

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

**MINUTE ORDER**

DATE: 01/20/2016

TIME: 08:20:00 AM

DEPT: 43

JUDICIAL OFFICER PRESIDING: Kevin DeNoce

CLERK: Tiffany Froedge

REPORTER/ERM: None

CASE NO: **56-2015-00468466-CU-BC-VTA**

CASE TITLE: **Doppel vs Burch**

CASE CATEGORY: Civil - Unlimited      CASE TYPE: Breach of Contract/Warranty

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**EVENT TYPE:** Demurrer (CLM)

MOVING PARTY: William Anderson as Trustee of the Schnepf Survivors Trust of April 3 1998, William Anderson

CAUSAL DOCUMENT/DATE FILED: Demurrer to Plaintiff's Complaint as to First Cause of Action and Request to Stay the Second Cause of Action, 11/25/2015

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**APPEARANCES**

JOHN E. SWEENEY, counsel, present for Plaintiff(s) telephonically.

Danielle R. Sokol, counsel, present for Defendant(s) telephonically.

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At 8:52 a.m., court convenes in this matter with all parties present as previously indicated.

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

Matter submitted to the Court with argument.

The Court finds/orders:

Matter is taken under submission.

After further consideration of submitted matter, the Court rules as follows:

**The court's ruling is as follows:**

Sustain the demurrer to the 1<sup>st</sup> cause of action without leave to amend. Grant the Request to stay the 2<sup>nd</sup> cause of action until the resolution of the probate case.

**Discussion:**

*First Cause of Action (breach of oral contract):*

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The elements of breach of contract are "(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff." *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1388. Plaintiff alleges a contract between herself and the decedent Schnepf; *not with the Trust or the trustees*. Probate Code §9351 requires that prior to commencing an action against a decedent's personal representative on a cause of action against the decedent; the party must first file a claim against the estate in probate court. The demurrer to the first cause of action is sustained without leave to amend.

### **Motion to Stay**

A trial court has the inherent power to stay an action. See CCP §128(a) "Every court shall have the power to do all of the following: [...] (3) To provide for the orderly conduct of proceedings before it, or its officers." A stay of proceedings is an equitable remedy, the issuance of which rests in the Court's discretion. (See, e.g., *Webster v. Sup. Ct.* (1988) 46 Cal. 3d 338, 345.) "Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency." (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489.)

The second cause of action here is a professional negligence claim. The elements of a cause of action for negligence are well established; (a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach as the proximate or legal cause of the resulting injury." (*Ladd v. Cnty. of San Mateo* (1996) 12 Cal. 4th 913, 917 (internal citation omitted).) On the issues of damages and causation, they cannot be established until the merits of the 1<sup>st</sup> c/a (breach of contract) have been resolved. To not stay this action would seem to invite the possibility of inconsistent judgments. As Defendants note in their Reply, "Only if the money is unrecoverable [from the estate] due to an alleged error by the attorney should Plaintiff be permitted to pursue a claim for damages against Defendant Anderson." Whether Plaintiff is successful in the probate action will necessarily impact causation and damages. Given the absence of any claim of prejudice if the requested stay is granted, the Court finds that a stay is in the interests of justice and grants the request.

Status Conference Status of Probation Case is scheduled for 07/18/2016 at 08:30 AM in Department 43.

Notice to be given by clerk.