

**DEPARTMENT SEVEN
JUDGE TIM P. KAM
707-207-7307
TENTATIVE RULINGS SCHEDULED FOR
FRIDAY, MAY 3, 2024**

The parties may appear via Zoom with the exception of trials, trial management conferences, order for examinations and mandatory settlement conferences. The information for the Zoom meeting is set forth below.

The tentative ruling shall become the ruling of the court unless a party desiring to be heard contacts the judicial assistant of the department hearing the matter by 4:30 p.m. on the court day preceding the hearing, and further advises that such party has notified the other side of its intention to request a hearing. A party requesting a hearing must notify all parties of the request to be heard by 4:30 p.m.

MARIA SOLEDAD RANGEL MERCADO VS. NORTH BAY DISTRIBUTION, INC., et al.

Case No. FCS057328

Plaintiffs' Motion for Preliminary Approval of Class Action Settlement

TENTATIVE RULING

Parties and any interested persons are to appear for hearing as scheduled.

CHAMPION MORTGAGE COMPANY VS. FREDERICK MARC COOLEY, et al.

Case No. FCS058061

Plaintiff's Motion for Leave to File First Amended Complaint

TENTATIVE RULING

Plaintiff CHAMPION MORTGAGE COMPANY moves for leave to file a first amended complaint seeking judicial foreclosure and declaratory relief. This action concerns foreclosure on a mortgage secured by deed of trust on real property located at 465 Carlson Street, Vallejo ("Property"). Defendant FREDERICK MARC COOLEY ("COOLEY") has an ownership interest in the Property.

Legal Standard. The trial court may, in its discretion, allow amendments to pleadings "in furtherance of justice." (Code Civ. Proc., § 473, subd. (a)(1).) The court has wide discretion here but repeatedly stated policy encourages liberality in allowing

amendment. (See *Frost v. Witter* (1901) 132 Cal. 421, 424; *Cardenas v. Ellston* (1968) 259 Cal.App.2d 232; *Kolani v. Gluska* (1998) 64 Cal.App.4th 402, 412.) Indeed, if the motion to amend is timely made and granting the motion will not prejudice the opposing party, it is error to refuse permission to amend where the refusal also results in a party being denied the right to assert a meritorious action or defense. (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.)

Leave to amend may be properly denied where the statute of limitations would bar a proposed cause of action, but the face of the proposed first amended complaint – including its attachments – does not clearly disclose a limitations bar. (*Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 230-231 [leave to amend futile in face of limitations bar].) A cause of action for judicial foreclosure must be brought within four years of the date the underlying promissory note comes due. (Code Civ. Proc., § 337, subd. (a); *Robin v. Crowell* (2020) 55 Cal.App.5th 727, 744.) The proposed first amended complaint states that the note on the Property here came due when COOLEY's predecessor in interest died in July 2014. (P1AC at ¶ 24.) Plaintiff did not file its original complaint in this action until 2022. However, the P1AC states that Plaintiff's predecessor in interest Wells Fargo filed a quiet title action in March 2017 to determine what exactly its lien encumbered. (*Id.* at ¶ 17.) Exhibit 10 to the P1AC, a statement of decision from the court in that quiet title action, confirms that Wells Fargo filed that action because COOLEY disputed Wells Fargo's right to foreclose. (*Id.* at ¶ 19, Exhibit 9.) Plaintiff filed this action in April 2022, fourteen months after the February 2021 judgment in Wells Fargo's action. (*Id.* at ¶ 20.) There are issues of fact here about whether or not the statute of limitations bars Plaintiff's judicial foreclosure action that make it inappropriate to deny leave to amend on the basis of the statute of limitations. (*Hopkins v. Kedzierski* (2014) 225 Cal.App.4th 736, 745 [factual nature of equitable defenses to limitation].)

As to the after-acquired property doctrine, the court does not evaluate the factual or legal soundness of Plaintiff's theory that it can foreclose on the entire ownership interest in the Property. It serves the policy of liberal amendment to permit amendment to assert novel theories that may be appropriately challenged later by demurrer, summary judgment, or trial. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.)

The Court finds no material prejudice such as delay of trial, loss of critical evidence, added costs of preparation, or increased burden of discovery. There does not appear to be extensive additional research and preparation to present the statute of limitations defense where the same arguments could be applied to the initial complaint. Similarly, the additional time, research, and discovery needed to address the after-acquired property doctrine does not appear to be extensive or overly complex.

Conclusion

Plaintiff's motion for leave to file a first amended complaint is granted.

Department 7 is inviting you to a scheduled ZoomGov meeting.

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