

Tentative Rulings for January 30, 2025
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

23CECG04193 *Zinc Auto Finance, Inc. v. U Drive Acceptance Corporation, Inc. et al.*

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(37)

Tentative Ruling

Re: ***Kirsten Krejcik v. City of Fresno***
Superior Court Case No. 23CECG03634

Hearing Date: January 30, 2025 (Dept. 403)

Motion: Defendant Fresno Association of Realtors' Demurrer to the
Second Amended Complaint

Tentative Ruling:

To overrule the demurrer to the seventh cause of action, with defendant Fresno Association of Realtors granted 10 days' leave to file its answer to the Second Amended Complaint. The time in which the answer can be filed will run from service by the clerk of the minute order.

To find moot as to the demurrer to the eighth cause of action based on the court's July 24, 2024 ruling striking the eighth and ninth causes of action from the Second Amended Complaint.

Explanation:

On March 18, 2024, a Second Amended Complaint ("SAC") was filed alleging 1) writ of mandate, 2) breach of mandatory duty, 3) local government policy or custom violating Constitutional rights (5 U.S.C., § 1983), 4) unconstitutional retaliation (5 U.S.C., § 1983), 5) nuisance, 6) trespass, 7) breach of contract, 8) intrusion into private affairs, and 9) intentional interference with contractual relations. On July 24, 2024, this court heard two demurrers and a motion to strike which resulted in 1) sustaining demurrer to the second, third, and fifth causes of action, with leave to amend, 2) sustaining demurrer to the sixth cause of action, without leave to amend, and 3) striking the eighth and ninth causes of action entirely. (See Minute Order, July 24, 2024.) A Third Amended Complaint was never filed. The only causes of action which remain at this time are writ of mandate alleged against the City of Fresno, unconstitutional retaliation alleged against the City of Fresno, and breach of contract alleged against Fresno Association of Realtors.

Defendant Fresno Association of Realtors asserts that it has never been served with either the First or Second Amended Complaint, but filed its demurrer as to the seventh and eighth causes of action alleged in the Second Amended Complaint. As noted above, the eighth cause of action was struck in its entirety on July 24, 2024. Thus, the demurrer as to that cause of action is rendered moot. The court will only address the seventh cause of action, for breach of contract.

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) The test is whether plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of plaintiff's possible difficulty or inability in proving the allegations of

his complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate courts' well established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc.* (1974) 12 Cal.3d 915, 918.)

In order to plead a breach of contract, plaintiff must allege 1) existence of the contract, 2) plaintiff's performance or excuse for nonperformance, 3) defendant's breach, and 4) resulting damages. (*Gautier v. General Tel. Co.* (1965) 234 Cal.App.2d 302, 305.) Here, the complaint does not indicate whether the contract was oral or written. To plead a contract, plaintiff must set forth the "substance of its relevant terms". (*Ibid.*) Here, plaintiff has indicated that defendant owed plaintiff confidentiality for her report. It appears that there may have been some oral affirmation of confidentiality, as plaintiff alleges, "When Plaintiff inquired as to the confidentiality of her report, Plaintiff was assured by MLS officials that 'all complaints remain anonymous.'" (SAC, ¶ 10.) This alone would be insufficient to plead a contract. However, other portions indicate more than the affirmation of confidentiality. Plaintiff alleges, "...the only way for the City to have known about an issue involving Defendant Alvarez would be for Defendant MLS to have breached its obligation of confidentiality, or otherwise breached its contractual obligations to Plaintiff, specifically the Fresno Multiple Listing Service MLS Citation Policy which imposed such confidentiality." (SAC, ¶ 15.) Plaintiff asserts the relevant terms to include confidential reporting: "As a licensed Realtor in the City of Fresno, Plaintiff entered into a valid contract with Defendant Fresno Association of Realtors. The terms of the contract, as offered by Defendant and accepted by Plaintiff, include, but are not limited to, the confidentiality of all reports under the MLS Citation Policy." (SAC, ¶ 69.) As such, plaintiff has pled the relevant terms of the contract. The court overrules the demurrer as to the seventh cause of action.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JS on 1/28/2025 .

(Judge's initials)

(Date)

(formerly the Office of Planning and Research). (Pub. Res. Code § 21152, subd. (b); RJN, Exs. K-L.)

CEQA expressly provides unusually short statutes of limitations on filing court challenges, reserving “its very shortest limitations periods for cases where the agency has given public notice, in a form required or permitted by the statute, of an agency act or decision that is relevant to CEQA’s statutory scheme.” (*Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 500 (*Stockton Citizens*); see Cal. Code Regs., tit. 14, § 15000 et seq. (CEQA Guidelines), § 15112, subd. (a).) “An action or proceeding alleging ‘that a public agency has improperly determined that a project is not subject to [CEQA]’ must be commenced ‘within 35 days from the date of the filing’ of the NOE [(notice of exemption)].” (§ 21167, subd. (d) (section 21167(d)); CEQA Guidelines, § 15112, subd. (c)(2).)” (*Stockton Citizens, supra* at p. 488.) Accordingly, the deadline to challenge Respondent’s approval of the project was Tuesday September 24, 2024 and this action, filed on October 18, 2024, is untimely.

Because this Court finds that that Petitioners cannot amend to cure this deficiency, it does not address Respondent’s other grounds for demurrer to this cause of action.

Second Cause of Action – Declaratory Relief

The second cause of action incorporates all prior allegations in the petition, and then alleges that “[a]n actual controversy exists” because Petitioners “contend that respondents have acted in violation of CEQA and state planning law and must vacate and set aside their certification of the EIR and approval of the Project” and Respondent disputes these contentions. Thus, the declaratory relief claim is entirely duplicative of the CEQA cause of action. Because “[t]he duration of the limitations period applicable to a declaratory relief action is determined by the nature of the underlying obligation sought to be adjudicated” (*Snyder v. California Ins. Guarantee Assn.* (2014) 229 Cal.App.4th 1196, 1208) and the CEQA cause of action is untimely, this Court sustains the general demurrer to this cause of action.

Third Cause of Action – Injunctive Relief

A request for injunctive relief is not a standalone cause of action. (*Shell Oil Co. v. Richter* (1942) 52 Cal.App.2d 164, 168; *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 65 [“Injunctive relief is a remedy, not a cause of action. [Citations.] A cause of action must exist before a court may grant a request for injunctive relief.”]; see also *Shamsian v. Atlantic Richfield Co.* (2003) 107 Cal.App.4th 967.) Thus, this Court likewise sustains the demurrer to this cause of action.

Defects Cannot Be Cured Through Amendment

It is an abuse of discretion to sustain a demurrer without leave to amend if there is a reasonable possibility any defect identified by the defendant can be cured by amendment. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) There is no reasonable possibility of curing the petition’s defects through amendment; the claims in the petition cannot be made timely by alleging new and/or different facts. It is also subject to mandatory dismissal for failure to comply with Public Resources Code section

21167.4, subdivision (a). (See *Nacimiento Regional Water Management Advisory Com. v. Monterey County Water Resources Agency* (2004) 122 Cal.App.4th 961, 966.) Accordingly, the demurrer is sustained without leave to amend.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JS on 1/28/2025.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: **Frank Cruz v. Oscar Bibiano**
Superior Court Case No. 24CECG03603

Hearing Date: January 30, 2025 (Dept. 403)

Motion: to Compel Plaintiff's Deposition

Tentative Ruling:

To order the motion off calendar, for plaintiff's failure to comply with Fresno Superior Court Local Rules, Rule 2.1.17.

Explanation:

"No motion under sections 2017.010 through 2036.050, inclusive, of the California Code of Civil Procedure shall be heard in a civil unlimited case unless the moving party has first requested an informal Pretrial Discovery Conference with the Court and such request has either been denied and permission to file the motion is granted via court order or the discovery dispute has not been resolved as a result of the Conference and permission to file the motion is expressly granted. This rule shall not apply [to]... Motions to compel the deposition of a duly noticed party or subpoenaed person(s) who have not timely served an objection pursuant to Code of Civil Procedure section 2025.410[.]" (Fresno Superior Court Local Rules, Rule 2.1.17.)

The present motion is brought under Code of Civil Procedure section 2025.450, thus falls under Local Rule 2.1.17. This matter does not fall into the exception set out for motions to compel depositions, as an objection was timely served by defendant. (Vecchiarelli Decl., ¶ 6, Exh. B.) Defendant Oscar Bibiano ("defendant") submits a copy of his objection to deposition, accompanied by a proof of service dated October 14, 2024. (*Ibid.*) The noticed date of deposition was October 28, 2024. (*Ibid.*) The party noticed for deposition must serve a written objection specifying any error or irregularity at least three calendar days prior to the date for which the deposition is scheduled. (Code Civ. Proc. § 2025.410 subd. (a).) Thus, defendant has evidenced that he served a timely objection to the deposition notice.

Plaintiff Frank Cruz ("plaintiff") failed to submit a request for an informal Pretrial Discovery Conference and obtain leave to file the instant motion to compel attendance on a deposition notice against which an objection was lodged. Accordingly, the motion is improperly before the court and shall not be heard. The motion is ordered off calendar.

