

Tentative Rulings –February 23, 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.

McDaniel v. Douglas: 04CV3207

Defendants' Demurrer to First Amended Complaint

There is no tentative ruling in this matter pursuant to Amador County Local Rule 4.03, subdivision (F).

MBNA v. Gyde: 05CV3835

Petitioner's Petition to Confirm Arbitration Award

Petitioner's Petition to Confirm Arbitration Award is granted. Petitioner is awarded costs in the amount of \$322.80. Petitioner is further entitled to interest from the date that the arbitration award was rendered, December 13, 2004.

Armstrong v. State of California (Department of Corrections and Rehabilitation): 05CV3994

Defendant's Demurrer to First Amended Complaint

Defendant's demurrer to the First Amended Complaint is overruled in part and sustained in part with 20 days leave to amend.

Code of Civil Procedure §425.10 states that a complaint must contain a statement of facts, constituting each cause of action, in ordinary and concise language. A plaintiff must set forth facts sufficient to establish each element of the cause(s) of action pled. (C.C.P. §430.10; see also Rakestraw v. California Physicians' Service (2000) 81 Cal.App.4th 39, 43.) Failure to do so subjects the complaint to a demurrer. (C.C.P. §430.10, subd. (e).)

In determining if a complaint states facts sufficient to constitute a cause of action, the court may consider all material facts pled in the complaint and any reasonable implications derived therefrom; however, it may not consider contentions, deductions, or conclusions of facts or law. (Young v. Gannon (2002) 97 Cal.App.4th 209, 220.)

Under FEHA, to demonstrate a claim of discrimination, the plaintiff must demonstrate that she was an employee of the defendant; that the defendant took adverse employment action against her; that her protected status (i.e. gender) was a motivating reason for the adverse employment action; that she was harmed; and that the adverse employment action was a substantial factor in causing her harm. (CACI 2500; Gov. Code §12940, sub. (a).)

To properly plead a cause of action in retaliation under FEHA, the plaintiff must demonstrate that she undertook a protected activity; that the defendant took adverse employment action against her; that her protected activity was a motivating reason for the defendant's decision to take the adverse action; that she was harmed; and that the defendant's retaliatory conduct was a substantial factor in causing her harm. (CACI 2505; Gov. Code §12940, sub. (h); see also Fisher v. San Pedro Peninsula Hospital (1989) 214 Cal.App.3d 590, 604.)

In this action, the complaint fails to plead facts sufficient to sustain the allegations pertaining to discrimination and retaliation. Plaintiff relies primarily on conclusory statements in her complaint to support said allegations. Therefore, the demurrer is sustained with 20 days leave to amend as pertains to the discrimination and retaliation causes of action. Of note, the defendant is not demurring to the Amended Complaint as pertains to the harassment allegations.

Defendant's alternative ground for the demurrer is that the complaint is uncertain. A Demurrer is proper if the pleading is uncertain, ambiguous, or unintelligible. (C.C.P. §430.10, subd. (f).) The

Complaint must set forth facts with sufficient precision, clarity, and particularity that the defendant may be apprised of the nature, source, and extent of the cause of action. (Metzenbaum v. Metzenbaum (1948) 86 Cal.App.2d 750, 753 [internal citations omitted].)

However, a Demurrer for uncertainty is strictly construed, even when the Complaint is uncertain in some respects, because ambiguities may be cleared up in the ordinary course of discovery. (Khoury v. Maly's of California, Inc. (1993) 14 Cal.App.4th 612, 616.) A Demurrer for uncertainty does not lie where the facts are presumptively within the knowledge of the demurring parties. (Dumm v. Pacific Valves (1957) 146 Cal.App.2d 792, 799 [internal citations omitted].)

If there are sufficient facts such that the defendant can figure out what issues he is being asked to meet, the failure to label each cause of action is not a ground for a demurrer, unless the lack of labels substantially impairs the plaintiff's ability to understand the complaint. (Williams v. Beechnut Nutrition (1986) 185 Cal.App.3d 135, 139, fn. 2.)

In this instance, the complaint is not so uncertain that Defendant would be unable to properly respond to the same. The defendants have addressed each of the "causes of action" under FEHA in their demurrer. Therefore, the lack of labels, necessarily, does not preclude the defendant from understanding what it is held to answer for. Therefore, the demurrer on the basis of uncertainty is overruled.

Defendant to prepare an order in compliance with California Rules of Court, Rule 391.

Martin v. Director, California Department of Motor Vehicles: 05CV4017

Petitioner's Petition for Alternative/Peremptory Writ

Prior to the court acting upon or conducting a hearing in relation to the instant petition, the petitioner is required to file a proof of service with the court. (C.C.P. §1088.5; Board of Supervisors v. Superior Court (1994) 23 Cal.App.4th 830, 840.) To date, no such proof of service has been provided. Therefore, until said proof of service is filed, the court may not take any action upon the instant petition.