

Tentative Rulings –November 30, 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.

Mauzy v Huggins: 06CV4478

Petitioner's Demurrer

Demurrers are used to challenge defects that occur on the face of the complaint or from matters that may be judicially noticed. (Blank v. Kirwan (1985) 39 Cal. 3d 311, 318.)

For the purposes of testing a cause of action, a demurrer admits the truth of all material facts properly pleaded. (Aubry v. Tri-City Hospital Dist. (1992) 2 Cal.4th 962, 966-967.) The issue upon demurrer is whether the complaint states a valid cause of action, not whether the facts alleged therein are true. Therefore, no matter how unlikely the facts are, the plaintiff's allegations must be accepted as true for the purposes of ruling on a demurrer. (Del E. Webb v. Structural Materials Co. (1981) 123 Cal.App.3d 593, 604.) However, the exception to this rule is that allegations in the complaint will not be taken as true if they are contradicted or inconsistent with facts judicially noticed by the court. (ibid.)

The complaint will be construed liberally with an eye to substantial justice between the parties. (C.C.P. §452.)

One ground for a demurrer is defect or misjoinder of parties. Demurrers based upon defect or misjoinder of parties only lie when it appears from the face of the complaint, or from matters judicially noticed, that some third person is a necessary or indispensable party to the action and, therefore, must be joined before the action can proceed. (C.C.P. §430.10, subd. (d).)

Code of Civil Procedure §389, subd. (a) provides:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

An indispensable party is one whose rights will inevitably be affected by a judgment. (Olszewski v. Scripps Health (2003) 30 Cal.4th 798.) Moreover, if the plaintiff seeks some type of affirmative relief, which, if granted, would injure or affect the interest of a third person, not joined in the action, that third person is an indispensable party. (Redevelopment Agency v. Commission on State Mandates (1996) 43 Cal.App.4th 1188.)

The face of the complaint does not demonstrate that there are other necessary and/or indispensable parties to the action. There is no information of which judicial notice has been taken, which demonstrates that there are necessary and/or indispensable parties to this action. Therefore, the demurrer is overruled on this basis.

Respondent also demurs to the petition on the grounds that improvement costs cannot be apportioned. However, the complaint itself states, "Petitioners have taken it upon themselves the burden of improving the Easement by paving it, but none of the costs of such improvement are sought from respondent; only the maintenance costs."

There is no information of which judicial notice may be taken which contradicts said allegations in the complaint. Moreover, the assessment of the respondent's liability is a factual issue, which is not properly adjudicated on demurrer.

Therefore, the demurrer is overruled on all grounds.

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.

Mizrahi v. Gibbs: 05CV4007

Motion to be Relieved as Counsel

There is no tentative ruling in this matter. Telephonic or personal appearances are required.

Neal v. Ikem: 06CV4360

Defendant's Demurrer to First Amended Complaint

Defendant's original demurrer was sustained, with leave to amend, on the grounds of failure to exhaust administrative remedies and for failure to state a cause of action in larceny and conversion.

Plaintiff filed an amended complaint on October 4, 2006. Defendant demurs to the amended complaint on the grounds that (1) Plaintiff fails to demonstrate exhaustion of administrative and judicial remedies or an exception to said doctrine, (2) Plaintiff cannot plead the elements of conversion based upon CDCR's failure to hire him, and (3) Defendant is immune from liability for the discretionary decisions made as a CDCR employee.

The amended complaint fails to demonstrate that Plaintiff exhausted administrative and judicial remedies or that he was excused from the same. Therefore, the demurrer is sustained without leave to amend on that basis. As said ruling disposes of the action, the remaining grounds for demurrer need not be adjudicated.

Defendant to prepare an order in compliance with Rule 391.

Neal v. MCSP: 06CV4361

Defendant's Demurrer to First Amended Complaint

Defendant's original demurrer to the complaint was sustained without leave to amend as to Defendant Brett Williams and sustained with leave to amend as to vicarious liability on the part of CDCR and as to compliance with the tort claims act. Plaintiff filed an amended complaint on October 4, 2006.

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.) In this context, the claim must be presented to the Victim Compensation and Government Claims Board. (Gov. Code §900.2.) 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)

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.)

The first amended complaint states, "In this case Defendant has filed a claim, STD 678 with Mule Creek State Prison (MCSP) and has filed a grievance, of which had been rejected by Padma Linker, Labor Relations Analyst at MCSP."

Plaintiff has failed to plead compliance with the tort claims act. Therefore, the demurrer is sustained without leave to amend.

In addition, Plaintiff continued to plead claims against Brett Williams. The demurrer to the original complaint was sustained without leave to amend as to all causes of action against Mr. Williams. Therefore, all causes of action pled against Mr. Williams are inappropriate.

As the demurrer is sustained without leave to amend for failure to comply with the Tort Claims Act, it is unnecessary to reach the merits of the remaining grounds for demurrer.

Defendant to prepare an order in compliance with Rule 391.