

TENTATIVE RULINGS for CIVIL LAW and MOTION September 30, 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.

Please take note that Yolo Superior Court is now located at 1000 Main Street, in Woodland.

Telephone number for the clerk in Department Eleven: (530) 406-6843

TENTATIVE RULING

Case: **Jaime v. Federal National Mortgage Association**
Case No. CV G 13-729

Hearing Date: **September 30, 2015** **Department Eleven** **9:00 a.m.**

Defendant Federal National Mortgage Association's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subs. (c) & (d).)

The Court does not consider the map attached to plaintiff Samuel Jaime's opposition or any other facts that are not on the face of the second amended complaint ("SAC") or discernible from items subject to judicial notice.

Defendant's demurrer to the first, second, third, and sixth causes of action for quiet title, ejectment, declaratory judgment of implied easement, and trespass to land, respectively, on the ground that defendant is a bona fide encumbrancer ("BFE") is **OVERRULED**. (Code Civ. Proc., §§ 430.10, subs. (e), (f).) These causes of action are not uncertain. There is a factual issue as to whether the property to which defendant claims superior title includes the 36 foot strip identified by plaintiff. Furthermore, defendant does not identify which element or elements of these causes of action fail because of this status. It is not the Court's role to research which element or elements of these causes of action are undercut by defendant's purported status as a BFE. It is incumbent upon the defendant to marshal the relevant legal authority that demonstrates that one or more elements of these causes of action cannot be established.

Defendant's demurrer to the SAC on the ground that the 1993 Grant Deed was not properly modified because the handwritten deed fails to comply with the statute of frauds is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Defendant does not identify which element or elements of which causes of action fail because of any purported failure to comply with the statute of frauds.

Defendant's demurrer to the third cause of action for declaratory judgment of an implied easement is **OVERRULED**. (Code Civ. Proc., §§ 430.10, subs. (e) & (f).) This cause of action

is not uncertain. Implied easements are an exception to the general rule that easements can only be created by an express writing or by prescription. Implied easements do not require an oral or written agreement. (*Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 131.)

Defendant's demurrer to the fourth cause of action for conversion is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) There is a factual issue as to whether defendant had the right to enter upon the 36 foot parcel and there are no facts alleged or of which the Court can take judicial notice that defendant gave the proper notice before removing personal property in accordance with Civil Code section 1983.

Defendant's demurrer to the fifth cause of action for trespass to chattels and sixth cause of action for trespass to land is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) There is a factual issue as to whether the property to which defendant claims superior title includes this 36 foot strip identified by plaintiff, and accordingly, whether defendant had the right to remove plaintiff's personal property.

The notice of motion does not provide notice of this Court's tentative ruling system as required by Local Rule 11.4(b). Counsel for moving party is ordered to notify the opposing party or parties immediately of the tentative ruling system and to be available at the hearing, in person or by telephone, in the event the opposing party or parties appear without following the procedures set forth in Local Rule 11.4(a).

TENTATIVE RULING

Case: **Turtle Hill Properties, LLC v. Douglas & Douglas**
Case No. CV CV 12-2451
Hearing Date: **September 30, 2015** **Department Eleven** **9:00 a.m.**

For good cause shown, defendant Daniel J. Cioci's ex parte application to continue the hearing on his demurrer to the second amended complaint is **GRANTED**. The demurrer is **CONTINUED** to be heard on October 23, 2015 at 9:00 a.m. in Department 11.

TENTATIVE RULING

Case: **In re J. Willard**
Case No. CV PT 15-956
Hearing Date: **September 30, 2015** **Department Eleven** **9:00 a.m.**

Petitioner J.G. Wentworth Originations, LLC's petition for approval of transfer of structured settlement payment rights is **GRANTED**. (Ins. Code, § 10134 et seq.)

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.