

Tentative Rulings –December 14, 2006

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.

Kromann v. Williams: 06CV4388

Demurrer to First Amended Complaint

Demurrers are authorized by Code of Civil Procedure §430.10, which provides that a party may demur to a complaint on several grounds, including failure to state facts sufficient to constitute a cause of action. (C.C.P. §430.10.) Demurrers are used to challenge defects that occur on the face of the complaint or from matters, which may be judicially noticed. (Blank v. Kirwan (1985) 39 Cal. 3d 311, 318.) The complaint will be construed liberally with an eye to substantial justice between the parties. (C.C.P. §452.) Moreover, leave to amend is to be liberally granted. (Goodman v. Kennedy (1976) 18 Cal.3d 335, 349.) In fact, it is an abuse of discretion to deny leave to amend when there is any real possibility that the plaintiff can state a valid cause of action. (ibid.)

In general, no suit for money or damages may be maintained against a government entity unless a formal claim has been presented to such entity and rejected, or said claim is deemed rejected by the passage of time. (Gov. Code §§945.4, 945.6.) Suits against public employees for actions taken in the course and scope of their employment are also subject to the requirements of the claims statute. (Gov. Code §950.2.) An employee is within the scope of his employment under the claims act when he is engaged in the work he is employed to perform or when his act is incident to his duty and was performed for the benefit of his employer and not merely to serve his own agenda. (Fowler v. Howell (1996) 42 Cal.App.4th 1746, 1750-1751.) The scope of employment is viewed broadly to include willful and malicious acts, as well as negligent acts. (id. at 1751.)

Failure to comply with the claims statute bars the claim against the public entity or public employee. (State of California v. Superior Court (2004) 32 Cal.4th 1234, 1239.) Moreover, failure to allege facts in the complaint, which demonstrate or excuse compliance with the government tort claims statute, subjects the complaint to a general demurrer. (State of California, supra, at 1239.)

Government Code §911.2 provides:

(a) A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with Section 915) not later than one year after the accrual of the cause of action.

However, if a claim is not presented within the time outlined in §911.2, an application may be made to the public entity to extend the time to file the claim. (Gov. Code §911.4, subd. (a).) Said application must be presented within one year of the accrual of the cause of action and shall state the reason for the delay in presenting the claim. (Gov. Code §911.4, subd. (b).) If the Board fails to act on an application within 45 days of its presentation, then the application is deemed denied. (Gov. Code §911.6.) If the public entity denies the application, the plaintiff may file a petition with the superior court requesting relief within 6 months from the date of the denial. (Gov. Code §946.6, subd. (b).) If the court grants relief, then the plaintiff must file his civil action within 30 days. (Gov. Code §946.6, subd. (f).)

The amended complaint fails to plead compliance with the tort claims act. As Plaintiff has been given the opportunity to amend the complaint and has been unable to do so, the demurrer is sustained without leave to amend.

Defendant to prepare an order in compliance with Rule 391.

Motion to Consolidate

The above ruling on the demurrer renders the motion to consolidate moot.

Kromann v. Holstine: 06CV4387

Demurrer to First Amended Complaint

Compliance with the tort claims act is a prerequisite to initiating a suit for money or damages against a Government entity. (Gov. Code §§945.4, 945.6.)

Although the court has not specifically given the plaintiff leave to amend in the instant case, the court may take judicial notice of case number 06CV4388. In that case, a virtually identical complaint was filed. A demurrer was sustained with leave to amend. Plaintiff filed the same amended complaint in all of his pending actions, including the instant action. Plaintiff fails to plead compliance with the tort claims act in the amended complaint. Based upon that fact, it does not appear that there is a reasonable possibility of the plaintiff amending the complaint to plead compliance with the tort claims act. Therefore, the demurrer is sustained without leave to amend.

Defendant to prepare an order in compliance with Rule 391.

Motion to Consolidate

The above ruling on the demurrer renders the motion to consolidate moot.

Kromann v. Clark: 06CV4386

Demurrer to First Amended Complaint

Compliance with the tort claims act is a prerequisite to initiating a suit for money or damages against a Government entity. (Gov. Code §§945.4, 945.6.)

Although the court has not specifically given the plaintiff leave to amend in the instant case, the court may take judicial notice of case number 06CV4388. In that case, a virtually identical complaint was filed. A demurrer was sustained with leave to amend. Plaintiff filed the same amended complaint in all of his pending actions, including the instant action. Plaintiff fails to plead compliance with the tort claims act in the amended complaint. Based upon that fact, it does not appear that there is a reasonable possibility of the plaintiff amending the complaint to plead compliance with the tort claims act. Therefore, the demurrer is sustained without leave to amend.

Defendant to prepare an order in compliance with Rule 391.

Motion to Consolidate

The above ruling on the demurrer renders the motion to consolidate moot.

Kromann v. Williams, MSCP, CDCR: 06CV4389

Demurrer to First Amended Complaint

Compliance with the tort claims act is a prerequisite to initiating a suit for money or damages against a Government entity. (Gov. Code §§945.4, 945.6.)

Although the court has not specifically given the plaintiff leave to amend in the instant case, the court may take judicial notice of case number 06CV4388. In that case, a virtually identical complaint was filed. A demurrer was sustained with leave to amend. Plaintiff filed the same amended complaint in all of his pending actions, including the instant action. Plaintiff fails to plead compliance with the tort claims act in the amended complaint. Based upon that fact, it does not appear that there is a reasonable possibility of the plaintiff amending the complaint to plead compliance with the tort claims act. Therefore, the demurrer is sustained without leave to amend.

Defendant to prepare an order in compliance with Rule 391.

Motion to Consolidate

The above ruling on the demurrer renders the motion to consolidate moot.