

TENTATIVE RULINGS

FOR: March 15, 2019

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. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. 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. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Estate of George E.B. King

PR23206

FIFTH ACCOUNT AND REPORT OF TRUSTEE AND PETITION FOR SETTLEMENT:
GEORGE E.B. AND BERYL M. KING TRUST B FOR BENEFIT OF LISA KING

TENTATIVE RULING: GRANT petition, including fees as prayed.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Denise Swank v. Garry Reynolds, et al.

18CV001487

PLAINTIFF'S APPLICATION FOR DEFAULT JUDGMENT AGAINST DEFENDANTS

TENTATIVE RULING: Plaintiff Denise Swank's application for default judgment against defendant Garry Reynolds is GRANTED. The statement of damages is in the amount of \$60,000 (\$30,000 for emotional distress, and \$30,000 for pain, suffering, and inconvenience). This action is for "personal injury" within the meaning of Code of Civil Procedure section 425.10. Emotional distress is unquestionably a form of personal injury. (See *Schwab v. Rondel Homes* (1991) 53 Cal.3d 428, 432 [plaintiffs' emotional distress claim covered by Code of Civil Procedure section 425.10].) Swank's claim for emotional distress is not "incidental" to the causes of action in her complaint as one of the reasons she filed her pleading is due to the alleged emotional distress she suffered from the death of her dog. (See *id.* [an emotional distress claim that is incidental to the cause of action will not render the claim an action "to recover damages for personal injury" under section 425.11].) The remaining damages "are tied so closely to the

personal injury claims [and emotional distress damages] that section 425.11 applies.” (*Jones v. Interstate Recovery Serv.* (1984) 160 Cal.App.3d 925, 930.)

Swank’s application for default judgment against defendants Garry Reynolds dba Norcal K9 and Norcal K9 is GRANTED. However, there is no statement of damages attached to the application for these defendants. As a result, no damages can be awarded against these defendants because there is no amount demanded in the prayer or from the damage allegations of the complaint. (Code Civ. Proc., § 580, subd. (a) [“The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint”]; see *Nat’l Diversified Servs. v. Bernstein* (1985) 168 Cal.App.3d 410, 417 [“An entry of a default judgment exceeding the allegations of the complaint is beyond the court’s jurisdiction.”].)



Kathleen D. McBride v. Byron C. Smith, et al.

26-63368

PLAINTIFF’S MOTION FOR LEAVE TO FILE SIXTH AMENDED COMPLAINT TO ADD AN INDISPENSABLE PARTY

TENTATIVE RULING: Plaintiff’s Request for Judicial Notice in Support of Plaintiff’s Reply to Defendants’ Opposition to Plaintiff’s Motion for Leave to File Sixth Amended Complaint to Add an Indispensable Party is GRANTED in part. Defendants’ Request for Judicial Notice in Opposition to Defendants’ Motion for Leave to File Sixth Amended Complaint to Add an Indispensable Party is GRANTED. Plaintiff’s Motion for Leave to File Sixth Amended Complaint to Add an Indispensable Party is DENIED.

1. PLAINTIFF’S REQUESTS FOR JUDICIAL NOTICE

Plaintiff’s Request for Judicial Notice is GRANTED in part. The Court takes judicial notice of: (a) Verified Complaint for Trespass, Foreceable Detainer, prescriptive Easement and Nuisance Abatement filed in this matter January 29, 2014, but not for the truth of the matters asserted therein; (b) Memorandum of Points and Authorities in Support of Defendants’ General and Special Demurrer, filed in this matter May 13, 2014, but not for the truth of the matters asserted therein; (c) Order Re: Defendants’ Motion for Summary Judgment, and Requests for Judicial Notice and Evidentiary Objections Related Thereto, filed in this matter February 19, 2019; (d) Judgment Quieting Title in Napa Superior Court Case No. 26-29788, filed September 16, 2005, but not for the truth of the matters asserted therein; (e) Reporter’s Transcript of Proceedings, Motion for Summary Judgment, February 14, 2019, Page 21; (f) Complaint to Quiet Title and for Reformation of Deed Restriction, in Napa County Superior Court Case No. 26-29788, filed June 14, 2005, but not for the truth of the matters asserted therein; Grant Deed, Recorded May 27, 1998, Official Records of Napa County, Document No. 1998-014347; and, (g) Plaintiff’s Response to Separate Statement of Undisputed Material Facts, filed in this matter on January 22, 2019.

The Court declines to take Judicial Notice of the St. Helena Police Department Information Report, Case 14-0581, dated September 4, 2014, on the ground that it is irrelevant to the issues presently before the Court.

Plaintiff's Request for Judicial Notice set forth in the Declaration of James R. Rose in Support of Plaintiff's Ex Parte Application for an Order Shortening Time to File Motion is DENIED. Requests for Judicial Notice must be set forth in a separate document. (Cal. Rules of Court, rule 3.1113, subd. (l).)

2. DEFENDANTS' REQUEST FOR JUDICIAL NOTICE

Defendants' Request for Judicial Notice is GRANTED. The Court takes judicial notice of: (a) Request for Judicial Notice in Support of Defendants' Demurrer to Third Amended Verified Complaint of Kathleen D. McBride, filed on March 30, 2015, but not for the truth of the matters asserted therein; and, (b) the Order Sustaining General and Special Demurrer of Defendants Byron C. Smith and Kalmia S. Smith to Third Amended Verified Complaint of Plaintiff Kathleen D. McBride, filed on June 17, 2015.

3. PLAINTIFFS' MOTION FOR LEAVE TO FILE SIXTH AMENDED COMPLAINT TO ADD AN INDISPENSABLE PARTY

Plaintiff's Motion for Leave to File Sixth Amended Complaint to Add an Indispensable Party is DENIED.

Factual Background

This case involves a dispute over a strip of land providing access to Plaintiff's property located at 1664 Spring Street (1664 Spring). Plaintiff filed her original Complaint in this action on January 29, 2014. Therein, Plaintiff alleged as follows: "Defendants, Byron C. Smith and Kalmia S. Smith, husband and wife, at all times mentioned herein, own real property which is the subject of this lawsuit and reside in Napa County, California." (Complaint at p. 2:1-3.) The Complaint further alleges, "Defendants owns [sic] real property located in St. Helena, California, commonly known as 1670 Spring Street, St. Helena, CA, Napa County Assessor Parcel No. 009-313-037." (Complaint at p. 2:6-7.) The Complaint set out causes of action for Trespass, Forceable Detainer, Prescriptive Easement, and Nuisance against Defendants. After several rounds of demurrer and amendment through which Plaintiff dropped her cause of action for Forceable Detainer, The First Appellate District of the California Court of Appeal held that Plaintiff's Fourth Amended Complaint stated causes of action for Nuisance and Prescriptive Easement, but not Trespass. On remittitur, Plaintiff filed her Fifth Amended Complaint.

On November 21, 2018, Defendants filed a Motion for Summary Judgment. Finding that Plaintiff failed to produce evidence sufficient to create a prima facie case under either cause of action, the Court granted the motion on February 19, 2019.

By the present motion, Plaintiff seeks leave to file a Sixth Amended Complaint for purposes of naming additional defendants. Plaintiff claims that the present motion is necessary because she has only recently discovered that the Defendants do not own fee title to the strip of land over which she has, for more than five years, been claiming easement rights.

Plaintiff seeks leave to add as Defendants the Heirs of Delores Daniels, who Plaintiff now contends own fee title in and to the subject strip of property. Plaintiff argues that leave to amend must be granted because the heirs of Delores Daniels are indispensable parties to the action.

General Discussion

Motions for leave to amend are directed to the discretion of the court. “The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading” (Code of Civ. Proc. § 473, subd. (a)(1).) The court’s discretion is typically exercised liberally to permit amendment to the pleadings. (*Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939.) However, the Court has discretion to deny leave to amend when it would not be in accordance with the spirit of the law and the ends of justice. (*Dunzweiler v. Sup. Ct. of Alameda Cty.* (1968) 267 Cal.App.2d 569.)

In the present procedural context, Plaintiff’s argument that the heirs of Delores Daniels are indispensable parties fails.

First, the heirs of Delores Daniels appear to have nothing whatsoever to do with Plaintiff’s Nuisance claim. In the proffered Sixth Amended Complaint, every action alleged to constitute a nuisance is expressly alleged to have been taken by the Smiths. The heirs of Delores Daniels are entirely excluded from those allegations. As such, it cannot be said that the heirs are indispensable to the Nuisance cause of action.

Second, Plaintiff’s motion ignores the fact that the Court has already ruled conclusively on her prescriptive easement claim – by granting Defendants’ motion for summary judgment.

The prescriptive easement issue framed in the proffered Sixth Amended Complaint is the same as that in Plaintiff’s Fifth Amended Complaint. The claims of expanded rights and the alleged adverse use are the same. The subject property is the same. After five years of litigation, Plaintiff failed to produce evidence sufficient to sustain her burden of proof on those claims of adverse use.

Plaintiff nevertheless asks the Court to allow her a second chance to develop such facts, because she now believes different persons own the subject property. In the context of Plaintiff’s failure to produce facts sufficient to show adverse use of the subject property, it is immaterial who owns the underlying fee. The identity of the fee title holder will not and does not change Plaintiff’s historic use of that property. Thus, in this specific context, even assuming, *arguendo*, that the heirs of Delores Daniels are the true owners of the fee, they cannot be said to be indispensable to a Prescriptive Easement claim that Plaintiff cannot produce evidence to sustain.

Another way to consider the issue is whether Plaintiff would be collaterally estopped from making the prescriptive easement claim in a subsequent lawsuit. Collateral estoppel, or “issue preclusion,” prevents the re-litigation of previously decided issues. Under California law, “issue preclusion applies (1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first

suit or one in privity with that party.” (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.) “In defining the term ‘actually litigated,’ the Restatement explains: ‘When an issue is properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined, the issue is actually litigated within the meaning of this Section. An issue may be submitted and determined on a . . . motion for summary judgment. . . .’” (*Barker v. Hull* (1987) 191 Cal.App.3d 221, 226.) Similarly, “[i]f a motion for summary adjudication is granted, at the trial of the action, the cause or causes of action within the action . . . claim for damages, or issue or issues of duty as to the motion that has been granted shall be deemed to be established. . . .” (Code Civ. Proc. § 437c, subd. (n)(1).)

Through Defendants’ Motion for Summary Judgment, the identical issue at the core of the proffered Sixth Amended Complaint of whether Plaintiff can establish prescriptive use of the subject property was actually litigated, necessarily decided and finally adjudicated such that Plaintiff is collaterally estopped from further litigating it against those now alleged to be the property owners. In arriving at this conclusion, the key is for the court to carefully examine the circumstances of the case to ensure Plaintiff was afforded the opportunity for a full and fair adjudication of the issue subject to collateral estoppel. (See 7 Witkin, Cal. Procedure (5th ed. 2008) Judgment §§ 455 and 456, pp. 1112-1113.) Under the circumstances of this case, the Court concludes that Plaintiff was, indeed, afforded the opportunity for a full and fair adjudication of whether she established a prescriptive easement over the subject property. Allowing her leave to amend the complaint now to bring the same claim against different alleged property owners would amount to nothing other than a “second bite at the apple” to the significant prejudice of the Smith defendants.

For the foregoing reasons, Plaintiff’s motion for leave to file the Sixth Amended Complaint is DENIED.

PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Conservatorship of Iva Gieffels

26-31961

REVIEW HEARING

TENTATIVE RULING: After a review of the matter, the Court finds the Conservator is acting in the best interest of the Conservatee. Thus, the case is set for a biennial review hearing in two years, on March 9, 2021, at 8:30 a.m. in Dept. B. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.