

VANCLEAVE v. HATCHER

20CV45056

PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

This is a civil action involving claims of trespass and emotional distress stemming from remediation work to a sewer line between adjoining parcels. Before the Court is a motion by the plaintiff for leave to amend the operative pleading. No opposition is noted.

To amend a pleading already at issue, the sponsoring party is required first to seek leave of court by way of noticed motion. (CCP §473(a)(1).) Pursuant to California Rule of Court 3.1324, the moving party must specify in the moving papers by page, paragraph, and line number the allegations proposed to be added and/or deleted; and include with the moving papers a declaration specifying (1) the effect of the amendment(s); (2) why the amendment is necessary and proper; (3) when the facts giving rise to the amended allegations were discovered; and (4) the reasons why the request was not made earlier.

The supporting declaration by Attorney Hamilton is hard to follow, and does not track the proposed changes in any meaningful way. Counsel merely states that through the course of discovery some of the averments and theories have changed. There is no discussion as to why the amendment is necessary, or why it was not made earlier. Nevertheless, motions for leave to amend a pleading are directed to the sound discretion of the court. (CCP §§ 473(a)(1) and 576.) This discretion should ordinarily be exercised liberally in favor of allowing amendments. (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428; *Central Concrete Supply Co v. Bursak* (2010) 182 Cal.App.4th 1092, 1101-1102.) Courts may permit amendments at any stage in the proceedings, up to an including trial, so long there is no prejudice to the adverse party. (See *Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 746; *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761.)

Plaintiff's motion is GRANTED. Plaintiff shall file and serve a First Amended Complaint consistent with that proposed as part of the motion. The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff is ordered to serve and file a proposed order consistent herewith and CRC 3.1312.

RYAN v. HUTCHINSON

19CV44070

PLAINTIFF'S MOTION FOR LEAVE TO SUBSTITUTE PARTY-DEFENDANT

This is a personal injury action stemming from an altercation between plaintiff and defendant occurring on 12/06/18. Defendant died on 11/21/22. Before the Court is a motion by plaintiff to substitute defendant's estate as a party-defendant. No opposition is noted.

Pursuant to CCP §377.41, "on motion, the court shall allow a pending action or proceeding against the decedent **that does not abate** to be continued against the decedent's personal representative or, to the extent provided by statute, against the decedent's successor in interest, **except that** the court may not permit an action or proceeding to be continued against the personal representative unless proof of compliance with Part 4 (commencing with Section 9000) of Division 7 of the Probate Code governing creditor claims is first made."

According to plaintiff, an estate has been opened on behalf of defendant-decedent (see 22PR8585) and a personal representative appointed (Christine Eberle). Pursuant to CCP §1250.220(b), she would be the proper individual to name – albeit in her capacity as personal representative for defendant's estate.

However, there are two abatement issues that need to be addressed.

First, since the operative pleading includes a claim for punitive damages, and such claims abate with the passing of defendant (see CCP §377.42), the motion to substitute is denied as to the claim for exemplary damages.

Second, the tort claim itself abates unless plaintiff shows proof of having complied with the requirements of perfecting a creditor's claim. Pursuant to Probate Code §9370, the tort claim itself will abate unless a creditor claim is timely filed, rejected, and then a motion timely filed. There is no evidence provided with the motion showing any of these preconditions. Moreover, a review of the court file for 22PR8585 fails to reveal any creditor claim by plaintiff. Since there are time limits to creditor claims, this Court cannot tell whether the tort claim has perhaps already abated. Plaintiff states in conclusory fashion that "all of the conditions of Probate Code §9370" have been "or will be" met – but that is not sufficient.

Motion DENIED without prejudice.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff is ordered to serve and file a proposed order consistent herewith and CRC 3.1312.

KAMMER v. MADDERRA et al

22CV46324

PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' ANSWER

This is a civil action involving allegations of malfeasance associated with an unrealized joint venture between plaintiff and defendant(s) to invest in property. The operative pleading is the original verified complaint, which includes eight (8) causes of action. Defendant Madderra filed an answer on behalf of himself (but not on behalf of his construction company) on 01/18/23, but that answer was not verified.

Before the Court this day is a motion by plaintiff to strike the unverified answer. The original notice for the motion was defective. See Local Rule 3.3.7. A timely amendment was served and filed. No opposition is noted, though defendant did recently attempt to cure the defect by filing a stand-alone verification (which the clerk's office rejected).

Pursuant to CCP §§ 435 and 436, a party may move for an order striking a pleading "not drawn in conformity" with laws, rules or orders. (See also *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528; *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683.) Pursuant to CCP §446, "when the complaint is verified, the answer shall be verified." Since defendant's answer was not verified, it was not drawn in conformity with law, and subject to a motion to strike. Although counsel's §435.5 efforts to meet and confer prior to filing consisted of just one terse email, this Court will find it sufficient for present purposes.

Motion to strike defendant's answer filed 01/18/23 is GRANTED, but defendant shall have 30 days in which to file a proper answer. Defendant is also reminded that while a default has already been entered as to the entity, any appearance on behalf of the entity (if it is indeed an entity) must be made by a licensed attorney.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff is ordered to serve and file a proposed order consistent herewith and CRC 3.1312.