

Judge Benson – Law & Motion – Wednesday, October 18, 2023 @ 9:00 AM
TENTATIVE RULINGS

1-2. 18CV03213 Conn, Shannon L v. Hale, Jim E et al.

EVENT: (1) Motion for Judgment on the Pleadings

(2) Case Management Conference

Motion for Judgment on the Pleadings is GRANTED.

Defendant Hudson Insurance Company shall prepare the form of order.

Plaintiffs first argument under CCP 438(g)(1) necessarily fails because the Court did not issue a ruling on the 19th cause of action. The Court will not entertain any further argument as to the 16th, 17th, and 18th causes of action.

As to the 19th cause of action for declaratory relief, this cause of action is predicated on the allegation that Hudson is required to perform on the bond. Because that issue has been adjudicated, the allegations no longer support a cause of action for declaratory relief. Without those allegations, there is no dispute alleged supporting the cause of action for declaratory relief.

Plaintiff's request for leave to amend is denied. Plaintiff has not explained how the SAC can be amended.

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

3. 20CV00841 Avila, Norberto S v. Rehman, Naeem V et al.

EVENT: Status Hearing (Special Set) Continued from 9/20/23

The Court will hear from the parties re: status of dismissal. If there are no appearances, the case will be dismissed pursuant to CRC 3.1385(e) with the Court retaining jurisdiction over the settlement.

4. **21CV00597 Zotnowski, Stephen R v. Chuck Patterson Inc et al.**

EVENT: Defendants/Cross Complainants Motion for Summary Judgment

Defendants/Cross Complainants (Hereinafter “Chuck Patterson Defendants”) Motion for Summary Judgment is GRANTED.

Defendants’ Request for Judicial Notice is GRANTED.

Terms set forth in a writing intended by the parties as a final expression of their agreement with respect to the terms included therein may not be contradicted by evidence of a prior agreement or of a contemporaneous oral agreement. (CCP § 1856 (a)) Here, the Settlement Agreement includes the following clause:

Entire Agreement. This Agreement along with the governing documents that will need to be drafted for A180 make up the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This Agreement may be amended and/or modified only by a written agreement executed by all parties to this Agreement.

The parol evidence rule, codified in Code of Civil Procedure section 1856, subdivision (a), prohibits a party from resorting to extrinsic evidence of a prior or contemporaneous oral agreement to contradict a plain and unambiguous term of a fully integrated agreement. (*Charnay v. Cobert*, (2006)145 Cal. App. 4th 170, 186) Here, the terms “agents” and “affiliates” under the “Release of Claims” portion of the Settlement Agreement is unambiguous. Consequently, pursuant to CCP § 1856, extrinsic evidence presented by Plaintiff cannot be considered.

Chuck Patterson Defendants have produced evidence in the form of the First Amended Complaint establishing that the Chuck Patterson Defendants were agents of the Settling Defendants. The Court agrees with Chuck Patterson Defendants that paragraphs 30,31,39,40,50,51,58, and 60 allege an agency relationship between the Settling Defendants and the Chuck Patterson Defendants. As Chuck Patterson Defendants correctly note, Plaintiff cannot backtrack from these allegations. Thus, not triable issue of fact exists that the Chuck Patterson Defendants were agents of the Settling Defendants. Consequently, the motion is granted as the Settlement Agreement released Chuck Patterson Defendants from the liability alleged in this case.

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

5. 23CV01507 Sampley, Walter K. v. Upton, Robert

EVENT: Motion to be Relieved (Defense Counsel)

Motion to be Relieved is GRANTED. The Court will sign the Proposed Order. The Order will become effective upon the filing of a proof of service indicating Defendant has been served with a copy of the order.

6. 23CV01735 In re: Ching, Marshall Koon Lum

EVENT: Change of Name (Adult) (Continued from 8/30/23)

There is no proof of publication on file. If there is no proof of publication on file by the hearing and no appearances the petition will be dismissed without prejudice.

7. 23CV02018 Ginger, Mary v. Oroville Hospital et al.

EVENT: Oroville Hospital and OHPAC Partners, LLC's Demurrer to Plaintiff's Second Cause of Action for Elder Abuse

Oroville Hospital and OHPAC Partners, LLC's Demurrer to Plaintiff's Second Cause of Action for Elder Abuse is OVERRULED. Plaintiff shall prepare the form of order.

8-11. 21CV02597 Stokes, Mona v. Enloe Medical Center

EVENT: (1) Plaintiff Mona Stokes' Motion to Compel Defendant Enloe Medical Center's Further Responses to Plaintiff's Form Interrogatories, Set One

(2) Plaintiff Mona Stokes' Motion to Compel Further Responses to Compel Defendant Enloe Medical Center's Further Responses to Plaintiff's Request for Production of Documents, Set One

(3) Plaintiff Mona Stokes' Motion to Compel Defendant Enloe Medical Center's Further Responses to Plaintiff's Request for Admissions, Set One

(4) Plaintiff Mona Stokes' Motion to Compel Defendant Enloe Medical Center's Further Responses to Plaintiff's Special Interrogatories, Set One

(Continued from 10/4)

Special Interrogatories

The Motion is GRANTED as to nos. 1, 20, 21 and 43. As to requests 21 and 43, the identity of witnesses and/or investigators is not privileged. To the extent Defendant claims information in requests 1 and 20 are privileged, it must provide a privilege log.

The Motion is DENIED as to nos.
2,3,5,10,12,15,16,22,23,24,27,28,29,30,31,32,37,38,39, 40.

Requests for Admissions

The Motion is GRANTED in its ENTIRETY.

Form Interrogatories

The Motion is GRANTED in its ENTIRETY. Regarding no. 17.1, in light of the Court's ruling on requests for admissions, further responses to 17.1 are required.

Production of Documents

The motion is granted in its entirety. Although it is the Court's practice to enforce CRC 3.1345 consistently, a separate statement is not necessary for the issue raised here. The issue raised here is the very basic requirement of categorizing documents that are produced. Defendant has provided no evidence to contradict Plaintiff's claim that it has failed to comply with CCP section 2031.280 notwithstanding the fact it has produced somewhere in the neighborhood of 2800 pages.

Defendant is sanctioned in the amount of \$1,800.00 for this particular violation.

To the extent this motion is granted Defendant shall provide further responses within 20 days of notice of this order.

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

12. 22CV01931 In Re Ed Dutro Corporation, a California Corporation

EVENT: Lawrence Dutro's Notice of Motion to Continue Deadline for Appraisers to Submit Corporations Code Section 2000 Appraisal Report(s) From September 30, 2023 to January 5, 2024

Lawrence Dutro's Notice of Motion to Continue Deadline for Appraisers to Submit Corporations Code Section 2000 Appraisal Report(s) From September 30, 2023 to January 5, 2024 is GRANTED in PART. A review hearing is hereby scheduled for December 6, 2023 at 9:00am. Two weeks prior to the hearing, a report shall be filed detailing the remaining tasks and corresponding completion dates. At the December 6 hearing the Court intends to select a firm date for the appraisals that will not be continued absent a showing of good cause.

Regarding the issue of going concern valuation, per Corporations Code Section the Corporation shall be valued as a going concern if possible. Lawrence Dutro shall prepare the form of order.

13. 22CV02781 Mountain Circle Family Services v. Rossington, Shauna

EVENT: OSC re: Subpoenaed documents. (Continued from 10/4/23)

Counsel is ordered to appear and report on the status of meet and confer efforts as it pertains to discovery.

14. 23CV02336 In re: Thurman, Rachelle

EVENT: Change of Name (minor)

The Court will hear from Petitioner. The Court notes there is no proof of service on the non-consenting parent.

15. 23MH00390 County of Butte v. Hatley, Madison

EVENT: Petition for Judicial Determination re Return of Confiscated Firearms

The Court will conduct a hearing.

16. 21CV00711 Eichor, David v. Lionel Foster et al.

EVENT: Plaintiff's Motion to Continue Trial

Plaintiff's Motion for a Trial Continuance is GRANTED. The trial date of November 13, 2023 and the Trial Readiness Conference date of November 9, 2023 are both vacated. Discovery deadlines will be commensurate with the new trial date per code. A trial setting conference is hereby scheduled for December 20, 2023 at 10:30am. Plaintiff shall prepare the form of order.