

1. 5059 GREYSON CREEK DRIVE, LLC v. PERSEVERE LENDING, et. al.

22CV1328

Plaintiff moves for a preliminary injunction restraining Defendants Persevere Lending, Inc. (“Persevere”), Pacific Premier Trust Custodian fbo Kenneth B. Berry IRA, Pacific Premier Trust Custodian fbo Burton Leitzell IRA, Dan Larkin and Mundi Larkin (collectively, “The Beneficiaries”), WFG National Title Insurance Company (“WFG”), The Foreclosure Company, Inc. (“TFC”), and all other persons or entities with interest in the real property at issue in the present matter (collectively “Defendants”) from engaging in the following acts: (1) completing the foreclosure sale of the real property located at 5059 Greyson Creek Drive, El Dorado Hills, CA 94526 while the present action is pending; and (2) issuing or recording any new or amended Notice of Trustee’s Sale in connection with the foreclosure of the real property located at 5059 Greyson Creek Dr., El Dorado Hills, CA 94526. Plaintiff’s Motion, Memorandum of Points and Authorities, Declaration of Alejandro Martinez, Declaration of Brian Morrow, Request for Judicial Notice and Proposed Order were all filed and served on January 24, 2023.

The Beneficiaries filed and served their opposition papers on February 9th and 10th. Defendants’ Opposition to Plaintiff’s Motion for Preliminary Injunction is supported by a Declaration of Hillary A. Lehmann and a Declaration of Damon Bowers. Defendants also filed evidentiary objections to the declaration of Alejandro Martinez and to the declaration of Brian Morrow. The remaining defendants, WFT and TFC have not opposed the preliminary injunction. Plaintiff has not filed a reply in response to the opposition of The Beneficiaries.

Request for Judicial Notice

In support of its motion for a preliminary injunction, Plaintiff has requested the court take judicial notice of the following: (1) Notice of Default and Election to Sell Under Deed of Trust, recorded in the El Dorado County Recorder’s Office on June 9, 2022, Document Number 2022-0025085; and (2) The Complaint filed in the present action. Plaintiff has attached copies of each of the subject documents as exhibits to its request. Defendants have not objected to the request.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that *must* be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including “[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States” and “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Cal. Ev. Code § 452 (d) & (h).

Section 452 provides that the court “may” take judicial notice of the matters listed therein, while Section 453 provides a caveat that the court “shall” take judicial notice of any matter “specified in Section 452 if a party requests it and: (a) Gives each adverse party

sufficient notice of the request...to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.” Cal. Evid. Code § 453.

The documents which are the subject of this request fall well within the confines of Section 452. Plaintiff complied with the requirements of Section 453, giving each party enough notice of the requests and giving the court sufficient information, including copies of the documents, to enable the court to take judicial notice thereof. Accordingly, Plaintiff’s request for judicial notice is granted.

Preliminary Injunction

According to Plaintiff, Persevere, and The Beneficiaries loaned Plaintiff \$1,200,000 for the construction of a custom home on the property located at 5059 Greyson Creek Drive, El Dorado Hills, CA 94526. A Construction Deed of Trust and Assignment of Rents was filed to secure the loan on April 30, 2021 (the “Deed of Trust”). The Deed of Trust identified Defendant WFG as trustee. On or about December 19, 2021, Plaintiff submitted a draw request in the amount of \$290,000 which was estimated to cover the costs of labor and materials to complete the project such that a certificate of occupancy could be obtained. Persevere sent a general contractor, Mr. Silvani, to inspect the project prior to the approval of the draw request. Plaintiff maintains that Mr. Silvani missed his appointment to inspect the project and likely never inspected it at all. After the dispute over the alleged inspection by Mr. Silvani, Persevere agreed to wire an initial payment on the draw request in the amount of \$100,000. However, the \$100,000 was wired to the wrong account and was never received by Plaintiff. Plaintiff continued to send follow up communications requesting the \$100,000, though, according to Plaintiff, the only response received was a notice of default.

On June 9, 2022 a Notice of Default and Election to Sell Under Deed of Trust was filed by TFC on behalf WFG (“Notice of Default”). The Notice of Default cites Plaintiff’s alleged failure to make payments as the reason for the default. However, according to Plaintiff, this is in contrast to a notice of default letter (the “Default Letter”) delivered to Plaintiff which cites numerous other grounds for the default. The inconsistencies between the two, Plaintiff argues, causes the Notice of Default filed with the county to be fraudulent and defective and therefore, the property cannot be foreclosed upon. Additionally, Plaintiff denies each of the purported breaches as stated in the Default Letter. Even if Plaintiff had breached, Plaintiff argues the breach would have been excused due to the prior breach of Defendants.

Plaintiff argues further that it should not be required to tender the amount owing under the note in order to obtain the requested relief because a sale has not yet occurred, and the circumstances of the matter would make it unjust to require Plaintiff to pay a debt which includes \$100,000 that Plaintiff never received in the first place. Finally, Plaintiff points to the fact that the harm suffered by Defendants in the face of an injunction is nominal as they will

continue to maintain the deed of trust until a final determination on the merits is made. In contrast, Plaintiff argues it will suffer irreparable harm if the property is sold since Plaintiff would have no right to set aside such a sale to a bona fide third party purchaser even if Plaintiff wins in the merits of the case.

The Beneficiaries maintain that Plaintiff defaulted on the loan over a year ago and the reason stated in the Notice of Default is correct. Simply because Persevere sent a letter identifying other defaults committed by Plaintiff, that does not render the filed Notice of Default unenforceable. The Beneficiaries argue that Plaintiff is unlikely to prevail on the merits of the case because it has been in default since March of 2022 and there is no legal basis to excuse the default. The Beneficiaries state that on March 15th a payoff demand letter was sent to Plaintiffs which stated a payoff amount of \$938,483.99. This amount did not include the \$100,000 that Plaintiff claims it did not receive, and still Plaintiff has not offered to reinstate the loan. The Beneficiaries state that there was no breach on their behalf which would excuse Plaintiff's default. According to The Beneficiaries, they had wide latitude to withhold payments after a breach and that is what they did.

Further, The Beneficiaries assert that Plaintiff has failed to establish that it would be irreparably harmed if the preliminary injunction was to be denied; whereas The Beneficiaries would suffer harm by the imposition of the injunction. According to The Beneficiaries, given the current status of the incomplete project on the property, the foreclosure and the present litigation, the Beneficiaries have been unable to obtain insurance for the property which leaves the value of their collateral at a substantial risk until the foreclosure can be completed. Notwithstanding the foregoing, if the court is inclined to grant the injunction, The Beneficiaries request the court require Plaintiff to post a bond in the amount of \$1,157,635.98 to protect The Beneficiaries from losing their security on the property in the event it is damaged before a determination on the merits of the claim is made.

“An injunction may be granted in the following cases: ¶ (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually. ¶ (2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action. ¶ (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual. ¶ (4) When pecuniary compensation would not afford adequate relief. ¶ (5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. ¶ (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings. ¶ (7) Where the obligation arises from a trust.” Cal. Civ. Pro. § 526(a). The general purpose of such an injunction

is to preserve the status quo until there is a final determination of the matter on the merits. The term “status quo” has been defined to include the last actual peaceable, uncontested status which preceded the pending controversy. Voorhies v. Greene, 139 Cal.App.3d 989, 995 (1983).

As a threshold issue, the moving party must establish that it will suffer irreparable harm in the absence of an injunction. See Cal. Civ. Pro. § 526(2) & (4); See also Butt v. State of Cal., 4 Cal. 4th 668, 677-678 (1992). Once the threshold issue has been satisfied, the court is to consider two separate but interrelated factors: (1) The likelihood the moving party will prevail on the merits; and (2) the balancing of the harm suffered by the moving party if the injunction were to be denied as opposed to the harm suffered by the opposing party if the injunction were to be granted. Smith v. Adventist Health System/West, 182 Cal. App. 4th 729, 749 (2010). The moving party bears the burden of establishing a prima facie showing of entitlement to injunctive relief. O’Connell v. Sup. Ct., 141 Cal. App. 4th 1452, 1481 (2006). Such a burden is not to be taken lightly as “[i]t is said: ‘To issue an injunction is the exercise of a delicate power, requiring great caution and sound discretion, and rarely, if ever, should [it] be exercised in a doubtful case...’ [Citations].” Ancora-Citronelle Corp. v. Green, 41 Cal. App. 3d 146, 148 (1974).

Irreparable Harm

“‘[T]he extraordinary remedy of injunction cannot be invoked without showing the likelihood of irreparable harm.’ [Citations]. ‘Irreparable harm’ does not mean ‘injury beyond the possibility of repair or beyond possible compensation in damages.’ Donahue Schriber Realty Group, Inc. v. Nu Creation Outreach, 232 Cal. App. 4th 1171, 1184 (2014). An irreparable injury is established where the evidence submitted shows actual or threatened injury to property or personal rights which cannot be compensated by an ordinary damage award. See Brownfield v. Daniel Freeman Marina Hospital, 208 Cal. App. 3d 405, 410 (1989). In instances involving the conveyance of real property, the property is generally considered unique and therefore monetary damages are insufficient compensation. See Civ. Code § 3387; See also Stockton v. Newman, 148 Cal. App. 2d 558, 564 (1957). However, where the property holds only a marketing interest and Plaintiff intends to sell it, money damages are compensable and therefore no irreparable harm occurs as the result of a forfeiture sale. See Jessen v. Keystone Sav. & Loan Ass’n, 142 Cal. App. 3d 454, 458 (1983).

The threatened harm at hand is the selling of the property through a foreclosure auction. Plaintiff argues that real property is considered unique and therefore money damages are insufficient to compensate for its loss of the property. However, as stated above, such is not the case where the purpose of the property is to be sold for Plaintiff’s monetary benefit. See Jessen v. Keystone Sav. & Loan Ass’n, 142 Cal. App. 3d 454, 458 (1983). Here, Plaintiff essentially concedes that the value of the property rests in Plaintiff’s ability to sell it for financial gain and payoff the note. See Memo. of Points and Auth., Jan. 24, 2023, pg. 10:22-24

("Payment of the final draw under the Note is material to the entire Loan Agreement because without it, Plaintiff cannot complete the Project, *sell the Property and re-pay the Loan per the terms of the Note.*") Emphasis added. This alone negates Plaintiff's argument that money damages are insufficient to compensate Plaintiff for the loss of the property because Plaintiff intends to sell the property anyway. Without a showing that Plaintiff will suffer irreparable injury for which money damages are insufficient compensation, Plaintiff cannot establish grounds for a preliminary injunction.

Plaintiff's Motion for Preliminary Injunction is denied.

TENTATIVE RULING #1: PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IS GRANTED. PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION IS DENIED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY WISHES TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530)621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2. CALIFORNIA SPORTFISHING PROTECTION ALLIANCE V. LAHNON REGIONAL 22CV0841

Plaintiffs filed their Verified Petition for Writ of Administrative Mandate on June 15, 2022. On October 26, 2022, the parties filed a stipulation and joint request for extension of time to prepare the administrative record to December 19, 2022. The court executed the stipulation and the time to prepare the administrative record was extended to December 19, 2022.

On December 13, 2022, the parties filed a second stipulation and joint request for extension of time. They indicated that the record was taking longer to prepare than anticipated and asked that they extend the time to prepare the administrative record from December 19, 2022, to February 17, 2023. The court executed the request for extension on December 13th and the review hearing on January 13th was continued to the present hearing date.

On February 9th the parties filed their Third Stipulation and Joint Request for Extension of Time to Prepare the Administrative Record; Joint Request to Continue CMC; [Proposed] Order. This time they request an extension from February 17, 2023 to April 18, 2023. Therein they also agree to continue the present hearing to a date after April 18th. The court grants the requested continuance and will sign the stipulation and proposed order. The matter is continued to April 28st, 2023 at 8:30 a.m. in Department 9.

TENTATIVE RULING #2: THE COURT GRANTS THE REQUESTED CONTINUANCE AND WILL SIGN THE STIPULATION AND PROPOSED ORDER. THE MATTER IS CONTINUED TO April 28st, 2023 AT 8:30 A.M. IN DEPARTMENT 9.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY WISHES TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530)621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

3. KAREN SPRINGER et al v. HANSEN BYPASS TRUST UAD 21CV0262/ ILLINOIS MIDWEST INSURANCE AGENCY LLC v. JOSEPH AND ELIZABETH FORTE TRUST 22CV0157

Defendant Hansen Bypass Trust UAD (hereinafter “Defendant Hansen”) moves for an order consolidating the present action with the matter of Illinois Midwest Insurance Agency, LLC, on behalf of ProCentury Insurance Company v. Joseph and Elizabeth Forte Trust, with case number 22CV0157. The moving papers were filed and served on January 17, 2023. Plaintiff Illinois Midwest Insurance (hereinafter “Midwest”) filed its opposition to the motion on February 9th. Plaintiffs Karen and David Springer (hereinafter “Springer Plaintiffs”) filed their joinder on February 14, 2023. There have been no filings by Defendant Joseph and Elizabeth Forte Trust (“Defendant Forte”) on this issue.

Requests for Judicial Notice

In opposing the motion to consolidate, Plaintiff Midwest has filed two requests for judicial notice asking the court to take judicial notice of the court’s file including pleadings and Case Management Statements of the parties for the February 6, 2023 Case Management Conference.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including “[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.”

Section 452 provides that the court “may” take judicial notice of the matters listed therein, while Section 453 provides a caveat that the court “shall” take judicial notice of any matter “specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request...to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.” Cal. Evid. Code § 453.

Here, Plaintiff Midwest has provided all parties and the court sufficient notice regarding its requests and no other parties have objected. The court has been provided with sufficient information regarding the documents Plaintiff Midwest seeks to have judicially noticed. As such, the Requests for Judicial Notice are granted.

Motion to Consolidate

This matter stems from a personal injury claim made by Karen Springer. During the scope of her employment, Mrs. Springer slipped and fell resulting in injuries. Mrs. Springer made a workers’ compensation claim and also filed suit against Defendant. Mr. Springer is also

a named Plaintiff as he is making a claim for loss of consortium. After the filing of the Springer matter, the workers' compensation carrier, Plaintiff Midwest, filed its subrogation complaint seeking reimbursement of benefits paid. Defendant argues for consolidation on the basis that both matters pertain to the slip and fall and consolidating the cases will be in the best interest of judicial economy and will reduce the likelihood of inconsistent judgments.

Plaintiff Midwest opposes the motion on the basis that consolidation would result in prejudice against it and in confusion to the jury. Plaintiff Midwest points to the fact that Mr. Springer's loss of consortium claim is inapplicable to Plaintiff Midwest and litigating his claim will cause Plaintiff Midwest to incur the unnecessary time and expense of an extended trial. Plaintiff Midwest cites the trial estimates given by the parties in their respective Case Management Statements. Plaintiff Midwest estimates a trial of 2-3 days while the estimated trial length in the Springer action is 4-7. Moreover, Plaintiff Midwest is of the opinion that Mr. Springer's loss of consortium claim will confuse the jury in its relation to the subrogation claim. Plaintiff Midwest would be agreeable to consolidation for discovery purposes only.

"When actions involving common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Cal. Civ. Pro. § 1048(a). The court has broad discretion to consolidate actions taking into consideration the time and expense to the parties and the court and whether or not the parties will be prejudiced by such consolidation. *See Id*; *See also* *Fellner v. Steinbaum*, 132 Cal. App. 2d 509 (1955). "The fact that evidence in one case might not have been admissible in the other does not bar consolidation. [Citation]. Nor does the fact that all parties are not the same. [Citation]." *Judd Whitehead Heater Co. v. Obler*, 111 Cal. App. 2d 861, 867 (1952).

The issue at hand is whether or not the inclusion of Mr. Springer's loss of consortium claim will cause so much additional time and resources as to burden Plaintiff Midwest and will cause the jury to become confused as to the issues. The court feels that it does not. While a loss of consortium claim is not derivative, it does require Mr. Springer to prove the nature and extent of Mrs. Springer's injuries. Such a showing will also need to be made by Plaintiff Midwest in establishing the basis for its subrogation claim. While Mr. Springer will have to put on additional evidence regarding the effect of those injuries on his relationship, such evidence is likely to be negligible and will not result in a significant impact on the length of trial. Further, any confusion to the jury can be easily addressed with a jury instruction on the matter.

Consolidating the claims will preclude the need for two separate trials both of which will present many of the same witnesses to establish the same facts and prove up the same issues. Thus, consolidation will not only preserve judicial resources, but will save parties and witnesses the time and expense of appearing to testify in two separate trials on the same issue.

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In light of the foregoing, the court grants Defendant Hasen's Motion to Consolidate Karen Springer et al v. Hansen Bypass Trust UAD case number 21CV0262 and Illinois Midwest Insurance Agency LLC v. Joseph and Elizabeth Forte Trust, case number 22CV0157. Case number 22CV0157 shall be the lead case for all purposes.

TENTATIVE RULING #3: PLAINTIFF MIDWEST'S REQUESTS FOR JUDICIAL NOTICE IS GRANTED. THE COURT ALSO GRANTS DEFENDANT HASEN'S MOTION TO CONSOLIDATE KAREN SPRINGER ET AL V. HANSEN BYPASS TRUST UAD CASE NUMBER 21CV0262 AND ILLINOIS MIDWEST INSURANCE AGENCY LLC V. JOSEPH AND ELIZABETH FORTE TRUST, CASE NUMBER 22CV0157. CASE NUMBER 22CV0157 SHALL BE THE LEAD CASE FOR ALL PURPOSES.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY WISHES TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530)621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

5. PEOPLE OF THE STATE OF CA v. VICTOR KRYLOV

PC20200443

On August 21, 2020, Claimant Krylov filed a claim opposing forfeiture of \$25,510 in response to a notice of administrative proceedings. On October 2, 2020, the People filed a petition for forfeiture of currency that was seized by the El Dorado County Sheriff's Department as a thing of value that was furnished, or intended to be furnished, in exchange for a controlled substance. The People pray for judgment declaring the money forfeited to the state of California.

"The following are subject to forfeiture: ...(f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used...if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first." Health and Safety Code, § 11470(f). "Any person claiming an interest in the property seized pursuant to Section 11488 may... within 30 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized ... a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property." Health and Safety Code, § 11488.5(a)(1). "If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases." Health and Safety Code §11488.5(c). "The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided." Health and Safety Code, § 11488.5(e).

This matter has been continued numerous times due to the ongoing criminal matter. As of the most recent hearing, on September 16, 2022, The People notified the court that the criminal matter had been resolved but they requested additional time to review. With no objection from Claimant's counsel, the court set the present hearing date.

TENTATIVE RULING #5: THE PARTIES ARE ORDERED TO APPEAR TO UPDATE THE COURT ON THEIR READINESS TO PROCEED. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

6. TERESA COBB v. SHIRLEY JEAN COBB

21CV0350

Counsel Kathryn Mulcahy seeks an order relieving her as counsel for Defendant. By and through her declaration Ms. Mulcahy establishes good cause for her request. Defendant has passed but all documents related to the motion have been served on her children and her last known address.

The motion is granted.

TENTATIVE RULING #6: THE MOTION TO BE RELIEVED AS COUNSEL IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY WISHES TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530)621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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