

TENTATIVE RULINGS—AUGUST 31, 2007

To request a hearing on any matter on this calendar, you must call the Court at (209) 257-2692 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.

Cody v. Carver: 06CV4437

Motion to Enforce Settlement

Plaintiffs' Motion to enforce settlement agreement and for attorneys' fees is hereby denied.

Plaintiffs move to enforce a settlement, which resulted from the settlement conference on November 14, 2006. However, all parties were not present at said settlement conference. Moreover, as the minutes from the conference indicate, the parties reached a "settlement in concept only." The Court informed the parties present that all parties would have to agree to the stipulated settlement and sign the same. At the conclusion of the settlement conference, a further hearing was scheduled to determine whether a settlement was actually implemented.

There was no binding settlement reached at the settlement conference. Therefore, the motion is denied. As the motion is denied, the plaintiffs' request for attorneys' fees is denied. Defendant's request for attorney's fees is also denied, as no authority was presented for the award of said fees.

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.

If oral argument is requested, it will be heard on September 5, 2007 at 3:00 a.m. in Department 2.

Fallon v. Yanes: 07CV4829

Defendant Walt Robb's Demurrer to Complaint

Defendant's Demurrer is hereby continued, on the court's own motion, to September 21, 2007 at 10:00 a.m. in Department 2. Defendant's Notice of Motion fails to comply with Local Rule 4.03. Defendant is to file and serve an amended notice, in compliance with Rule 4.03, no later than September 10, 2007.

Hausen v. Thukral: 06CV4536

Demurrer to Complaint

Defendant's demurrer to the complaint is overruled in part and sustained in part with leave to amend.

Defendant's request for judicial notice is denied. Defendant failed to properly authenticate the document of which judicial notice was requested to be taken.

Demurrers are authorized by Code of Civil Procedure §430.10, which provides that a party may demur to a complaint on several grounds, including failure to state facts sufficient to constitute a cause of action. (C.C.P. §430.10.) Demurrers are used to challenge defects that occur on the face of the complaint or from matters, which may be judicially noticed. (Blank v. Kirwan (1985) 39 Cal. 3d 311, 318.) The complaint will be construed liberally with an eye to substantial justice between the parties. (C.C.P. §452.)

Leave to amend is to be liberally granted. (Goodman v. Kennedy (1976) 18 Cal.3d 335, 349.) In fact, it is an abuse of discretion to deny leave to amend when there is any real possibility that the plaintiff can state a valid cause of action. (ibid.)

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.)

Defendant demurs to the first cause of action on the grounds of failure to state a cause of action and lack of jurisdiction. Defendant bases both grounds for the demurrer upon the contention that the repairs to the easement did not constitute maintenance of the easement; but rather, they were improvements. However, the characterization of the repairs is not an issue to be determined by this demurrer. Rather, it is an issue of fact. Giving the appropriate deference to the petition, the plaintiffs have pled sufficient facts to state a cause of action under Civil Code §845. Therefore, the demurrer is overruled as to the first cause of action.

Defendant demurs to the second cause of action on the grounds of failure to state a cause of action and uncertainty.

The elements for a claim of unjust enrichment are receipt of a benefit and unjust retention of the benefit at the expense of another. (Lectrodryer v. Seoulbank (2000) 77 Cal. App. 4th 723, 726.) However, it must ordinarily be shown the benefits were conferred by mistake, fraud, coercion, or request; otherwise, although there is enrichment, it is not unjust. (1 Witkin, Summary of California Law, Contracts (10th ed.), §1020.)

Plaintiffs do not allege facts demonstrating the benefits in question were retained unjustly. Therefore, the plaintiffs fail to state cause of action for unjust enrichment. The demurrer is sustained with leave to amend as to the second cause of action.

Defendant is to prepare an order in compliance with Rule 3.1312.

Hinton v. Director of California Department of Motor Vehicles: 07CV4869

There is no tentative ruling in this matter. All parties are to appear, either personally or telephonically, to reset the long cause hearing on the petition for writ of mandate.