

Tentative Rulings – September 18, 2003

To request a hearing on any matter on this calendar, you must call the Court at (209) 223-6360 by 4:30 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

Schneider v. Peters – 01CV1336 – Motion to Compel to Plaintiff's Response to Supplemental Discovery

The defendant's motion for an order compelling plaintiff's response to supplemental interrogatories and request for production is granted. The plaintiff is ordered to provide written, verified responses to this discovery within 10 days of the date of this ruling. The responses shall be without objection.

Plaintiff is ordered to pay the defendant sanctions in the amount of \$256.30 for costs and attorney fees incurred in bringing this motion. The court reserves the right to increase the amount of sanctions in the event that oral argument is requested and the tentative ruling confirmed.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.

Dunn v. Blackman – 03CV2807 – Demurrer of Frank Briski and Briski Well Drilling to First Amended Complaint

The demurrer of Frank Briski and Briski Well Drilling Co. (collectively referred to as "Briski") to the Dunns' First Amended Complaint is sustained with 10 days leave to amend.

The 10-year statute of limitations found in Code of Civil Procedure Section 337.15 does not apply to suits based on "willful misconduct or fraudulent concealment." (Lantzy v. Centex Homes (2003) 31 Cal.4th 363, 373; Code of Civil Procedure Section 337.15(f).)

Fraudulent concealment may be found where the defendant conceals from the plaintiff a material fact of the subject matter of the transaction that the defendant has a duty to disclose. (Barnhouse v. City of Pinole (1982) 133 Cal.App.3d 171.) There is a duty of disclosure, "when one party to a transaction has sole knowledge or access to material facts and knows that such facts are not known or reasonably discoverable by the other party." (Goodman v. Kennedy (1976) 18 Cal.3d 335.)

In the context of a real estate transaction, "[i]t is now settled in California that where the seller knows of facts materially affecting the value or desirability of the property ... and also knows that such facts are not known to, or within the reach of the diligent attention and observation of the buyer, the seller is under a duty to disclose them to the buyer." (Lingsch v. Savage (1963) 213 Cal.App.2d 729, 735; Shapiro v. Sutherland (1998) 64 Cal.App.4th 1534.)

Code of Civil Procedure Section 337.15(f) does not create an exception to the 10-year statute of limitations for causes of action based on affirmative misrepresentations. The exception is limited to situations in which the plaintiff alleges fraudulent concealment of a material fact. By the Dunns' own admission (Opposition to Demurrer, p. 7, ll. 26-27; p. 8, ll. 1-3) Briski did not owe a duty of disclosure to the Dunns and therefore, was not included in the third cause of action for suppression of facts. Briski was not retained by the Dunns and was not a party to the real estate transaction.

A cause of action based on willful misconduct can also create an exception to the 10-year limitation period. Willful misconduct has been defined as meaning intentional, wrongful conduct done either with knowledge that serious injury probably will result or with a wanton and reckless disregard of the possible result. Three elements are necessary to raise a negligent act to the level of willful misconduct: actual or constructive knowledge of the peril to be apprehended; actual or constructive knowledge that injury is a probable as opposed to a possible result of the danger; and a conscious failure to act to avert that peril. (Colich & Sons v. Pacific Bell, (1988) 198 Cal.App.3d 1225.)

The Dunns do not allege facts sufficient to establish Briski engaged in willful misconduct.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.