

**Tentative Rulings
December 18, 2017
Department 7**

This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b)(1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court’s website (www.shasta.courts.ca.gov) and are available by clicking on the “Tentative Rulings” link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

9:00 p.m. – Special Set

**LIU, ET AL. VS. DECKER, ET AL.
Case Number: 184523**

Tentative Ruling on Motion for Summary Judgment: Defendant, California Department of Transportation (“Caltrans”) moves for summary judgment against Plaintiffs, Yuchen Liu, Tinggang Li, Nina Jamilla Hung, Yang Sui, Yuting Xiong, and Jingchun Guo’s Complaint pursuant to CCP § 437c on the grounds: 1) Caltrans is immune under Gov’t Code § 830.6; 2) Plaintiffs have no facts showing Caltrans failed to maintain the subject high tension cable barrier; and 3) Plaintiffs have not facts showing a dangerous condition on public property. Plaintiffs’ complaint alleges only one cause of action against Caltrans for “Dangerous Condition on Public Property.”

Summary Judgment Authority: CCP § 437c states a motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue of material fact and that the moving party is entitled to judgment as a matter of law. “A defendant...has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant ... has met that burden, the burden shifts to the plaintiff ... to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto....” CCP § 437c(p). Summary judgment may be granted where all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. CCP § 437c(c). The evidence must be viewed in the light most favorable to the nonmoving party. *Ennabe v. Manosa* (2014) 58 Cal.4th 697, 703.

Design Immunity: Gov’t Code § 830.6 provides immunity to a public entity for an injury caused by a plan or design of a construction provided that the design/plan has been approved in advance by a legislative body. For a public entity to establish design immunity as a defense, it must show: 1) a causal relationship between the plan and the accident; 2) discretionary approval of the plan prior to construction; and 3) substantial evidence supporting the reasonableness of the design. *Mirzada v. Department of Transportation* (2003) 111 Cal.App.4th 802, 806.

Here, Caltrans has established each element. The causal relationship is contained in Plaintiff’s own allegations. The discretionary approval and substantial evidence of the reasonableness of the design are thoroughly discussed in multiple declarations by qualified Caltrans engineers who have personal knowledge and reviewed numerous documents. Additionally there is no evidence that the cable barrier was modified from the original design. The evidence is sufficient to find each element has been established. Caltrans has sufficiently met its

burden related to design immunity which now shifts to Plaintiffs. CCP § 437c(p). Plaintiffs are not opposing the motion and therefore failed to meet the now shifted burden.

Cable Barrier was Properly Maintained: Caltrans notes that improper maintenance, which has been alleged by Plaintiffs, would not be covered by the design immunity defense. Caltrans then establishes not only proper maintenance of the cable barrier based on the various engineer declarations but shows that Plaintiffs have no evidence of improper maintenance. Caltrans has satisfied their burden of proof which now shifts to Plaintiffs. CCP § 437c(p). Plaintiffs have not opposed this motion and therefore failed to meet the now shifted burden.

No Dangerous Condition as a Matter of Law: A “dangerous condition” is a “condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property...is used with due care in a manner in which it is reasonable foreseeable that it will be used.” Gov’t Code § 830(a). Caltrans has provided evidence that there was not a dangerous condition, there were no similar collisions involving in the cable barrier and that Plaintiffs have no evidence of prior similar collisions. Caltrans has satisfied their burden of which now shifts to Plaintiffs. CCP § 437c(p). Plaintiffs have not opposed this motion and therefore failed to meet the now shifted burden.

The motion is GRANTED. A proposed order was not lodged with the Court as required by Local Rule 5.17(D). Caltrans shall prepare the order.

This matter is also on calendar today for review regarding trial setting. The Court designates this matter a Plan III case and intends on setting the matter for trial no later than April 3, 2018. Any party that has not yet posted jury fees is granted 10 days leave to post jury fees. A failure to post jury fees will result in a waiver of the right to a jury. **The parties are ordered to appear to provide the Court with available trial dates.**