

Judge Benson – Law & Motion – Wednesday, January 8, 2025 @ 9:00 AM
TENTATIVE RULINGS

1. 19CV00855 Weston, Caryl Lynn v. State of California Department of Transportation, et al.

EVENT: Plaintiff's Motion to Strike And/Or Tax Memorandum of Costs By Defendants California Department of Transportation and Mark Allen Lawson

Plaintiff's Motion to Strike And/Or Tax Memorandum of Costs By Defendants California Department of Transportation and Mark Allen Lawson is GRANTED. Defendants' Memorandum of Costs is stricken in its entirety.

CCP § 1033.5(c)(2)

Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation.

In reviewing the file, Defendants did not challenge the initial Complaint. Rather, Defendants filed an answer and ostensibly, engaged in litigation for years (including discovery) without challenging the pleading.

It wasn't until May of 2024 when Defendants challenged the Complaint and filed a Motion for Judgment on the Pleadings which, for the first time after roughly 4 years of litigation, raised the issue concerning the deficiencies in Plaintiff's claim. In response, Plaintiff filed a First Amended Complaint in June 2024.

Defendants then demurred to the First Amended Complaint in July 2024, and that demurrer was sustained with leave to amend. Defendants again demurred to the Second Amended Complaint which ultimately resulted in a judgment of dismissal.

The Court cannot conceive of a reason why Defendants could not have demurred to the initial Complaint. Ostensibly, the legal issue would have been the same in 2019 as it was in 2024. The facts surrounding the demurrer were the same in 2019 as they were in 2024. Neither party disputed the contents of the claim, and therefore it was purely a legal issue whether Plaintiff complied with the claim presentation requirements. None of the costs requested by Defendants had a connection to the dispositive demurrer. They all related to discovery and trial preparation for litigation of a factual dispute that ultimately did not come to fruition. Consequently, none of the costs sought are recoverable CCP § 1033.5(c)(2).

Neither is the Court permitting any costs to the extent it could exercise discretion. The circumstances dictate that it would be inequitable to do so.

Plaintiff shall prepare and submit a form of order consistent with this ruling within 2 weeks.

2-4. 20CV01781 Leland, Morrissey & Knowles, LLP v. Bailey, Catherine

EVENT: (1) Motion to Compel Responses to Request for Production of Documents, Set One, Special Interrogatories, Set One, Form Interrogatories, Set One, and to Deem Admissions Contained Within the Request for Admissions, Set One, as Admitted, and Award of Monetary Sanctions

(Continued from 10/30/24)

(2) Case Management Conference

(3) Motion to Strike, Demurrer and Motion to Quash

The parties are ordered to appear and the Court will conduct a Case Management Conference.

Discovery Motion

Plaintiff's Motion to Compel Responses to Request for Production of Documents, Set One, Special Interrogatories, Set One, Form Interrogatories, Set One, and to Deem Admissions Contained Within the Request for Admissions, Set One, as Admitted, and Award of Monetary Sanctions is GRANTED.

Defendant/Cross-Complainant is sanctioned in the amount of \$1,275 for violation of CCP § 2023.030 and an additional \$1,000 for violation of CCP § 2023.050. Plaintiff is ordered to provide complete responses to Request for Production of Documents, Set One, Special Interrogatories, and Set One, Form Interrogatories, Set One within 10 days of service of this order.

The admissions are deemed admitted.

Demurrer/Motion to Strike/Motion to Quash

To the extent the demurrer is sustained and the motion to strike is granted with leave to amend, Cross-Complainant shall amend within 20 days of service of this order.

Demurrer

The demurrer is sustained with leave to amend as to Cross-Defendant Sara M. Knowles individual. The invoices attached to the Second Amended Cross Complaint indicate Ms. Knowles is a partner of Cross-Defendant Leland, Morrissey & Knowles, a Limited Liability Partnership. The current pleading does not state allegations which could "pierce the corporate veil."

The demurrer is overruled on uncertainty grounds. Demurrers for uncertainty are disfavored, see *A.J. Fistes Corp. v. GDL Best Contractors, Inc.*, (2019) 38 Cal. App. 5th 677, 695) The Court is aware of no legal authority requiring malpractice claims be alleged with specificity.

The demurrer to the Breach of Fiduciary Duty cause of action on the grounds it fails to allege sufficient facts is overruled. As with malpractice, the Court is unaware of any authority requiring heightened pleading for breach of fiduciary duty. The pleading in essence alleges Defendants did not provide professional services during the fiduciary relationship. Reading the pleading as a whole, as we are required to do, Cross-Complainant appears to allege Defendants' failure to provide competent services resulted in Cross-Complainant being deprived of attorney fees and costs for which she was entitled.

Motion to Strike

Paragraph 6: The Motion is GRANTED with leave to amend, if Cross-Complainant so chooses. The portion of paragraph 6 commencing "On April 12, 2024" through the remainder of the paragraph is stricken. The Court takes judicial notice of the Statement of Decision in case # 16CV01891.

Contrary to the allegations in the Amended Cross-Complaint, Ms. Bailey was not awarded punitive damages, nor was she awarded any fixed sum for attorney fees. She was awarded attorney fees, but not in an amount specified. Nor does it specify an amount for costs. Also, the compensatory damages awarded were \$10,000, not \$12,000 as the cross-complaint alleges.

Paragraph 7: The Motion is DENIED.

Paragraph 11: The Motion is DENIED.

Paragraph 13 (First Sentence): The Motion is DENIED. (The pleading does not explicitly allege Cross-Defendants were only retained for appeal purposes. At the pleading stage we are required to make all reasonable inferences in favor of the non-moving party, not the moving party. (See *Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238.)

Paragraph 13 (Second Sentence): The motion is DENIED. Simply because Cross-Defendants were not attorney of record until September 5, 2019 does not necessarily mean they were not retained prior to that date. Again, the Court cannot make inferences against the non-moving party at the pleading stage.

Paragraph 13 (Sixth Sentence): The Motion is DENIED. Again, the attorney of record date is not determinative.

Paragraph 13 (Seventh Sentence): The Motion is DENIED.

Paragraph 13 (Eighth Sentence): The Motion is DENIED.

Paragraph 13 (Ninth Sentence) The Motion is DENIED. The settlement agreement is extrinsic evidence which cannot be considered at the pleading stage.

Paragraph 16: Motion DENIED.

Motion to Quash

In light of the proof of service filed on December 23, 2024, the Motion to Quash appears to be moot.

Cross-Defendants shall prepare and submit a form of order consistent with this ruling within 2 weeks.

5. 24CV00451 Jones, Tim et al. v. Chico Mobile Home Park LLC et al.

EVENT: Defendants' Motion to Compel Arbitration of All Claims By Plaintiffs

Defendants' Motion to Compel Arbitration of All Claims By Plaintiffs is DENIED.

Plaintiff's Evidentiary Objections

Declaration of Aric Resnicke

Overruled: Entirety of Declaration, ¶5, ¶8, ¶9.

Sustained: ¶10, ¶11, ¶13, ¶15.

Defendants' Evidentiary Objections

Declaration of Chance Hansen – All objections are Overruled.

Declaration of Tim Jones – All objections, with the exception of the last objection, are overruled.

Declaration of James P. McKenna – All objections are overruled.

Defendants Have Not Unreasonably Delayed in Seeking Relief

Although this case was filed in February 2024 and the instant motion was not filed until September 2024, based on the evidence presented, that time frame is not the relevant time frame. According to the file, Defendants were not served until July 18, 2024 with the First Amended Complaint. Thus, it wasn't until July 18, 2024 that Defendants had a legal obligation to appear in this case. Consequently, the relevant time frame as it pertains to Plaintiffs delay argument is July 18, 2024, not February 2024.

Only 68 days elapsed between service on Defendants and the filing the instant motion on September 23, 2024. During that time Defendants did nothing which was inconsistent with preserving their right to petition the Court to compel arbitration.

The FAA Applies

As Defendants have noted, interstate commerce is interpreted broadly. *Allied-Bruce Terminix Cos. v. Dobson*, (1995) 513 U.S. 265 highlights this fact. There, the Supreme Court found an effect on interstate commerce in the context of a pest control contract because the pest control materials used in providing the pest control services were produced out of state.

In *Allied-Bruce*, the Supreme Court held that whether the parties contemplated the transaction would involve interstate commerce is not the test, rather the test is whether interstate commerce was “in fact” involved. (*Allied-Bruce, supra* at pp. 281-282) Here, while it appears these lease disputes were not necessarily intended to involve interstate commerce, the operative pleading implicates utility services. Consequently, interstate commerce is “in fact” involved in the transaction.

However, as Defendants acknowledge, even if the FAA applies, the lease agreements may be subject to contractual defenses such as unconscionability even under FAA and California’s arbitration laws. (*OTO, L.L.C. v Kho* (2019) 8 Cal.5th 111, 125)

The Arbitration Agreement is Unconscionable

Procedural Unconscionability

The Court finds a moderate level of procedural unconscionability exists. The Court finds the arbitration clause is sufficiently conspicuous. Ostensibly, Plaintiffs were provided copies of the leases prior to the close of escrow, so they apparently had a reasonable opportunity to review the terms.

However, the Court finds the arbitration agreements were adhesive in nature. The Court is sustaining the evidentiary objection to paragraph 10 of the declaration of Mr. Resnicke as lacking foundation. That ruling aside, the Court finds any suggestion that the arbitration term was anything other than a take it or leave it term to be not credible. There is simply no specific evidence supporting the argument.

Further, there is an element of procedural unconscionability to the extent the arbitration clause fails to disclose the arbitration fees, see *Parada v. Superior Court* (2009) 176 Cal.App.4th 1554, 1572.

Substantive Unconscionability

The Court finds a high level of substantive unconscionability exists. The arbitration agreement denies Plaintiffs the ability to recover attorney fees and limits punitive damages. Consequently, the arbitration agreement denies Plaintiffs substantive rights for which they are

statutorily entitled. “[B]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum.” (*McGill v. Citibank, N.A.*, (2017) 2 Cal. 5th 945, 962-963 citing *Mitsubishi Motors v. Soler Chrysler-Plymouth* (1985) 473 U.S. 614, 628.)

Additionally, there are several mutuality problems. The arbitration agreement includes a carve out for unlawful detainer actions. This situation is analogous to *Flores v. Transamerica HomeFirst, Inc.*, (2001) 93 Cal. App. 4th 846 where the arbitration agreement contained a carve out for foreclosure:

As a practical matter, by reserving to itself the remedy of foreclosure, HomeFirst has assured the availability of the only remedy it is likely to need.

Flores, supra, at p. 855

Here, the only remedy Defendants are likely to need will arise through an unlawful detainer proceeding. Conversely, as a practical matter, all claims Plaintiffs are likely to pursue will go to arbitration.

Further, in addition to the aforementioned problem concerning attorney fees, there is a mutuality issue with attorney fees. The lease authorizes attorney fees, however as noted, the arbitration clause prohibits attorney fees. As a result, Defendants have created a scenario in which they can recover attorney fees if they proceed in litigation, but not Plaintiffs.

In sum, the Court finds a high degree of substantive unconscionability exists. Both procedural unconscionability and substantive unconscionability must be shown, but they need not be present in the same degree and are evaluated on a sliding scale. *Dougherty v. Roseville Heritage Partners*, (2020) 47 Cal. App. 5th 93, 102) Here, because the Court find a moderate degree of procedural unconscionability and a high degree of substantive unconscionability, the arbitration agreement is unconscionable and cannot be enforced.

Plaintiffs shall prepare and submit a form of order consistent with this ruling within 2 weeks.

6-7. 24CV00796 Pagonis, Chris et al. v. Richard, Zachary

EVENT: (1) Plaintiff's Motion for Summary Judgment

(2) Case Management Conference

Plaintiffs' Motion for Summary Judgment is GRANTED. The Case Management Conference is vacated.

The Court takes judicial notice of the answer filed by Defendant. The answer uses the Judicial Council Form and checks the box "Defendant admits that all of the statements of the complaint or cross-complaint are true EXCEPT:" The answer attaches a document entitled "Written Response Letter". The letter fails to deny any of the allegations in the Complaint. Consequently, the answer has admitted all allegations in the Complaint.

Facts established by pleadings as judicial admissions are conclusive concessions of the truth of those matters, are effectively removed as issues from the litigation, and may not be contradicted, by the party whose pleadings are used against him or her. (*Myers v. Trendwest Resorts, Inc.*, (2009) 178 Cal. App. 4th 735, 746. Based on the admissions, the motion is GRANTED.

Plaintiffs shall prepare a form of order and judgment.

8. 24CV01724 Bank of America, NA v. Snodgrass, Richard C.

EVENT: Plaintiff's Motion to Deem Requests for Admissions Admitted

Plaintiff's Motion to Deem Requests for Admissions is GRANTED. The Court will sign the proposed order.

9. 24CV02515 Mesa, Isela v. Pozar, Kimberly

EVENT: Plaintiff/Cross-Defendant's Motion to Quash Service of Cross-Complaint and Verified Answer

Plaintiff/Cross-Defendant's Motion to Quash Service of Cross-Complaint and Verified Answer is DENIED. Personal service is not required on Plaintiff, who is subject to the Court's jurisdiction by virtue of Plaintiff filing this action. The Court finds the amended proof of service demonstrating the Answer and Cross-Complaint was served on Plaintiff by mail on October 21, 2024 is credible. The Court makes the factual finding that Plaintiff has been served with both the Answer and Cross-Complaint.

Defendant/Cross-Complainant shall prepare and submit a form of order consistent with this ruling.

10. 24CV03752 In re: Kissiar

EVENT: Change of name (minor)

The Court will hear from Petitioner. There is no proof of publication on file. Additionally, there is no proof of service on the non-consenting parent as required by CCP § 1277(a)(4).

11. 24CV03573 In re: Acosta, Lucio

EVENT: Change of name (adult)

The Court is in receipt of the proof of publication and will sign the decree provided.

12. 24CV00836 Ganss, Thomas v. Camara, Matthew Vaughn

EVENT: Motion for Terminating Sanctions For Plaintiff's Continued Failure to Respond to Written Discovery

Motion for Terminating Sanctions For Plaintiff's Continued Failure to Respond to Written Discovery is DENIED WITHOUT PREJUDICE. Plaintiff is further ordered to respond to outstanding discovery by January 24, 2024. If Plaintiff fails to comply, the Court will consider a renewed motion for terminating sanctions.

Defendant shall prepare and submit a form of order consistent with this ruling within 2 weeks.

13. 24CV00757 Modern-Sundt, a Joint Venture v. Oroville Hospital

EVENT: Demurrer of Modern-Sundt and James Seegert to First Amended Cross-Complaint

In light of the amended cross-complaint filed by Oroville Hospital on December 23, 2024, Modern Sundt's demurrer is moot.

14. 24CV03847 In re: Allison, Robert Andrew

EVENT: Change of Name (Adult)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

15. 21CV02823 Smith, Shane v. Blakely, Connor et al.

EVENT: Motion to Be Relieved as Counsel (Defense Counsel)

Motion to Be Relieved as Counsel is GRANTED. The Court will sign the proposed order. The order will become effective upon the filing of the proof of service of order.

16-18. 24CV01070 Carrillo, Heriberto et al. v. Carrillo, Raul et al.

EVENT: (1) Defendants' Raul Carrillo and Lorena Carrillo Motion to Disqualify Counsel for the Plaintiff

(2) Plaintiff's Motion for Application and Issuance of Writ of Possession Claim and Delivery

(3) Defendant's Motion Pursuant to Code of Civil Procedure Section 475 For Extraordinary Relief Re: The Filing Date of Defendants' Opposition to Plaintiff's Motion for Injunctive Relief

Defendants' Raul Carrillo and Lorena Carrillo Motion to Disqualify Counsel for the Plaintiff

The motion is DENIED.

In California where the ethical breach is manifest and glaring and so infects the litigation in which disqualification is sought that it impacts the moving party's interest in a just and lawful determination of his or her claims, a nonclient might meet the standing requirements to bring a motion to disqualify based upon a third party conflict of interest or other ethical violation. (*Kennedy v. Eldridge*, (2011) 201 Cal. App. 4th 1197, 1204)

Ostensibly, the ultimate goal of this action is to cancel the deed transactions and restore Heriberto's ownership in the property. For purposes of this motion, the important fact is that Heriberto, and not Julieta, would obtain ownership if the case is successful. To the extent Julieta might personally benefit if the action is successful, this indirect result does not satisfy the "manifest and glaring" standard set forth in *Kennedy*.

As to the Defendants' conservatorship arguments, there is a separate proceeding for such matters. It would be inappropriate for the Court to make factual findings concerning those issues in the context of this motion. Further, Defendants have not suggested that the power of attorney currently in place is somehow void. If Defendants are suggesting that Julieta should be removed as attorney in fact because she is not acting in Heriberto's interests, there is a procedure for that under the Probate Code.

Plaintiff's Application For Writ of Possession

The Application is GRANTED and is unopposed. The Court will sign the proposed order.

Defendant's Motion Pursuant to Code of Civil Procedure Section 475 For Extraordinary Relief Re: The Filing Date of Defendants' Opposition to Plaintiff's Motion for Injunctive Relief

The motion is DENIED. Defense counsel was present at the preliminary injunction hearing, was provided an opportunity to argue, and declined the opportunity. Further, the Court notes that there was no late opposition filed (no opposition of any kind is currently on file) concerning the preliminary injunction motion.

19. 24CV03585 Fair Political Practices Commission v. Fennell, David et al.

EVENT: Plaintiff's First Amended Motion for Order to Show Cause Re: Contempt

Plaintiff's Motion for Order to Show Cause Re: Contempt is GRANTED. An Order to Show Cause Re: Contempt is hereby set for February 19, 2025 at 9:00am. Plaintiff is directed to serve Defendants with all moving papers and file a proof of service evidencing the same. Plaintiff shall serve the order no later than January 10, 2024. The Court will sign the proposed order with these modifications.

20-21. 24CV01764 Miller, Lisa v. 1200 Park Avenue LP et al.

EVENT: (1) Defendants' Demurrer to First Amended Complaint

(2) Defendants' Motion to Strike First Amended Complaint

Plaintiff's opposition is untimely and is not being considered.

Defendants' Demurrer is Sustained Without Leave to Amend as unopposed. Failure to oppose a demurrer may be deemed abandonment of the issue. (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.) Defendants shall prepare and submit a form of order within 2 weeks.

Defendants' Motion to Strike is GRANTED and is unopposed. The Court will sign the proposed orders.

22. 22CV02898 Dasbach, Catherine et al. Moore, James, MD et al.

EVENT: Defendant Enloe Medical Center's Motion for Judgment on the Pleadings as to Plaintiffs' Entire Complaint

On the Court's motion, in light of the pending appeal, Defendant Enloe Medical Center's Motion for Judgment on the Pleadings as to Plaintiffs' Entire Complaint is continued to February 26, 2024 at 9:00am.

23. 21CV02652 Elizalde, Marshall v. Lowe's Home Centers, LLC

EVENT: Petition for Approval of Minor's Compromise (Continued from 12/18/24)

The Court will hear from counsel. At the previous hearing the Court indicated it would approve the application upon the filing of the retainer agreement. The retainer may be submitted ex parte.

24. 23CV00059 Town of Paradise v. LaPoint, Jarrod Anthony et al.

EVENT: Motion to Be Relieved as Counsel (Defense Counsel)

The Court will hear from counsel. The Court is concerned with the timing of this motion in relation to the upcoming trial date.

25. 24CV02683 Sharma, Suneel et al v. North State Hulling

EVENT: Request for a Prove-Up Hearing

The default prove-up hearing is hereby scheduled for the Court's Court Trial calendar on February 10, 2025 at 8:30am, with a Trial Readiness Conference on February 4, 2025 at 10:00am.