

**Judge Benson – Law & Motion – Wednesday, April 17, 2024 @ 9:00 AM  
TENTATIVE RULINGS**

**1-2. 23CV03298 Penna, Maurice v. Neher, Wyatt J et al**

*EVENT: (1) Application for Writ of Possession and for Temporary Restraining Order  
(2) Application for Temporary Restraining Order*

The Court will hear from counsel re: status of publication.

**3. 24CV00461 In re: Davidson, Lorraine**

*EVENT: Change of name (minor)*

The Petition is in order. The Court will sign the decree provided.

**4. 24CV00534 In re: Laslo, Margie Karen**

*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. 24CV00561 In re: Melendez, Tiffany**

*EVENT: Change of name (minor)*

The Court will hear from Petitioner regarding the biological father. The court notes there is no proof of publication on file.

6. **24CV00676 In re: Williams, Shirley Ann**

*EVENT: Change of name (minor)*

The Court will hear from petitioner.

7. **24CV00462 In re: Lavis, Brandon Franklin Augustus**

*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. **22CV02682 Long, Mary L v. Christine A McCasland as Trustee of the McCasland 1997 Trust et al.**

*EVENT: Motion to Be Relieved as Counsel (Plaintiff's Counsel)*

The Motion to be Relieved as Counsel is Granted. However, in light of the fact trial is only a month away, on the Court's motion, the Court Trial scheduled for May 20, 2024 and the Trial Readiness Conference on May 15, 2024 are both vacated. A Case Management Conference is hereby scheduled for June 26, 2024 at 9:00am.

The Court notes that the proper and ethical procedure under these circumstances would have been to file a motion to continue the trial in conjunction with the motion to be relieved.

**9-10. 22CV03060 D.N. v. DOE 1 et al.**

*EVENT: (1) Defendant County of Butte's Demurrer to Plaintiff D.N.'s Complaint, Or, In the Alternative, Motion to Stay Action*

*(2) Defendant County of Butte's Motion to Strike Portions of Plaintiff D.N.'s Complaint*

In light of *Doe v. Acalanes Union High School District*, Court of Appeal Case number A169013 pending review by the First District Court of Appeal, the demurrer and motion to strike is continued to July 17, 2024 at 9:00am.

**11-12. 20CV01884 Tyler Edwards, Inc. v. McCain, Kevin et al.**

*EVENT: (1) Motion for Order Awarding Attorney's Fees to Defendants and Cross-Complainants Against Tyler Edwards and James Edwards*

*(2) McCains' Motion to Strike and Tax Costs*

**MOTION FOR AWARDING ATTORNEY'S FEES TO DEFENDANTS AND CROSS-COMPLAINANTS AGAINST TYLER EDWARDS AND JAMES EDWARDS**

Motion for Order Awarding Attorney's Fees to Defendants and Cross-Complainants Against Tyler Edwards and James Edwards is DENIED.

CCP § 1021.5

Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed therefor under Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code.

*The Individual Edwards Defendants Are Not “Opposing Parties” for purposes of CCP § 1021.5*

This case presents what appears to be a matter of first impression: can individual shareholders of a corporation, who were brought into this case under a theory of alter ego liability, and who ultimately prevailed on the issue of alter ego liability, be considered “opposing parties” for purposes of section 1021.5? Although there are numerous published decisions concerning the interpretation of the phrase “opposing parties”, many of which were cited in briefing, none of them dealt with the unique circumstances presented here.

To further complicate matters, there appears to be tension in the law between the public policy of limited liability versus the public policy of broadly construing section 1021.5 and who qualifies as an “opposing party.” Although the McCains contend the alter ego adjudication is irrelevant to the question of attorney fees under Section 1021.5, the Court respectfully disagrees. The individual parties were brought into this case on a theory of alter ego-liability. Absent those allegations, there was no legal basis for the inclusion of the individual defendants in this case. Said another way, the only reason the individual defendants were participating in this case was due to the alter ego allegation, which was ultimately adjudicated in their favor. Thus, the alter ego disposition cannot be simply set aside and compartmentalized in engaging in this analysis.

In reviewing published decisions on the interpretation of “opposing parties”, keeping in mind that none of them resemble the facts of this case, the Court finds a common theme is whether the parties played an active role in litigation, see *Connerly v. State Personnel Board* (2006) 37 Cal.4th 1169, 1182. In determining whether the parties played an active role, it appears that Courts have considered whether the party has limited its participation to defense of its own rights or whether they engaged in affirmative or “offensive” litigation, see *Friends of the Trails v. Blasius*, (2000) 78 Cal. App. 4th 810, 836.

Here, the individual defendants were not voluntary participants in this case. They were brought in under an alter-ego theory of liability, and they defended those allegations and prevailed. Although Tyler Edwards Inc. pursued a claim of unpaid services, the individual defendants made no affirmative claims. As a result, the individual defendants were not active litigants as case law appears to define it.

As the Court has indicated in this ruling, there are no published decisions on point with the unique circumstances presented here. In *Connerly*, the Court acknowledged that the legislature has not provided a further explanation of what constitutes an opposing party, see *Connerly*, supra at p. 1176.

The Court has researched the legislative history of section 1021.5. The Court found nothing helpful as to what the legislature intended when it used the phrase “opposing parties.”

Under the unique facts of this case, the first two principles of statutory construction have not produced a clear answer. The plain language of the statute is ambiguous as to

whether individual shareholders prevailing on alter-ego liability fall within that category, and the legislative history provides no guidance on the issue. We are thus left to consider the consequences of awarding attorney fees against the individual defendants under section 1021.5 in light of the circumstances of this case.

Here, awarding attorney fees against the individual defendants opens the door and possibly sets precedent for situations beyond what the Court believes the legislature likely intended. Such a ruling would significantly undermine the purpose of the limited liability statute.

Theoretically, a plaintiff could name individual shareholders of a corporation without any legal basis for bringing them into the case and still seek to recover attorneys' fees from them by lumping them in the same group or category as the corporation. Such a result is completely at odds with the limited liability of corporations.

As the United States Supreme Court explained over 60 years ago: "Normally the corporation is an insulator from liability on claims of creditors. The fact that incorporation was desired in order to obtain limited liability does not defeat that purpose. ... Limited liability is the rule, not the exception; and on that assumption large undertakings are rested, vast enterprises are launched, and huge sums of capital attracted.

*Greenspan v. LADT LLC*, (2010) 191 Cal. App. 4th 486, 510

In sum, the Court finds, under these circumstances, the individual parties are not "opposing parties" for purposes of the statute.

*Even if the Individual Defendants Were Opposing Parties, Applying Section 1021.5 as to the Individual Defendants Would Not Be In The Interests of Justice*

The Court finds that it would not be in the interests of justice to assess attorney fees against the individual defendants. This finding is based on the aforementioned public policy concerning limited liability and the fact that the Court's adjudication of the alter ego issue would be in some respects circumvented by permitting plaintiffs to recover attorney fees from the defendants individually. Also, as previously stated, the Court is concerned an award of attorney fees under these circumstances may set an undesirable precedent.

Lastly, the Court notes that it has discretion under section 1021.5. This is evidenced by the legislative history as well as the use of the word "may" in the statute. The Court finds, in its discretion an award of attorney fees against the individual defendants in this case would be improper. Although the Court has already awarded attorney fees under section 1021.5 against the corporation, for the reasons set forth, awarding attorney fees against the individual defendants implicates separate issues, including conflicting policy considerations.

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

## MOTION TO STRIKE AND TAX COSTS

Preliminarily, although the Statement of Decision and Judgment could have been clearer, the individual Edwards parties were prevailing parties. The McCains alleged only two theories of liability against the individual Edwards parties: alter ego liability, and a cause of action for fraud which named the individual Edwards parties. Per the Court's ruling, the Court ruled in favor of the individual Edwards parties on both issues.

Further, although the Judgment indicated (3) bases for attorney fees, Civil Code § 1717 and Code of Civil Procedure § 1021 authorize attorney fees based on contract. However, the individual Edwards parties were not parties to the contract. In light of the Court's ruling on alter ego liability, there is no legal basis to award attorney fees against the individual Edwards parties based on either Civil Code § 1717 or Code of Civil Procedure § 1021.

### *Court Filing Fee and Motion Fees and Fees for Electronic Filing*

In reviewing the spreadsheet attached to the opposition, it appears that Edwards has lumped filing fees together with electronic filing fees and service. Based on the spreadsheet the Court finds Edwards has substantiated costs in the amount of \$ 1,913.55. That amount will be deemed the total amount of costs for both filing fees and electronic filing fees.

Applying a 50% discount, the cost awarded is \$956.77.

### *Deposition Costs*

Deposition costs are calculated as follows:  $\$2,267.70 \times .50 = \$1,133.75$ . The Court notes that there appears to be some duplication in counsel's spread sheet. Individual defendants are awarded \$1,133.75 for deposition costs.

### *Service of Process*

This cost is taxed in its entirety. Because the witness was not called at trial, this cost can be described at best as a cost in preparation for litigation, which is not allowed, see CCP § 1033.5(c)(2).

### *Jury Fees*

Jury fees are taxed in its entirety. Because the Edwards defendants waived a jury trial jury fees are not reasonably necessary to the conduct of the litigation, see CCP § 1033.5(c)(2).

### *Witness Fees*

The Court calculates witness fees at \$150.00 for the witnesses who testified. Applying a 50 % discount, the Court awards a total of \$75.00 in witness fees.

### *Court-Ordered Transcripts*

Contrary to the Edwards parties contention, the Court did not require citations to the record in their final briefs. The motion is granted as to Court Ordered Transcripts and the costs are taxed in their entirety.

### *Trial Exhibits*

The Court denies awarding costs for trial exhibits.

In sum, the Court is awarding a total of \$ \$2,165.52 in costs.

Edwards parties shall prepare the form of order.

## **13. 17CV03587 Unipan, Mark v. Reetz, Kimberly et al.**

*EVENT: Motion for Order Vacating Void Judgment, Vacating Renewal Judgment and Staying Enforcement*

Motion for Order Vacating Void Judgment, Vacating Renewal Judgment and Staying Enforcement is DENIED WITHOUT PREJUDICE for failure to file a proof of service indicating Plaintiff was served and that complies with CCP § 1005 et seq. The Court will prepare the order.

## **14. 20CV00558 Snider, Elizabeth v. FDM Community Services, Inc.**

*EVENT: Motion to Be Relived as Counsel (Defendant FDM Community Services, Inc.)*

Motion to Be Relived as Counsel is GRANTED. The Court will sign the Proposed Order. The Order will become effective upon the filing of the proof of publication indicating Defendant was served with the Order.

**15-19. 22CV02886 VB v. Doe 1 et al.**

*EVENT: (1) Defendant Doe 1's Motion to Compel Plaintiff V.B. to Respond To Request for Production of Documents, Set One;*

*(2) Defendant Doe 1's Motion to Compel Plaintiff V.B. to Respond to Respond to Special Interrogatories, Set One;*

*(3) Defendant Doe 1's Motion to Deem Requests for Admissions, Admitted, Set One, Admitted*

*(4) Defendant Doe 1's Motion to Compel Plaintiff V.B. to Respond to form Interrogatories, Set One*

*(5) Defendant Doe 1's Motion to Compel Plaintiff V.B. to Respond to Respond to Special Interrogatories, Set One;*

Defendant Doe 1's Motion to Compel Plaintiff V.B. to Respond To Request for Production of Documents, Set One; Defendant Doe 1's Motion to Compel Plaintiff V.B. to Respond to Respond to Special Interrogatories, Set One; Defendant Doe 1's Motion to Deem Requests for Admissions, Admitted, Set One, Admitted and Defendant Doe 1's Motion to Compel Plaintiff V.B. to Respond to form Interrogatories, Set One are all GRANTED.

The Court notes that it appears defense counsel may have inadvertently filed the motion regarding special interrogatories twice, as both motions appear to be identical and concern the same Special Interrogatories, Set One. Absent any explanation from defense counsel, the Court will sign the proposed orders and disregard the duplicative proposed order regarding special interrogatories.