

1. 23CV2017 KRUGER v. HISUN MOTORS CORP.

Petition for Attorney's Fees and Costs

This case involves a claim under lemon law for a defective vehicle. On February 25, 2023, Plaintiff purchased a new 2022 Hisun Sector 550 (hereinafter "Vehicle") from Placerville Polaris & Power Tools (hereinafter "Dealership"). The Vehicle was sold with Hisun Motors Corp., U.S.A.'s ("Hisun") 2-year limited warranty to be free from defects in materials and workmanship. Plaintiff alleges that the vehicle has had major problems from the time of purchase, including, but not limited to, the fuel system and steering issues, yet the steering issues persist and the four-wheel drive is now inoperable.

After several attempts to resolve the matter out of court, to which Defendant failed to respond, Plaintiff filed the underlying complaint. Defendant again did not respond, and default was entered on January 26, 2024 (with an amended default entered on February 27, 2024). Plaintiff submitted a request for a default judgment, which was rejected by the court due to technical deficiencies.

Plaintiff's pending motion is regarding attorney's fees and costs as the prevailing party. However, as the court has yet to enter a judgment in the matter, there has been no determination as to the prevailing party. As such, the pending motion is premature. The court continues the matter to August 30, 2024 at 8:30 a.m. in Department 9. If at that time the motion is ripe for adjudication, the court will address the motion on its merits. If Plaintiff has incurred or will incur any additional fees prior to the next hearing, Plaintiff may file a supplemental declaration to augment the request, provided the declaration is served on Defendant at least 16 court days (plus time for service if applicable) in advance of the next hearing.

TENTATIVE RULING #1:

THE COURT CONTINUES THE MATTER TO AUGUST 30, 2024 AT 8:30 A.M. IN DEPARTMENT 9. IF AT THAT TIME THE MOTION IS RIPE FOR ADJUDICATION, THE COURT WILL ADDRESS THE MOTION ON ITS MERITS. IF PLAINTIFF HAS INCURRED OR WILL INCUR ANY ADDITIONAL FEES PRIOR TO THE NEXT HEARING, PLAINTIFF MAY FILE A SUPPLEMENTAL DECLARATION TO AUGMENT THE REQUEST, PROVIDED THE DECLARATION IS SERVED ON DEFENDANT AT LEAST 16 COURT DAYS (PLUS TIME FOR SERVICE IF APPLICABLE) IN ADVANCE OF THE NEXT 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.

2. 24CV0223 SITEONE LANDSCAPE SUPPLY, LLC v. JVM LANDSCAPE CONSTRUCTION, INC.

Motion to Set Aside

The Complaint alleged breach of contract, account stated, and book account. Default was entered on April 25, 2024 and Default Judgment was entered on April 30, 2024 in favor of Plaintiff against Defendant. The judgment was for \$22,713.28, including \$14,641.02 in damages, \$5,342.80 in prejudgment interest, \$2,000 in attorney fees, and \$729.46 in costs.

Defendant moves the court to set aside the default, vacate the default judgment, permit Defendant to file an Answer, and appear at a trial. The Motion was filed June 7, 2024. Defendant argues that she was mistaken as to some material fact or law relating to Defendant's duty to respond, through inadvertence and/or oversight failed to timely respond, and Defendant was prevented from responding due to an unexpected condition or situation which arose, without any default or negligence on their part, and which ordinary care could not have prevented. Defendant states she was working on filing for bankruptcy and believed that bankruptcy filing would allow for more time in responding to this matter. Defendant filed a general denial on June 7, 2024.

[B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default (*Waite v. Southern Pacific Co.* (1923) 192 Cal. 467, 470-471 [221 P. 204]; *Carli v. Superior Court* (1984) 152 Cal.App.3d 1095, 1099 [199 Cal.Rptr. 583] [in the context of deemed admissions § 473 should be applied liberally "so cases can be tried on the merits"]; *Flores v. Board of Supervisors, supra*, 13 Cal.App.3d at p. 483.) . . . A motion seeking such relief lies within the sound discretion of the trial court, and the trial court's decision will not be overturned absent an abuse of discretion. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854 [48 Cal.Rptr. 620, 409 P.2d 700]; *Martin v. Cook* (1977) 68 Cal.App.3d 799, 807 [137 Cal.Rptr. 434].)

Elston v. City of Turlock, 38 Cal. 3d 227, 233, 695 P.2d 713 (1985).

California Code, Code of Civil Procedure - CCP § 473

(b) The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken. . . . No affidavit or declaration of merits shall be required of the moving party...

(c)(1) Whenever the court grants relief from a default, default judgment, or dismissal based on any of the provisions of this section, the court may do any of the following:

(A) Impose a penalty of no greater than one thousand dollars (\$1,000) upon an offending attorney or party.

(B) Direct that an offending attorney pay an amount no greater than one thousand dollars (\$1,000) to the State Bar Client Security Fund.

(C) Grant other relief as is appropriate.

* * *

The Motion to Set Aside was filed within 6 months of the entry of Judgment, but it is not accompanied by a proof of service.

Plaintiff filed an Opposition arguing that they were not served with the pleadings and that a proof of service was not filed with the pleadings. Plaintiff further claims it is their belief that the motion was filed on behalf of Defendant as an individual and not the corporate entity, JVM Landscape Construction. Plaintiff also claims they were not served with Defendant's Answer, which was filed on June 7, 2024.

In order to allow the matter to be resolved on its merits, the court continues the matter to August 9, 2024 at 8:30 a.m. in Department 9. Defendant is directed to serve the motion, the answer, and any other filed pleadings Defendant wishes the court to consider on Plaintiff by no later than 16 court days in advance of the hearing (plus five calendar days if service is by mail). Service must be confirmed by a filed proof of service. The court confirms that the motion to set aside the default only applies to the individual defendant and not the corporate entity. If Defendant wishes to file another motion to set aside the default as to the corporate entity, that motion may be calendared on the same date (August 9, 2024), provided that it is filed and served on Plaintiff by no later than 16 court days in advance of the hearing (plus five calendar days if service is by mail).

TENTATIVE RULING #2:

THE COURT CONTINUES THE MATTER TO AUGUST 9, 2024 AT 8:30 A.M. IN DEPARTMENT 9. DEFENDANT IS DIRECTED TO SERVE THE MOTION, THE ANSWER, AND ANY OTHER FILED PLEADINGS DEFENDANT WISHES THE COURT TO CONSIDER ON PLAINTIFF BY NO LATER THAN 16 COURT DAYS IN ADVANCE OF THE HEARING (PLUS FIVE CALENDAR DAYS IF SERVICE IS BY MAIL). SERVICE MUST BE CONFIRMED BY A FILED PROOF OF SERVICE. THE COURT CONFIRMS THAT THE MOTION TO SET ASIDE THE DEFAULT ONLY APPLIES TO THE INDIVIDUAL DEFENDANT AND NOT THE CORPORATE ENTITY. IF DEFENDANT WISHES TO FILE ANOTHER MOTION TO SET ASIDE THE DEFAULT AS TO THE CORPORATE ENTITY, THAT MOTION MAY BE CALENDARED ON THE SAME DATE (AUGUST 9, 2024), PROVIDED THAT IT IS FILED AND SERVED ON PLAINTIFF BY NO LATER THAN 16 COURT DAYS IN ADVANCE OF THE HEARING (PLUS FIVE CALENDAR DAYS IF

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SERVICE IS BY MAIL). 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.