

## **TENTATIVE RULINGS—APRIL 19, 2007**

**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.**

### **Amador Water Agency v. Perano: 06CV4189**

#### ***Plaintiff's Motion to Require Defendant to Produce Compliant Statement of Valuation Data***

Plaintiff's motion is denied in part and granted in part. Defendant is ordered to submit a supplemental statement of valuation, which includes the shape of the properties used to determine value.

C.C.P. §§1258.250, et seq. are discovery statutes, which are designed to safeguard against surprise. (*City of Fresno v. Harrison* (1984) 154 Cal.App.3d 296, 301.) Moreover,

[t]he special condemnation discovery rules are not accidental. Exceptionally full disclosure is the obvious purpose of the statutes. Ample discovery makes settlement more likely and promotes judicial economy if trial is necessary. "Deposing" an expert in front of a jury is time-consuming and unwise. (*ibid.*)

The statutes intend to fully expose the expert's opinions on the subjects concerned. (*id.* at 302-303.)

Section 1258.260 should be liberally construed to provide for a general statement of the expert's proposed testimony, with specifics covering the listed factors and any other supporting factors upon which the expert relies. If the factors are not important enough to disclose prior to trial, they are not sufficiently important once trial arrives and may be excluded upon proper objection. (*id.* at 303.)

The provisions in question are discovery provisions, which are designed to aid the parties in preparation for trial, etc. The valuation statements should give the opposing party a general idea as to the testimony of any experts who will testify and put the opposing party on notice of the same. The opposing party may then depose the expert to gather further information prior to trial.

The defendant's valuation statement by John Nicolaou breaks down the damages into those damages related to the property that is undisputedly owned by defendant and those areas that are in dispute. Plaintiff's arguments regarding the valuation statement are not well placed. The defendant is giving more information to the plaintiff than is required by code. Plaintiff should not complain regarding the same. The plaintiff may set the defendant's appraiser's deposition to gain additional information regarding the appraiser's opinions and expected testimony.

Plaintiff has not presented any authority that states that including additional information in the valuation statement is inappropriate.

Plaintiff contends that the defendant's valuation statement must include a statement regarding future zoning. However, said statement is not required, if the expert does not hold an opinion regarding the same.

Plaintiff also makes an argument about the omission of the shape of the properties used to determine value from the valuation statement. Information regarding the shape of the properties is required by statute. Defendant did not include information pertaining to shape. However, Defendant did submit much identifying information about the parcels in question, including the assessor's parcel numbers. From said information, the plaintiff could ascertain the shape of each parcel by referencing the assessor's records or via further discovery, including a deposition of the

appraiser. Thus, even if the statement was allowed to stand as is, it is unlikely that said deficiency would warrant the exclusion of the appraiser's testimony.

The plaintiff's motion is denied in part. The only valid portion of motion is that pertaining to shape. Thus, the defendant is ordered to prepare a modified or supplemental valuation statement, which includes the shape of each parcel used to determine value.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.

**Baseline Financial v. Johnson: 06CV4171**

***Cross-Defendant's Motion for Summary Judgment***

Cross-defendant's Motion for Summary Judgment is denied.

Summary judgment may be granted where there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. (C.C.P. §437c, subd. (a).) A party may move for summary adjudication as to one or more causes of action within an action if that party contends that the cause of action has no merit. (C.C.P. §437c, subd. (f)(1).) A motion for summary adjudication shall be granted only if it completely disposes of a cause of action. (C.C.P. §437c, subd. (f)(1).) A motion for summary adjudication may be made by itself or in the alternative to a motion for summary judgment. (C.C.P. §437c, subd. (f)(2).) A motion for summary adjudication shall proceed in all procedural respects as a motion for summary judgment. (C.C.P. §437c, subd. (f)(2).)

However, the court cannot grant a motion for summary adjudication when the only motion noticed for hearing is a motion for summary judgment. (Maryland Cas. Co. v. Reeder (1990) 221 Cal.App.3d 961, 974.) Therefore, when the notice of motion only seeks summary judgment, the presence of any triable issue requires denial of the motion. (Homestead Savings v. Superior Court (1986) 179 Cal.App.3d 494, 498.) The court cannot summarily adjudicate claims as to which no triable issue is raised, unless summary adjudication was requested in the notice of motion. (id.)

In moving for summary judgment, the moving party must make a prima facie showing that there are no triable issues of material fact. (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 850.) Upon such a showing, the burden of proof shifts to the opposing party to demonstrate that there is a triable issue of material fact. (ibid.) A material fact is one that relates to some claim or defense at issue under the pleadings and it must be essential to the judgment, i.e. if proved it would change the outcome of the case. (Zavala v. Arce (1997) 58 Cal.App.4th 915, 926.)

A motion for summary judgment must be supported by evidence establishing the party's right to the relief sought. (Regents of Univ. of Calif. V. Superior Court (1996) 41 Cal.App.4th 1040, 1044.) Said evidence may consist of declarations, admissions by the opposing party, discovery, and matters subject to judicial notice. (C.C.P. §437c, subd. (b)(1).) A declaration in support of said motion must be based upon personal knowledge of the declarant, demonstrate that the declarant is competent to testify to the matters stated therein, and set forth admissible evidence. (C.C.P. §437c, subd. (d).) In ruling on a motion for summary judgment, the court must consider all of the evidence and all reasonable inferences drawn therefrom and must view such evidence in the light most favorable to the opposing party. (Aguilar, supra, at 843.)

Of note, because the cross-defendant did not request summary adjudication of issues, the motion for summary judgment must be denied if there is any triable issue of material fact present.

1. First Cause of Action: Breach of Contract:

Cross-defendant brought forth evidence demonstrating that there is no triable issue of material fact regarding the failure to send proper notice. The burden then shifted to Cross-complainant to demonstrate a triable issue of material fact. Cross-complainant failed to do so.

The second allegation regarding breach of contract is that the cross-defendant assigned the incorrect realized value to the vehicle. In the cross-complaint, it is alleged that the wholesale value of the vehicle should have been used as the realized value. The contract provides three methods by which the realized value of the vehicle could be evaluated: (1) by written agreement of the parties; (2) by a professional appraiser; or (3) if the realized value is not determined within 10 days after termination, by selling the vehicle at wholesale or another commercially reasonable manner that is deemed appropriate. Cross-defendant introduced evidence that the vehicle was sold for \$10,150.00. Selling the vehicle at wholesale or in another commercially reasonable manner is one of the proper means of determining the realized value. However, Cross-defendant relies on the conclusory declaration that the sale was made in a commercially reasonable manner without any support for the same. Therefore, a triable issue of fact remains as to whether the method of sale was commercially reasonable.

Said triable issue alone is sufficient to defeat the entire motion. However, for the sake of completeness, the second cause of action will also be examined.

## 2. Second Cause of Action: Misrepresentation

The cross-complaint contends that the cross-defendant told the cross-complainant that an appraisal was not necessary because cross-defendant was in the business of making money and would receive a fair price for the vehicle. The representative told the cross-complainant that the price would be the wholesale value and not the fair market value. Cross-complainant states that he detrimentally relied on said statement when he delivered the vehicle to the cross-defendant's car lot instead of obtaining an appraisal or selling the vehicle himself.

Cross-defendant relies upon a document that contains notes of the cross-defendant's representative's conversation with the cross-complainant for the proposition that the cross-defendant did not make any misrepresentations to the cross-complainant. However, the document is not a verbatim record and does not foreclose the cross-complainant's claims. Thus, a triable issue exists as to the second cause of action as well.

Cross-defendant has not met its burden to demonstrate that there is no triable issue of material fact. Therefore, the motion for summary judgment is denied.

Cross-defendant to prepare an order in compliance with Rule 3.1312.