

1. DELGADILLO v. PICKETT, SC20180081**Plaintiff's Motion for Post-Judgment Attorney Fees and Costs**

On February 12, 2021, defendant John Pickett accepted plaintiff Ana Delgadillo's Code of Civil Procedure section 998 Offer to Compromise. On April 5, 2021, the court entered judgment in favor of plaintiff and against defendant in the amount of \$31,707. The court awarded \$29,950.00 in attorney fees to plaintiff.

Pending is plaintiff's motion for post-judgment attorney fees and costs in the total amount of \$18,582. Defendant filed an opposition to the motion. In plaintiff's reply, she claims that the motion is now moot because her requested attorney fees and costs were paid out of the sale proceeds of defendant's residence.

The court agrees with plaintiff. It is true that defendant opposed the motion and requests that the court order plaintiff and her counsel to return to defendant any amount by which the \$18,582 paid to plaintiff exceeds the amount of the court's award. However, the court finds that defendant waived these objections to the requested post-judgment attorney fees and costs. Specifically, on November 23, 2022, plaintiff was paid after defendant signed a letter stating that he had "read, approved, and accepted" plaintiff's offer of satisfaction of (1) the April 5, 2021, Judgment and (2) plaintiff's pending motion for post-judgment attorney fees and costs. (Reply, Supp. Decl. of Glenn A. Murphy, ¶¶ 3–4 & Exs. 6–7.) When plaintiff signed the offer of satisfaction he did not indicate that he was signing under protest or pending the court's ruling on the motion. As such, because the court finds that defendant waived his objections to the requested fees and costs, there is no longer any actual controversy and plaintiff's motion is moot.

TENTATIVE RULING # 1: PLAINTIFF'S MOTION IS MOOT. MATTER IS DROPPED FROM THE CALENDAR.

2. CREDITORS ADJUSTMENT BUREAU v. MYKA CELLARS, INC., SC20210008

Order of Examination

Per stipulation of the parties, this matter was continued from October 28, 2022.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, DECEMBER 16, 2022, IN DEPARTMENT FOUR. PARTIES MAY APPEAR IN PERSON. IF ANY PARTY WISHES TO APPEAR REMOTELY, THEY MUST APPEAR BY ZOOM.

3. HITCHCOCK, ET AL. v. CITY OF S. LAKE TAHOE, ET AL., 22CV1691

**Status Conference Re: Service, Response, Administrative Record, Briefing
Schedule**

**TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY,
DECEMBER 16, 2022, IN DEPARTMENT FOUR. PARTIES MAY APPEAR IN PERSON.
IF ANY PARTY WISHES TO APPEAR REMOTELY, THEY MUST APPEAR BY ZOOM.**

4. JACOBS v. PAPEZ, ET AL., 22CV0891**Demurrer to and Motion to Strike Plaintiff's Complaint**

This action involves an attorney fee dispute between two contingency fee attorneys. Plaintiff Jeffrey Jacobs's complaint, filed June 23, 2022, is for declaratory relief to determine the respective rights, if any, of the parties to settlement funds held by Amica Insurance, pursuant to a lien claim by defendant Thomas Papez. Pending is defendant's demurrer to the complaint and motion to strike plaintiff's complaint.

1. Legal Standards

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30(a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank*, 39 Cal.App.3d at p. 318.)

Regarding a motion to strike, "[t]he court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: [¶] (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. [¶] (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436(a), (b).)

2. Discussion

The demurrer pursuant to Code of Civil Procedure section 430.10(c) is overruled as there is not "another action pending between the same parties on the same cause of action." (*Ibid.*)

The demurrer pursuant to Code of Civil Procedure section 430.10(e) is overruled as defendant's argument goes to disputed facts, which cannot be resolved on demurrer.

The motion to strike pursuant to Code of Civil Procedure section 436 is denied as defendant's argument goes to disputed facts, which cannot be resolved on a motion to strike.

TENTATIVE RULING # 4: DEFENDANT'S DEMURRER IS OVERRULED AND THE MOTION TO STRIKE THE COMPLAINT IS DENIED. DEFENDANT MUST FILE AND SERVE AN ANSWER TO THE COMPLAINT NO LATER THAN JANUARY 6, 2023. 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. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

5. COSSOUL v. HEAVENLY VALLEY, LP, SC20180207**Petition for Approval of Minor's Compromise of Claim or Action**

On April 16, 1017, Tanguy Cossoul, age 15 at the time, was on his last snowboarding run at Kirkwood Mountain Resort. He was heading back to a townhome along with his father, brother, and two family friends. The group followed a route from the Lower Olympic run through a ski in/ski out neighborhood and were heading to Palisades Drive in order to walk the remaining way to their townhome. As he approached Palisades Drive, which he could not see, Tanguy inadvertently snowboarded off a 25 foot snowbank and fell on to the road, which resulted in devastating injuries. Pending is a petition for approval of compromise of minor's claim or action, filed on behalf of Tanguy by his parent and guardian ad litem, Matthieu (Matthew) Cossoul.

Having reviewed and considered the papers submitted on the petition, the court deems the matter appropriate for decision on the petitioning papers and without the presence and testimony of witnesses. (Cal. Rules of Ct., rule 7.952(b).)

The petition states Tanguy suffered a severe traumatic brain injury, including a hemorrhage of the right cerebrum and cerebral edema; a collapsed left lung resulting in pneumonia, acute tracheitis, respiratory failure, asthma, and chronic ethmoidal/maxillary sinusitis; and a ruptured diaphragm, neuromuscular dysfunction of the bladder, a broken hip, and broken femur. (Pet., ¶ 6.)

Following the incident, Tanguy underwent multiple surgeries and procedures and was hospitalized for about four months. After he was discharged, his parents took over as his primary caregivers, initially providing 24/7 supervision and assistance in all aspects of activities of daily living, including food preparation and feeding, bathing, and changing his diaper. He also transitioned to at-home physical therapy, occupational therapy, and speech therapy, which are ongoing. (*Id.*, ¶ 7 & Attachment 7.)

The petition states that Tanguy still faces substantial physical challenges. From a cognitive perspective, Tanguy has permanent and significant disabilities. As far as future

care, he will require ongoing, regular physician appointments; diagnostic laboratory testing; neurodiagnostic and radiologic studies; various types of therapy, including physical, occupational, vocational, and speech; the use of multiple types of equipment, including, inter alia, respiratory, mobility aids, and adaptive equipment for activities of daily living; medications; medical procedures; and 24/7 caregiver support. (*Id.*, ¶ 8(c) & Attachment 8c.)

The total amount offered by defendants is \$13,200,000. (Pet., ¶ 10.) Medical expenses to be paid from the settlement proceeds is \$1,600,000. (*Id.*, ¶ 12.) The total amount of requested attorney fees (\$3,554,910.46) and costs (\$503,891.23) is \$4,058,801.69. (*Id.*, ¶ 13.) Having reviewed and considered the Declaration of Valerie N. Rose in support of the petition (Attachment 13a) as well as the factors set forth in California Rules of Court, rule 7.955(b), the court finds that the requested attorney fees are reasonable. (*Ibid.*) The proposed disposition is to invest \$6,200,000 in a single-premium deferred annuity, subject to withdrawal only on the court's authorization, and pay or transfer \$1,341,198.31 to the trustee of a special needs trust established under Probate Code section 3604 for Tanguy's benefit. (*Id.*, ¶ 18(b) & Attachment 18b(3).)

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, DECEMBER 16, 2022, IN DEPARTMENT FOUR. PLAINTIFF'S AND THE GUARDIAN AD LITEM'S APPEARANCES ARE WAIVED. (CAL. RULES OF CT., RULE 7.952(a).) PARTIES MAY APPEAR IN PERSON. IF ANY PARTY WISHES TO APPEAR REMOTELY, THEY MUST APPEAR BY ZOOM. IF THE PETITION IS UNOPPOSED, IT IS THE COURT'S INTENTION TO GRANT THE PETITION AS REQUESTED AT THE CONCLUSION OF FRIDAY'S HEARING.