

## **Tentative Rulings – February 19, 2004**

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.

### **County of Amador v. Wright– 03CV3125 – Defendants' Demurrer to Complaint**

The defendants' demurrer to the first cause of action on the grounds that it fails to state a claim for creation of a public nuisance based violation of an ordinance is overruled. The first cause of action alleges that the defendants operated a business that was not a permitted use of the property, the unpermitted use violated a county ordinance, the unlawful use constitutes a public nuisance and that plaintiff will suffer irreparable harm if the nuisance is not abated. Accepting the allegations of the complaint as true, the plaintiff states a valid cause of action.

The defendants contend they were engaged in a use permitted by the ordinance. This contention simply raises a disputed issue of fact, which is not subject to determination on a demurrer.

The demurrer to the second cause of action for breach of contract is overruled for these same reasons. The plaintiff alleges facts sufficient to support a cause of action based on breach of the Williamson Act contract. In summary, the plaintiff alleges the contract required the defendants to limit their operations on the property to permitted uses. The plaintiff goes on to allege that the defendants breached the contract by engaging in an unpermitted commercial business.

To summarize the demurrer to this cause of action, defendants contend that their operations were a permitted use and therefore, there was no breach of contract. Again, this is one of the ultimate issues that must be decided upon presentation of evidence. The demurrer to the second cause of action on the grounds it fails to state a claim for breach of contract is overruled.

The defendants challenge the complaint on the grounds that the ordinance they allegedly violated is unconstitutional because it deprived them of equal protection.

A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual. (*Dillon v. Municipal Court* (1971) 4 Cal.3d 860, 865.) An "as-applied" challenge "contemplates analysis of the facts of a particular case or cases to determine the circumstances in which the statute or ordinance has been applied and to consider whether in those particular circumstances the application deprived the individual to whom it was applied of a protected right.

Because an as applied challenge necessarily requires factual findings not permitted in the context of a demurrer, the court assumes defendants are making a facial challenge to the ordinance at this time.

The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner. (Smith v. Board of Medical Quality Assurance (1988) 202 Cal.App.3d 316.) Based on a review of Section 19.24.036(G)(32) of the Amador County Code, the court finds the ordinance constitutional on equal protection grounds.

A review of the ordinance in question does not support a finding that wineries are treated differently than other AG zoned parcel owners. The “winery ordinance” is set forth in Section 19.24.036(G)(32) of the county code. Subsection G sets forth the permitted uses in the AG district. Subsection (G)(32) provides wineries (and only wineries) may engage other, additional uses. Subsection (G)(32) does not by its terms limit or restrict a winery from engaging in any of the other permitted uses set forth in (G)(1) – (31). Therefore, the defendants have not established the first element of a facial challenge to an ordinance on equal protection grounds.

The demurrer to the complaint on equal protection grounds is overruled. Defendants are granted 10 days leave to file an answer to the complaint.

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 notice required.

**Anderson v. Belli – Motion of Christopher D. Williams to be Relieved as Counsel**

The motion of Christopher D. Williams to be relieved as counsel for defendants, David J. Belli and Linda J. Belli, is granted. This order will become effective upon the filing of the proof of service of the signed order on the clients.

Mr. Williams is to provide notice of this ruling.

**MBNA v. Raper – 03CV3154 – Petition to Confirm Arbitration Award**

Plaintiff’s motion for terminating sanctions is denied without prejudice. Local Rule 4.03 requires the moving party to provided notice of the court’s tentative ruling procedures in the notice of motion. Plaintiff failed to provide the notice required.

**Citibank v. Raper – 03CV2719 – Motion for Terminating Sanctions**

Plaintiff’s motion for terminating sanctions is denied without prejudice. Local Rule 4.03 requires the moving party to provided notice of the court’s tentative ruling procedures in the notice of motion. Plaintiff failed to provide the notice required.

**Central Valley Parnters in Care v. Bunch – 03CV3035 – Plaintiff’s Motion for Order that Matters in Request for Admissions be Deemed Admitted**

Plaintiff’s motion for terminating sanctions is denied without prejudice. Local Rule 4.03 requires the moving party to provided notice of the court’s tentative ruling procedures in the notice of motion. Plaintiff failed to provide the notice required.

**Hansen v. Sutter Amador Hospital – 02CV2503 – Motion of William Kruse to be Relieved as Counsel**

The motion of William E. Kruse to be relieved as counsel for plaintiffs, Geraldine and Dennis Hansen, is denied. There is no proof of service on the client. The notice provided to opposing was less than the required 26 days. Mr. Kruse failed to provide notice of the court's tentative ruling procedures as required by Local Rule 4.03 and failed to submit an order at the time of filing as required by California Rules of Court, Rule 376.

**Potter v. Wright - 03CV2996 – Plaintiff's Motion to Tax Costs**

Plaintiff failed to comply with Local Rule 4.03 and provide notice of the court's tentative ruling procedures. Because opposition was filed, the hearing will go forward as noticed. The court reserves the right to issue an OSC re sanctions for failure to comply with Local Rule 4.03. There is no tentative ruling.

**Hawkins v. Kitayama – 02CV2460 – Plaintiff's Motion for Terminating Sanctions**

No tentative ruling.