

Tentative Rulings –June 29, 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.

The Alberta Hale Land Trust v. Bonneau: 05CV3880

Defendants' Demurrer to Amended Complaint

Defendants demur to each cause of action of the Amended Complaint on the grounds of uncertainty.

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 (see also Rutter, Civ. Proc. Before Trial, §7:85 (citing Khoury, supra, for the proposition that a demurrer for uncertainty will only be sustained when the complaint is so bad that the defendant cannot reasonably respond, i.e. that he cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed towards him).) 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].)

In this instance, the complaint is not so uncertain that the defendants cannot reasonably respond to the same.

Defendants also claim that the complaint is defective because it fails to state a proper demand for damages, pursuant to C.C.P. §425 (a)(2). However, a defective prayer for damages is immaterial to whether a cause of action is stated. (Gomez v. Volkswagen of America, Inc. (1985) 169 Cal.App.3d 921 (adding that a plaintiff is entitled to any relief warranted by the facts pleaded. The failure to ask for proper relief is not fatal to a complaint); see also Rogoff v. Grabowski (1988) 200 Cal.App.3d 624.)

Thus, any defect in the prayer for relief cannot be grounds to sustain the demurrer, as said issue is immaterial as to whether a cause of action is stated.

Therefore, the demurrer is overruled in its entirety. Defendants are to provide an answer the complaint within 15 days of the date of the instant ruling.

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 further notice of this ruling required.

Eugene Everett Welch v. Booker T. Welch: 05CV3825

Defendant's Demurrer to Amended Petition

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