

Judge Benson – Law & Motion – Wednesday, April 30, 2025 @ 9:00 AM
TENTATIVE RULINGS

1. 22CV00273 Edwards, Marsha J v. Daugherty, Ira

EVENT: OEX (Ira Daugherty)

The Court will swear in the witness.

2-4. 23CV02738 Hawks, Dixianne v. Bidwell Title and Escrow Company herein called Trustee of the Ida Robinson Revocable Trust Dated August 29, 1989 et al.

EVENT: (1) Defendant Lyle Don Robinson's Motion for Relief from Default (Continued from 3/12/25)

(2) Defendant Lyle Don Robinson's Motion for Case Dismissal Due to Unfounded and Incorrect Complaint

(3) Defendant Lyle Don Robinson's Motion for Full Loan Repayment

Defendant Lyle Don Robinson's Motion for Relief from Default is Continued to May 14, 2025 at 9:00am. While Mr. Robinson's amended filing includes a proof of service indicating the papers were served by mail on April 4, notice does not comply with CCP §1005 which requires a minimum of 16 court days' notice plus an additional 5 calendar days for mailing. April 4 is 16 court days plus 4 calendar days before the hearing, so notice is one day short.

Defendant Lyle Don Robinson's Motion for Case Dismissal Due to Unfounded and Incorrect Complaint and Motion for Full Loan Repayment are continued to May 14, 2025 at 9:00am for the same reasons.

The clerk is directed to mail notice of the new hearing to the parties. The Court will prepare the order.

5. 24CV00800 Capital One Bank (USA) NA v. Contestable, Pajja K

EVENT: Motion for Judgment on the Pleadings

Motion for Judgment on the Pleadings is GRANTED. The Court takes judicial notice of the order deeming admissions admitted. In light of the admissions, which are conclusive, Defendant cannot amend the pleading.

The Court will sign the proposed order and judgment.

6. 24CV02374 Wells Fargo Bank, N.A. v. Coulon, Shelby E

EVENT: Motion for Judgment on the Pleadings

Motion for Judgment on the Pleadings is GRANTED. In light of Plaintiff's admissions, Plaintiff has no defense to the properly plead allegations in the Complaint. The Court will sign the proposed order and judgment.

7-8. 25CV00213 Balbutin, Janet v. Avila, Kevin et al.

EVENT: (1) Defendants Leslie Depweg and Oak Leaf Properties, LLC Petition to Compel Arbitration

(2) Defendants Leslie Depweg and Oak Leaf Properties, LLC's Motion to Stay Proceedings Pending Arbitration

The 2022 Agreement Concerning Garner Lane is Not a Basis for Compelling Arbitration

As Plaintiff noted, in determining whether an arbitration agreement applies to a specific dispute, the court may examine only the agreement itself and the complaint filed by the party refusing arbitration. (*Weeks v. Crow* (1980) 113 Cal.App.3d 350, 353.) Plaintiff contends the complaint does not assert any claims with respect to the 2022 Garner Lane purchase. After reviewing the Complaint, the Court agrees.

The arbitration clause in the 2022 agreement provides it is limited to disputes “arising ... out of this agreement”. Violation of a duty or right originating outside the agreement does not arise from the agreement, see *Rice v. Downs* (2016) 248 Cal.App.4th 175, 191. The 2022 agreement concerned the acquisition of the Garner property, not the sale of the property. The Complaint’s allegations are not focused on Plaintiff’s acquisition of Garner, rather it is focused on the sale of Garner. (See Complaint, ¶¶ 51-53) Thus, the allegations in the Complaint do not arise from the 2022 agreement.

Standing

Plaintiff contends Defendants Zepweg and Zink lack standing because they were not signatories to the contract dated 6/21/23. Generally, one must be a party to an arbitration agreement to be bound by it or invoke it. (*DMS Services, LLC v. Superior Court* (2012) 205 Cal.App.4th 1346, 1352) However, there are exceptions where non-signatories may have standing, such as when an agency relationship exists or estoppel. Further allegations in complaint that defendants acted as agents of one another are sufficient to allow alleged agent/nonsignatory to compel arbitration. (*Id at p. 1353*)

Here, the Complaint alleges at paragraph 8 each Defendant acted as an agent for the other Defendants. Thus, Defendant Zepweg and Zink have standing as non-signatories. Defendant Oakleaf LLC is the signatory to the 6/21/23 contract but, interestingly is not a named party to the second cause of action. However, that does not preclude Defendant Oakleaf from compelling arbitration. A plaintiff may not avoid arbitration by artfully pleading his complaint. (*Holland v. Silverscreen Healthcare, Inc.* (1977) 70 Cal.App.3d 675, 682)

First Cause of Action – Breach of Fiduciary Duty

The motion is granted in part and denied in part.

The breach of fiduciary duty claim is based in part on the allegations concerning the Garner Lane agreement, see paragraph 44 of the complaint. The cause of action is also premised on transactions outside the agreement including the Clear Creek transactions. Defendant argues Garner Lane and Clear Creek are related because the proceeds from Garner Lane went to the Clear Creek projects.

The Court is not persuaded. Disputes concerning Clear Creek do not arise from the Garner Lane agreement simply because proceeds were taken from Garner. Nor are separate business transactions “resulting transactions” simply because the proceeds from Garner Lane were used. Thus, we have a cause of action which includes arbitrable and non-arbitrable claims. The arbitration clause applies to “any claim.” Consistent with the agreement, the motion is granted as to the Garner Lane claims. The motion is denied as to all other claims.

Second Cause of Action – Breach of Contract (Garner Lane)

The motion is granted.

This cause of action triggers the arbitration provision on its face. The cause of action expressly concerns damages as a result of the sale of Garner Lane. Consequently, the arbitration of the second cause of action is proper.

Third Cause of Action – Breach of Contract (Clear Creek)

The motion is denied. As discussed, Defendants' argument that proceeds from the Garner transaction were used is not persuasive.

Fourth Cause of Action – Fraud

Consistent with the fiduciary duty cause of action, the motion is granted as to the Garner Lane claim and denied as to all other claims.

Fifth Cause of Action – Rescission

The motion is denied. This cause of action concerns Clear Creek. As discussed, Defendants' argument that proceeds from the Garner transaction were used is not persuasive.

Sixth Cause of Action - Dissolution of Clear Creek Ranch

Defendants concede this is not subject to arbitration. The motion is denied.

Seventh Cause of Action – Elder Abuse

Consistent with the fiduciary duty cause of action, the motion is granted as to the Garner Lane claim and denied as to all other claims.

Eighth Cause of Action – Constructive Trust

The motion is denied. This cause of action concerns Clear Creek. As discussed, Defendants' argument that proceeds from the Garner transaction were used is not persuasive.

Ninth Cause of Action – Declaratory Relief

Consistent with the fiduciary duty cause of action, the motion is granted as to the Garner Lane claim and denied as to all other claims.

Tenth Cause of Action – Disgorgement

Defendants concede this is not subject to arbitration. The motion is denied.

CCP § 1281.2(c)

Plaintiff argues the motion should be denied in its entirety because of the risk of inconsistent decisions. Even if Plaintiff's CCP §1281.2(c) argument had merit, CCP §1281.2(c) does not apply. The FAA requires the arbitration of all claims within the scope of an arbitration provision even if the action includes nonarbitrable claims by or against third parties. (See 9 U.S.C. §§ 3, 4.) (*Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 157) Because the arbitration clause clearly states that the Federal Arbitration Act applies, CCP § 1281.2(c) is inapplicable.

Attorney Fees

The request for attorney fees denied. *Frog Creek Partners, LLC v. Vance Brown, Inc.* (2012) 206 Cal.App.4th 515 makes clear that there can only be one prevailing party as it pertains to attorney fees, therefore an interim award of attorney fees concerning a petition to compel arbitration is impermissible.

Stay

In light of the Court's ruling, this case is stayed pending completion of arbitration.

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

9. 25CV00223 In re: Markham, Juhney Azul

EVENT: Change of name (adult) (Continued from 3/19/25)

There is no proof of publication on file. The Court will hear from Petitioner.

10. 25CV00545 In re: Anderson, Jorden Faith

EVENT: Change of name (minor) (Continued from 4/16/25)

The Court will conduct a hearing.

11. 25CV00671 In re: Wilks, Susan Jacqueline

EVENT: Change of name (adult)

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

12. 25CV00803 In re: Avila, Jaime Morales

EVENT: Change of name (adult)

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

13. 25CV00804 In re: Jackson, Ashley

EVENT: Change of name (minor)

The Court will hear from Petitioner.

14. 25CV00966 JG Wentworth Originations, LLC v. J.M.

EVENT: Verified Petition for Approval of Transfer of Payment Rights

The Court will hear from counsel and the payee.

15. 141833 NDS, LLC v. Wilcox, Lloyd A

EVENT: Rehearing on Homestead Exemption (Continued from 3/19/25)

The Court will conduct a hearing. The Court is interested in a status update concerning a potential conservatorship.