

Tentative Rulings – January 29, 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.

Neco v. Department of Transportation – 02 CV 2354 – Defendant's Motion for Summary Judgment

The defendant's motion for summary judgment is denied. The court finds that the plaintiffs, through the admissible evidence contained in the declaration of William Neuman, raised a triable issue of material fact as to whether the crosswalk at intersection of Sutter Street and Highway 49 constituted a dangerous condition of public property.

Mr. Neuman states in his declaration that a dangerous condition was created by "sight distance problems, the approach speed of 45 miles per hour, there had been a history of accidents at this intersection and that the beacon light was positioned over the southbound and not in the middle of intersection. (Neuman Declaration, page 6, lines 1-21.)

Mr. Neuman opines that the crosswalk constituted a dangerous condition based on the facts set forth above. The requirements for expert testimony are that it relate to a subject sufficiently beyond common experience as to assist the trier of fact and be based on matter that is reasonably relied upon by an expert in forming an opinion on the subject to which his or her testimony relates. Such evidence is admissible even though it encompasses the ultimate issue in the case. (Evidence Code Section 805; People v. Olguin (1994) 31 Cal.App.4th 1355.)

Accordingly, the declaration of Mr. Neuman, to the extent it contains admissible evidence, raises a triable issue of fact.

Defendant's motion for summary adjudication on the issue of its duty to light the subject accident area is granted. (Code of Civil Procedure Section 437c(f)(1).) Duty, being a question of law, is particularly amenable to resolution by summary judgment. (Parsons v. Crown Disposal Co. (1997) 15 Cal.4th 456, 465.)

Based on the holdings of Antenor v. City of Los Angeles (1985) 174 Cal.App.3d 477 and Plattner v. City of Riverside (1999) 69 Cal.App.4th 1441, the court finds, as a matter of law, that the defendant had no duty to light the area of the subject accident.

Likewise, the defendant is granted summary adjudication on the issue of whether it had a duty to install traffic signals. (Mittenhuber v. City of Redondo Beach (1983) 142 Cal.App.3d 1; Government Code Section 830.4.)

Based on this ruling, the court finds the defendant's requests for costs pursuant to Code of Civil Procedure Section 1038 premature.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed. Moving party to provide notice of this ruling.

Neco v. Department of Transportation – 02 CV 2354 – Defendant's Motion to Compel Discovery Responses (Request for Production of Documents and Requests for Admissions.)

The Discovery Act requires that, prior to the initiation of a motion to compel, the moving party declare that he or she has made a serious attempt to obtain 'an informal resolution of each issue.' (Code of Civil Procedure Section 2025 (o).) This rule is designed "to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order". (McElhaney v. Cessna Aircraft Co. (1982) 134 Cal.App.3d 285, 289.)

In support of the motions, Ms. Jacobs declares that she asked for similar information at the plaintiff's deposition and that plaintiffs' counsel objected to providing this information. This does not satisfy the "meet and confer" obligation set forth in the code.

This motion is continued to February 5, 2004, at 3:15 p.m., in Department 2 of this court. The motion will be subject to the court's tentative ruling procedures. Counsel are ordered to engage in a serious meet and confer discussions regarding the issues raised in the defendant's motions. Ms. Jacobs shall file a supplemental declaration with the court on or before February 5, 2004, describing her attempts to meet and confer with plaintiffs' counsel.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed. Moving party to provide notice of this ruling.

Hawkins v. Kitayama – 02 CV 2460 – Defendant's Motion for Terminating Sanctions

The defendant's motion for terminating sanctions is granted. On December 11, 2003, this court granted defendant's motion for an order compelling the plaintiff to respond to interrogatories and a request for production. Plaintiff was ordered to serve his responses, without objection, within 10 days of the date of the ruling. The tentative ruling specifically stated that the order was to become effective immediately and further notice was not required. On December 16, 2003, the clerk of the court served the parties with a copy of the court's minute order.

The plaintiff has failed to obey the court's order and filed no opposition to this opposition. It does not appear the plaintiff has any excuse or justification for his failure to comply with the previous discovery order. Trial in this matter is scheduled in approximately two months. Plaintiff has not yet provided the defendant with basic written discovery and has failed to appear of his properly noticed deposition.

Under the circumstances terminating sanctions are appropriate. The plaintiff's complaint is dismissed.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed. Moving party to provide notice of this ruling.

Robinson v. Knowles – 03 CV 3113 – Demurrer of Defendant Mike Knowles

No tentative ruling. Appearances required.