

**Judge Benson – Law & Motion – Wednesday, December 28, 2022 @ 9:00 AM
TENTATIVE RULINGS**

1-2. 20CV01884 Tyler Edwards, Inc. v. McCain, Kevin et al

*EVENT: (1) Defendants Kevin McCain and Sarah McCain’s Motion for Summary Judgment
(2) Cross-Complainants Kevin McCain and Sarah McCain’s Motion for Summary Judgment or in the Alternative Summary Adjudication*

**Defendants’ Kevin McCain and Sarah McCain’s Motion For Summary Judgment Or In
The Alternative, Summary Adjudication**

Defendants’ Kevin McCain and Sarah McCain’s (hereinafter the McCains”) Motion For Summary Judgment Or In The Alternative, Summary Adjudication is Granted in Its Entirety.

Citing Labor Code § 3352(a)(16)(A)(i) Defendants contend David Morrison was not exempt from worker’s compensation requirements because he was not a 10% owner, he was not an officer or director, and he did not sign a waiver. In response to this argument Plaintiff simply states that David Morrison owned a 10% interest in Edwards at all times relevant and was exempt from workers compensation requirements. However, this statement fails to address the other requirements of section 3352, namely that Mr. Morrison was an officer or member of the board of directors and that he executed a waiver. In fact, Plaintiff does not dispute UMF 20 and 21 which provide that Mr. Morrison was neither an officer or a board member.

As a result, the exemption found in Labor Code § 3352(a)(16)(A)(i) did not exempt Mr. Morrison from worker’s compensation insurance requirements. Although the Declaration of Tyler Edwards states at paragraph 8 that Mr. Morrison, among others were paid for reimbursements of supplies, to the extent this suggests that Mr. Morrison was only paid for reimbursements and was never paid by Tyler Edwards Inc. for wages, this contradicts Mr. Edwards deposition testimony:

Q. When Dave was a shareholder of the corporation, did he receive pay for his *hourly work*?

A. He did.

Q. And what was his rate of pay?

A. \$30.

Deposition of Tyler Edwards, 19:24-25, 20:1-3 [Emphasis Added]

Where there is a clear and unequivocal admission by the plaintiff, himself, in his deposition . . . we are forced to conclude there is no substantial evidence of the existence of a triable issue of fact. (*D’Amico v. Board of Medical Examiners*, (1974) 11 Cal. 3d 1, 21) Thus, the Court

finds based on Mr. Edwards deposition testimony there is no triable issue of fact that Mr. Morrison was paid directly for work, not just reimbursement.

Additionally, it is undisputed that Tyler Edwards Inc. did not have its own worker's comp. insurance policy separate from Rush Personnel. (UMF 5) Thus, because Tyler Edwards Inc. employed an employee who was not exempt, and paid that employee directly without having its own policy of insurance, Tyler Edwards Inc.'s license was suspended as a matter of law pursuant to Bus. & Prof. Code § 7125.2(a) As a result, pursuant to Bus. & Prof. Code § 7031(a), the McCain's motion for summary judgment as to Tyler Edward Inc.'s complaint is GRANTED in its entirety. The Court notes that the *Loranger* case is inapplicable here because Tyler Edwards Inc. failed to obtain a policy for an employee it was paying directly.

Cross-Complainant's Kevin McCain and Sarah McCains Motion for Summary Judgment

The Court reincorporates its discussion concerning the triable issues of fact pertaining to Cross-Defendant's license status. Tyler Edwards Inc.'s contention that Bus. and Prof. Code § 7031(b) is expressly limited to "compensation paid" is well taken.

In reviewing the first cause of action for breach of contract, the First Amended Cross Complaint requests the following:

46. As a Direct result of the breach of contract by cross-defendants, cross-complainants have suffered damages for loss of use of money, loss of use of their residence, prejudgment interest, additional repair and replacement costs, and have been forced to incur [sic] reasonable attorney fees and costs in prosecuting this matter, all in an amount to be proven at trial.

Clearly the breach of contract cause of action seeks more than "compensation paid." CCP 437c(f)(1):

A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted *only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.* [Emphasis Added]

Here, the Court cannot grant summary adjudication as to "compensation paid", because doing so does not completely dispose of the cause of action and more specifically does not completely dispose of the claim for damages associated with breach of contract.

For the same reasons, the motion is denied as to the 3rd, 4th, 5th, and 6th causes of action, as they all seek damages beyond compensation paid.

However, the second cause of action for unjust enrichment and the seventh cause of action for disgorgement essentially only seek damages for compensation paid. Since the Court has found Cross-Defendant's license was suspended, pursuant to section 7031(b), as a matter of law, Cross-Complainants are entitled to relief on the second and seventh causes of action.

Regarding the McCains attempt to pierce the corporate veil, the motion is granted. The McCains have met their initial burden by demonstrating the corporation is under capitalized (UMF 60-72), that Mr. Edwards used corporate funds for his personal use (UMF 55-59), and failed to maintain corporate formalities (UMF 47, 60-72). Tyler does not dispute these contentions. The Court disagrees with Tyler's contention that the McCains have failed to demonstrate that "inequity will follow". To the contrary, the evidence shows due to the undercapitalization of the corporation, it has nowhere near the funds to repay the McCains for compensation paid, much less any other damages that may be obtained.

Lastly, the McCains request for attorney fees are denied, as they do not identify statutory authority or a written agreement supporting the same.

In summary, the McCain's Motion for Summary Judgment as to the Cross Complaint is DENIED, however their motion for summary adjudication as to the second and seventh causes of action is GRANTED. Cross-Complainants shall prepare and submit a form of order consistent with this ruling within 10 days.

3-4. 22CV00196 De La Torre, Saul v. KNS, LLC a California Limited Liability Company, et al.

EVENT: (1) Defendant KNS, LLC dba Super 8's Demurrer to Certain Causes of Action in the Second Amended Complaint

(2) Defendant KNS, LLC dba Super 8's Motion to Strike Portions of Plaintiff's Second Amended Complaint

Defendant KNS, LLC dba Super 8's Demurrer to Certain Causes of Action of Plaintiff's Second Amended Complaint (SAC) is OVERRULED in Its Entirety. In reviewing the SAC as a whole and assuming the truth of the allegations as the Court is required to do at this stage, the Court finds the SAC has alleged sufficient facts supporting the Intentional Misrepresentation and Concealment causes of action.

Defendant KNS, LLC dba Super 8's Motion to Strike is DENIED. Consistent with the Court's ruling in overruling the demurrer to the fraud causes of action, the fraud allegations also provide a sufficient basis for punitive damages under Civil Code § 3294(c)(3).

Defendant shall file an answer to the SAC within 20 days. Plaintiffs shall prepare and submit a form of order consistent with this ruling within 10 days.

5. **22CV02139 In re: Hawkins, Desiree Sue**

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. **22CV02141 In re: Bradley, Shannon Eugene**

EVENT: Change of Name (Adult)

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

7. **22CV02541 In re: Okonkwo, Awele Cordelia**

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. **21CV00385 Alvarado, Eduardo et al. v. Worroll, Rodney D. et al.**

EVENT: Cross-Defendants Eduardo Alvarado and Natalie Alvarado's Motion to Compel Cross-Complainant to Sign Medical Authorization

Cross-Defendants Eduardo Alvarado and Natalie Alvarado's Motion to Compel Cross-Complainant to Sign Medical Authorization is GRANTED. Attorney fees granted in the amount of \$1,269.00. The Court will sign the proposed order.

9. 20CV00578 Holman, Ryan v. County of Butte, et al.

EVENT: Defendant County of Butte's Motion to Compel Further Responses to Defendant's Request for Production of Documents, Set One and Defendant's Requests for Admission, Set One

Defendant County of Butte's Motion to Compel Further Responses to Defendant's Request for Production of Documents, Set One and Defendant's Requests for Admission, Set One is GRANTED in PART and DENIED in PART. Defendant's request for sanctions is GRANTED in the amount of \$1,140.00 against Plaintiff.

The Court issues the following ruling concerning requests for admissions:

Requests nos. 2-6, Denied.

Weil & Brown. Cal. Practice Guide: Civil Procedure Before Trial

[8:1344.1] Parties are often requested to admit the genuineness of the propounding party's own documents and records (whether prepared by the propounding party or someone else). E.g., P serves D with RFAs to admit "the attached copies of my bank statements and payroll stubs are genuine."

[8:1344.2] Comment: There is no known authority in point, but arguably D may properly deny such requests on the ground D has no "reasonable" way of verifying the genuineness of P's records.

The Court concurs with the above commentary.

Request no. 10, Granted. The response fails to state that any inquiry has been made.

As to Requests for Production of Documents the motion is Granted in its entirety (nos. 6-12). The Court finds all requests are reasonably particularized and are not unduly burdensome. The Court disagrees with Plaintiff's interpretation of request nos. 6,7, an 8. In *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 222 the court noted "reasonable particularized" means from the standpoint of the party on whom the demand is made.

Here, the request is reasonably particularized from Plaintiff's standpoint because it is limited to documents identified or referenced in Plaintiff's responses. The limitation in the request is documents identified or referenced. Contrary to Plaintiff's assertion, the request does not implicate all documents that may be in some way connected to the response but are not

identified or referenced. Rather it only implicates documents that were identified in the response.

Calcor noted “Generalized demands, insupportable by evidence showing at least the potential evidentiary value of the information sought, are not permitted.” (*supra* at p. 218) Logically, if the document is referenced in a response to an interrogatory, the evidentiary value of the document is self-evident, otherwise the responding party would not identify it in the response.

Plaintiff is ordered to provide further code complaint responses to Request For Admission no. 10 and Production of Document Request nos. 6-12 within 20 days. Defendant shall prepare and submit a form of order consistent with this ruling within 10 days.

**10. 21CV01030 Anguiano, Rogelio v. Bains Properties, LP,
a California limited partnership**

EVENT: Plaintiff’s Motion for Leave to File DOE Amendments to Plaintiff’s Complaint
(Continued from 12/7)

Plaintiff’s Motion for Leave to File DOE Amendments to Plaintiff’s Complaint is GRANTED. The cases reflect that denial of amendments of pleadings have been upheld in the past on two possible bases: the subject matter of the proposed pleading, or the conduct of the parties. (*Hunt v. Smyth*, (1972) 25 Cal. App. 3d 807, 827) If the subject matter raises a disfavored plea, is insufficient to state a cause of action or defense, contradicts an admission in the original pleading without a showing of mistake or excuse, or changes the cause of action, denial is upheld. (*Id*)

As to the first prong, Defendant in its moving papers appears to argue that the pleading fails to state a cause of action as to the proposed Defendants. Without delving into the details of Defendant’s arguments, the Court finds the arguments incorporate extrinsic matters for which the Court cannot assess at the pleading stage. For example, the question of whether the proposed Defendants are protected by the Workers Compensation Act is inherently a factual one.

As to the second prong, in light of the evidence presented by Defendant the Court finds Plaintiff’s contention that he did not discover information pertaining to the corporate structure until the filing of the Motion for Summary Adjudication disingenuous. However, the Court finds the delay in filing this motion does not rise to the level of bad faith. At most, Plaintiff has been aware of the information for roughly 8 months. While there is no specific timeframe guidelines in determining whether a motion to amend was unreasonably delayed, in balancing the liberal preferences in permitting amendment, the Court finds under the circumstances presented that the delay is relatively minimal in light of the policy favoring amendment.

Plaintiff shall prepare and submit a form of order consistent with this ruling within 10 days.

11. 22CV00689 Wright, Luke v. Hutton, Eric et al

EVENT: Plaintiff's Counsel's Motion to Be Relieved

Plaintiff's Counsel's Motion to Be Relieved is continued to January 4, 2022 at 9:00am so that it complies with the notice requirements of CCP § 1005. Plaintiff's counsel to give notice.

12. 22CV02593 Haman, John et al. v. F & S Houseboats, LLC et al.

EVENT: Plaintiff's Application for Writ of Possession (Continued from 12/14)

Plaintiff's Application for Writ of Possession is GRANTED and remains unopposed. The Court will sign the proposed order.

13. 22CV02341 In re: Fuller, Adrian Mark

*EVENT: Change of Name (Adult) *Continued from 11/30 and 12/14*

The Court will hear from Petitioner. If Petitioner does not appear at the hearing, the Petition will be dismissed without prejudice.

14. 22CV02332 In re: Reeves, Curtis Lee

EVENT: Change of Name (Adult) Continued from 12/7/22

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

15. 18CV03213 Conn, Shannon L v. Hale, Jim E

EVENT: Plaintiff's Motion to Set Aside/Vacate Voluntary Dismissal Without Prejudice

Plaintiff's Motion to Set Aside/Vacate Voluntary Dismissal Without Prejudice and Restoring the Cause to the Court's Calendar and Allow Amended Complaint is GRANTED. Plaintiff shall file her amended complaint within 20 days. A Case Management Conference is hereby set for March 15, 2023 at 10:30am in Courtroom 2. Plaintiff shall prepare and submit a form of order consistent with this ruling within 10 days.