

1. LI, ET AL. v. CHEN, SC20200010

(1) Default Judgment Prove-Up

(2) Defendant's Ex Parte Application for Order Continuing Default Judgment Prove-Up Hearing or, Alternatively, Shortening Time for Hearing on Motion for Relief from Default or, Alternatively, Granting Relief from Default

Good cause appearing, defendant's application on shortened time for order continuing the default judgment prove-up hearing is granted. Appearances are required to set a hearing date, no earlier than 16 court days from March 18, for the default judgment prove-up and defendant's motion for relief from default.

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, MARCH 18, 2022, IN DEPARTMENT FOUR.

2. TAHOE KEYS MARINA & YACHT CLUB v. TAHOE KEYS POA, SC20170140

Order of Examination

On March 2, 2022, proof of personal service was filed showing that plaintiff, via its agent for service of process, was served with the order to appear for examination.

TENTATIVE RULING # 2: JUDGMENT DEBTOR'S APPEARANCE IS REQUIRED AT 1:30 P.M., FRIDAY, MARCH 18, 2022, IN DEPARTMENT FOUR.

3. COSSOUL v. HEAVENLY VALLEY LP, ET AL., SC20180207**Resort Defendants' Motion to Bifurcate Liability and Damages**

This matter was continued from January 28, 2022, and February 22, 2022.

Defendants Heavenly Valley, LP, dba Kirkwood Mountain Resort, VR Heavenly I, Inc., and Vail Resorts, Inc. (“Resort Defendants”), move to bifurcate the liability and damages phases of trial. The motion is joined by the other defendants. Plaintiff is opposed. On March 1, 2022, plaintiff filed a supplemental opposition to the motion.

Code of Civil Procedure § 598 provides that “[t]he court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, ... make an order ... that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case ...” (*Ibid.*) Further, Code of Civil Procedure § 1048 provides that “[t]he court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action, including a cause of action asserted in a cross-complaint, or of any separate issue or of any number of causes of action or issues” (*Id.*, subd. (b).)

In support of bifurcation, Resort Defendants argue that the damages issues will predominate the liability evidence. With regard to liability issues, Resort Defendants state there were 5 people in plaintiff’s skiing group when the incident occurred (although plaintiff does not recall the incident). There are no other known eyewitnesses. There were 7 people with Kirkwood Mountain Resort who responded to the incident, including ski patrollers and security personnel. Thus, there are 12 potential percipient witnesses. In addition, Resort Defendants state that the parties exchanged expert witness disclosures on January 18, 2022. (Def. Reply, Declaration of Jill Haley Penwarden, ¶ 2 & Ex. A.) The parties, collectively, identified 9 liability

experts. Plaintiff identified 5 retained liability experts, and the Resort Defendants identified 4 liability experts. (*Id.*, ¶¶ 4, 5 & Ex. A.)

With regard to damages issues, Resort Defendants state that the parties, collectively, have identified 39 damages experts. Plaintiff identified 5 damages experts, and he identified 28 medical providers as “non-retained” experts on damages issues. (*Id.*, ¶¶ 5, 6 & Ex. A.) Resort Defendants identified 6 damages experts. (*Id.*, ¶ 7.) Plaintiff has been billed over \$6 million in medical expenses and, through 2021, his insurer has paid over \$2 million of his expenses. (*Id.*, ¶ 1; Def. Mot., Penwarden Decl., ¶ 5.) Plaintiff produced over 18,000 pages of medical records to Resort Defendants. (Def. Mot., Penwarden Decl., ¶ 4.) Further, Resort Defendants expect that plaintiff will claim he will incur future medical expenses for treatment and assistance with significant ongoing physical and neurological deficits.

In his supplemental opposition, plaintiff notes that Resort Defendants’ motion (filed Jan. 2, 2022) and plaintiff’s initial opposition focused only on the case against Resort Defendants, and did not address the witnesses or evidence that would be introduced on the liability of the Developer Defendants and The Palisades at Kirkwood HOA. On February 10, 2022, the court heard oral argument on the Developer Defendants’ and the HOA’s motions for summary judgment. The court tentatively denied the motions, although the matters are currently under submission.

Plaintiff contends there is a substantial amount of evidence and witness testimony that relates to those defendants, but does not overlap the evidence and witness testimony against Resort Defendants. Further, plaintiff states that since the filing date of the instant motion, the parties have deposed additional percipient witnesses and defendants have identified additional liability experts who were not included in the initial disclosures.

Having reviewed and considered the parties’ papers and given the change in circumstances in this action, the court no longer finds that the damages issues would

heavily predominate over issues of liability if this case goes to trial. Rather, it appears that liability and damages would be on par with one another in terms of complexity and trial time. As such, bifurcation would not promote the convenience of witnesses, the ends of justice, or judicial economy.

Resort Defendants' motion is denied.

TENTATIVE RULING # 3: RESORT DEFENDANTS' MOTION TO BIFURCATE LIABILITY AND DAMAGES PHASES OF TRIAL IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.