

1. ARTHUR MURRAY v. CLAMPITT

22UD0384

Motion for Damages Proscribed by a TRO

The court issued a Temporary Restraining Order on February 24, 2023 that restrained Defendants from impairing the value of trailer used as a residence “either by acts of destruction or failure to care for the property in a reasonable manner, including . . . removing or damaging parts thereof.”

On June 9, 2023, Plaintiff filed a Motion for Damages Proscribed by a Temporary Restraining Order, which was served on Defendant electronically on June 9, 2023. In a Declaration filed with the Motion, Defendant listed several items of damage to the equipment that was the subject of the restraining order, totaling \$5,028. The hearing on the motion was set for June 16, seven days later.

On June 12, 2023, Plaintiff filed an Amended Motion, with a proof of electronic service dated June 11, 2023, for a hearing set on June 16, 2023.

Code of Civil Procedure § 1005 requires all moving and supporting papers to be served and filed at least 16 court days before the hearing. As such, the court finds that the current hearing date does not allow Plaintiff to provide sufficient notice to Defendants as required by the code.

TENTATIVE RULING # 1: THE MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, JULY 10, 2023, IN DEPARTMENT NINE.

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 OR PARTIES WISH

06-16-23
Dept. 9
Tentative Rulings

**TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING
INFORMATION WILL BE PROVIDED.**

2. ASSET SECURITY CONSULTING, LLC v. H.S. 23CV0491

Petition for Approval of Transfer of Structured Settlement Payment Rights

Prior to approving a petition for the transfer of payment rights, this court is required to make a number of express written findings pursuant to Cal. Insurance Code § 10139.5, including the following:

1. That the transfer is in the best interests of the Payee, taking into account the welfare and support of Payee's dependents. This finding is supported by the Payee's Declaration, dated May 17, 2023, and filed on May 24, 2023.
2. That the Payee has been advised in writing by the Petitioner to seek independent professional advice) and has either received that advice or knowingly waived in writing the opportunity to receive that advice. This finding is supported by Exhibits B, C and D to the Petition.
3. That the transferee has complied with the notification requirements and does not contravene any applicable statute or the order of any court or government authority. This finding is supported by Exhibit A to the Petition and the Payee's Declaration, dated May 17, 2023, and filed on May 24, 2023.

In addition to the express written findings required by the applicable statutes, Cal. Ins. Code § 10139.5(b) requires the court to determine whether, based on the totality of the circumstances and considering the payee's age, mental capacity, legal knowledge, and apparent maturity level, the proposed transfer is fair and reasonable, and in the payee's best interests. the Payee's Declaration, dated May 17, 2023, addresses these concerns.

The Petition submitted generally contains the information required by the Insurance Code for court approval of this transaction.

TENTATIVE RULING # 2: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

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).

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COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

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3. CLAIM OF BRANDYN HERRERA 23CV0515

Claim Opposing Forfeiture

Claimant filed a Claim Opposing Forfeiture regarding \$2,981 on April 11, 2023.

On May 22, 2023, the People of the State of California filed a Petition for Forfeiture pursuant to Health and Safety Code § 11469, *et seq.* regarding \$2,981 that was seized from Claimant's person on February 2, 2023 and is currently in the possession of the El Dorado County District Attorney's Office.

At the hearing on May 26, 2023, the court found that no proof of service had been filed and there had been no meet and confer efforts and continued the hearing.

"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 or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, 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).)

"(a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located. ¶ A petition of forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture, or as soon as practicable, but in any case within one year of the filing by

the Attorney General or district attorney of a lis pendens or other process against the property, whichever is earlier.” (Emphasis added.) (Health and Safety Code, § 11488.4(a).)

“(a)(1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or 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 or, if there was no seizure, in which the property is located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim...” (Health and Safety Code, § 11488.5(a)(1).)

“(c)(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. Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of Section 11488. ¶ (2) The hearing shall be by jury, unless waived by consent of all parties. ¶ (3) The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter.” (Emphasis added.) (Health and Safety Code, § 11488.5(c).)

“(d)(1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4. ¶ (2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4.” (Health and Safety Code, § 11488.5(d).)

“(e) 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. The forfeiture hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237, and Sections 607 to 630 of the Code of Civil Procedure if trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure, if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto. ¶ If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant.” (Emphasis added.) (Health and Safety Code, § 11488.5(e).)

“In the case of property described in subdivision (f) of Section 11470 that is cash or negotiable instruments of a value of not less than twenty-five thousand dollars (\$25,000), the state or local governmental entity shall have the burden of proving by clear and convincing evidence that the property for which forfeiture is sought is such as is described in subdivision (f) of Section 11470. There is no requirement for forfeiture thereof that a criminal conviction be obtained in an underlying or related criminal offense.” (Emphasis added.) (Health and Safety Code, § 11488.4(i)(4).)

“(5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial.” (Health and Safety Code, § 11488.4(i)(5).)

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JUNE 16, 2023, IN DEPARTMENT NINE.

PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

4. J.G. WENTWORTH ORIGINATIONS, LLC v. DOE 1 23CV0643

Petition for Approval of Transfer of Structured Settlement Payment Rights

Prior to approving a petition for the transfer of payment rights, this court is required to make a number of express written findings pursuant to Cal. Insurance Code § 10139.5, including the following:

1. That the transfer is in the best interests of the Payee, taking into account the welfare and support of Payee's dependents. The Payee's Declaration, executed and filed with the court on March 17, 2023, supports this finding.
2. That the Payee has been advised in writing by the Petitioner to seek independent professional advice) and has either received that advice or knowingly waived in writing the opportunity to receive that advice. This finding is supported by Exhibits B and E to the Petition. *See also*, Petition at p. 10.
3. That the transferee has complied with the notification requirements and does not contravene any applicable statute or the order of any court or government authority. This finding is supported by Exhibits A and B to the Petition.
4. That the transfer does not contravene any applicable statute or the order of any court or government authority. Payee's Declaration, executed and filed with the court on March 17, 2023, includes this representation.

In addition to the express written findings required by the applicable statutes, Cal. Ins. Code § 10139.5(b) requires the court to determine whether, based on the totality of the circumstances and considering the payee's age, mental capacity, legal knowledge, and apparent maturity level, the proposed transfer is fair and reasonable, and in the payee's best interests. The court may deny or defer ruling on the petition if the court believes that the payee does not fully understand the proposed transaction, and/or that the payee should obtain independent legal or financial advice regarding the transaction.

The Petition submitted generally contains the information required by the Insurance Code for court approval of this transaction.

TENTATIVE RULING # 4: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

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).

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5. NAME CHANGE OF LONG 23CV0455

Petition for Name Change

Petitioner filed a Petition for Change of Name on April 3, 2023.

Proof of publication was filed on May 1, 2023, as required by Code of Civil Procedure § 1277(a). A background check has been filed with the court as required by Code of Civil Procedure § 1279.5(f).

TENTATIVE RULING # 5: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

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).

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6. NAME CHANGE OF FUJINARI 23CV0592

Petition for Name Change

Petitioner filed a Petition for Change of Name on April 21, 2023.

Proof of publication was filed May 30, 2023, as required by Code of Civil Procedure § 1277(a). A background check has been filed with the court as required by Code of Civil Procedure § 1279.5(f).

TENTATIVE RULING # 6: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

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).

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7. NAT'L COLLEGE STUDENT LOAN TRUST v. DUNCKELMAN

PCL20140557

Attorney Withdrawal

Counsel for the Defendants has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that the clients have been unresponsive to numerous attempts at communication through various means.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on the Defendants at their last known address and on counsel for Plaintiff was filed on April 21, 2023.

No hearing dates are currently scheduled for the case. After review of the declaration, the court finds good cause to grant the motion.

TENTATIVE RULING #7: THE MOTION TO BE RELIEVED AS COUNSEL IS GRANTED, EFFECTIVE UPON FILING OF THE PROOF OF SERVICE OF THE SIGNED ORDER UPON ALL PARTIES. COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER (FORM MC-053) ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e).

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).

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8. NORTHERN CA COLLECTION SVC v. CUNNINGHAM PCL20191007

Order of Examination Hearing

Service of the Application and Order for Appearance and Examination was made on Defendant by personal service on April 13, 2023 and was filed with the court on April 18, 2023.

TENTATIVE RULING #8: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JUNE 16, 2023, IN DEPARTMENT NINE.

PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

9. PEOPLE OF THE STATE OF CALIFORNIA v. BUTTERFIELD

Settlement Conference

TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JUNE 16, 2023, IN DEPARTMENT NINE.

PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

**10. PEOPLE OF THE STATE OF CALIFORNIA v. \$31,939.97 IN US CURRENCY
23CV0581**

Petition for Forfeiture

The unverified petition contends: \$31,939.97 in U.S. Currency was seized by the El Dorado County Sheriff's Office; such funds are currently in the hands of the El Dorado County District Attorney's Office; and the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of Health and Safety Code, § 11358. The People pray for judgment declaring that the money is forfeited to the State of California.

A proof of service was sent by registered mail to an interested party on April 14, 2023.

"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 or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, 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).)

"(a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which

the real property is located. ¶ A petition of forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture, or as soon as practicable, but in any case within one year of the filing by the Attorney General or district attorney of a lis pendens or other process against the property, whichever is earlier.” (Emphasis added.) (Health and Safety Code, § 11488.4(a).)

“(a)(1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or 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 or, if there was no seizure, in which the property is located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim...” (Health and Safety Code, § 11488.5(a)(1).)

“(c)(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. Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of Section 11488. ¶ (2) The hearing shall be by jury, unless waived by consent of all parties. ¶ (3) The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter.” (Emphasis added.) (Health and Safety Code, § 11488.5(c).)

“(d)(1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4. ¶ (2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in

question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4.” (Health and Safety Code, § 11488.5(d).)

“(e) 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. The forfeiture hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237, and Sections 607 to 630 of the Code of Civil Procedure if trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure, if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto. ¶ If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant.” (Emphasis added.) (Health and Safety Code, § 11488.5(e).)

“In the case of property described in subdivision (f) of Section 11470 that is cash or negotiable instruments of a value of not less than twenty-five thousand dollars (\$25,000), the state or local governmental entity shall have the burden of proving by clear and convincing evidence that the property for which forfeiture is sought is such as is described in subdivision (f) of Section 11470. There is no requirement for forfeiture thereof that a criminal conviction be obtained in an underlying or related criminal offense.” (Emphasis added.) (Health and Safety Code, § 11488.4(i)(4).)

“(5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial.” (Health and Safety Code, § 11488.4(i)(5).)

TENTATIVE RULING #10: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JUNE 16, 2023, IN DEPARTMENT NINE.

PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

11. ROCKY TOP RENTALS, LLC v. PRATHER-RESOVICH

22CV1032

Writ of Possession

This case relates to the rental of a storage building to Defendant; Plaintiff alleges that Defendant has not made a rental payment since August 15, 2020.

At a hearing on March 6, 2023, the court noted that there is no proof of service on file with the court. The court continued the hearing to June 16, 2023, to allow Plaintiff to serve Defendant with notice of the application.

There is no proof of service on file with the court.

TENTATIVE RULING #11: THIS MATTER IS CONTINUED TO 8:30 A.M., FRIDAY SEPTEMBER 29, 2023, TO ALLOW PLAINTIFF AN OPPORTUNITY TO SERVE DEFENDANT WITH NOTICE OF THE APPLICATION FOR WRIT OF POSSESSION. IF DEFENDANT IS NOT SERVED TIMELY FOR THE NEXT HEARING, THE COURT IS INCLINED TO DROP THE MATTER FROM CALENDAR FOR LACK OF SERVICE.

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 OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

12. HEFFRON v. HUDNELL

22CV0040

Joinder of Necessary/Indispensable Party

This case arises from the purchase and sale of residential real property, regarding which the Plaintiff alleges that the Defendants misrepresented the condition of the property and failed to repair the property. The causes of action against the former owners of the property ("Sellers" or "Defendants") include fraud, negligent misrepresentation, breach of contract, violation of Civil Code § 1102 and negligence.

The Complaint alleges that Sellers failed to disclose the state of repair of the swimming pool on the property, and that it required substantial and costly repairs at the time it was purchased by Plaintiff. The damages requested are investigative expenses to determine the extent of the damage, compensatory damages to compensate Plaintiff for the value of required repairs or the lost value of the property with a damaged swimming pool, attorney fees to recover the costs of the lawsuit, and punitive damages.

Request for Judicial Notice

Defendants request the court to take judicial notice of 1) Plaintiff's Complaint, 2) the Motion to Join Wendy Morrow as Necessary and/or Indispensable Party and documents in the court's file supporting that Motion, 3) Wendy Morrow's Declaration in Support of Objection to the Motion, dated January 22, 2023.

California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Defendants' request for judicial notice is granted.

Whether Joint Tenant is an Indispensable Party

The Sellers have filed this motion to join Plaintiff's daughter W. Morrow as a necessary/indispensable party to this lawsuit because she is a co-owner of the property and holds an undivided one-half share in joint tenancy with Plaintiff.

Code of Civil Procedure § 389(a) provides:

(a) A person . . . shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action

in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

Joint tenancy is an ownership interest that is distinguished by four unities: unity of interest, unity of title, unity of time and unity of possession. “The requirement of four unities reflects the basic concept that there is but one estate which is taken jointly; . . .” Tenhet v. Boswell, 18 Cal. 3d 150, 155 (1976) (citations omitted).

Defendants claim that Plaintiff’s co-owner is an indispensable party because Plaintiff is “seeking recovery for all damages she alleges are connected with” the causes of action in her Complaint and for attorney fees, but that Plaintiff, as owner of only one-half the interest in the property, is not entitled to the full measure of damages “incurred by both parties.” Defendants’ Memorandum of Points and Authorities in Support of Motion at 6. Plaintiff, they argue, is not the real party in interest for the purpose of Morrow’s half share in the property and “lacks standing to assert a claim that belongs to another person.” Id., citing Code of Civil Procedure § 367 (“Every action must be prosecuted in the name of the real party in interest.”)

Assignment to Plaintiff

Morrow filed a Declaration with the court opposing Defendants’ motion to join her as an involuntary plaintiff. In her Declaration, Morrow states: “I am hereby assigning all of my causes of action, if any, as it related to the non-disclosures of the pool cracks and leaks against all named defendants in the lawsuit, El Dorado Superior Court Case No. 22CV0040 that are the subject of this lawsuit to my mother, Sally Heffron.”

Defendants argue that such assignment is invalid under Paragraph 26 in the California Residential Purchase Agreement and Joint Escrow Instructions (C.A.R. Form RPA-CA) governing the purchase of the property, which states: “Buyer shall not assign all or any part of Buyer’s interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee.” Paragraph 26 references “C.A.R. Form AOAA” (Assignment of Agreement Addendum) which is used to add or delete buyers from a real property transaction. Both Plaintiff and Morrow are already buyers under and signatories to the C.A.R. RPA-CA contract form.

Morrow’s assignment to Plaintiff is of “causes of action”, not assignment of her status as a party to the real estate contract. Code of Civil Procedure § 954 allows transfer of “a thing in action, arising out of the violation of a right of property, . . .,” also referred to as a “chose in action.” As a cause of action arising out of a violation of a property right, the assignment is not

subject to the contractual prohibition against assignment of the purchase and sale contract to another buyer in the C.A.R. RPA-CA contract. “The California rule is that a chose in action is presumptively assignable.” Bush v. Superior Ct., 10 Cal. App. 4th 1374, 1378 (1992). Defendants argue that “causes of action for personal injuries arising out of a tort are not assignable”, citing Baum v. Duckor, Spradling & Metzger 72 Cal.App.4th 54 (1999). That case held that causes of action for legal malpractice and breach of fiduciary duty were personal in nature and not assignable. Defendants’ Reply in Support of Defendants’ Motion to Join Wendy Morrow as a Necessary/Indispensable Party at 7. The citation is apt. Defendants’ Reply brief itself quotes the following passage from the court’s opinion:

Assignable are choses in action arising out of an obligation or breach of contract as are those arising out of the violation of a right of property (§ 954, Civ. Code) or a wrong involving injury to personal or real property.” (Goodley, supra, 62 Cal.App.3d at p. 393, fns. omitted; see also 1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts, § 933, p. 833 [“Choses in action are assignable when they arise out of an obligation or out of the violation of a right of property.”].)

Baum v. Duckor, Spradling & Metzger, 72 Cal. App. 4th 54, 65 (1999).

This case alleges a violation of a right of property, which is an assignable chose in action. Morrow’s Declaration, dated January 22, 2023, describes the assignment with particularity by referencing “all of my causes of action, if any, as it related to the non-disclosures of the pool cracks and leaks against all named defendants in the lawsuit, El Dorado Superior Case No. 22CV0040 that are the subject of this lawsuit”.

Defendants argue that even if the assignment is valid it is only a partial assignment, which does not assign Morrow’s interest in any recovery if Plaintiff prevails or her liability for attorney’s fees if Defendants prevail.

An assignment of a cause of action necessarily includes any recovery that might be realized if the assignee succeeds in pursuing the cause of action; otherwise the assignment would be nonsensical. If Plaintiff prevails, then the assignment of Morrow’s causes of action necessarily includes any damages that might be recovered. “[A]n assignee of a chose in action does not sue in his own right but stands in the shoes of the assignor.” Bush v. Superior Ct., 10 Cal. App. 4th 1374, 1380 (1992).

Defendant argues that “California law is clear that partial assignees are indispensable parties”, citing Bank of the Orient v. Superior Ct., 67 Cal. App. 3d 588, (1977). That case involved a defendant in a lawsuit that initially did not include the insurance company that had paid out a substantial part of the plaintiff’s losses and had a related but not identical interest as the plaintiff. If the insurance company were not joined it could maintain a separate action for its losses which would

have resulted in a multiplicity of actions. In this case the damages arise from a single piece of property in which Plaintiff and Morrow share an identical interest.

Even in cases involving a partial assignment there is no requirement that additional parties be joined where there is “no new or different obligation on the part of defendant.” Taylor v. Sanford, 203 Cal. App. 2d 330, 346 (1962). This case involves a single swimming pool that requires defined repairs, and without repair, represents an objectively measurable loss in property value to a single piece of property. Those damages are identical to both Plaintiff and Morrow and are not cut in half or doubled depending on whether one joint tenant or the other, or both, pursue the lawsuit.

Complete Relief

Defendants argue that without Morrow as a Plaintiff the court will not be able to afford “complete relief” to the Plaintiff. This is not a concern, as the issue in the lawsuit is the cost incurred in repairing the pool or the diminished value of the property with a leaking pool. The addition of a plaintiff would not change the nature or amount of damages, the underlying factual allegations, or the availability of any defenses to Defendants.

Defendants quote the following language from the opinion in Bank of California v. Superior Court, 16 Cal.2d 516, 520 (1940): “joinder of plaintiffs was compulsory where the parties, under the substantive law, were possessed of joint rights. Joint promises under a contract, partners, and joint tenants were familiar examples.” At issue in the Bank of California case was the trial court’s exercise of discretion in denying the motion of an executor of an estate to include all of the legatees of the estate as necessary parties in a case initiated by a single legatee. The Court held that the trial court’s denial of the motion was not an abuse of discretion and that joining the other parties was not required. The language of that opinion quoted by Defendants refers to an older “common law” theory that was discussed by the Court in examining the origins of Code of Civil Procedure § 389, and which was distinguished by the Court from the current version of the rule in which holding rights in common is not the determining factor in whether a party is “indispensable.” Id. at 520-521.

Prejudice to Person Proposed to be Joined

A nonjoined party's ability to protect its interest is not impaired or impeded as a practical matter where a joined party has the same interest in the litigation. Deltakeeper v. Oakdale Irrig. Dist. 94 Cal.App.4th 1092, 1102 (2001). Because the alleged damages are all related to one piece of property in which Plaintiff and Morrow hold identical property interests, Morrow’s interests can be adequately represented by Plaintiff without Morrow’s participation in the suit.

Danger of Multiple Lawsuits

There is no risk of multiplicity of actions because there is only one swimming pool on the property. If Plaintiff prevails, the costs of investigating the need for repairs to the pool and the cost of repairs to the pool can only be incurred one time. If Plaintiff recovers damages for the reduced value of the property, or obtains a judicial determination as to the adequacy of Sellers' disclosures, any future claim by her co-owner against the same defendants regarding the same property and the same seller representations would be barred by collateral estoppel:

'A prior determination by a tribunal will be given collateral estoppel effect when (1) the issue is identical to that decided in a former proceeding; (2) the issue was actually litigated and (3) necessarily decided; (4) the doctrine is asserted against a party to the former action or one who was in privity with such a party; and (5) the former decision is final and was made on the merits.' " (*McCutchen v. City of Montclair* (1999) 73 Cal.App.4th 1138, 1144, 87 Cal.Rptr.2d 95.)

Colombo v. Kinkle, Rodiger & Spriggs, 35 Cal. App. 5th 407, 416 (2019).

Potential Recovery of Attorney Fees

Paragraph 25 of the C.A.R. RPA-CA contract provides that "In any action, proceeding or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, . . ." Defendants argue that they would not be able to recover from Morrow "her share" of the attorney's fees they might be awarded as prevailing party. As a non-party to an action or proceeding, Morrow would not be liable for attorney's fees. Any such award would not be divided into halves and assessed against a non-party to the suit just because the Plaintiff holds an undivided half interest in the real estate that is the subject of the agreement.

It is possible that Morrow's interest in the property would be affected if the recovery of any attorney fees awarded to Defendants as prevailing party involved recording a lien against the property, but that eventuality doesn't make Morrow necessary to the determination of rights and damages in the lawsuit, or subject to an award of attorney fees and costs incurred by a co-owner who chooses to initiate a lawsuit.

Discovery

Defendants allege that they will be prejudiced by not being able to conduct party discovery on Morrow. However, the claims in the lawsuit are not personal to Morrow, they relate to property defects and the economic costs of repairing the property or the economic loss to the property if not repaired. The causes of action and damages are not particular to any person and the factual basis of the complaint is not dependent on Morrow's experience or perspective.

Mediation Requirement

Defendants argue that the C.A.R. RPA-CA contract required all parties to that agreement to enter into mediation before any party can initiate a lawsuit. There is nothing in the language of Section 22.A of that agreement that supports Defendants' interpretation. In fact, the same paragraph contradicts that interpretation where it states that "mediation fees shall be divided equally among *the parties involved*." Further, it provides that "If . . . *any Party* (i) commences an action without first attempting to resolve the matter through mediation . . . then that party shall not be able to recover attorney fees, even if they would be otherwise available to that party in any such action."

Disclosure

Defendants complain that Plaintiff failed to disclose Morrow's ownership interest in the property and that she had an obligation to disclose Morrow's ownership interest and that without Plaintiff's disclosure they were unable to fully ascertain Morrow's ownership interest in the property. Code of Civil Procedure § 389(c) requires a plaintiff to "state the names, if known to the pleader, of any [necessary or indispensable persons] who are not joined, and the reasons why they are not joined." First, as discussed above, Morrow is not in fact a necessary or indispensable party as defined in the statute, so this provision would not apply. Second, the fact that Morrow was a buyer and co-owner of the property was known to Sellers from the time that the C.A.R. RPA-CA contract was executed to accomplish the transfer of the property. Morrow was a co-signatory on that agreement, executed on September 6, 2020, and the related disclosures. Morrow was named as a joint tenant on the Grant Deed for the property that was recorded on September 21, 2020.

For all of the reasons discussed above, the court finds that Wendy Morrow is not a necessary or indispensable party to the lawsuit.

TENTATIVE RULING #12:

- 1. DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
- 2. DEFENDANTS' MOTION TO JOIN WENDY MORROW AS A NECESSARY/INDISPENSABLE PARTY 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).

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