

TENTATIVE RULINGS—AUGUST 8, 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.

THE SIGN SHOP V. READE: 08CV5264

Defendant's Motion to Quash

Defendant's unopposed motion to quash 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.

Defendant's Demurrer to Complaint

Based upon the ruling on the Motion to Quash, the demurrer is rendered moot and 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.

DEPASS V. STATE OF CALIFORNIA: 07CV4886

Defendant State of California's Motion for Summary Judgment of Complaint and Cross-Complaint

(1) Evidentiary Issues:

Defendant's objections (numbers 1, 2, and 3) are sustained.

(2) Merits of Motion:

Defendant State of California's Motion for Summary Judgment is hereby granted.

Defendant Sutter Creek Palace contends there is a triable fact as to the location of the plaintiff's fall. The allegations of the complaint acknowledge the plaintiff fell on or about the grate immediately adjacent to the premises of Defendant Sutter Creek Palace. Defendant Sutter Creek Palace failed to introduce any admissible evidence to defeat said fact. Therefore, Defendant Sutter Creek Palace has failed to create a triable issue regarding the location of the fall.

Defendant State of California could be liable to the plaintiff for the injuries incurred if the State owned, controlled, or maintained the property on which the dangerous condition was located. (Gov. Code §§835.) State submitted a declaration from Robert Beeson, which provides evidentiary support for the fact that the State did not own or control the property on which the dangerous condition was located. State introduced a declaration from Rich Taylor, which provided evidentiary support for the fact that State did not maintain the location of the alleged dangerous condition. Said evidence is sufficient to shift the burden to the plaintiff and/or defendant/cross-complainant to demonstrate there is a triable issue of material fact. (see Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826.) Defendant Sutter Creek Palace failed to do so. Therefore, the motion for summary judgment is granted as to the complaint.

As the cross-complaint is dependent upon the complaint, the motion is also granted as to the cross-complaint.

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.

MEYERS V. COUNTY OF AMADOR: 07CV4650

Defendant County of Amador's Motion for Summary Judgment:

(1) Evidentiary Issues:

a. Plaintiff's Objections to Evidence:

Plaintiff's objections to Exhibit A to County's Motion (State's Responses to County's Request for Admissions, Set One) are overruled.

Plaintiff's objections to Exhibit A to County's Motion (State's Amended Responses to County's Request for Admissions, Set One) are sustained.

Plaintiff's objection to Exhibit D to County's Motion (Deposition of Beeson) is sustained.

Plaintiff's objection to Exhibit F to County's Motion (Original Complaint) is overruled.

Plaintiff's objection to Exhibit G to County's Motion (Deposition of Kroeker) is sustained.

Plaintiff's objection to Exhibit H (County's Response to Special Interrogatories) is sustained.

Plaintiff's objection to Exhibit M (County's Amended Responses to Form Interrogatories) is sustained.

Plaintiff's objection to Exhibit N (Declaration of Stephens) is overruled.

b. Defendant State of California's (hereinafter "State") Objections to Evidence:

State's objection to County's Request for Judicial Notice is hereby sustained. Therefore, the Request for Judicial Notice is denied.

State's objection to the Declaration of Larry Stevens, objection 1, is overruled. The remainder of the State's objections to the Declaration of Larry Stevens are sustained.

c. State's Objections to County's Separate Statement:

The objections to UMFs 3, 11, 13, 14, 19 are sustained. The objections to UMFs 4 and 15 are overruled.

d. County of Amador's (hereinafter "County") Objections and Motion to Strike Evidence in Support of Plaintiff's Opposition to Motion for Summary Judgment:

County's objections to Plaintiff's Material Facts 62, 63, 65, 66, 67, 68, 72, and 74 are overruled.

e. County's Objections and Motion to Strike Evidence in Support of State's Opposition to Motion for Summary Judgment:

County's objections to State's Material Facts 20, 21, and 22 are sustained.

(2) Merits of Motion:

Upon summary judgment, the County had the initial burden of demonstrating there was no triable issue of material fact. County has failed to meet its initial burden of demonstrating there is no triable issue of material fact regarding County's lack of notice of the dangerous condition. The majority of the evidence submitted by County was determined to be inadmissible for the purpose of the instant motion. Therefore, the burden never shifted to the Plaintiff/Co-defendant to demonstrate the existence of a triable issue of fact.

Assuming arguendo the County was able to meet its initial burden and the burden thereafter shifted to the opposing parties to demonstrate the existence of a triable issue, the motion for summary judgment would still fail. The declaration of Harry Krueper, submitted as Exhibit 4 in support of Plaintiff's opposition to the motion for summary judgment, provide evidence indicative of a prior accident history at the location of the subject accident. Said prior history is sufficient to create a triable issue of material fact, as to the County's knowledge of the alleged dangerous condition in question.

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.