

Calaveras Superior Court
Friday, May 7, 2021
Civil Law & Motion Calendar
Tentative Rulings
Hon. David M. Sanders
Courtroom #2

9:00 AM 20CV44713 Plaintiff's Motion to Expunge Lis Pendens 05/19/2020 05/19/2021 Case Management Conference

Ptff/Pet: Guaranty Holdings of California Inc. Atty: Arata Swingle Van Egmond & Heitlinger
Def/Res: Cattaneo, Bernadette Francine; Dufresne, Christopher; Estate of Sylvia Brown; Atty: Parr, Shawn Robert; Law Offices of Vittoria
Giambi, Jason; Holmes, Dan; Resort at Lake Tulloch Llc; Robinson, Craig David Bossi

Tentative Ruling: The complaint was filed on May 19, 2020 and defendant Dufresne answered on June 23, 2020. Defendant Estate of Sylvia Brown has not filed an answer. This motion was filed on April 7, 2021.

Plaintiff has not complied with Local Rule 3.3.7 enacted January 1, 2018, by failing to include the mandatory language in the notice of motion regarding the Court's tentative ruling system. Pursuant to said local rule, lack of compliance provides a specific ground to deny any such procedurally-deficient motion. Based solely upon plaintiff's failure to comply with Local Rule 3.3.7, the motion is DENIED without prejudice to refile, to the extent it otherwise is timely and appropriate pursuant to relevant statutes.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

9:00 AM 21CV45132 Defendant's Special Motion to Strike

01/19/2021 05/19/2021 Case Management Conference

Ptff/Pet: Smith, Tracy
Def/Res: Cartwright, Shane

Atty: Loving, Roy William
Atty: Brewer Offord & Pedersen Llp

Tentative Ruling: On January 19, 2020, plaintiff filed the complaint. On March 26, 2021, defendant filed this special motion to strike the first and second causes of action pursuant to CCP §435.16.

CCP §415.16(a) provides “[t]he Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.”

Defendant filed this motion to strike plaintiff’s allegedly “meritless” claim in the first and second cause of action claiming that it seeks to chill defendant’s exercise of his constitutional right of free speech. CCP 425.16(a), (b)(1) provides that a claim that seeks to chill such constitutional rights is referred to as a “SLAPP” action (strategic lawsuit against public participation).

Defendant’s request for judicial notice is granted as to Exhibits 1 through 3 pursuant to Evidence Code section 452 and 453.

To prevail on an anti-SLAPP motion, the defendant must make a prima facie showing that the plaintiff’s complaint alleges a claim for relief arising out of the defendant’s activity that is constitutionally protected under the anti-Slapp statute. CCP §425.16(b)(1). In this matter, defendant does not make any prima facie showing that the claim for relief arises out of defendant’s activity that is constitutionally protected under the anti-Slapp statute.

Secondly, even if it is assumed arguendo that defendant can make such a prima facie showing, the burden then shifts to the plaintiff to establish that it has a probability of prevailing on each claim that arises from the allegations of protected activity. (Baral v Schnitt (2016) 37 Cal.4th 1048, 1056.) The Court finds that plaintiff can make an appropriate showing of a probability of prevailing on the first and second causes of action. [Specifically, with regard to the five statements that are the basis of defendant’s motion, the Court does not find any are being used to chill a valid exercise of defendant’s constitutional right of freedom of speech. Plaintiff simply is alleging his rendition of the facts necessary to support his complaint.]

Therefore, based on the foregoing, defendant’s special motion to strike is DENIED. Defendant’s request for attorney’s fees is therefore also DENIED.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant to prepare a formal Order pursuant to Rule 3.1312 in conformity with this ruling.