

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA

MINUTE ORDER

DATE: 01/24/2020

TIME: 08:20:00 AM

DEPT: 20

JUDICIAL OFFICER PRESIDING: Matthew P. Guasco

CLERK: Maricela Mijares

REPORTER/ERM: None

CASE NO: **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)

MOVING PARTY: County of Ventura

CAUSAL DOCUMENT/DATE FILED: Demurrer to Plaintiffs Complaint, Memorandum of Points and Authorities in Support thereof, Declaration of Maureen Houska, Exhibits, 12/23/2019

APPEARANCES

Stephen K McElroy, counsel, present for Plaintiff(s).

Robert Baggs, counsel, present for Defendant(s) telephonically.

MAUREEN M HOUSKA, counsel, present for Defendant(s).

At 09:07 AM, court convenes in this matter with all parties present as previously indicated.

Counsel have received and read the court's written tentative ruling.

Plaintiff's counsel submits on the Court's tentative ruling.

Matter submitted to the Court with argument.

The Court finds/orders:

The Court's tentative is adopted as the Court's ruling.

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

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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 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.

=End of Ruling=

Also, Court denies the written request for Judicial Notice.

Formal order to be submitted by Ms. Houska.