

TENTATIVE RULINGS: CIVIL LAW & MOTION

Monday, May 6, 2024 at 1:30 p.m.
Courtroom 18—Honorable R. Michael Smith
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

CourtCall is not permitted for this calendar.

If the tentative ruling does not require appearances, and is accepted, no appearance is necessary.

Any party who wishes to be heard in response or opposition to the Court's tentative ruling **MUST NOTIFY** the Court's Judicial Assistant by telephone at **(707) 521-6723** and **MUST NOTIFY all other parties of their intent to appear, the issue(s) to be addressed or argued and whether the appearance will be in person or by Zoom.** Notifications must be completed no later than 4:00 p.m. on the court (business) day immediately before the day of the hearing.

TO JOIN "ZOOM" ONLINE **Department 18:**
<https://sonomacourt.org.zoomgov.com/j/1607394368?pwd=aW1JTWIL3NBeE9LVHU2NVVpQIVRUT09>

Meeting ID: **160—739—4368**
Password: **000169**

To Join Department 18 "Zoom" By Phone:

Call: +1 669 254-5252 6833 US
Enter Meeting ID: **160—739—4368**
And Password: 000169

Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1-2. SCV-273745, Bey v. Simonds

Defendants' two unopposed demurrers are **SUSTAINED without leave to amend.**

PROCEDURAL HISTORY

Plaintiff Bey, self-represented, filed the complaint on July 5, 2023, alleging personal injury and damages for wage loss, loss of use of property, general damage, and loss of earning capacity against all defendants. Plaintiff requested damages in the amount of \$5,000,000.00 and punitive damages against all defendants. Plaintiff Bey claims that because all defendants used his name 57 times and another defendant's name ("Battiest") 44 times during two criminal proceedings in *People v. Hiram El Kenyatta Bey* (Case Nos. SCR-747688-1 and SCR763008-1) involving Plaintiff Bey, that defendants committed breach of contract and copyright infringement.

The four named judicial defendants (together “Judicial Defendants”) in the complaint presided over the two above-referenced criminal proceedings and otherwise have no other connection to Plaintiff Bey or Mr. Battiest. The Judicial Defendants demur (“Judicial Defendants’ Demurrer”) to the whole complaint for failure to state facts sufficient to state any causes of action against them and on the basis of absolute judicial immunity.

Defendants Rodriguez, Hobson, Henning, and Nanney (together “District Attorney Defendants”) are the District Attorney and Deputy District Attorneys for Sonoma County. The District Attorney’s office prosecuted the two above-mentioned criminal proceedings against Plaintiff Bey. They filed a second demurrer against the complaint on the basis of prosecutorial immunity, of failure to comply with the California Government Claims Act, and of failure to allege facts sufficient to state causes of action for breach of contract and copyright infringement.

Instead of opposing the demurrers, Plaintiff Bey filed the first amended complaint (“FAC”) on March 20, 2024. Plaintiff has not filed any proofs of service of process of the FAC on any demurring defendants, so the Court is uncertain whether they have been duly served. The FAC, brought by Plaintiff Bey and Mr. Battiest, alleges causes of action for breach of contract, fraud, general negligence, intentional tort, and exemplary damages in attachments 1-4 and page 9 of the FAC. The FAC also claims copyright infringement, breach of fiduciary duty, and violation of several state and federal statutes along with Plaintiffs’ first amendment rights.

Plaintiff Bey is currently incarcerated at the California Department of Corrections and Rehabilitation. Defendants met and conferred via letters and email to Plaintiff Bey on the issues raised in the demurrers before they were filed. Plaintiff Bey did not respond to the Judicial Defendants’ counsel. Plaintiff did acknowledge receipt of the District Attorney Defendants’ meet and confer letter regarding their demurrer. None of the issues raised in either of the demurrers have been resolved by Plaintiff, who has also not filed any oppositions.

REQUEST FOR JUDICIAL NOTICE

Defendants have requested judicial notice of the register of actions in *People v. Hiram El Kenyatta Bey* (Case Nos. SCR-747688-1 and SCR763008-1). Judicial notice of official acts and court records is statutorily appropriate. (Evid. Code §§ 452(c)-(d).)

Defendants’ requests for judicial notice are **GRANTED** per Evidence Code section 452(d).

DEFENDANTS' DEMURRERS

Legal Standard for Demurrer

Per Code of Civil Procedure section 430.30(a), a demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. (*Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Generally, the pleadings “must allege the ultimate facts necessary to the statement of an actionable claim; it is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts.” (*Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal. App. 3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal. App. 3d 367, 384.) Each evidentiary fact that might eventually form part of a party’s proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal. 4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) “The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree.” (*Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473.) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Per Code of Civil Procedure (“C.C.P.”) section 472(a), “a party may amend its pleading once without leave of the court at any time before the answer, demurrer, or motion to strike is filed, or after a demurrer or motion to strike is filed but before the demurrer or motion to strike is heard if the amended pleading is ***filed and served*** no later than the date for filing an opposition to the demurrer or motion to strike...” (C.C.P. § 472(a). [Emphasis added.]) If a party timely amends the complaint per section 472(a), the party demurring to the original complaint must renew the demurrer as to the amended complaint in order to have its benefit against it. (*Ibid.*)

Judicial Defendants’ Demurrer

Per the Judicial Defendants’ Demurrer, the only connection Judicial Defendants have with Plaintiff Bey is that they presided over portions of two criminal proceedings prosecuted against him.

Judicial Defendants argue that Plaintiff Bey's complaint is barred against them for four reasons. The first reason is that Judicial Defendants have absolute judicial immunity from civil suits arising out of the exercise of their judicial functions. The second reason is that Plaintiff Bey has not complied procedurally with the claim presentation requirements under the California Government Claims Act, which requires a timely presentation of a written claim for money or damages before bringing a suit against a public entity or its employees. Third, Judicial Defendants are not "persons" subject to liability under section 1983 so Plaintiff cannot plead sufficient facts to state a cause of action against them because Plaintiff is required to show an "individual" was personally involved in the deprivation of his civil rights. Finally, the fourth reason is that Plaintiff has not alleged any facts that sufficiently satisfy the elements of either a breach of contract or copyright infringement cause of action against them because no contract exists between Plaintiff and Judicial Defendants and because a person's name is not automatically subject to any copyright protection.

Plaintiff Bey has still not opposed this demurrer and Judicial Defendants filed a notice of Plaintiff's non-opposition.

District Attorney Defendants' Demurrer

The District Attorney Defendants demur to the complaint for similar reasons as Judicial Defendants. They argue that prosecutorial immunity under state and federal law bars Plaintiff's claims against them. Per Government Code section 821.6, a public employee cannot be held liable for injury caused by "his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause..." District Attorney Defendants also note that Plaintiff did not comply with the Government Claims Act. Finally, they argue that Plaintiff cannot allege facts sufficient to state causes of action for either breach of contract or copyright infringement because there was no contract between Plaintiff and these defendants and because a person's name is not subject to copyright protection.

Plaintiff did not oppose the demurrer.

Application

The Court finds both demurrers persuasive because Plaintiff has failed to allege facts sufficient to state causes of action for either breach of contract or copyright infringement against demurring defendants. Furthermore, Plaintiff has not shown that the service of the FAC was properly effectuated on

demurring defendants, so the filing of the FAC does not moot either demurrer for that reason per C.C.P. section 472(a).

As it does not appear to the Court that there is any reasonable possibility that Plaintiff will be able to cure the defects in the complaint, the Court will sustain both demurrers without leave to amend.

CONCLUSION

Based on the foregoing, defendants' demurrers are **SUSTAINED without leave to amend** for lack of reasonably possibility to cure defects within the complaint. Moving parties shall each submit a written order on their demurrers consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).