

**Judge Benson – Law & Motion – Wednesday, February 15, 2023 @ 9:00 AM
TENTATIVE RULINGS**

1-3. 20CV01884 Tyler Edwards, Inc. v. McCain, Kevin, et al.

EVENT: (1) Plaintiffs/Cross-Defendants’ Motion for a New Trial

(2) Plaintiffs/Cross Defendants’ Motion to Amend Their answer to First Amended Cross-Complaint

(3) Motion for Order Awarding Attorney’s Fees to Defendants and Cross-Complainants

Plaintiffs/Cross-Defendants’ Motion for a New Trial

Plaintiffs/Cross-Defendants’ Motion for a New Trial is DENIED on procedural grounds. As Defendants/Cross-Complainants correctly note, a motion for a new trial requires either a judgment or an appealable order. As an order granting summary adjudication is neither, the motion is procedurally defective.

However, in the interests of judicial economy, the Court, on its own motion, reconsiders its ruling as to the matters addressed in Plaintiffs/Cross-Defendants’ Motion for a New Trial.

Objection to QuickBooks Reports

After review, the Court affirms its ruling overruling Edwards’ objections to the QuickBooks evidence. Ms. Juhl Rhodes’ declaration is sufficient to lay a foundation because it states that the Quickbooks reports are “from Edwards Construction”.

The contention that there was in fact manipulation of dates was never made in the underlying motion. Additionally, even in this motion, Edwards makes general and conclusory allegations as to lack of authenticity without providing any detail, despite being the originator of the evidence in question. Further, as demonstrated by this motion, Edwards cites to portions of the QuickBooks data implying at least some of the information is what it purports to be. Edwards’ reference to the 2019 balance sheet and the assets of the corporation is an example.

The fact conflicting inferences can be drawn regarding authenticity goes to its weight as evidence, not its admissibility. (*McAllister v. George* (1977) 73 CA3d 258, 261-263) In sum, the Court finds no error in its evidentiary rulings.

Alter Ego Liability

Upon closer inspection, the Court finds much of the evidence cited by the McCains in support of UMFs 55-59 do not necessarily support the finding that no triable issue of fact exists whether Tyler Edwards was paying for personal expenses through the corporation. As an

example, Mr. Edwards states that golf expenses were incurred to take clients out golfing. (*Tyler Edwards Deposition*, 44:16-18) Thus whether certain expenses were, or were not, legitimate business expenses are questions of fact. To the extent some expenses were legitimate and others were not, a question of fact exists as to whether the illegitimate expenses warrant alter ego liability.

Additionally, upon further inspection, it appears based on the 2019 balance sheet, Edwards had in excess of \$238,000 in the corporate bank accounts. It is generally undisputed that Edwards performed construction services for the McCains from 2019 through early 2020. The balance sheet for 2020 was not presented to the Court. Based on this evidence, the Court finds a triable issue of fact exists as to whether Edwards was undercapitalized.

Regarding the failure to abide by corporate formalities, this fact made up one piece of the puzzle supporting the Court's previous ruling. The Court finds that failure to comply with corporate formalities does not, by itself, support a finding of alter ego liability. Consequently, based on the Court's findings as to undercapitalization and business expenses, the Court finds generally a triable issue of fact exists on the question of alter ego liability. As a result, the Court is modifying its previous ruling as to the piercing the corporate veil issue only. The Court finds there are triable issues of fact as discussed above.

Plaintiffs/Cross Defendants' Motion to Amend Their answer to First Amended Cross-Complaint

Tyler Edwards, Inc. dba Edwards Construction's, Tyler J. Edwards', and James B. Edwards' Motion to Amend Their Answer to the First Amended Cross-Complaint is DENIED. To create a triable issue of material fact, the evidence must be directed to issues raised by the pleadings. (*Distefano v. Forester*, (2001) 85 Cal. App. 4th 1249, 1264) Should the party wish to offer a different factual assertion from that alleged in the pleadings, it **must** move to amend prior to the hearing on the summary judgment motion, see *580 Folsom Assocs. v. Prometheus Dev. Co.*, (1990) 223 Cal. App. 3d 1, 18. [Emphasis Added]

Here, because Edwards did not move for leave to amend their answer until after the hearing on the Defendants/Cross-Complainants' Motion for Summary Judgment/Adjudication, the motion for leave to amend must be denied.

Motion for Order Awarding Attorney's Fees to Defendants and Cross-Complainants

Motion for Order Awarding Attorney Fees to Defendants and Cross Complainants is DENIED without prejudice. The motion is premature considering the case is not completely adjudicated.

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

4. **21CV02431 Rivera, David K., et al. v. Annichero, Maria**

EVENT: Motion to Appoint Arbitrator and Determine Applicability of Consumer Arbitration Statutes

Motion to Appoint Arbitrator and Determine Applicability of Consumer Arbitration Statutes is GRANTED in PART. The Court finds CCP § 1284.3(a) does not apply to the arbitration previously ordered by this Court as Cross-Complainant Maria C. Annichero is not a “Consumer” as defined in CCP § 1280, et seq. As the American Arbitration Association (AAA) has expressed a willingness to proceed with a Court Order, in the interest of preserving the parties mutual assent to arbitration through AAA, the parties are ordered to proceed to arbitration through AAA.

The Court is in receipt of Defendants “Supplemental Statement and Case Authority” which the Court disregards as late filed.

RLR Remodels, LLC shall prepare and submit a form of order consistent with this ruling.

5. **19CV02574 Najolia, Miriam v. Chavez, Michelle et al.**

EVENT: Defendant Joseph Guiffra’s Motion to Set Aside Default Judgment

Defendant Guiffra Was On Notice For An Amount Of At Least \$15,000

The policy behind this statute [CCP § 580] is that a defendant is entitled to be informed of the maximum liability which he will face if he chooses to default. (*Nat’l Diversified Servs. v. Bernstein*, (1985) 168 Cal. App. 3d 410, 417) Except for personal injury or wrongful death cases, a defendant must be notified **by the prayer or allegations in the body** of the complaint of the damages sought. (Id. at pp. 417- 418) [Emphasis Added]

Here, the allegations in the body of the First Amended Complaint provide notice that Defendant Guiffra could be liable for \$15,000. The FAC alleges that neither Ms. Chavez nor Mr. Guiffra had the authority to transfer the 2001 Dodge, and that Ms. Chavez was wrongfully retaining the sum of \$15,000 as proceeds from the transaction. Consequently,

Defendant Guiffra was on notice that he could be liable for the \$15,000 amount alleged in the FAC.

The Default Judgment Did Not Award Punitive Damages

In reviewing the supporting papers pertaining to default judgment, Plaintiff's declaration states that Mr. Guiffra wrongfully retained the sum of \$15,000 in the form of insurance proceeds from the 2007 Dodge that was destroyed in the accident. Thus, no reasonable interpretation could support a finding that the \$15,000 judgment included punitive damages. Consequently, any failure to serve a statement of damages pursuant to CCP § 425.115 was not fatal to the judgment.

Similarly, any failure to serve a statement of damages pursuant to CCP § 425.11 was not fatal. We have observed in another context that where an emotional distress claim is "incidental" to the cause of action, the cause of action will not be considered an action "to recover damages for personal injury. (*Schwab v. Rondel Homes*, (1991) 53 Cal. 3d 428, 432) Again, Plaintiff's declaration in support of default judgment demonstrates an ascertainable sum - \$15,000 in insurance proceeds, it does not support emotional distress or any other personal injury associated damages. Thus, although the FAC contains causes of action for Intentional Infliction of Emotional Distress and Negligent Infliction of Emotional Distress, considering the circumstances surrounding the default judgment, these causes action were incidental to the judgment.

As a result, Defendant Joseph Guiffra's Motion to Set Aside Default and Default Judgment is DENIED. Plaintiff shall prepare and submit a form of order consistent with this ruling within 2 weeks.

6. 22CV00163 Wilkie, Emily et al v. Stone, Kyle Mason et al

EVENT: Plaintiff's Motion to Compel Verifications to Requests for Admissions, Set One, Form Interrogatories, Set One and Two, Request for Production of Documents, Set One, Special Interrogatories, Set One, and Request for Monetary Sanctions

Plaintiff's Motion to Compel Verifications to Requests for Admissions, Set One, Form Interrogatories, Set One and Two, Request for Production of Documents, Set One, Special Interrogatories, Set One, and Request for Monetary Sanctions is GRANTED. Defendant Kyle Mason Stone shall provide further verified responses within ten days of service of this order. Sanctions are awarded in favor of Plaintiffs and against Kyle Mason Stone in the amount of \$2,000. The Court will sign the Proposed Order with the noted modifications.

7. **22CV00739 Enloe Medical Center – Cohasset v. Prestige Care, Inc.**

EVENT: Defendant Prestige Care Inc.'s Motion to Compel Plaintiff's Responses to Defendant's Form Interrogatories, Set One and for Sanctions in the Amount of \$2,000.00

Defendant Prestige Care Inc.'s Motion to Compel Plaintiff's Responses to Defendant's Form Interrogatories, Set One and for Sanctions in the Amount of \$2,000.00 is GRANTED. Plaintiff shall provide responses without objections within 10 days. As an aside, the Court notes that prior to considering any additional sanctions in the future, the Court expects to see some evidence that Plaintiff's counsel was contacted by phone.

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

8. **22CV02956 In re: Russell, Jordyn**

EVENT: Change of Name (minor)

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

9. **22CV03021 In re: Adkins, Kenneth Timothy**

EVENT: Change of Name (adult)

The Court will hear from Petitioner.

10. **22CV02803 Butte County Sheriff's Office v. Grassi, Carole Ann**

EVENT: Petition for Default and Order on Petition for Judicial Determination Re: Return of Firearm

Petition for Default and Order on Petition for Judicial Determination Re: Return of Firearm is GRANTED. The Court will sign the proposed order.