

Tentative Rulings for June 26, 2024
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.*

24CECG01390 *Ichaal v. Velasco*

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 Ruling

Re: **Yepez v. Old Town Saloon**
Superior Court Case No. 23CECG05013

Hearing Date: June 26, 2024 (Dept. 403)

Motion: Demurrer to Complaint

Tentative Ruling:

To sustain Old Town Saloon's demurrer to the complaint without leave to amend. (Code Civ. Proc. § 430.10, subd. (a).)

Explanation:

Defendant Old Town Saloon demurs to the entire complaint on the basis that this court does not have subject matter jurisdiction over all causes of action in the complaint. (Code Civ. Proc. § 430.10, subd. (a).) Defendant was the employer of decedent Michael Yepez, whose parents have brought the present action for damages on behalf of decedent and themselves individually.

Workers' Compensation Exclusivity

Generally, an employer who provides workers' compensation coverage for its employees is not liable in tort for negligent injury to those workers. (Lab.Code §3602(a); see also *Johnson v. Berkofsky-Barret Productions, Inc.* (1989) 211 Cal.App.3d 1067 [injured employee's relief against employer is limited to workers' compensation]; *Santa Cruz Poultry v. Superior Court* (1987) 194 Cal.App.3rd 575 [plaintiff's loss of right to bring tort action against employer justified where plaintiff has received workers' compensation coverage].) There are some exceptions to the exclusivity rule. (See Lab. Code §§ 3602, 3706, 4558.) The legal theory supporting the exclusivity of the workers' compensation remedy is a presumed compensation bargain, pursuant to which the employer assumes liability for industrial personal injury or death without regard to fault in exchange for limitations on the amount of that liability; the employee is afforded relatively swift and certain payment of benefits to cure or relieve effects of industrial injury without having to prove fault but, in exchange, gives up the wider range of damages potentially available in tort. (*Mason v. Lake Dolores Group, LLC* (2004) 117 Cal.App.4th 822; see Lab. Code §3602.)

Plaintiffs' complaint states that decedent Michael Yepez was an employee of Defendant Old Town Saloon and was involved in a fatal motorcycle crash after driving away from work intoxicated. (Complaint, ¶¶ 1, 3.) Plaintiffs allege drinking on the job was a common occurrence at Old Town Saloon done with the express and implied permission of the employers. (*Id.* at ¶ 2.) Decedent is alleged to have been served alcoholic beverages during his work hours to the point of intoxication, with his managers knowing his inebriated state and failing to prevent him from driving away on his motorcycle. (*Id.* at ¶ 3.) Here, decedent's consumption of alcoholic beverages during his work shift, a

common practice given the employer's express and implied permission, is alleged to have caused the single vehicle crash resulting in decedent's death.

Ordinarily an employee is outside the course of employment while going to or returning from work, however, a "special risk" causally related to the employment can provide an exception to this going and coming rule. (*Childers v. Shasta Livestock Auction Yard* (1987) 190 Cal.App.3d 792, 812.) An employee will be entitled to compensation if the employment creates a special risk for injuries sustained within the field of that risk. (*Id.*) Consumption of alcohol to the point of intoxication on the employer's premises, endorsed with the express or implied permission of the employer, falls within the course and scope of employment if such drinking activity has become a customary incident of the employment relationship. (*McCarty v. Workmen 's Comp. Appeals Bd.* (1974) 12 Cal.3d 677, 682-683.) Plaintiffs' allegations of drinking on the employer's premises with its permission support finding the special risk doctrine applies here.

Plaintiffs argue the claim is not barred by worker's compensation exclusivity because the decedent was not within the course and scope of his employment at the time of the motorcycle accident. (*Lynn v. Tatitlek Support Services, Inc.* (2017) 8 Cal.App.5th 1096, 1106.) The *Lynn* case relied upon by plaintiffs involved a third party attempting to hold the tortfeasor's employer responsible for its employee's negligent driving while commuting home from over three days of military role-playing exercises. The court found the special risk exception did not apply under those circumstances, however it specifically described employees drinking alcohol at work as a sufficient link to apply the special risk doctrine. (*Id.* at p. 1113.)

That the action is plead as both a wrongful death and survivor action does not remove it from the exclusive remedy rule. (*Jimenez v. Mrs. Gooch's Natural Food Markets, Inc.* (2023) 95 Cal.App.5th 645, 654; *Seide v. Bethlehem Steel Corp.* (1985) 169 Cal.App.3d 985, 990 [demurrer to wrongful death action brought by nondependent parent of decedent worker affirmed].)

Thus, as a matter of law, decedent here is deemed to have made the bargain noted above, in which case plaintiffs' sole and exclusive remedy is workers' compensation. To maintain their causes of action, then, plaintiffs must allege an exception to the exclusivity rule. Plaintiffs have failed to do so and have not demonstrated that there are additional allegations that would support such an exception.

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 6/22/2024.
(Judge's initials) (Date)