

Tentative Rulings –October 5, 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.

Biendenweg v. Frasier: 05CV3954

Defendants' Motion for Judgment on the Pleadings

Defendants' Motion for Judgment on the Pleadings is granted with 30 days leave to amend.

To state a cause of action for Intentional Interference with Contractual Relations requires the plaintiff to demonstrate the following:

- (1) That there was a contract between the plaintiff and a third party;
- (2) that the defendant knew of the contract;
- (3) that the defendant intended to disrupt the performance of the contract;
- (4) that the defendant's conduct prevented performance or made performance more expensive or difficult;
- (5) that Plaintiff was harmed; and
- (6) that the defendant's conduct was a substantial factor in causing the plaintiff's harm. (CACI 2201.)

If there is no valid enforceable contract between the parties, only a claim for interference with prospective economic advantage may be pled. (PMC, Inc. c. Saban Entertainment (1996) 45 Cal.App.4th 579.)

When two parties execute a contract with the understanding that approval from a third party is necessary for the contract to be effective, the contract is not complete, and neither party is bound by the terms of said contract, until the third party has actually approved of the contract. (Frankel v. Board of Dental Examiners (1996) 46 Cal.App.4th 534.) However, this is true only when, at the time that the contract was originally signed, a reasonable person would have understood that the agreement would not be effective until third party approval. (*id.*) The fact that the performance under the contract is not to be performed until a later date and there is a present anticipation of future repudiation of the contract does not mean that the contract is not presently binding and effective. (*id.* (discussing Chicago Bridge Co. v. Ind. Acc. Com. (1964) 226 Cal.App.2d 309, which held that the existence of a condition that security clearance had to be obtained before employment would commence did not prevent the formation of a contract with respect to such employment at the time that the employment agreement was made).) For example, in Frankel, a settlement agreement was reached between the parties contingent on the Board of Dental Examiner's approval of the terms thereof. In that case, the court noted that the potential lack of approval by the Board of the settlement agreement was simply a condition subsequent, i.e. a future event upon the happening of which the agreements and obligations contained therein would no longer be binding on the parties. (*id.*)

Conditions precedent are acts that must be performed or a certain event that must occur prior to the promisor's duty of performance arising. (1 Witkin, Summary of CA Law (10th ed.), Contracts §776.) The courts should not construe the terms of the contract to establish a condition precedent unless the terms of the contract are plain and unambiguous to that effect. (Frankel, supra.) Regardless, contracts subject to conditions precedent do not, necessarily, preclude tortious interference claims. (SCECORP v. Superior Court (1992) 3 Cal.App.4th 673.)

In this case, the complaint alleges that the plaintiff signed an "intent to buy" a Mobilehome with the Behlans. The complaint goes on to state that the Behlans informed the plaintiff that the defendants had to approve him to move in as a resident and a buyer.

It is somewhat ambiguous what the actual agreement between the plaintiff and the Behlans was and the plaintiff fails to attach a copy of the intent to buy agreement in question. However, Plaintiff does allege that there was an agreement between himself and the Behlans. It is only the precise nature of said agreement that is unclear. However, for the sake of the instant motion, Plaintiff has sufficiently pled the existence of a contract.

The next step is to determine whether the plaintiff has pled the other necessary elements of an intentional interference cause of action. It appears that the plaintiff has failed to plead facts showing that the defendants intended to interfere with the contract in question. The defendants were required to approve of the contract in question. Thus, the defendants could either approve of or reject the contract in question. In this instance, the defendants chose to reject the contract, which is in accordance with the alleged agreement. Thus, necessarily, the defendants had to "interfere" with the contract in question. Plaintiff has failed to plead sufficient facts to show interference with the contract beyond which was required by the agreement or that the decision to reject the plaintiff was somehow legally improper. Plaintiff must allege more than the conclusory statement that he was unreasonably rejected.

Moreover, assuming arguendo, that no valid contract was pled, the plaintiff could possibly plead a cause of action for intentional interference with economic relationship. Although, in this instance, the plaintiff has failed to plead all of the elements of the same; most notably, wrongful conduct on the part of the defendants.

However, because leave to amend is to be granted liberally and there is some possibility that the plaintiff can state a valid cause of action, the motion for judgment on the pleadings is sustained with 30 days leave to amend.

Defendants also allege that the statute of frauds bars the action. However, only a party or his/her successor, in general, can invoke the statute of frauds. (1 Witkin Summary of CA Law (10th ed.), Contracts, §348.) The defendants were neither parties to the contract nor successors; therefore, the defendants cannot invoke the protection of the statute of frauds.

Defendants are to prepare an order in compliance with Rule 391.

Serber v. Estate of Johnson: 04CV3608

Brandon Johnson's Motion to Quash Service of Summons

Brandon Johnson's Motion to Quash Service of Summons is hereby denied.

C.C.P. §415.20 (b) provides:

If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, as specified in Section 416.60, 416.70, 416.80, or 416.90, a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United State Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the

place where a copy of the summons and complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

Filing a proof of service with the court, which complies with all of the statutory requirements, creates a rebuttable presumption that service was proper. (Dill v. Berquist (1994) 24 Cal.App.4th 1426, 1441-1442.)

If a motion to quash service is filed, the burden is on the plaintiff to demonstrate that all of the jurisdictional requirements for proper service are met. (Sheard v. Superior Court (1974) 40 Cal.App.3d 287.) When the declarations in support of and in opposition to the motion to quash conflict, it is up to the trial court to determine which declaration is more credible. (Evangelize China Fellowship, Inc. v. Evangelize China Fellowship, Hong Kong (1983) 146 Cal.App.3d 440.) As long as the determination by the trial court is supported by substantial evidence, the decision will not be disturbed on appeal. (ibid.)

Plaintiff filed a valid proof of service with the court. Therefore, a rebuttable presumption that service was proper arose. Plaintiff has submitted sufficient evidence to demonstrate that the address where Brandon Johnson was served is his usual mailing address and that Susan Johnson was informed of the nature of the documents that she was served with.

Plaintiff to prepare an order in compliance with Rule 391.

Cody v. Carver: 06CV4437

Plaintiffs' Order to Show Cause re: Preliminary Injunction and Temporary Restraining Order

There is no tentative ruling in this matter.