

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar
Judge: HONORABLE RICHARD H. DUBOIS
Department 16

400 County Center, Redwood City
Courtroom 7A

Tuesday, August 14, 2018

NOTICE TO ALL COUNSEL

Until further order of the Court, no endorsed-filed "courtesy copy" of pleadings is required to be provided to the Law and Motion Department.

IF YOU **INTEND TO APPEAR** ON ANY CASE ON THIS CALENDAR YOU MUST DO THE FOLLOWING:

1. YOU MUST CALL (650) 261-5019 BEFORE 4:00 P.M. TO INFORM THE COURT OF YOUR INTENT TO APPEAR.
2. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).

Failure to do both items 1 and 2 will result in no oral presentation.

Notifying CourtCall with your intent to appear is not an alternative to notifying the court.

All Counsel are reminded to comply with California Rule of Court 3.1110. The Court will expect all exhibits to be tabbed accordingly.

Case

Title / Nature of Case

9:00

LINE: 1

16-CIV-01390 LISA MALEY VS. GAVIN CHAN, ET AL.

LISA MALEY
GAVIN CHAN

GREGORY C. CATTERMOLE
ANTHONY F. PINELLI

MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING:

This matter is dropped as MOOT. A dismissal of the entire action has been filed.

9:00

LINE: 2

17-CIV-00991 NOLAN CONSTRUCTION AND DESIGN VS. LUIS BALENKO, ET AL.

NOLAN CONSTRUCTION AND DESIGN
LUIS BALENKO

RONALD J. COOK
KATHRYN S. DIEMER

MOTION TO BIFURCATE

TENTATIVE RULING:

Defendants / Cross-Complainants LUIS BALENKO and STEPHANIE CHENEVERT's Motion to Bifurcate is DENIED.

It does not appear that bifurcation of the issues of "liability and the nature of the parties' contract" would be in furtherance of convenience or conducive to expedition and economy in this case. Code Civ. Proc. § 1048.

Plaintiff claims that it performed work on Defendants' property on a "time and materials" basis, for which it was not adequately compensated, leading to its claims for breach of contract and foreclosure of mechanic's lien. Defendants dispute that Plaintiff is entitled to further payment, arguing that they had a "total cost" agreement which Plaintiff grossly exceeded, and that Plaintiff's work was moreover defective, resulting in Defendants having to pay significant sums to correct the defects. A separate trial on the issue of whether the parties' agreement was on a "time and materials" basis or a "total cost" basis does not simplify the issues of whether Plaintiff was negligent in its work and perhaps not entitled to the \$500,000 plus that Defendants have already paid. Even if the Court were to conclude that the parties had a "total cost" agreement, Plaintiff is correct in asserting that this would not dispose of a *quantum meruit* claim. As there does not appear to be any benefit to the Court or to the parties in bifurcating these issues, the motion is denied.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 3

17-CIV-01028 DEEVYUTI CHAMPANERI VS. ROBERT HALF INTERNATIONAL, INC.,
ET AL.

DEEVYUTI CHAMPANERI
ROBERT HALF INTERNATIONAL, INC.

MATERN LAW GROUP, P.C.
TRACI BERNARD-MARKS

MOTION TO BE RELIEVED AS COUNSEL FOR PLAINTIFF

TENTATIVE RULING:

Matern Law Group, P.C. unopposed motion to be relieved as counsel for plaintiff is GRANTED.

In this case, counsel has used all of the required forms, he has provided proof that they were served in compliance with CRC 3.1362(d) and his declaration provides a factual basis for withdrawal.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, ATTORNEY is directed to prepare, circulate, and submit a written order on the appropriate judicial council form for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

9:00

LINE: 4

17-CIV-03004 EMILIO LUNA FLORES VS. YEVGENIY KORAVITSYN, ET AL.

EMILIO LUNA FLORES
YEVGENIY KORAVITSYN

ARASH KHORSANDI
KEVIN J. GRAY

MOTION TO BE RELIEVED AS COUNSEL

TENTATIVE RULING:

Arash Khorsandi's unopposed motion to be relieved as counsel for plaintiff is GRANTED.

In this case, counsel has used all of the required forms, he has provided proof that they were served in compliance with CRC 3.1362(d) and his declaration provides a factual basis for withdrawal.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, ATTORNEY is directed to prepare, circulate, and submit a written order on the appropriate judicial council form for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

9:00

LINE: 5

17-CIV-05803 ROBERT LINDOW VS. DARREN WALLACE, ET AL.

ROBERT LINDOW
DARREN WALLACE

PRO/PER
RUIZ F. JESSE

MOTION TO SANCTION
TENTATIVE RULING:

The moving parties (Defs) complied with the "safe harbor" requirement re 128.7 motions. In the Court's discretion, Defendants Darren Wallace et. al.'s Motion for Sanctions against Plaintiff Robert Lindow, filed pursuant to Code Civ. Proc. § 128.7, is DENIED.

Normally, 128.7 sanctions are reserved for fairly blatant, bad conduct. See Rutter Group excerpts below:

[9:1211] Sanctions discretionary: Sanctions under CCP § 128.7 are discretionary. The court is *not* required to impose a monetary sanction or any sanction at all. [See CCP § 128.7(c); see *Kojababian v. Genuine Home Loans, Inc.* (2009) 174 CA4th 408, 421, 94 CR3d 288, 298]

[9:1212] Policy of restraint? Federal cases have adopted a policy of restraint in imposing sanctions under Rule 11, **resolving doubts in favor of the party against whom sanctions are sought. It is treated as an "extreme" remedy and reserved for the "rare and exceptional case where the action is clearly frivolous."** [*Operating Engineers Pension Trust v. A-C Co.* (9th Cir. 1988) 859 F2d 1336, 1344] It remains to be seen whether California courts will follow the same policy in imposing sanctions under CCP § 128.7.

Here, in the underlying motion, Plaintiff Lindow sought multiple forms of relief:

- (1) he sought to introduce evidence (the grant deeds and notary documents) that was not presented to the Court in the context of the prior motion; and
 - (2) he sought to stop Defendant from selling P's personal property that had been left in the Aptos property (which he stated, in the declaration supporting the underlying motion, belong to him and have significant value).
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As to issue No. 1 (above) (the additional evidence), as the Court's Order denying his prior motion stated, this was an improper, and untimely, *motion for reconsideration, which was both procedurally and substantively flawed. It was filed too late (beyond the 10-day rule under CCP 1008).* And it is true, as Defendants argue, that none of those documents (the grant deeds and notary pages) constituted "new" evidence; nor did P explain, in his prior motion, how these documents constitute new evidence, or whether they were unavailable previously. Thus the motion was properly denied as a late and meritless motion for reconsideration. *Apparently these two grant deeds were on Plaintiff's computer. P gave no indication these documents were "new" or unavailable when the prior motion was litigated (when the Court issued the stay). P didn't state/explain when, where, or how he obtained these "new" documents - or how any of it constitutes "new" evidence.*

However, as to Issue No. 2 (above) (his personal property being sold), this at least appears to have been something new (since the prior motion), and P arguably has a legitimate interest in his personal items being sold/destroyed. In his declaration supporting the underlying motion, Plaintiff stated that, at a court hearing in a related case in Santa Cruz County, Plaintiff and an attorney who representing another party "entered into an agreement" that the Aptos home at issue in this case (in which Plaintiff's personal belongings are apparently stored) would not be listed for sale. Plaintiff's declaration states that "recently, the home was listed for sale," along with P's personal belongings, some of which apparently were auctioned off.

Given plaintiff the benefit of the doubt, this was legitimate grounds to seek a partial lift of the stay (to protect his personal belongings that he purportedly believed, based on the representations of another attorney, would not be sold). Although the motion was denied, this request was not clearly baseless. Under the circumstances, the Court declines to issue sanctions at this time.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 6

17-CLJ-04040 CAVALRY SPV I, LLC VS. ANGELA M. MOGIN, ET AL.

CAVALRY SPV I, LLC
ANGELA M. MOGIN

BRIAN N. WINN
PRO/PER

MOTION TO DEEM FACTS AS ADMITTED

TENTATIVE RULING:

Plaintiff's motion is GRANTED. The genuineness of any documents and the truth of any matters in the requests for admission are deemed admitted.

The request for sanctions is also granted pursuant to CCP §2033.280(c). Defendant shall pay plaintiff \$260 within 14 days

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, moving party is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

9:00

LINE: 7

18-CIV-00911 MARTHAELENA CHATEAUVERT, ET AL. VS. PENINSULA
CONVALESCENT ASSOCIATES, LLC, ET AL.

MARTHAELENA CHATEAUVERT
PENINSULA CONVALESCENT ASSOCIATES, LLC

GEORGE KAWAMOTO

MOTION TO COMPEL

TENTATIVE RULING:

This matter is dropped from calendar as MOOT. A notice of settlement of the entire case has been received.

9:00

LINE: 8

18-UDL-00586 FERMIN IRIGOYEN, SR., ET AL. VS. DENISSE GONZALEZ, ET AL.

FERMIN IRIGOYEN
DENISSE GONZALEZ

GARY W. SULLIVAN
MICHAEL BITONDO

HEARING ON DEMURRER

TENTATIVE RULING:

The demurrer is overruled on all grounds. Defendant has not established that the complaint fails to state a cause of action nor that it is uncertain. Defendant shall file an answer on or before August 20, 2018.

The complaint alleges that defendant agreed to rent the premises as a tenant at will. Civil Code §789 provides that a tenancy at will may be terminated by a written notice to remove from the premises in no less than 30 days that is given in the manner prescribed in CCP §1162.

Here, the complaint alleges that defendant was personally served with a thirty-day notice on May 21, 2018. Defendant cites no authority indicating that this notice is defective or uncertain simply because it indicates it is intended as a thirty-day notice prior to termination of defendant's month-to-month tenancy rather than a tenancy at will. The notice clearly states that defendant is to vacate and deliver possession of the premises to the landlord on or before June 20, 2018.

Defendant's additional contention regarding the lack of a proof of service of the notice also fails. CCP §166(a)(5) requires the complaint to allege the method of service but it specifically states that this can be done by completing the items on the form complaint relating to service or by attaching a copy of the POS. There is no requirement that a landlord attach the POS to the complaint.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

POSTED: 3:00 PM