

TENTATIVE RULINGS—APRIL 25, 2008

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.

COOPER V. GREILICH: 08CV5220

Defendant's Motion to Expunge Lis Pendens

Defendant's requests for judicial notice are granted.

Defendant's motion to expunge lis pendens is granted.

A party to an action who asserts a real property claim may record a notice of pendency of action in which that real property claim is alleged. (C.C.P. §405.50.) A real property claim is defined as a cause of action "which, if meritorious, affects (a) title to, or the right to possession of, specific real property or (b) the use of an easement identified in the pleading." (C.C.P. §405.4.)

A lis pendens may be expunged under the following conditions:

- (a) The pleading contains no real property claim (C.C.P. §405.31);
- (b) The claimant fails to establish by the preponderance of the evidence the probable validity of the real property claim (C.C.P. §405.32);
- (c) If the court determines that the real property claim has probable validity, however a bond would provide adequate security to the claimant (C.C.P. §405.33);
- (d) Defective service and filing of lis pendens (C.C.P. §405.23.)

Expungement is mandatory if the lis pendens is improper, i.e. there is no real property claim or there is no showing of probable validity. (C.C.P. §§405.31, 405.32.) The burden is on the party opposing the motion to expunge to demonstrate that a real property claim was pled and said claim is probably valid, i.e. it is more likely than not that he/she will prevail at trial. (C.C.P. §405.32.)

A real property claim is determined by the allegations of the complaint. (Urez Corp. v. Superior Court (1987) 190 Cal.App.3d 1141, 1149; see also Campbell v. Superior Court (2005) 132 Cal.App.4th 909, 911.) The term "concerning real property" is interpreted to encompass those claims affecting title or the right to possession of real property. (Kendall-Brief v. Superior Court (1976) 60 Cal.App.3d 462, 466.) A claim that seeks an interest in real property simply to secure a money damage judgment does not support the recording of a lis pendens. (Campbell, supra, at 912.)

Plaintiff's complaint states a single cause of action for breach of contract. The complaint alleges the defendant breached the August 29, 2007 written agreement between the parties. Plaintiff contends the defendant breached the agreement by retaining a broker to only list the trust's one-half interest in "Plymouth Place;" by failing to give notice as required in the agreement; by failing to conduct the sale so the highest and best offer would be accepted; and by proceeding with a proposed sale of only the trust's one-half interest in the property without first petitioning the court and obtaining court approval.

In this instance, the plaintiff is not claiming a right to title or possession of the land. The complaint claims breach of contract. Plaintiff seeks to block the sale of the trust's ½ interest in the property and force the sale of the entire property. Plaintiff believes the entire property should be sold to obtain a higher value for the property. This is a claim for monetary damages and not a real property claim, as defined by statute. Therefore, the motion to expunge is granted.

The prevailing party on an expungement motion is entitled to attorneys' fees and costs, unless the court finds the other party acted with substantial justification or other circumstances exist to make the award of such fees and costs unjust. (C.C.P. §405.38.) Defendant is awarded \$2,040.00 in attorney fees and costs.

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.

EASY LOAN CORP. V. HARPER: 07CV5131

Plaintiff's Motion for Judgment on the Pleadings

The court finds the plaintiff provided proper notice of the instant motion. (C.C.P. §1005.) However, pursuant to the defendant's request, the Court finds it appropriate to grant the defendant additional time to respond to the merits of the motion. This matter is continued to May 23, 2008 at 10:00 a.m. in Department 2. Defendant is to submit a supplemental opposition to the motion by May 9, 2008. Plaintiff is to file any reply by May 16, 2008.

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.

VIKING DRILLERS V. TML DEVELOPMENT: 08CV5164

Motion to Stay Proceedings Pending Arbitration

Defendant's requests for judicial notice are granted.

Defendant's motion to stay proceedings pending arbitration is hereby granted. (see C.C.P. §1281.4; Heritage Provider Network, In. v. Superior Court (2008) 158 Cal.App.4th 1146; Cook v. Superior Court (1966) 240 Cal.App.4th 1146.)

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.