

TENTATIVE RULINGS—MAY 21, 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.

AMADOR WATER AGENCY V. PERANO: 06CV4189

DEFENDANT/CROSS-COMPLAINANT'S MOTION FOR SUMMARY ADJUDICATION OF ISSUES

Defendant/Cross-complainant's Motion for Summary Adjudication of Issues is hereby denied.

(a) Evidentiary Objections:

(1) Declaration of Kenneth Perano (hereinafter "Perano"), Paragraph 4: Ambiguous, uncertain, and improper conclusion:

The objection is overruled. Although there is a dispute over one of the boundaries of the property, the statement that Perano has paid taxes on the property known as APN 020-010-039 is not ambiguous, uncertain, or an improper conclusion.

(2) Declaration of Perano, Paragraph 5, page 1, lines 26-27: Foundation, hearsay, lack of personal knowledge, improper conclusion:

The objection is sustained based upon lack of foundation and lack of personal knowledge. The declaration does not provide sufficient facts to support the admissibility of the statement in question.

(3) Declaration of Perano, Paragraph 5, page 2, lines 5-7: Hearsay, lack of personal knowledge:

Evidence Code §1323 provides:

Evidence of a statement concerning the boundary of land is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and had sufficient knowledge of the subject, but evidence of a statement is not admissible under this section if the statement was made under circumstances such as to indicate a lack of trustworthiness.

The above hearsay exception would apply to the above statement. The declaration states Perano's father lived on the property for decades and that Perano helped his father maintain the fence in question for over 40 years. However, there is little information on the circumstances under which the above statements were made. For example, although Perano's father is deceased, it is unknown when he passed away. If he recently passed away and the above statements were made to Perano during the pending controversy, the statements would be indicative of untrustworthiness. As such, the objection is sustained for failure to lay the proper foundation for the admission of the hearsay statement.

(4) Declaration of Perano, Paragraph 6: Foundation, improper conclusion:

The objection is sustained. The statement is conclusory and does not state evidentiary facts. Moreover, a proper foundation for the statement was not laid.

(5) Declaration of Perano, Paragraph 7, page 2, lines 12-13: Foundation, improper conclusion:

The objection is sustained. The statement lacks foundation. In addition, the statement is conclusory and lacks evidentiary facts.

(b) Merits of Motion:

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 shall proceed in all procedural respects as a motion for summary judgment. (C.C.P. §437c, subd. (f)(2).)

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.)

Preliminarily, Perano's entire procedural history cites facts, which are not contained within the separate statement. The court may disregard those facts in its discretion. (see Thrifty Oil Co. v. Superior Court (2001) 91 Cal.App.4th 1070, 1075; San Diego Watercrafts v. Wells Fargo Bank (2002) 102 Cal.App.4th 308, 316.) Perano also failed to comply with CRC 3.1116 in the submission of the deposition testimony of Rux Oneto. Said rule requires a party to highlight deposition testimony submitted for consideration.

In addition, as noted herein above, much of Perano's declaration in support of the motion is inadmissible.

However, even if Perano is given the benefit of the doubt on the procedural issues, the motion still fails on a substantive level.

Perano cites to the survey of James Willson of Carlton Engineering as an undisputed fact to establish the correct boundary line and, therefore, title to the property in question. However, said fact is contradicted by Amador Water Agency in its opposition to separate statement and the evidence in support thereof. A conflicting survey was prepared by Toma & Associates, which sets the boundary line at a different location. This is sufficient to create a triable issue of material fact as to the true location of the boundary in question and provide a basis upon which the motion may be denied.

Therefore, based upon the foregoing, the motion is denied.

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.

PLAINTIFF/CROSS-DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION OF ISSUES

Plaintiff/Cross-defendant's unopposed Motion for Summary Adjudication of Issues is hereby granted.

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.