

Judge Benson – Law & Motion – Wednesday, November 13, 2024 @ 9:00 AM
TENTATIVE RULINGS

1. 23CV01923 Greenberg, Stuart et al v. Jacques, Michel et al.

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

In light of the stay, the Court is inclined to deny defense counsel's motion to be relieved without prejudice.

2. 24CV00317 Velocity Investments, LLC v. Sparrow, Tiffinie

EVENT: Motion By Counsel For Defendant To Be Relieved as Counsel of Record

Motion By Counsel For Defendant To Be Relieved as Counsel of Record is DENIED WITHOUT PREJUDICE. Judicial Council form MC-052 is a mandatory form that is required for this motion. Counsel is directed to use MC-052 along with MC-051 and MC-053 in refiling the motion.

3. 24CV00602 Bank of America, NA v. Dugger, Kevin Demetrius

EVENT: Plaintiff's Motion for Judgment on the Pleadings

Plaintiff's Motion for Judgment on the Pleadings is GRANTED. The Court will sign the proposed order and judgment. The Trial Readiness Conference and Court Trial dates are hereby vacated.

4. **24CV02711 In re: Levchenko, Kateryna**

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.

5. **24CV03150 In re: Gaffney, Robert William**

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.

6. **24CV03264 Amy K. Hughes, Permanent Guardian of David Jecmen v. Chapman, Mitchell Dee**

EVENT: Demurrer of Mitchell Dee Chapman to Plaintiff's Complaint

Demurrer of Mitchell Dee Chapman to Plaintiff's Complaint is OVERRULED.

Preliminarily, Defendant's objections are well taken to the extent facts alleged in the opposition but not alleged in the complaint cannot be considered on demurrer – only the pleading and matters subject to judicial notice may be considered.

Standing

Defendant's argument that the Complaint insufficiently alleges facts demonstrating Mr. Jecmen lacks decision making capacity is unpersuasive. On demurrer, we draw all reasonable inferences in favor of the plaintiff. (*Bank of New York Mellon v. Citibank*, (2017) N.A., 8 Cal. App. 5th 935, 951) Paragraph 1 of the Complaint alleges Amy Hughes was appointed permanent guardian of David Jecmen who is an adult. A reasonable inference from that allegation is the permanent guardianship was based at least in part on Mr. Jecmen's lack of decision making capacity.

Regarding defendants "real party in interest" argument, the argument is not fully developed and the Court is struggling to understand it. To the extent defendant may be concerned he could be subject to multiple liability as to both Amy Hughes and David Jecmen, the caption of the complaint is clear that Ms. Hughes is acting in her capacity as guardian and not in her individual capacity.

The Complaint Alleges Sufficient Facts

Defendant has misconstrued the pleading standard as it pertains to the causes of action asserted in this case. Defendant contends Plaintiff needs to allege the "who, what, when where and why". That's the pleading standard for fraud, which case law indicates requires specific pleading of the "who, what, when where and why".

Fraud is not a cause of action in this case. This is a personal injury case. Defendant cites no authority, nor is the Court aware of any, that requires such a specific level of pleading in a personal injury action.

Less specificity is required if the defendant would likely have greater knowledge of the facts than the plaintiff. (*Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 231) In light of the allegations in the Complaint concerning the seriousness of Plaintiff's injuries and the fact he is now under a permanent guardianship, it can be reasonably inferred Plaintiff lacks the personal knowledge regarding many of the circumstances surrounding the accident.

Punitive Damages

As Plaintiff correctly noted, a demurrer is not the proper procedural mechanism to address punitive damages.

Defendant shall file an answer within 20 days' notice of this order. Plaintiff shall prepare and submit a form of order consistent with this ruling within 2 weeks.

7. 24CV03412 In re: Hart-Bode, Jeremy Carl

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.

8. 24CV00800 Capital One Bank (USA) v. Contestable, Paija, K

EVENT: Plaintiff's Motion for Judgment on the Pleadings

Plaintiff's Motion for Order that Matters in Request for Admission of Truth of Facts be Deemed Admitted is GRANTED. The Court will sign the proposed order, correcting the typo in the first sentence indicating the hearing was on November 14 (hearing is on November 13).