

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 01/24/2020 EVENT TIME: 08:20:00 AM DEPT.: 20
JUDICIAL OFFICER: Matthew P. Guasco

CASE NUM: 56-2019-00535055-CU-PA-VTA
CASE TITLE: STEWART VS. CITY OF OJAI

CASE CATEGORY: Civil - Unlimited CASE TYPE: PI/PD/WD - Auto

EVENT TYPE: Demurrer (CLM)
CAUSAL DOCUMENT/DATE FILED: Demurrer, 12/23/2019

Notice Regarding Courtroom 20 Law & Motion Procedures: The law and motion calendar in Courtroom 20 before Judge Matthew P. Guasco starts promptly at 8:30 a.m. Ex parte applications will be heard at the same time as matters on the law and motion calendar. Parties appearing by Court Call must check in with the Judicial Assistant by 8:20 a.m. No notice of intent to appear is required. Parties wishing to submit on the tentative decision must so notify the Court by e-mail at Courtroom20@ventura.courts.ca.gov or by fax to Judge Guasco's secretary, Claudine Nesbitt at (805) 477-5892. **Do not call in lieu of sending an e-mail or fax.** If a party submits on the tentative decision without appearing, but another party appears, the hearing will be conducted in the absence of the non-appearing party. Effective February 13, 2018, all cases assigned to Courtroom 20 are assigned for all purposes (including trial) to Judge Guasco.

The following is the Court's tentative decision concerning the demurrer of defendant, County of Ventura ("County"), as to the Complaint of plaintiffs, Wayne J. Stewart, John Manning, and Susan Manning ("plaintiffs"):

Legal Principles

In ruling on a demurrer, the Court treats all properly pleaded facts in the complaint as admitted. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318, 216 Cal.Rptr. 718, 703 P.2d 58.) The demurrer is limited to the four corners of the complaint and any additional facts which are properly the subject of judicial notice. (Code of Civ. Proc., § 430.30, subd.(a).) If there is a reasonable possibility that a pleading deficiency can be cured, it is an abuse of discretion for the Court to deny leave to amend. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318, 216 Cal.Rptr. 718, 703 P.2d 58.)

Demurrers on the ground of uncertainty are disfavored and should only be sustained in the event the complaint is so vaguely and deficiently pleaded that the demurring defendant reasonably cannot intelligently respond to the complaint. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616, 17 Cal.Rptr.2d 708.)

Meet & Confer

The Court finds the parties met and conferred as required by Code of Civil Procedure section 430.41.

Ruling

The Court OVERRULES County's general demurrer to the First Cause of Action (dangerous condition of public property). The Complaint alleges County's ownership, operation, maintenance, and control of the section of Highway 33 in question. The Court declines to entertain what amounts to a speaking demurrer concerning the consideration of noticed facts beyond the four corners of the Complaint. The ownership and control issues raised by County are not appropriate to the pleading stage; they must be addressed at a later stage in the litigation.

The Court SUSTAINS County's general demurrer to the Second Cause of Action (general negligence) WITHOUT LEAVE TO AMEND. Plaintiffs concede this cause of action is not viable and have offered to dismiss it. The Court intends to dismiss that Cause of Action as to County only.

County shall serve and file its Answer to the Complaint consistent with the above and in conformity with the Code of Civil Procedure and the California Rules of Court by no later than **February 14, 2020**.

Counsel for County shall serve and file a notice of ruling and proposed order consistent with the above and in conformity with the Code of Civil Procedure and the Rules of Court. A copy of this tentative decision (if adopted by the Court as its final ruling) may be attached to and incorporated by reference in any such notice and proposed order in lieu of copying same verbatim in the body of the document.