Tentative Rulings for June 25, 2024
Department 501

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

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

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(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(35)

Tentative Ruling

Re: ***BIFCO, LLC v. Jennings***
Superior Court Case No. 24CECG01586

Hearing Date: June 25, 2024 (Dept. 501)

Motion: Verified Petition for Approval for Transfer of Structured Settlement

Tentative Ruling:

The court intends to deny the Petition.

Explanation:

Insurance Code section 10134 *et seq*. controls the transfers of structured settlement payment rights.

Of initial note, Insurance Code section 10136 requires that at least 10 days prior to the filing of the Petition, a disclosure notice be made to the payee, here defendant Chase Jennings ("Jennings"). Though the Petition references Exhibit H as a disclosure notice consistent with Insurance Code section 10136, subdivision (b), Exhibit H appears to be a declaration by Jennings. While Jennings declares having been provided with a disclosure statement, no information was provided to conclude whether the disclosure statement Jennings received is in substantial compliance with Insurance Code section 10136, subdivision (b). (Petition, Ex. H, Jennings Decl., ¶ 8; *compare* Ins. Code § 10136, subd. (b).) Accordingly, the court is unable to conclude that the Petition satisfies the disclosures made mandatory by statute in the mandatory format as set forth by statute.[1] Failure to demonstrate compliance with the disclosure notice alone is grounds to deny the petition.

The court further notes that Jennings indicates in his declaration in support of the Petition that another petition to transfer structured settlement payments is presently pending, though it is his intent to dismiss that petition. (Petition, Ex. H, Jennings Decl., ¶ 14.) The present Petition does not disclose information regarding that previous attempt or provide a copy, whether it was approved or withdrawn. (Ins. Code § 10139.5, subd. (c)(6), (f)(2)(A); *see also* Fresno County Superior Court Local Rules, rule 2.8.7(A)(1), (2).)

Additionally, Jennings declared an understanding that all of the proposed transferred payments will be paid directly to plaintiff BIFCO, LLC ("BIFCO"), and that he will no longer receive any of the transferred payments. (Petition, Ex. H, Jennings Decl., ¶¶

[1] Portions of Exhibit F to the petition appear to satisfy some of the required disclosures, but other disclosures are absent, such as an advisement to seek independent legal or financial advice regarding the transaction, the costs of which, up to $1,500.00 will be paid by the transferee. (Ins. Code § 10136, subd. (b).) Neither does Exhibit F employ the necessary formatting, including 14-point boldface type where required, or circumscribed by a box with a bold border. (*Ibid.*)

6-7.) However, the amounts listed are less than the amounts remaining to be transferred, suggestive that Jennings will receive the balance of the lump sum payments not subject to the proposed transfer. (*Id.*, Ex. H, Jennings Decl., ¶ 3 [identifying principal payments of $25,000 and $163,200]; *compare id.*, Ex. H, Jennings Decl., ¶ 6 [seeking to transfer $15,000 and $110,000 in payments only].) This requires further clarification.

Further, Jennings does not declare an understanding of his rights to cancel the transfer agreement, or that he does not wish to exercise that right. (Ins. Code § 10139.5, subd. (a)(6).)

Finally, the Petition does not address certain information required by Local Rules. (Fresno County Superior Court Local Rules, rule 2.8.7(A)(1), (2), (5)-(8).)

For the above reasons, the court intends to deny the Petition, without prejudice.

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: DTT on 6/21/2024.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Frank X. Ruiz Avionics, Inc. v. Kenneth Grossman***
Superior Court Case No. 22CECG03248

Hearing Date: June 25, 2024 (Dept. 501)

Motion: by Plaintiff to Amend Judgment

Tentative Ruling:

To grant plaintiff Frank X. Ruiz Avionics, Inc.'s motion. However, plaintiff's Proposed Amended Judgment contains an error. Plaintiff is to submit a revised amended judgment with the correct naming of plaintiff as Frank X. Ruiz Avionics, Inc.

Explanation:

Plaintiff Frank X. Ruiz Avionics, Inc., requests the court amend the Judgment entered on January 24, 2024, to enter plaintiff's name correctly. The court finds the amendment merely corrects a clerical error. (Code Civ. Proc., § 473, subd. (d).) Therefore, it is appropriate to amend the Judgment on page 2, line 6 to change the plaintiff's name from Ruiz Avionics, Inc., to Frank X. Ruiz Avionics, Inc.

However, the Proposed Amended Judgment still contains an error on page 2, line 1, incorrectly naming plaintiff as Ruiz X. Avionics, Inc. Plaintiff should be named Frank X. Ruiz Avionics, Inc. Plaintiff is to submit a revised amended judgment correctly naming plaintiff as Frank X. Ruiz Avionics, Inc.

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: DTT on 6/21/2024.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Davis, et al. v. Hyundai Motor America, et al.***
Superior Court Case No. 23CECG04428

Hearing Date: June 25, 2024 (Dept. 501)

Motion: by Defendants Hyundai Motor America and Hyundai Motor Company Demurring to the Complaint

Tentative Ruling:

To sustain the demurrer to the second and third causes of action for breach of implied and express warranty, with leave to amend. To overrule the demurrer to the first cause of action for strict products liability. (Code Civ. Proc., § 430.10, subd. (e).)

Plaintiffs are granted 20 days' leave to file a First Amended Complaint. The time in which such pleading may be filed will run from service by the clerk of the minute order. All new allegations in the First Amended Complaint are to be set in **boldface** type.

Explanation:

Defendants Hyundai Motor America ("HMA") and Hyundai Motor Company ("HMC") demur to the first, second and third causes of action for strict products liability, breach of implied warranty of fitness for use, and breach of express warranty on the ground that the Complaint fails to state sufficient facts to state a cause of action.

Strict Liability

"A manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being." (*Greenman v. Yuba Power Products, Inc.* (1963) 59 Cal.2d 57, 62.)

"*Barker v. Lull Engineering Co.* (1978) 20 Cal.3d 413, 432, sets forth the two tests for strict products liability in California. '[A] product may be found defective in design, so as to subject a manufacturer to strict liability for resulting injuries, under either of two alternative tests. First, a product may be found defective in design if the plaintiff establishes that the product failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner [consumer contemplation test]. Second, a product may alternatively be found defective in design if the plaintiff demonstrates that the product's design proximately caused his injury and the defendant fails to establish in light of relevant factors, that, on balance, the benefits of the challenged design outweigh the risk of danger inherent in such design' [safer alternative design test]." (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139–140.)

Here, plaintiffs allege that HMA and HMC manufactured, designed, sold and distributed the subject vehicle (a 2017 Hyundai Sonata) and the component parts thereof. (Compl., ¶ 4.) The decedent is alleged to have used the vehicle and its component parts in their intended or foreseeable manner. (*Id.*, ¶¶ 20, 29.) Plaintiffs further allege that a defect existed in the subject vehicle, in that the trunk, trunk latch, trunk latch assembly and component parts of the trunk failed, causing the trunk of the vehicle to stay shut and not open properly and/or to fail to close and fail stay closed properly. (*Id*., ¶ 21.) While the decedent was operating the subject vehicle on the State Route 99, the trunk opened. (*Id*., ¶ 16.) The decedent then pulled over to the left shoulder of the freeway to address the problem with the trunk. He was struck and killed by another driver during this stop. (*Id*., ¶¶ 16-17.) It is further alleged that the decedent was killed as a result of defendants' conduct. (*Id.*, ¶ 22.)

These allegations imply the foreseeability of the trunk opening while the vehicle is in motion. Likewise, it is foreseeable that an operator of the vehicle would then pull over on the side of the highway to close the trunk, and that he would be injured while tending to the trunk. Thus, these allegations fall within the consumer contemplation test and satisfy the minimum pleading requirements to state a claim for strict products liability to survive a demurrer. However, the moving parties contend that the allegations are insufficient, because they fail to describe how the subject vehicle was defective, why it was defective, what the defect was, and how the defect caused the trunk to open. HMA and HMC further indicate that the complaint fails to contain any facts or evidence establishing that a defect even existed in the subject vehicle.

The demurring defendants fail to provide any authority to support their contention that such heightened pleading requirements are necessary to bring a claim for strict products liability. "To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged." (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) It is sufficient that the complaint alleges that the manufacturers and distributors placed a product into the market, a defect existed in that product, the product was used for its intended or reasonably foreseeable purpose, and the defect caused injury to plaintiffs. Accordingly, the demurrer to the first cause of action is overruled.

Breach of Implied and Expressed Warranty

Next, the moving parties contend that the Complaint fails to allege facts sufficient to state a claim for either breach of implied warranty or breach of expressed warranty, because (1) it fails to allege that HMA or HMC sold the subject vehicle to the decedent; (2) it fails to allege facts establishing the requisite elements of a breach of implied warranty claim; (3) the complaint is vague because it fails to allege the exact terms of the warranty, provide for whether the warranty was written, oral, or implied by conduct, and which defendant(s) provided the express warranty; and (4) the complaint fails to allege vertical privity between HMA/HMC on one side and plaintiffs or decedent on the other. Each of these arguments are considered in turn.

- The Sellers of the Subject Vehicle

Contrary to the moving parties' claim, the Complaint expressly alleges that HMA and HMC "designed, manufactured, *sold*, and distributed the subject vehicle." (Compl., ¶ 4.) Although the moving parties argue that this allegation directly conflicts with the allegations indicating that the subject vehicle was sold by co-defendant Western Motors Merced, this allegation does not actually contradict the allegations that the demurring defendants sold the subject vehicle, since it is possible that *all* of these defendants sold the subject vehicle.

- Elements Required to State a Claim for Implied Warranty

The demurring defendants specifically argue that the Complaint fails to allege the elements enumerated in the Judicial Council of California Civil Jury Instruction 3211, which set forth the factual elements required to establish a claim for breach of implied warranty of fitness for a particular purpose under the Song-Beverly Consumer Warranty Act, as follows:

(1) That plaintiff bought a consumer good from/manufactured by/distributed by the defendant;
(2) That, at the time of purchase, defendant knew or had reason to know that plaintiff intended to use the consumer good for a particular purpose;
(3) That, at the time of purchase, defendant knew or had reason to know that plaintiff was relying on its skill and judgment to select or provide a consumer good that was suitable for that particular purpose;
(4) That plaintiff justifiably relied on defendant's skill and judgment;
(5) That the consumer good was not suitable for the particular purpose;
(6) That plaintiff was harmed; and
(7) That defendant's breach of the implied warranty was a substantial factor in causing plaintiff's harm.

(Judicial Council of Civ. Civ. Jury Instns. (Feb. 2024 rev.) CACI No. 3211.)

Here, while there are allegations indicating that HMA and HMC designed, manufactured, sold and distributed the subject vehicle, there are no allegations that either plaintiffs or the decedent purchased the subject vehicle. Although these allegations appear to convey the same facts, it is possible, for example, that HMA and HMC designed, manufactured, sold and distributed the subject vehicle, but an unnamed third party actually purchased the subject vehicle and the decedent was using the vehicle. Thus, it is impossible to ascertain who the buyer actually was.

Additionally, the Complaint fails to allege that HMA and HMC knew or had any reason to know that the buyer, whoever that may be, intended to use the subject vehicle for any particular purpose, because such a particular purpose has not been alleged. Nor it is alleged that HMA and HMC, pursuant to the knowledge of the buyer's needs, selected that particular vehicle for that particular purpose. Furthermore, it is not alleged that the buyer relied upon the skill and judgment of the sellers in such selection. Accordingly, plaintiffs have not alleged facts sufficient to state a claim for implied warranty of fitness for a particular purpose.

However, it is well established that there are two types of implied warranties: implied warranty of merchantability that the goods shall be merchantable and fit for their ordinary purpose, and implied warranty of fitness that the goods will be fit for a particular purpose. (See U. Com. Code, §§ 2314, 2315.) Plaintiffs may state a prima facie case for implied warranties by alleging the elements required to meet either of the two types of implied warranties.

To plead a prima facie case for a breach of the implied warranty of merchantability, plaintiffs must plead: (1) that plaintiffs purchased a consumer good that was sold or manufactured by defendant; (2) that at the time of the purchase, defendant was in the business of selling the consumer good to retail buyers or manufacturing such goods; (3) that the consumer good either: (a) was not of the same quality as those generally acceptable in the trade; (b) was not fit for the ordinary purposes for which the goods are used; (c) was not adequately contained, packaged, or labeled; or (d) did not measure up to the promises or facts stated on the container or label; (4) that plaintiff was harmed; and (5) that defendant's breach of the implied warranty was a substantial factor in causing plaintiff's harm. (Judicial Council of Civ. Civ. Jury Instns. (Feb. 2024 rev.) CACI No. 3210.)

Again, the Complaint does not allege that plaintiffs or the decedent purchased the vehicle. But, it is noteworthy that the allegations are sufficient for the court to reasonably construe that the remaining elements have been pled, since it is alleged (1) that HMA and HMC are vehicle manufacturers and distributors in the United States; (2) that the subject vehicle was defective in that the trunk either stayed shut and did not close property and/or failed to close and remain closed properly; (3) plaintiffs' decedent was killed when he stopped the vehicle on the freeway to tend to trunk that had opened while he was driving; and (4) the decedent's death was a result of defendants' wrongful conduct, i.e., placing the defective good on the market.

Accordingly, the demurrer to the second cause of action for breach of implied warranty is sustained, with leave to amend.

- Express Warranty

"…[T]o prevail on a breach of express warranty claim, the plaintiff must prove (1) the seller's statements constitute an ' "affirmation of fact or promise" ' or a ' "description of the goods" '; (2) the statement was ' "part of the basis of the bargain" '; and (3) the warranty was breached." (*Weinstat v. Dentsply Internat., Inc.* (2010) 180 Cal.App.4th 1213, 1227.) Some courts require additionally that the breach caused injury to the plaintiff. According to a different articulation of a breach of express warranty, one must allege "the exact terms of the warranty," "plaintiff's reasonable reliance thereon," and "a breach of that warranty which proximately causes plaintiff injury." (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 142 ("*Williams*").)

To satisfy the first element, a plaintiff must identify a specific and unequivocal statement that constitutes an explicit guarantee. (see *Keith v. Buchanan* (1985) 173 Cal.App.3d 13, 22.) In *Williams*, the Second District Court of Appeal found the complaint to substantially comply with the first requirement, where it alleged that Beechnut Nutrition Corp. "utilized the advertising media to urge the use and application of the [subject

product] and expressly warranted to the general public… that said product was effective, proper and safe for its intended use…" (*Id*., at p. 608.) There, the court further found the second requirement to be met where the plaintiff's "reliance [could] be reasonably inferred from the tenor and totality of the allegations in the complaint." (*Id*., at p. 608.)

Here, just as in *Williams,* the Complaint alleges that "defendants expressly warranted that [the subject vehicle] and its component parts were safe to be used by members of the public", which includes plaintiffs and decedent. (Compl. ¶ 31.) Likewise, it can be reasonably inferred by the tenor and totality of the complaint, that plaintiffs and decedent relied on the warranty. Further, the Complaint alleges the decedent's death was as a result of defendants' conduct. However, plaintiffs fail to provide how the statement was presented to them, i.e., by means of a formal warranty document, product advertisements, brochures, etc., or who (as in which defendant(s)) presented the statement.

Accordingly, the Complaint does not sufficiently allege the requisite elements to state a claim for breach of express warranty and the demurrer to the third cause of action is sustained with leave to amend.

- Vertical Privity

"The general rule is that privity of contract [between the plaintiff and defendant] is required in an action for breach of either express or implied warranty and that there is no privity between the original seller and a subsequent purchaser who is [not] a party to the original sale. [Citations.]" (*Burr v. Sherwin Williams Co.* (1954) 42 Cal.2d 682, 695.) Exceptions to the privity requirement have been established in certain circumstances, such as when the plaintiff relies on a manufacturer's written labels or advertisements (*Id*., at p. 696.), cases involving foodstuffs, pesticides and pharmaceuticals (*Windham at Carmel Mountain Ranch Ass'n v. Superior Court* (2003) 109 Cal.App.4th 1162, 1169.), where the user is an employee of the purchaser (*Arnold v. Dow Chem. Co.* (2001) 91 Cal.App.4th 698, 720.), or where the user is a member of the purchaser's family. (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 114, fn. 8.)

Since the moving parties only challenge the issue of vertical privity, this ruling does not reach the issue of horizontal privity. "Vertical privity is a prerequisite in California for recovery on a theory of breach of the implied warranties of fitness and merchantability. [Citations.]" (*United States Roofing, Inc. v. Credit Alliance Corp.* (1991) 228 Cal.App.3d 1431, 1441, citations omitted.) However, "[p]rivity is not required for an action based upon an express warranty. [Citation.]" (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 114, fn. 8 citing *Seely v. White Motor Co.* (1965) 63 Cal.2d 9, 14.)

Here, vertical privity between the demurring defendants and plaintiffs or the decedent has not been established by the pleadings. Although it is properly alleged that HMC and HMA sold the subject vehicle, the Complaint does not identify the buyer of the vehicle. Plaintiffs do not allege, nor do they argue, that an exception to the privity requirement exists.

Thus, the demurrer to the second cause of action for breach of implied warranty is sustained for this reason as well, with 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: DTT on 6/21/2024.
(Judge's initials) (Date)