

1. CSPN LL v. KOCH 23CV0145

Change of Venue

This matter relates to a contract involving the purchase of commercial real estate located in Santa Clara County, California. Plaintiff is a limited liability company incorporated in the State of Delaware. Performance of the contractual obligations related to secured loan on the property, for which Defendant is a guarantor, was due in Great Neck, New York. Complaint, Exhibits A and C.

A Summons and Complaint were filed with this court on January 30, 2023. The matter was continued to allow Plaintiff to file a proof of service, which was filed with the court on April 3, 2023, along with notice of the continued hearing date.

On February 23, 2023, Plaintiff filed an Application for Writ of Attachment.

On May 3, 2023, Defendant filed a Motion for Change of Venue to Nevada County. Proof of service of the Motion was filed on May 18, 2023.

Plaintiff has not filed any opposition to the motion for change of venue.

Code of Civil Procedure § 397(a) provides that “The court may, on motion, change the place of trial . . . [w]hen the court designated in the complaint is not the proper court.” The proper county for the trial of the action is the county where the defendants or some of them reside at the commencement of the action. Code of Civil Procedure § 395(a).

Except as otherwise provided in Section 396a, if an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof, other than the court designated as the proper court for the trial thereof, under this title, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time he or she answers, demurs, or moves to strike, or, at his or her option, without answering, demurring, or moving to strike and within the time otherwise allowed to respond to the complaint, files with the clerk, a notice of motion for an order transferring the action or proceeding to the proper court, together with proof of service, upon the adverse party, of a copy of those papers. *Upon the hearing of the motion the court shall, if it appears that the action or proceeding was not commenced in the proper court, order the action or proceeding transferred to the proper court.*

Code of Civil Procedure § 396b(a) (emphasis added).

Defendant contends that El Dorado County Superior Court is not the proper court for this action because Defendant has been a resident of Nevada County, California since February 2021 and has discontinued the use of an office in El Dorado County since November 2022, prior to the commencement of this action in January 2023. Declaration of Kenneth Ryan Koch, dated May 3,

2023. Defendant's Declaration further declares that Plaintiff's counsel has granted Defendant until May 3, 2023 to respond to the Complaint. Accordingly, the motion is timely.

TENTATIVE RULING # 1: THE COURT GRANTS THE MOTION FOR CHANGE OF VENUE AND ORDERS THIS ACTION TRANSFERRED TO THE NEVADA COUNTY SUPERIOR COURT.

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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2. **GARBERO ET AL v. JEFFREY JEAN ET AL**

PC20200370

Motion for Leave to Intervene

Liberty Mutual Insurance Company (“Intervenor”) has filed a motion for leave to intervene in this case as the insurer pursuant to a workers’ compensation policy covering the work-related injury that is the subject of this action and that was sustained by Dina Garbero in her capacity as an employee of Intervenor’s insured. Intervenor has paid out claims under this policy and seeks to intervene to secure its right to reimbursement.

Labor Code § 3852 gives an employer a right to bring an action against a third person to recover amounts that the employer was obligated to pay to the employee because of the employee’s claims against a third person for injuries sustained by the employee. Under Labor Code § 3853 the employer may join as a plaintiff in an action initiated by the employee for such injuries.

Insurance Code § 11662 provides:

Whenever any employer is insured against liability for compensation with any insurer, such insurer is subrogated to the rights of the employer to recover losses arising out of . . . [p]ayment of any compensation for which the employer is liable. Such insurer may enforce any such subrogated rights in its own name.

Accordingly, Intervenor, as the workers’ compensation insurance carrier that has paid out claims for the employee’s injury, is entitled to enforce its subrogated rights for reimbursement of insurance claims paid out to plaintiff Dina Garbero as a workers’ compensation benefit, and is entitled to join the action as a plaintiff.

Code of Civil Procedure § 387(d)(1)(A) requires the court to permit a nonparty to intervene in the action if a provision of law confers and unconditional right to intervene.

TENTATIVE RULING # 2: THE MOTION TO INTERVENE IS GRANTED AS REQUESTED. INTERVENOR SHALL FILE AND SERVE THE COMPLAINT IN INTERVENTION AND THIS COURT’S ORDER GRANTING LEAVE TO INTERVENE ON THE PARTIES AS REQUIRED BY CODE OF CIVIL PROCEDURE § 387(e)(2).

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Tentative Rulings

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3. SCHIRO v. DOWNER

21CV0265

Default Hearing – Entry of Judgment

On February 10, 2022, Plaintiff filed a Request for Entry of Default Judgment in a Quiet Title and Declaratory Relief action regarding the record title to a mobile home. Proof of service of the Summons and Complaint made on December 12, 2021, by substituted service and by mail, is on file with the court.

The mobile home had been sold pursuant to a trustee's deed of sale on July 19, 2012, and title transferred to Guild Mortgage Company. Guild Mortgage Company transferred title to the Secretary of Housing and Urban Development on May 3, 2013. Plaintiff purchased the mobile home on August 20, 2013, but later learned that title to the home had never been transferred to his name with the California Department of Housing and Community Development. Defendant Downer is the sole surviving joint tenant to the original title to the mobile home prior to the trustee's sale.

Plaintiff seeks a judicial determination that he is the present owner of the mobile home and that Defendant has no right, title or interest therein. Plaintiff also seeks attorneys' fees and costs for the suit.

The Defendant having filed no responsive pleading, default was entered on January 27, 2022. Notice of the request for entry of default was served on Defendant by mail on February 8, 2022.

In cases that are not based on contract or for the recovery of money damages,

if the defendant has been served, other than by publication, and no [responsive pleading] has been filed with the clerk of the court within the time specified in the summons, . . . the clerk, upon written application of the plaintiff, shall enter the default of the defendant. The plaintiff thereafter may apply to the court for the relief demanded in the complaint. The court shall hear the evidence offered by the plaintiff, and shall render judgment in the plaintiff's favor for that relief, not exceeding the amount stated in the complaint, . . . as appears by the evidence to be just. If the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose.

Cal. Civ. Proc. Code § 585(b).

At a hearing on January 6, 2023, a hearing date was set for May 12, 2023, and notice of the hearing date was to be given by Plaintiff's counsel. At the May 12, 2023 hearing, the court noted that no proof of service of notice of the hearing date was on file with the court and the

matter was continued to July 7, 2023, to give Plaintiff an opportunity to serve notice of the hearing on this matter. There is still no proof of service of the hearing date in the court's file.

TENTATIVE RULING # 3: THE MATTER IS CONTINUED TO 8:30 A.M. ON AUGUST 25, 2023, TO ALLOW PLAINTIFF AN OPPORTUNITY TO PROVIDE NOTICE OF THE HEARING DATE TO DEFENDANT.

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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4. BOWMAN v. GOLD COUNTRY HOMEOWNERS

PC20200539

Motion to Quash

TENTATIVE RULING # 4: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, AUGUST 25, 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).

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5. LON USO AS TRUSTEE OF USO FAMILY TRUST

23CV0385

Demurrer

Status Conference

Petitioner has filed a Writ of Mandate requesting that this court set aside a discretionary decision of the El Dorado County Board of Supervisors, which upheld a neighbor's appeal of Petitioner's conditional use permit ("CUP"). The Board of Supervisors' action resulted in the County's denial of permission for Petitioner to maintain certain existing non-conforming structures on his property.

The County's Planning Commission had earlier concluded that the existing nonconforming structures were not inconsistent with the County's General Plan, that they created no environmental or other negative impacts, and based on those findings, had approved the CUP on November 22, 2022. In accordance with El Dorado County Code § 130.52.090, the Board of Supervisors heard the neighbor's appeal of the issuance of the CUP on January 10, 2023. A staff report submitted to the Board of Supervisors was supportive of the CUP and recommended denying the appeal, but the Board of Supervisors upheld the appeal and denied the CUP. Petitioner argues that the Board of Supervisors' decision was an abuse of discretion that was not based on substantial evidence and relies on Code of Civil Procedure § 1094.5 to overturn that decision.

"Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." Code of Civil Procedure § 1094.5(b).

El Dorado County ("County") has filed a demurrer to the Petition, stating that it does not state facts sufficient to support a cause of action, citing Code of Civil Procedure § 430.10(e).

Standard for Demurrer

A demurrer tests the sufficiency of a complaint by raising questions of law. (*Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20, 223 Cal.Rptr. 806.) In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe, supra*, 7 Cal.4th at p. 638, 29 Cal.Rptr.2d 152, 871 P.2d 204; *Interinsurance Exchange v. Narula, supra*, 33 Cal.App.4th at p. 1143, 39 Cal.Rptr.2d 752.) The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. (*Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679, 197 Cal.Rptr. 145.)

In addition to the facts actually pleaded, the court considers facts of which it may or must take judicial notice. (*Cantu v. Resolution Trust Corp., supra*, 4 Cal.App.4th at p. 877, 6 Cal.Rptr.2d 151.)

Rodas v. Spiegel, 87 Cal. App. 4th 513, 517 (2001).

Standard for Writ of Mandate

“A traditional writ of mandate lies “to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station.” Crestwood Behav. Health, Inc. v. Baass, 91 Cal. App. 5th 1, 15 (2023). A writ may compel the performance of a ministerial duty that does not involve discretion. Id. Alternatively, a writ may be issued when a public agency has abused its discretion in carrying out a discretionary function. Id.

‘When a court reviews a public entit[y’s] decision for an abuse of discretion, the court may not substitute its judgment for that of the public entity, and if reasonable minds may disagree as to the wisdom of the public entity’s discretionary determination, that decision must be upheld. [Citation.] Thus, the judicial inquiry ... addresses whether the public entity’s action was arbitrary, capricious or entirely without evidentiary support, and whether it failed to conform to procedures required by law.’

Id. at 16.

In this case the act for which a writ is requested from Petitioner is the denial of a conditional use permit to Petitioner.

The issuance of a conditional use permit is a quasi-judicial administrative action, which the trial court reviews under *administrative* mandamus procedures pursuant to Code of Civil Procedure section 1094.5. . . . Except in a limited class of cases involving fundamental vested rights . . . , the trial court reviews the whole administrative record to determine whether the agency’s findings are supported by substantial evidence and whether the agency committed any errors of law.

Neighbors in Support of Appropriate Land Use v. Cnty. of Tuolumne, 157 Cal. App. 4th 997, 1005 (2007) (Citations omitted, emphasis in original.)

Request for Judicial Notice

The County has filed multiple requests for judicial notice, which include the following items:

1. Petitioner’s First Amended Verified Petition
2. Petitioner’s Memorandum of Points and Authorities in support of Verified Petition for Writ of Mandate
3. February 14, 2023, Minutes of the El Dorado County Board of Supervisors
4. El Dorado County Code §130.52.090 (“Appeals”)
5. El Dorado County Code §130.54.020 (“Effective Date of Permit Approvals”)
6. El Dorado County Code §130.10.030 (“Responsibility for Administration”)

Defendant has filed a Request for the court to take judicial notice of the Complaint filed in this action. 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 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code § 452 lists matters of which the court may take judicial notice. Evidence Code § 452(b) authorizes the court to take judicial notice of “regulations and legislative enactments issued by or under the authority of the of the United States or any public entity in the United States.” Evidence Code § 452(c) allows the court to take judicial notice of “official acts of the legislative, executive and judicial departments of the United States and of any state of the United States.” Evidence Code § 452(d) permits judicial notice of “records of (1) any court in this state or (2) any court of record of the United States.”

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, Defendant’s request for judicial notice is granted.

The County argues that the Petition does not state facts sufficient to constitute a cause of action. Yet the First Amended Petition alleges that Petitioner applied for a CUP, which was granted by the County Planning Commission, and that the Commission issued a report finding that the proposed uses were consistent with residential open space and did not create negative environmental impacts. Petition at ¶6. The Petition alleges that when the CUP was appealed to the Board of Supervisors, the Planning and Building Department submitted a Staff Report that recommended denying the appeal. Petition at ¶8. The Petition alleges that the Board of Supervisors voted to grant the appeal and deny the CUP to Petitioner, and that its decision was not based upon substantial evidence and constituted an abuse of discretion. Petition at ¶9, 12.

At this stage of the proceedings the court is not called upon to evaluate the quantity and quality of the evidence relied upon by the Board of Supervisors and whether that evidence adequately supported any findings made by the Board. Accordingly, it is not fatal to the Petition in the context of a demurrer that it does not catalogue the evidence that was or was not used as the basis for the Board’s decision. In considering whether the Petition itself contains sufficient information to survive demurrer it is not necessary to give deference to the Board’s interpretation of its governing statutes. The only question before the court is whether the Petition states facts sufficient to constitute a cause of action.

As stated above, all material facts pleaded in the complaint and those that arise by reasonable implication are deemed admitted by the demurring party, and the complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. If the Petition states that there was substantial evidence that would have supported the grant of the Petition which was nevertheless denied, it is a reasonable inference that the Board’s findings were not supported by the evidence. Whether the Petitioner can ultimately prove these allegations is a question that remains for a later phase of the litigation.

**TENTATIVE RULING # 5: RESPONDENTS' REQUEST FOR JUDICIAL NOTICE IS GRANTED.
RESPONDENTS' DEMURRER IS OVERRULED.**

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6. NAME CHANGE OF NAGEL 23CV0693

Petition for Name Change

Petitioner filed a Petition for Change of Name on May 8, 2023.

Proof of publication was filed on June 12, 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. NAME CHANGE OF CLAPP 23CV0715

Petition for Name Change

Petitioner filed a Petition for Change of Name on May 10, 2023.

Proof of publication was filed on June 26, 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 # 7: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

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8. PEOPLE OF THE STATE OF CALIFORNIA v. HARRIS

PC20200368

Petition for Forfeiture

On August 3, 2020 the People filed a petition for forfeiture of cash in the total amount of \$285,347.90; 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.

Claimant Harris filed a Judicial Council Form MC-200 claim opposing forfeiture in response to a notice of petition.

Both parties waived further notice of hearing at the petition for forfeiture hearing held on June 2, 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 # 8: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JULY 7, 2023, IN DEPARTMENT NINE.

07-07-23
Dept. 9
Tentative Rulings

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. DASGUPTA v. TUNDAVIA

22CV0175

Motion to Compel

This is a matter that includes a cause of action for defamation. Defendant requests further responses to Defendant's Request for Admissions, Set One, and to Interrogatory No. 17.1, Set Two.

Requests for Admissions

Defendant propounded the following Request for Admissions to Plaintiff:

None of the defamatory statements alleged in the Fourth Cause of Action in the Complaint filed in this action on February 8, 2022, were made by [Defendant] after September 2, 2020.

Plaintiff's response to the Request for Admissions is as follows:

Deny on information and belief. For many months after the initial defamatory statements, Defendants continued to accuse me of criminal activity to both the Detective that was assigned to the investigate the Defendants claims, as well as employers. Further, Defendants posted online social media that I was a criminal. Discovery is continuing as to the full extent and number of times that Defendants, and each of them, made the defamatory statements, and to whom, which made the difficulty to obtain exculpatory evidence that much harder.

Code of Civil Procedure § 2033.220 sets forth the requirement for responding to a Request for Admission:

- (a) Each answer in a response to requests for admission shall be as complete and straightforward as the information reasonably available to the responding party permits.
- (b) Each answer shall:
 - (1) Admit so much of the matter involved in the request as is true, either as expressed in the request itself or as reasonably and clearly qualified by the responding party.
 - (2) Deny so much of the matter involved in the request as is untrue.
 - (3) Specify so much of the matter involved in the request as to the truth of which the responding party lacks sufficient information or knowledge.
- (c) If a responding party gives lack of information or knowledge as a reason for a failure to admit all or part of a request for admission, that party shall state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter.

Defendant's response does deny the admission, but does not specify "so much of the matter involved in the request as to the truth of which the responding party lacks sufficient

information or knowledge,” does not state that “that a reasonable inquiry concerning the matter in the particular request has been made, and does not state that the information known or readily obtainable is insufficient to enable that party to admit the matter” as required by the statute.

The court finds that this response is not code compliant. As such, the court grants the motion to compel with regard to the Requests for Admissions.

Interrogatory 17.1

Defendant’s Form Interrogatory No. 17.1 asks whether Plaintiff’s response to the Request for Admission is an unqualified admission, and if not, requests:

- A statement of the facts which are the basis for the response,
- The names, addresses and telephone numbers of persons with knowledge of those facts, and
- Identification of any documents and other tangible things that support the response, as well as the name address and telephone number of each person who has each such document or thing.

Plaintiff’s answer to the Interrogatory is vague and unresponsive, in that it did not provide any specific date subsequent to September 2, 2020 on which a defamatory statement was made and did not identify any specific statements alleged to have been made after that date. Further, while it alleged that Defendant contacted Plaintiff’s place of work and posted statements on social media accounts, she did not specify the names or contact information of any individuals with knowledge of those events as was requested by the Interrogatory. Instead, she stated that:

Defendant “continued to make false and defamatory statements against Plaintiff . . . accusing her of criminal activity . . . Defendant . . . not only contacted Plaintiff’s place of work, he also filed complaints against her that resulted in Plaintiff being suspended from her employment during the subsequent investigation. Defendant further made multiple contacts with the investigating Detective of the El Dorado County Sherriff’s Department . . . making repeated claims that Plaintiff had hidden and placed drugs in the Subject Real Property and Defendant’s vehicle, . . . Defendant . . . made several calls to the investigating Detective . . . over a period of time beyond the September 2, 2020 date, attempting to continue to get Plaintiff in trouble with the law. Defendant . . . further made several postings on Social Media making allegations against Plaintiff that were untrue and seen by a multitude of people. Discovery is continuing as to the full nature and extent of all Defamatory Statements made by Plaintiff

The court finds that Defendant is entitled to a more specific answer and therefore grants the motion to compel with regard to the Interrogatory.

Sanctions

A Declaration from Defendant's attorney describing efforts to meet and confer to resolve this matter accompanies the Motion, as required by Code of Civil Procedure § 2033.290.(b). Declaration of Dennis M. Wilson, dated May 2, 2023. The Declaration claims \$60 in costs and \$3,438 in attorney's fees for bringing the Motion, which are detailed in Exhibit C to the Motion. The Declaration also anticipates \$2,000 in additional fees for five hours spent preparing a Reply to any opposition to the Motion, preparation for and attending oral argument.

Code of Civil procedure § 2023.020, which requires the court to impose monetary sanctions, including attorney's fees incurred by someone as a result of conduct on a party who fails to confer as required. Further, the court may impose a monetary sanction on any party who engages in the misuse of the discovery process including reasonable attorney's fees incurred by anyone as a result of that conduct. "Misuse of the discovery process" includes "making an evasive response to discovery," "failing to respond to . . . discovery," and "failing to confer . . . with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery if the section governing a particular discovery motion requires the filing of a declaration stating facts showing that an attempt at informal resolution has been made." Code of Civil Procedure §§ 2023.010(d), (f) and (i).

The court finds good cause to impose sanctions. The court declines to grants sanctions in the full amount as requested by Defendant given the narrow scope of this discovery motion which the court finds necessitates less attorney work than claimed in the attorney's declaration. The court imposes \$2,000 in sanctions on Plaintiff, payable by August 4, 2023.

TENTATIVE RULING # 9: THE MOTION TO COMPEL FURTHER ANSWERS TO REQUEST FOR ADMISSIONS AND INTERROGATORY NO. 17.1 IS GRANTED. PLAINTIFF IS ORDERED TO PROVIDE DISCOVERY RESPONSES TO THE REQUEST FOR ADMISSIONS AND INTERROGATORY NO. 17.1 THAT ARE IN COMPLIANCE WITH THE REQUIREMENTS OF THE CODE OF CIVIL PROCEDURE BY JULY 28, 2023. THE COURT IMPOSES \$2,000 IN SANCTIONS ON PLAINTIFF, PAYABLE BY AUGUST 4, 2023.

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.

10. PEOPLE OF THE STATE OF CALIFORNIA v. US CURRENCY

22CV0916

Petition for Forfeiture

On July 13, 2022, the People filed an amended petition for forfeiture of cash. The unverified petition contends: \$178,829.01 in U.S. Currency, as well as jewelry valued at approximately \$31,340.00 was seized by the El Dorado County Sheriff's Office on July 15 and July 19, 2021; such funds are currently in the hands of the El Dorado County District Attorney's Office and the jewelry is booked in evidence at, and is under the control of the El Dorado County Sheriff'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 property is forfeited to the State of California.

Claimants Thomas Henry Harris III and Kim Thuy Harris filed Judicial Council Forms MC-200 claim opposing forfeiture in response to a notice of petition.

"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, JULY 7, 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.