

TENTATIVE RULINGS for CIVIL LAW and MOTION

April 17, 2015

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Two: (530) 406-6843
Telephone number for the clerk in Department Seven: (530) 406-6722

TENTATIVE RULING

Case: Done Again LLC v. Sierra Nevada Reconveyance, Inc.
Case No. CV CV 12-2574

Hearing Date: April 17, 2015 Department Seven 2:30 p.m.

Defendants Windemere Capital, LLC (“Windemere”) and Mesa Asset Management, LLC’s (“Mesa”) demurrer to the first cause of action for conspiracy to restrain bidding at the nonjudicial foreclosure sale in plaintiff Done Again, LLC’s fourth amended complaint (“4AC”) is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff pleads sufficient facts to support a finding that the defendants acted “in concert with others” to “fix or restrain bidding” by agreeing to sell the subject property to Bruce Myers on other terms which were not disclosed to potential bidders in the Notice of Trustee’s Sale recorded on February 8, 2012. (4AC, ¶¶ 18, 24(i), 30, Exh. 1; Civ. Code, § 2924h, subd. (g).)

Defendants’ demurrer to the second cause of action for constructive fraud is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff fails to plead facts which ‘show how, when, where, to whom, and by what means the representations were tendered.’” (*Knox v. Dean* (2012) 205 Cal.App.4th 417, 434; *Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73.)

Defendants’ demurrer to the third cause of action for negligence per se is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff pleads facts sufficient to support a cause of action based on an alleged violation of Civil Code section 2924h(g). (*Quelimane Co., Inc. v. Stewart Title Guar. Co.* (1998) 19 Cal.4th 26, 38-39.)

Defendants’ demurrer to the fourth cause of action for breach of fiduciary duty is **OVERRULED** as to Windemere. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff pleads sufficient facts to support the existence of a fiduciary relationship between plaintiff and Windemere. (*Ford v. Shearson Lehman American Express, Inc.* (1986) 180 Cal.App.3d 1011, 1020.)

Defendants’ demurrer to the fourth cause of action for breach of fiduciary duty is **SUSTAINED WITH LEAVE TO AMEND** as to Mesa. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff fails to plead sufficient facts to support the existence of a fiduciary relationship between plaintiff and Mesa. (4AC, ¶¶ 5a, 50; *Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 335.)

Defendants' demurrer to the fifth cause of action for declaratory relief is **OVERRULED**. (Code Civ. Proc., § 430.10, subds. (e).) Code of Civil Procedure section 1060 authorizes actions for declaratory relief.

Defendants' demurrer to the sixth cause of action to set aside the trustee's sale is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (d).) The owners of the other beneficial interests in the original loan are indispensable parties to this cause of action. (*Banc of Am. Leasing & Capital, LLC v. 3 Arch Tr. Servs., Inc.* (2009) 180 Cal.App.4th 1090, 1103; *Washington Mutual Bank v. Blechman* (2007) 157 Cal.App.4th 662, 665–668.)

Defendants' demurrer to the seventh cause of action for unjust enrichment is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) A court may construe a "purported cause of action for unjust enrichment as an attempt to plead a cause of action giving rise to a right to restitution." (*McBride v. Boughton* (2004) 123 Cal.App.4th 379, 387.)

Defendants' demurrer to the eighth cause of action for violation of Business and Professions Code section 17200 is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff lacks standing to bring an unfair competition claim as it is unable to establish it has suffered an injury in fact as required. (Bus. & Prof. Code, § 17204; *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1001-1002.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.

TENTATIVE RULING

Case: Fry v. Wave Division Holdings, LLC
Case No. CV CV 13-243

Hearing Date: April 17, 2015 Department Two 9:00 a.m.

Defendant Wave Division Holdings, LLC's unopposed motion to dismiss plaintiff Adam Fry's complaint for failure to prosecute is **GRANTED**. (Code Civ. Proc., § 583.410.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.