

TENTATIVE RULINGS

LAW & MOTION CALENDAR

Friday, September 6, 2024, 3:00 p.m.

Courtroom 16 –Hon. Bradford DeMeo for the Hon. Patrick M. Broderick

3035 Cleveland Avenue, Suite 200, Santa Rosa

PLEASE USE DEPARTMENT 17'S ZOOM INFORMATION FOR THIS HEARING

<https://sonomacourt->

[org.zoomgov.com/j/1611264123?pwd=eHRoZTRvaHhoR25Ec21sVVdGemlTdZ09](https://sonomacourt-)

TO JOIN “ZOOM” ONLINE,

Courtroom 16

Meeting ID: 161-460-6380

Passcode: 840359

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TO JOIN “ZOOM” BY PHONE,

By Phone (same meeting ID and password as listed above):

(669) 254-5252 US (San Jose)

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6729**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing. Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1-2. 23CV0202, County of Sonoma v Luba

1. Motion to Strike

Plaintiff County of Sonoma (“County”) moves for an order striking Affirmative defenses 1-11 and 13 from the First Amended Answer of Defendant Michael Luba (“Defendant”).

On August 22, 2024, Defendant filed a request to dismiss affirmative defenses, numbers 1, 8, and 9. Therefore, as to these, the motion is MOOT. As to the remaining affirmative defenses, **the motion is DENIED.**

The County alleges that for the past ten years it has repeatedly attempted to seek voluntary abatement of code violations on the Defendant’s Property located at 1005 Wagon Road, Sebastopol, Assessor Parcel Number 073-071-018 (“the Property”) and for payment of abatement costs, fees, and penalties.

Defendant’s First Amended Answer (“FAA”) states that the allegations in the County’s complaint are barred by: the doctrine of estoppel as allowed against a government entity by example

within *Smith v. County of Santa Barbara* (1992) 7 Cal.App.4" 770; unclean hands; laches; failure to comply with due process; unjust enrichment; waiver; Acts of God; impossibility; the Constitution; and because Defendant substantially complied with the permitting process.

i. Estoppel

The County argues that the doctrine of estoppel is not available against a public entity seeking to abate a public nuisance. The County cites *Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2000) 23 Cal. 4th 305 and *Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813.

Kajima involved competitive bidding for a public works project. That case states “neither the doctrine of estoppel nor any other equitable principle may be invoked against a governmental body where it would operate to defeat the effective operation of a policy adopted to protect the public.” (*Kajima, supra*, at 316.) In that case, promissory estoppel was applied against a public entity allowing plaintiff to recover the costs of preparing a bid for a public contract. However, lost profits were not recoverable because that would undermine competitive bidding statutes enacted for the benefit of property holders and taxpayers and injure the public.

Pettitt involved the issuance of a building permit in violation of a zoning ordinance. The appellate court noted: “It is settled that ‘[t]he doctrine of equitable estoppel may be applied against the government where justice and right require it.’” (*Pettitt, supra*, at 819.) “Correlative to this general rule, however, is the well-established proposition that an estoppel will not be applied against the government if to do so would effectively nullify ‘a strong rule of policy, adopted for the benefit of the public, ...’ [Citation.] The tension between these twin principles makes up the doctrinal context in which concrete cases are decided.” (*Ibid.*) The County argues that abatement of a nuisance is at least as vital to the public interest as zoning laws.

In opposition, Defendant argues that the County should be estopped from pursuing this action due to its years of inaction coupled with Defendant’s medical decline over the years. The FAA alleges that enforcement of abatement proceedings under the circumstances of this case does not affect any public interest or policy. Here, Defendant attempted to comply with abatement notices by hiring an architect, has only modified his own home by constructing a cover for his car, enclosing a porch, replacing old siding, and repairing electrical wiring. He argues that there is no allegation that the work was performed in an unsafe manner or in less than a workmanlike quality. Defendant is disabled, the COVID pandemic caused delays and confusion, and Defendant relied on years of no correspondence from the County causing him to believe that matter had been resolved.

Equitable remedies are determined on a case-by-case basis. *Pettitt* is sufficiently dissimilar that it does not rule out the doctrine of estoppel in this specific case. Notably, *Pettitt* involved a salon open to the public. This case only involves Defendant’s residence and purported upgrades to his home.

The motion regarding Defendant’s affirmative defense based upon estoppel is DENIED.

ii. Laches

The County also argues that this defense is not available as against a public entity as part of its overall argument against defenses of estoppel, unjust enrichment, and waiver, as laches is an

equitable remedy. No specific authority is cited in support of this argument. Nor does the County provide any discussion of this affirmative defense.

In opposition, Defendant cites *City and County of San Francisco v. Pacello* (1978) 85 Cal.App.3d 637 in which laches was applied against the city and county of San Francisco to bar an action to abate a public nuisance. Thus, laches is potentially a valid affirmative defense in this case.

The motion regarding Defendant's affirmative defense of laches is DENIED.

iii. Unclean hands, Unjust Enrichment

The County argues that the doctrines of unclean hands and unjust enrichment are inapplicable to this case. In support of its argument against the doctrine of unclean hands, the County cites *Delfino v. Delfino* (1969) 272 Cal.App.2d 556.

The equitable doctrine of unclean hands is applicable to prevent a finding of merit in situations where one party plans and executes fraud and inequitable devices to obtain an improper advantage over the other party. (*Delfino, supra*, at 562.) In *Delfino*, the doctrine was not applicable to invalidate a wife's request to set aside a default decree of annulment supported by affidavits showing she had committed adultery, but operated in her favor, where she had been fooled by lies instigated by the husband's inequitable conduct in admittedly paying the man with whom the act of adultery was committed.

Delfino is not an abatement case. Therefore, it does not establish as a matter of law that the Defendant's affirmative defense of unclean hands is completely inapplicable to this case. And, while *Pettitt* states that equitable defenses are not available to defeat the effective operation of a policy adopted to protect the public, there could conceivably be circumstances where it would apply in an abatement case. *City and County of San Francisco v. Pacello* establishes that equitable defenses may on occasion defeat an abatement action. Similarly, the County has not cited authority that unclean hands is also completely unavailable here.

The motion to strike to these affirmative defenses is DENIED.

iv. Due Process

The County argues that Defendant failed to appeal the notices and orders issued by Permit Sonoma and failed to request administrative hearings; therefore, the existence of code violations cannot be contested. This issue is factual. The County has not established that Defendant did not or cannot *allege* due process violations. The County's arguments presume the facts alleged in its complaint are true—that notice was proper and that Defendant was given a reasonable opportunity to abate the violations.

The motion to strike Defendant's due process affirmative defense is DENIED.

v. Impossibility, Unforeseeable Circumstances, Acts of God

Defendant's tenth affirmative defense alleges unforeseeable circumstances or Acts of God. His eleventh affirmative defense alleges impossibility, impracticability, or lawful compliance.

The County argues these claims are false. The County's citation to *Kajima, supra*, for the same proposition that equitable principles cannot be invoked against a governmental body where it would operate to defeat the effective operation of a policy adopted to protect the public is insufficient to establish that Defendant may not raise these affirmative defenses under the facts of this case.

The motion as to these affirmative defenses is DENIED.

vi. Conclusion and Order

The motion to strike Defendant's second through eighth, eleventh, and thirteenth affirmative defenses is DENIED.

Defendant's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

2. Motion for Non-Jury Trial – MOTION WITHDRAWN

The County of Sonoma moved for an order for a non-jury trial. However, on August 20, 2024, the County filed a stipulation and order withdrawing its motion as Defendant has withdrawn his request for a jury trial. Accordingly, this motion is DROPPED.

3. **23CV02101, Looney v Martin**

Plaintiff Gary E. Looney, dba Collectronics of California ("Plaintiff") moves for an order compelling Defendants Stephanie Ann Martin, individually dba The Whiskey Barrel, and as personal guarantor of The Whiskey Barrel ("Defendants") to provide responses to Plaintiff's post-judgment demand for production of documents. Plaintiff requests sanctions in the amount of \$60.

Plaintiff served Defendants with post-judgment interrogatories and requests for production of documents on April 10, 2024. (Looney decl., ¶1, Exhibit A.) Responses were due on May 17, 2024. Plaintiff sent meet and confer letters on June 19, 2024, and July 9, 2024, requesting responses. (*Id.*, Exhibit B.) As of the date of the motion, Defendants have not responded. (*Id.*, ¶2.)

Plaintiff's motion is GRANTED. Defendants Stephanie Ann Martin, individually dba The Whiskey Barrel, and as personal guarantor of The Whiskey Barrel are ordered to provide responses, without objections, to Plaintiff's discovery requests within 15 days of the service of this order, and to pay sanctions of \$60 within 30 days of the service of this order.

Plaintiff is directed to submit a written order to the court consistent with this ruling.

4. **24CV00302, Craker v Santander Consumer USA Inc dba Chrysler Capital**

Plaintiff Kevin Lee Craker ("Plaintiff") moves for summary judgment in his favor. **The motion is DENIED.**

On January 23, 2024, Plaintiff filed a complaint against Defendant Santander Consumer USA Inc. dba Chrysler Capital (“Defendant”) alleging that Defendant hired a third-party company to locate and illegally repossess Plaintiff’s 2014 GMC Acadia. Plaintiff alleges that Defendant had plans to sell the vehicle on February 4, 2024. Plaintiff alleges that Defendant did not comply with Vehicle Code section 27907 and Uniform Commercial Code Article 9 in the repossession, and that he was not given required notices.

Plaintiff’s motion for summary judgment was filed on May 8, 2024. Plaintiff lays out the factual issues as follows: Alleged illegal repossession of the Plaintiff’s 2014 GMC Acadia; breach of peace during the repossession process; failure to comply with legal and contractual obligations; denial of a negotiable instrument; and constitutional considerations regarding payment tender.

Plaintiff lays out the legal issues as follows:

1. Whether the Plaintiff is entitled to injunctive relief based on the alleged violations by the Defendant, particularly in light of the recent refusal of certified mail.
2. The likelihood of the Plaintiff prevailing on the merits of the case, considering the refusal of assistance and lack of full disclosure in the contractual relationship.
3. Whether irreparable harm has been demonstrated justifying injunctive relief, taking into account the Defendant's actions and the ongoing disputes.
4. Preservation of the status quo pending final determination of the case, with regard to the Defendant's recent actions and refusal to engage.
5. The enforceability of any contractual arbitration clause, given the lack of mutual assent and full disclosure in the contract.
6. Sufficiency of the complaint to state claims upon which relief can be granted, in light of the recent developments and the Defendant's refusal to cooperate.
7. Adequacy of addressing outstanding indebtedness and disputes regarding tender, considering the Defendant’s refusal to assist a disabled person as stipulated in the contract.
8. Disputes regarding set-off, unjust enrichment, and statutes of limitations in light of the Defendant's actions and ongoing disputes.
9. Challenges to equitable doctrines, mitigation of damages, and consent issues.
10. Disputes regarding privilege, waiver, and the lack of willfulness, oppression, or malice, given the recent refusal of certified mail and the Defendant's actions.
11. Contests regarding proximate cause, intervening acts, and several liability, considering the Defendant's actions and the ongoing disputes.
12. Disputes over necessary party joinder, indemnification, and issues of vagueness and ambiguity, in light of the recent developments and the Defendant's refusal to cooperate.
13. Challenges to alleged compliance with statutes, regulations, and application of various legal doctrines, taking into account the Defendant's actions and the ongoing disputes.

Plaintiff’s motion fails to comply with the legal requirements of a summary judgment motion. A motion for summary judgment asks the court to determine that the entire action has no merit (or that there is no defense) and to terminate the action without the necessity of a trial. (See CCP § 437c(a).) A summary judgment may be granted where it is shown that the “action has no merit or that there is no defense to the action or proceeding.” (CCP § 437c(a).) The court must determine from the evidence presented that “there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” (CCP § 437c(c).)

The requirement that there be “no triable issue of material fact” means that summary judgment can be granted only where the essential facts are either conceded or beyond dispute. If there is one, single material fact in dispute, the motion must be denied. (See CRC 3.1350(a)(2).)

A motion for summary judgment or summary adjudication must contain and be supported by the following documents (CRC 3.1350(c)): Notice of Motion; Separate Statement of Undisputed Facts; Points and Authorities; Declarations or other evidence; and a Request for judicial notice, if appropriate.

Every motion for summary judgment must be accompanied by a “separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed.” Each of the material facts in the statement must be “followed by a reference to the supporting evidence.” (CCP § 437c(b)(1).)

The moving party must go through its own case and the opposing party's case on an issue-by-issue basis. The moving party must identify for the court the matters it contends are “undisputed,” and cite the specific evidence (pleadings admissions, or discovery, or declarations) showing there is no controversy as to such matters and that the moving party is entitled to judgment as a matter of law. “This is the Golden Rule of Summary Adjudication: If it is not set forth in the separate statement, it does not exist.” (*United Comm. Church v. Garcin* (1991) 231 Cal. App. 3d 327, 337.)

Here, Plaintiff has not gone through the allegations in his complaint on an issue-by-issue basis and supported those allegations with evidence. Plaintiff has only raised issues of law and fact. As such, Plaintiff has not met his burden on this motion and the motion must be denied.

Motion DENIED. Defendant’s counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

5. 24CV00356, Karp v Hansel Prestige, Inc

Defendant Hansel Prestige, Inc. dba Hansel BMW of Santa Rosa (“Defendant”) moves for an order requiring Plaintiff Suzanne Karp (“Plaintiff”) to provide further verified responses to Defendant’s Form Interrogatories, Set One, Special Interrogatories, Set One, and Requests for Production, Set One.

On August 26, 2024, Plaintiff filed a stipulation wherein the parties agreed to resolve this discovery dispute informally by participating in a discovery facilitation conference as specified in the stipulation. Accordingly, **the motion is DROPPED.**