

Tentative Rulings – June 24, 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. Jerry B. Wright, et al. – 04CV3278 – Defendants’ Demurrer to Complaint

In summary, the complaint alleges that the defendants are operating a business, which is not a permitted use in the AG zone. These allegations form the basis of causes of action for nuisance (first cause of action) and breach of contract (second cause of action).

The defendants demurrer to both cause of action on the grounds that the zoning ordinance in question allow restaurant operations. The defendants contend that certain subsections of the ordinance permit activities related to food preparation and service and therefore, the operation of a “deli-style” restaurant, as alleged in the complaint, is a permitted use.

The function of a demurrer is to test the sufficiency of a pleading by raising questions of law. (California Federal Bank v. Matreyek (1992) 8 Cal.App.4th 125, 130.) As a general rule in testing a pleading against a demurrer the facts alleged in the pleading are deemed to be true, however improbable they may be. (Del E. Webb Corp. v. Structural Materials Co. (1981) 123 Cal.App.3d 593, 604.)

The complaint alleges that the defendants’ business activities constitute “the unlawful operation of a commercial business in a non-commercial zone, including but not limited to the operation of a restaurant in a winery on AG-zoned land.” (Plaintiff’s Complaint p. 9, ll. 18-20.) Therefore, the allegations of the complaint go beyond the issue of whether a “restaurant” is a permitted use. The complaint alleges that defendants are operating a commercial business in a non-commercial zone. Whether this allegation can be sustained is a question of fact not amenable to determination upon a demurrer.

The defendants’ demurrer is overruled. An answer shall be filed within 20 days of the date of this ruling.

Unless a hearing is requested, this minute order is effective immediately. Moving party to provide notice of this ruling and submit an order to the court pursuant to Code of Civil Procedure Section 437c(g) and California Rules of Court, Rule 391.

