1. PAUL, ET AL. v. THE RIVA PARTNERS, SC20200155

Motion for Class Certification

On the court's own motion, matter is continued to May 20, 2022. The court apologizes for any inconvenience to the parties.

TENTATIVE RULING # 1: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, MAY 20, 2022, IN DEPARTMENT FOUR.

2. LI, ET AL. v. CHEN, SC20200010

(1) Motion for Relief from Default

(2) Default Judgment Prove-Up Hearing

This is a breach of contract and wage and hour action. Plaintiffs commenced this action in January 2020 against defendant. On August 20, 2021, due to defendant's misuse of the discovery process, the court ordered that defendant's answer be stricken and that judgment be entered in favor of plaintiffs. Default was entered against defendant on January 5, 2022. Pending is (1) defendant's motion for relief from default pursuant to Code of Civil Procedure § 473(b), and (2) plaintiffs' request for default judgment against defendant in the amount of $152,774.10. For the following reasons, defendant's motion for relief from default is granted and plaintiffs' request for default judgment is denied.

Code of Civil Procedure § 473 provides, in part: "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. … Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect. …" (*Id.*, subd. (b).)

The purpose of the attorney affidavit provision is " ' "to relieve the innocent client of the burden of the attorney's fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits." [Citation.] In

the words of the author[,] " 'Clients who have done nothing wrong are often denied the opportunity to defend themselves, simply because of the mistake or inadvertence of their attorneys in meeting filing deadlines.' " [Citation.]' [Citation.]" (*Lang v. Hochman* (2000) 77 Cal.App.4th 1225, 1248, quoting *Huens v. Tatum* (1997) 52 Cal.App.4th 259, 263.)

While there is no affidavit from defendant's former attorney, Robert Huckaby, attesting to his mistakes, the interests of justice compel the court to waive that requirement given the unusual circumstances presented here. In or about September 2017 Mr. Huckaby was charged with a felony in El Dorado Superior Court Case No. P17CRF0387, which action is still pending trial. (Mot., Declaration of Martin Fineman in Support of Mot., ¶¶ 4, 5.) During the pendency of the criminal case against Mr. Huckaby, the court has observed Mr. Huckaby to be—at best—distracted and—at worst—absent on behalf of his clients, including defendant here.

Default was entered against defendant due to repeated misuse of the discovery process. There is nothing in the record to establish that this misuse was in any way the fault of defendant. Defendant declares that she met with Mr. Huckaby on multiple occasions to provide information needed for discovery responses. (Mot., Declaration of Sisi Chen in Support of Mot., ¶ 6.) It was only after default was entered against her that she learned that Mr. Huckaby did not provide plaintiffs with defendant's responses, he failed to respond to plaintiffs' counsel's meet and confer attempts, he did not file responses to plaintiffs' motions to compel and for sanctions, he did not pay the sanctions, and he failed to communicate with defendant. (*Id.*, ¶¶ 7–11.)

Defendant's statements are consistent with what the court observed of Mr. Huckaby's behavior in this case. As such, although Mr. Huckaby has not affied as to his mistakes having resulted in default being entered against his client, the court finds that default was entered against defendant solely as a result of Mr. Huckaby's mistakes. While the court does not discount the hardship this situation has caused

plaintiffs, the interests of justice favor relief for a blameless defendant. Accordingly, defendant's motion for relief from default pursuant to Code of Civil Procedure § 473(b) is granted. Plaintiffs' request for entry of default judgment is denied.

TENTATIVE RULING # 2: DEFENDANT'S MOTION FOR RELIEF FROM DEFAULT IS GRANTED. DEFAULT ENTERED AGAINST DEFENDANT ON JANUARY 5, 2022, IS VACATED AND DEFENDANT'S ANSWER IS REINSTATED. PLAINTIFFS' REQUEST FOR ENTRY OF DEFAULT JUDGMENT IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

3. MAICO ASSET MGMT. v. WOODS, ET AL., PC20210228

Demurrer to Second Amended Complaint

On the court's own motion, matter is continued to May 20, 2022. The court apologizes for any inconvenience to the parties.

TENTATIVE RULING # 3: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, MAY 20, 2022, IN DEPARTMENT FOUR.

4. McKEEN v. PICK 6 TAHOE, LLC, ET AL., 22UD0002

Motion for Attorney Fees and Costs

This is an unlawful detainer action. The trial proceeded on February 2, 2022. Subsequently, the court issued a Proposed Statement of Decision finding that defendant breached its lease by subletting the premises without first seeking plaintiff's consent. The court was prepared to enter judgment in favor of plaintiff, the lease would be forfeited, and plaintiff would be restored to the subject premises.

However, on March 29, 2022, before the Proposed Statement of Decision became the final decision and before judgment had been entered, the court granted defendant's ex parte application for relief from forfeiture on the grounds that plaintiff suffered no harm from the subletting, which lasted just 30 days, defendant remained current on its rent obligations, and the equities balanced in favor of defendant.

Pending is plaintiff's motion for attorney fees in the amount of $13,562.50 and costs in the amount of $523.00, on the basis that plaintiff is the prevailing party to this action. (Mot., Ex. 1, Schedule A, ¶ 28; Civ. Code § 1717; Code of Civ. Proc. § 1033.5(c)(5).) "Section 1717 defines prevailing party as 'the party who recovered a greater relief in the action on the contract.' [Citation.] Under section 1717, there may be one prevailing party [citations], or 'no party prevailing on the contract ....' [Citation.] 'If neither party achieves a complete victory on all the contract claims, it is within the discretion of the trial court to determine which party prevailed on the contract or whether, on balance, neither party prevailed sufficiently to justify an award of attorney fees.' [Citation.]" (*Waterwood Enterprises, LLC v. City of Long Beach* (2020) 58 Cal.App.5th 955, 964–965.)

Defendant first opposes the motion on the basis that plaintiff is not the prevailing party. The court disagrees with defendant.

Following the trial, plaintiff prevailed on every issue and request; i.e., defendant had breached the lease agreement, judgment would be entered in favor of plaintiff,

the lease would be forfeited, and plaintiff would be restored to the subject premises. The fact that defendant's lease ultimately was not forfeited and it retained possession of the premises is not due to defendant having prevailed on the merits, but rather because of the court's exercise of its equitable jurisdiction. (*See Artesia Med. Dev. Co. v. Regency Assocs.*, *Ltd.* (1989) 214 Cal.App.3d 957, 964.) Thus, similar to *Artesia*, defendant did not become a prevailing party as a result of the court relieving it from forfeiture. As such, plaintiff obtained the greater relief on the contract and is the prevailing party.

Plaintiff is therefore entitled to recover his attorney fees and costs.

1. Attorney Fees

While the fee awards should be fully compensatory, the trial court's role is not to simply rubber stamp the defendant's request. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133; *Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 361.) Rather, the court must ascertain whether the amount sought is reasonable. (*Robertson*, *supra*, 36 Cal.App.4th at p. 361.)

A court assessing attorney fees begins with a lodestar figure, based on the "careful compilation of the time spent and reasonable hourly compensation of each attorney … involved in the presentation of the case." (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48; *PLCM Group*, *Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Ketchum*, *supra*, 24 Cal.4th at p. 1134.) The California Supreme Court has noted that anchoring the calculation of attorney fees to the lodestar adjustment method " 'is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.' "(*Serrano III*, *supra*, 20 Cal.3d at p. 48, fn. 23.)

The party seeking attorney fees has the burden of establishing entitlement to an award. To that end, competent evidence as to the nature and value of the attorney's services must be presented. (*City of Colton v. Singletary* (2012) 206 Cal.App.4th 751,

784 [evidence furnished should allow the judge to consider whether the case was overstaffed, how much time the attorney spent on particular claims, and whether the hours were reasonably expended].)

Here, plaintiff requests $13,562.50 in attorney fees. In support thereof, plaintiff submitted declarations from his attorney, Scott Souers, as well as a billing log attached as Exhibit 2 to the motion and memorandum of points and authorities. Mr. Souers's current hourly fate is $350.00. All entries were billed at a minimum increment of a quarter of an hour. He put 38.75 hours of work into this case.

Defendant challenges the number of hours of work plaintiff's counsel put into this case. The court finds defendant's arguments unpersuasive.

Defendant first challenges the fees incurred prior to the filing of the unlawful detainer action. The lease agreement entitles the prevailing party "to a reasonable attorney fee … in the *institution and prosecution* of the action …." (Mot., Ex. 1, Schedule A, ¶ 28 [emphasis added].) Thus, fees incurred prior to filing the complaint are allowable under the lease agreement.

Next, defendant contends that the amount of time that plaintiff's counsel spent on certain tasks was excessive and unreasonable. Having reviewed the billing log and being familiar with the procedural history of this case, the court finds that the amount of hours plaintiff's counsel worked on this matter is reasonable under the circumstances.

Plaintiff's request for attorney fees in the amount of $13,562.50 is granted.

2. Costs

A party's right to recover costs is governed by statute, and a prevailing party is entitled as a matter of right to recover their allowable costs. (Code of Civ. Proc. § 1032(b); *Perko's Enterprises, Inc. v. RRNS Enterprises* (1992) 4 Cal.App.4th 238, 241.)

Plaintiff seeks costs in the total amount of $523.00. Defendant challenges a pre-litigation charge of $149.00 for using a registered process server to serve the 3-day notice to quit. Defendant also challenges a filing fee of $5.00 for the proof of service of prejudgment claim of interest.

As already noted earlier, under the lease agreement, the prevailing party is entitled to fees and costs incurred "*in the institution* … of the action." (Mot., Ex. 1, Schedule A, ¶ 28 [emphasis added].) Accordingly, the court will allow the $149.00 charge for use of a process server to serve the 3-day notice as the cost was incurred, is reasonable in amount, and was reasonably necessary to the conduct of the litigation. (Code of Civ. Proc. § 1033.5(c).)

With regard to the $5.00 filing fee for a proof of service, without further explanation from plaintiff's counsel, the court will not allow this charge.

The court finds that plaintiff is entitled to costs in the total amount of $518.00.

TENTATIVE RULING # 4: PLAINTIFF'S MOTION FOR ATTORNEY FEES AND COSTS IN THE TOTAL AMOUNT OF $14,080.50 IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

5. WALLACE, ET AL. v. HENDERSON, ET AL., SC20210157

(A) Defendants' Motion to Transfer and Consolidate Actions

(B) Motion to Compel Defendants' Further Joint Responses to Requests for Production of Documents

A. Defendants' Motion to Transfer and Consolidate Actions

On August 17, 2021, plaintiffs filed a complaint for partition of property by sale and accounting in this court. The parties to this action are also involved in a separate partition and accounting action in Monterey County Superior Court, which was filed on August 3, 2021 (Case No. 21CV002489). (Mot., Seher Decl. in Support of Mot., Ex. A.) Pending is defendants' motion to transfer the Monterey action to this court and to consolidate the actions. The motion is opposed.

"A judge may, on motion, transfer an action … from another court to that judge's court for coordination with an action involving a common question of fact or law within the meaning of Section 404. The motion shall be supported by a declaration stating facts showing that the actions meet the standards specified in Section 404.1, are not complex as defined by the Judicial Council and that the moving party has made a good faith effort to obtain agreement to the transfer from all parties to each action. Notice of the motion shall be served on all parties to each action and on each court in which an action is pending. Any party to that action may file papers opposing the motion within the time permitted by rule of the Judicial Council. The court to which a case is transferred may order the cases consolidated for trial pursuant to Section 1048 without any further motion or hearing." (Code of Civ. Proc. § 403.)[1]

Section 404.1 provides: "Coordination of civil actions sharing a common question of fact or law is appropriate if one judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice taking into account whether the

[1] All undesignated statutory references are to the Code of Civil Procedure.

common question of fact or law is predominating and significant to the litigation; the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and manpower; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and, the likelihood of settlement of the actions without further litigation should coordination be denied." (*Ibid.*)

1. Preliminary Matters

Defendants' Motion is Defective

Defendants' motion is procedurally defective as it is not accompanied by evidence that defendants served notice of this motion on the Monterey court. Defendants indicate that they filed notice of related case in each court, but that does not constitute the mandatory notice of the motion to transfer. (*See* Mot., Seher Decl., ¶ 7 & Ex. C.) On the same day that plaintiffs filed their opposition, defendants' counsel filed a declaration with new evidence asserting that they filed notice of this motion in the Monterey court. (*Id.*, Kelley Decl., ¶ 2 & Ex. A.) There are due process concerns as this evidence was submitted too late for plaintiffs to address in their opposition brief. Accordingly, the court will not consider the Kelley declaration and supporting exhibits. Even so, the court notes that the copy of the notice that was submitted is not a file-stamped copy, and thus does not prove it was actually filed or when it was filed.

Plaintiffs' Request for Judicial Notice and Defendants' Objection

Plaintiffs' request is denied as the documents are not necessary to the court's determination.

Defendants' Evidentiary Objections to the Declaration of Jeffrey Einsohn

Objection Numbers 1 and 2 are overruled.

Plaintiffs' Objections to New Evidence in Defendants' Reply Documents

The court reviewed the physical file and its eCourt system and the three declarations and new evidence to which plaintiffs object does not appear to have been

filed with this court. Regardless, the court would not consider new evidence submitted with reply papers because of due process concerns over plaintiffs not having had the opportunity to address any new evidence.

2. Discussion

Further, the court finds that transfer would not promote the ends of justice. First, the Monterey action was filed before the El Dorado action. In Monterey, there is a pending motion for summary judgment. Here, in the seven months prior to the filing of this motion, no active litigation occurred. The Monterey action is set for trial in January 2023, whereas the El Dorado action is not set for trial until July 2023. Thus, the Monterey action is more fully developed, and transferring the Monterey case to El Dorado would unduly delay the Monterey case, especially with a dispositive motion pending.

Although the parties are identical, the questions of law and fact are not. The Monterey property involves a custom-designed Frank Lloyd Wright single-family residence, on the ocean, in Carmel-by-the-Sea. The Tahoe properties consist of a summer vacation home, a vacant lot, and a small house. Thus, it appears that the Monterey property cannot be partitioned, whereas the parties disagree about whether the Tahoe properties should be partitioned or sold as a whole.

Defendants assert that El Dorado County is a more convenient location that Monterey, stating that one of the plaintiffs and one of the beneficiaries reside in El Dorado. However, plaintiffs point out that all of the defendants live closer to Monterey County and plaintiffs are not concerned about their own potential travel expenses. As such, convenience of the parties and witnesses does not favor transfer.

With regard to utilization of judicial resources and the calendars of each court, this court notes that one of the two judges assigned to South Lake Tahoe retired, which has resulted in delays in conducting civil trials. Thus, these two factors weigh against transfer and consolidation.

The factors concerning duplicative and inconsistent orders and judgments and promotion of settlement are neutral. The circumstances of each property are wholly distinct and there is no possibility of inconsistent or duplicative judgments. Based on the court's review of the parties' court documents and involving this motion, it does not appear that transfer and consolidation would promote settlement

Lastly, defendants also unreasonably delayed in filing this motion. The instant motion was not even filed until seven months after both cases were commenced and only after the summary judgment motion was filed in the Monterey action.

For the foregoing reasons, defendants' motion to transfer and consolidate actions is denied.

B. <u>Plaintiffs' Motion to Compel Defendants' Further Joint Discovery Responses</u>

On the court's own motion, matter is continued to May 20, 2022. The court apologizes for any inconvenience to the parties.

TENTATIVE RULING # 5: DEFENDANTS' MOTION TO TRANSFER AND CONSOLIDATE ACTIONS IS DENIED. PLAINTIFFS' MOTION TO COMPEL DEFENDANTS' FURTHER JOINT RESPONSES TO REQUESTS FOR PRODUCTION IS CONTINUED TO 1:30 P.M., FRIDAY, MAY 20, 2022, IN DEPARTMENT FOUR. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON.

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