

**Tentative Rulings for December 18, 2024**  
**Department 503**

**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)**

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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 for Department 503**

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**Tentative Ruling**

Re: ***Oliba Quezada v. Felipe Avila***  
Superior Court Case No. 24CECG02009

Hearing Date: December 18, 2024 (Dept. 503)

Motion: Cross-Defendant Oliba Quezada's Demurrer to the Cross-Complaint

**If oral argument is timely requested, it will be entertained on Wednesday, January 8, 2025, at 3:30 p.m. in Department 503.**

**Tentative Ruling:**

To sustain the demurrer to the first, second, and third causes of action. Cross-complainant is granted 30 days' leave to file the First Amended Cross-Complaint, which will run from service by the clerk of the minute order. New allegations/language should be in **boldface** type.

The court notes there is no demurrer as to the fourth cause of action and as such, this cause of action remains.

**Explanation:**

On July 22, 2024, defendant/cross-complainant filed a cross-complaint against plaintiff/cross-defendant alleging 1) breach of contract, 2) fraud/intentional misrepresentation, 3) breach of fiduciary duty, and 4) negligence. Cross-defendant demurs as to the first three causes of action, arguing a failure to allege facts sufficient to constitute a cause of action for these.

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.) A cause of action is not subject to general demurrer if, on consideration of all the facts stated, it appears that the plaintiff is entitled to some relief, even if the facts are inartfully stated or intermingled with irrelevant facts. (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal. 3d 110, 123.)

In ruling on a demurrer, the court can consider only matters that appear on the face of the complaint or matters outside the pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) No other extrinsic evidence can be considered. (*Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.)

### *Breach of Contract*

In order to plead a breach of contract, cross-complainant must allege 1) existence of the contract, 2) plaintiff's performance or excuse for nonperformance, 3) cross-defendant's breach, and 4) resulting damages. (*D'Arrigo Bros. of California v. United Farmworkers of America* (2014) 224 Cal.App.4th 790, 800.) Here, cross-defendant has alleged that there was an agreement to build a fence on a portion of cross-defendant's property more than 20 years ago. (Cross-Complaint, ¶ 12.) However, cross-defendant has not clarified if this agreement was oral or in writing. Additionally, cross-defendant has not clarified the terms of the agreement or any performance required of cross-complainant. As cross-defendant notes, there is no discussion whether the agreement was made between these parties or that cross-complainant lived on the property at the time of the alleged agreement. Cross-complainant has not sufficiently alleged facts for a cause of action for breach of contract. The court sustains the demurrer to this cause of action, with leave to amend.

However, it appears that cross-complainant may have mislabeled this cause of action, which appears to allege a prescriptive easement. A prescriptive easement is sufficiently alleged where the claimant alleges use of the property, for the statutory period of five years, which has been 1) open and notorious, 2) continuous and uninterrupted, 3) hostile to the true owner, and 4) under claim of right. (*Hansen v. Sandridge Partners, L.P.* (2018) 22 Cal.App.5th 1020, 1032-1033.) The court has already granted leave to amend for breach of contract. Should cross-complainant wish to change this cause of action to label it a prescriptive easement, the court grants permission to do so.

### *Fraud/Misrepresentation*

In order to plead fraudulent misrepresentation, cross-complainant must allege 1) a representation that an important fact was true, 2) that the representation was false, 3) that the party knew the representation was false when it was made, or made the representation recklessly, without regard for its truth, 4) that the party intended the opposing party to rely on the representation, 5) that the party reasonably relied on the representation, 6) harm, and 7) that the reasonable reliance was a substantial factor in causing the harm. (*Manderville v. PCG&S Group, Inc.* (2007) 146 Cal.App.4th 1486, 1498.) Additionally, fraud must be pled with sufficient specificity. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) Here, the alleged fraud claims lack specificity. Additionally, and imperatively, the fraud cross-complainant complains of is a misrepresentation directed toward a non-party, law enforcement. It does not appear that any misrepresentation between the parties is alleged. The court sustains the demurrer as to this cause of action, with leave to amend.

### *Breach of Fiduciary Duty*

