

TENTATIVE RULINGS

FOR: January 5, 2018

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

PROBATE CALENDAR – Hon. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

In the Matter of the Grosskopf Family Trust

17PR000252

PETITION FOR ORDER: (1) DETERMINING OWNERSHIP OF REAL PROPERTY; AND (2) TERMINATING TRUST BASED ON CHANGED CIRCUMSTANCES AND FOR DISTRIBUTION OF ASSETS

TENTATIVE RULING: GRANT petition.

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

Jose G. Cano v. Ford Motor Co.

17CV000350

(1) DEMURRER TO THE SECOND AMENDED COMPLAINT

TENTATIVE RULING:

Defendant Ford Motor Co.'s request for judicial notice of the definition of "automatic transmission" from Merriam-Webster's online dictionary is GRANTED.

Ford's demurrer to the third cause of action for fraudulent inducement (concealment), fourth cause of action for fraudulent inducement (intentional misrepresentation, and fifth cause of action for fraudulent inducement (negligent misrepresentation) on the ground of failure to state sufficient facts is OVERRULED. Ford argues the three-year statute of limitations bars the claims. The Court previously held that Cano's allegation of reasonable diligence was

conclusory. The Court is satisfied with Cano's explanation that he was not exposed to any magazine articles criticizing different models than the one he purchased or bulletins which were only issued to authorized Ford dealers and repair facilities, and these items were sent before he purchased a car model that had not yet been made available for sale. (Second Amended Compl., ¶¶ 23, 37, 51, 58, 67, 77, 100.)

Despite Ford's contention to the contrary, the claims are alleged with the requisite specificity. "Whether a statement is nonactionable opinion [and puffery] or actionable misrepresentation of fact is a question of fact for the jury." (*Furla v. Jon Douglas Co.* (1998) 65 Cal.App.4th 1069, 1081.) Moreover, Ford's averment regarding the economic loss rule fails due to the fraud allegations. (See *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 992 ["A breach of contract remedy assumes that the parties to a contract can negotiate the risk of loss occasioned by a breach."].)

With regard to the third claim, Ford maintains it did not have a duty to disclose. Cano specifically alleges "non-public, internal data about the Transmission Defect" was in Ford's exclusive knowledge. (Second Amended Compl., ¶ 30.) Cano has shown that Ford possessed exclusive knowledge at the time of purchase in order to allege a legal duty to disclose.

Ford shall file its answer within 10 calendar days of service of notice of entry of order.

(2) MOTION TO STRIKE

TENTATIVE RULING

Defendant Ford Motor Co.'s request for judicial notice of the definition of "automatic transmission" from Merriam-Webster's online dictionary is GRANTED.

Ford's motion to strike the claim for punitive damages is DENIED because the fraud claims are adequately pled and serve as a basis for such damages.

CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)

First American Title Company of Napa v. In the Vines, LLC, et al. **17CV001419**

OSC RE: PRELIMINARY INJUNCTION

TENTATIVE RULING:

Plaintiff First American Title Company of Napa's OSC re: preliminary injunction is GRANTED. Plaintiff has standing as it is a real party in interest. (*Builders' Control Serv., Inc. v. North Am. Title Guar. Co.* (1962) 205 Cal.App.2d 68, 76.) The case is ripe. The Court will adjudicate whether the \$675,493.65 should be returned to plaintiff.

Plaintiff has demonstrated it is likely to prevail on the merits of its complaint and the relative balance of harm favors plaintiff. (*Jay Bharat Developers, Inc. v. Minidis* (2008) 167 Cal.App.4th 437, 443; see *WhIT Corp. v. Cnty. of Imperial* (1983) 35 Cal.3d 63, 72.) Plaintiff acted as escrow holder for the sale of real property by defendant In the Vines, LLC (“Vines”). (Fratini Decl., ¶ 2.) There was a recorded \$1,300,000 deed of trust against the property from U.S. Bank. (*Id.*, ¶ 5.) The seller’s closing statement included a net sum “due to seller” of \$1,524,337, 35, which did not reflect a payoff of the U.S. Bank deed of trust. (*Id.*, ¶ 6.) Plaintiff then mistakenly disbursed \$675,493.65 to Vines, but did not discover the mistake until Michael Venuta, defendant Lisa Mini’s ex-husband and the former owner of the property, contacted plaintiff to advise of the U.S. Bank deed of trust. (*Id.*, ¶¶ 7-8.) The amount necessary to payoff the U.S. Bank deed of trust is \$675,493.65. (*Id.*, ¶ 9.) Vines and Mini never disclosed the existence of the deed of trust to plaintiff. (*Id.*, ¶ 5.) Since the transfer of the funds, Vines (through its principal Mini) has transferred almost all of the money out of the account to which the funds were sent. (Cohoe Reply Decl., ¶¶ 2-4.) Vines, for example, transferred money to AZL LLC, which has the same business address as Vines, and Mini is a signatory on the AZL LLC account. (*Id.*, ¶ 4.) Likewise, money was transferred to an account held by Bare Fitness LLC, which on information and belief is an entity controlled by Tessa Mini, Lisa Mini’s niece. (*Id.*) Thus, there is a strong likelihood that the remaining identifiable funds will continue to be transferred and withdrawn, depriving plaintiff of any opportunity to recover them.

Plaintiff shall obtain a bond in the amount of \$10,000.

The Court will sign the proposed order.