Tentative Rulings for April 17, 2025
Department 501

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(03)

Tentative Ruling

Re: ***CMG Construction Management Group, Inc. v. City of Fresno***
Case No. 22CECG00271 (lead case, consolidated with Fidelity National Title Co. v. County of Fresno, Case No. 22CECG01512)

Hearing Date: April 17, 2025 (Dept. 501)

Motions: by Plaintiff/Cross-Defendants CMG Construction and Mark Stevenson for Summary Judgment or, in the Alternative, Summary Adjudication

by Marc Annotti for Summary Judgment

Tentative Ruling:

To strike Marc Annotti's motion for summary judgment, as he is not a party to the action and has no standing to bring a summary judgment motion.

To deny CMG and Stevenson's motion for summary judgment, as well as the alternative motion for summary adjudication.

Explanation:

Annotti's Motion for Summary Judgment: First of all, Mr. Annotti is not a party to the action with standing to bring a motion in this case. Code of Civil Procedure section 437c states that summary judgment motions may be filed by "a party", i.e. a plaintiff, defendant, cross-complainant or cross-defendant in an action. Here, Mr. Annotti is not a plaintiff, cross-complainant, defendant or cross-defendant in either of the consolidated actions. His company, Generations Real Estate Management, LLC ("GREM") was named as a defendant in the interpleader action filed by Fidelity National Title Company after GREM, CMG Construction Management Group, and the County of Fresno made competing claims on the $500,000 deposit held by Fidelity as the escrow holder for the purchase agreement. (See Complaint filed in *Fidelity National Title Company v. County of Fresno*, case no. 22CECG01512. The court will take judicial notice of the pleadings in the *Fidelity* case under Evidence Code section 452, subdivision (d).) However, GREM's CEO, Mr. Annotti, was not named as a defendant in that action. (*Ibid*.) GREM filed an Answer in the interpleader action, but Mr. Annotti was not named in the Answer either. (See Answer filed in case no. 22CECG01512, attached to the County's Request for Judicial Notice, Exh. A.) Nor was Mr. Annotti named as a plaintiff, defendant or cross-defendant in the original action between CMG, the County and the City. Therefore, he has not shown that he has standing to bring a motion for summary judgment in this case, as he is not a party to either action.

Also, to the extent that Mr. Annotti brings the motion on behalf of GREM, he is not an attorney licensed to practice law in California, and thus he is not allowed to file motions on behalf of, or otherwise represent, GREM. GREM is a limited liability company,

as it admits in its Answer to the interpleader Complaint. As a result, it must appear in court through an attorney licensed to practice law in California. (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1146.)

"Several rationales lie behind the rule. First, a corporation, as an artificial entity created by law, can only act in its affairs through its natural person agents and representatives. If the corporate agent who would likely appear on behalf of the corporation in court proceedings, e.g., an officer or director, is not an attorney, that person would be engaged in the unlicensed practice of law. [¶] Second, the rule furthers the efficient administration of justice by assuring that qualified professionals, who, as officers of the court are subject to its control and to professional rules of conduct, present the corporation's case and aid the court in resolution of the issues. Third, the rule helps maintain the distinction between the corporation and its shareholders, directors, and officers." (*Ibid*, citations omitted.)

Where a non-attorney improperly files a pleading on behalf of a corporate entity, the court has discretion to strike it. (*Ibid*.) Under Code of Civil Procedure section 436, "[t]he court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: … Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436, subd. (b).)

In this case, while Mr. Annotti claims that he is bringing the summary judgment motion on his own behalf, as discussed above he has no standing to bring the motion because he is not a party to the action. Nor can he bring the motion on behalf of GREM, which is a defendant in the interpleader action, because he is not a licensed attorney. Therefore, the court intends to strike the motion for summary judgment as improperly filed.

In addition, even if Mr. Annotti does have standing to bring the motion here, the motion was still improperly filed because he did not serve the motion at least 81 days before the hearing date, or 86 days if the motion was served by mail to an address in California. (Code Civ. Proc., § 437c, subd. (b(2).) Mr. Annotti filed his motion on February 10, 2025, with additional briefs and documents filed on February 24 and March 17, 2025. However, he has not filed a valid proof of service with his motion, as his proofs of service are not signed under penalty of perjury and they do not list all of the documents that were filed with the motion, nor do they state the manner of service. (See Proofs of Service attached to decl. of Annotti filed on February 24, 2025, and Points and Authorities brief filed on March 17, 2025.) However, even if the proofs of service had been signed and were otherwise valid, they show that the motion was served on February 21, 2025, which is less than 81 days before the April 17, 2025, hearing date. Therefore, the motion for summary judgment was not timely served, and it is subject to being stricken for that reason as well.

Furthermore, Mr. Annotti has not signed his declaration in support of the motion, so it is not properly sworn under penalty of perjury. Mr. Annotti has not submitted any other evidence to support his motion, other than copies of various documents and emails that are merely attached to the notice of motion and separate statement without a proper foundation or authentication. As a result, the motion is not supported by any admissible evidence, which is an additional reason to strike it as improperly filed.

Consequently, the court intends to strike Mr. Annotti's motion for summary judgment in its entirety without ruling on its merits.

CMG's Motion for Summary Judgment or Adjudication: First, while CMG has moved for summary judgment as to the entire Second Amended Complaint, it is not made any attempt to show how it is entitled to summary judgment of all of its causes of action. Nor has it shown that it is entitled to summary judgment as to the County's entire First Amended Cross-Complaint. Indeed, the notice of motion states that CMG is only moving to adjudicate its own breach of contract claim against the County, as well as the County's breach of contract claim against CMG and the County's alter ego allegations against Mr. Stevenson. Thus, CMG admits that it is only seeking summary adjudication of certain causes of action and issues, not summary judgment as to the entire Second Amended Complaint or the First Amended Cross-Complaint. Therefore, the court intends to deny the motion for summary judgment, as CMG has completely failed to meet its burden of showing that it is entitled to judgment as to its entire Second Amended Complaint or the County's First Amended Cross-Complaint.

Next, CMG has also failed to meet its burden of showing that it is entitled to summary adjudication of its breach of contract claim or the County's breach of contract claim in the Cross-Complaint. First, CMG's motion for summary adjudication improperly attempts to adjudicate parts of the causes of action rather than an entire cause of action. Under Code of Civil Procedure section 437c, subdivision (f)(1), "[a] party may move for summary adjudication *as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty*… A motion for summary adjudication shall be granted *only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.*" (Code Civ. Proc., § 437c, subd. (f)(1), italics added.)

Thus, normally a party cannot adjudicate only a part of a cause of action. Here, CMG and Stevenson appear to be attempting to adjudicate only parts of the breach of contract claim in the Second Amended Complaint, as they seek to adjudicate only the issue of whether the liquidated damages clause in the contract is valid without adjudicating any other parts of the contract claim. They also seek to adjudicate the issue of whether the County can prove up the alter ego allegations against Stevenson, which is not the type of issue that may be summarily adjudicated. (Code Civ. Proc., § 437c, subd. (f)(1) [stating that issues of duty may be adjudicated.]) CMG also seeks to adjudicate only parts of the County's breach of contract cross-claim rather than the entire cause of action. As a result, the motion seeks to adjudicate issues that are not subject to summary adjudication, and it must be denied.

Furthermore, even if the court were to construe the motion as seeking adjudication of CMG's entire breach of contract cause of action and the County's entire cross-claim, the motion still fails because CMG has not submitted admissible evidence to support many of its allegedly undisputed material facts. Under Code of Civil Procedure section 437c, subdivision (b)(1), "]t]he motion [for summary judgment] shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken." (Code Civ. Proc., § 437c, subd. (b)(1).)

"The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence…" (Code Civ. Proc., § 437c, subd. (c).) "Supporting and opposing affidavits or declarations shall be made by a person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavits or declarations." (Code Civ. Proc., § 437c, subd. (d).)

Thus, in order to meet its burden on summary judgment, the moving party must submit admissible evidence establishing that it is entitled to judgment as a matter of law. "Neither party can rely on *its own* pleadings (even if verified) as evidence to support or oppose a motion for summary judgment or summary adjudication." (Weil & Brown, Cal. Prac. Guide Civ. Pro. Before Trial, Ch. 10-B, Role of Pleadings in Summary Judgment Procedure, ¶ 10:51.30, italics in original, citing *College Hosp., Inc. v. Sup.Ct. (Crowell)* (1994) 8 Cal.4th 704, 720, fn. 7; *Roman v. BRE Properties, Inc.* (2015) 237 Cal.App.4th 1040, 1054; *Ducksworth v. Tri-Modal Distribution Services* (2020) 47 Cal.App.5th 532, 539-540 (reversed on other grounds by *Pollock v. Tri-Modal Distribution Services, Inc.* (2021) 11 Cal.5th 918).)

Here, CMG has submitted only one declaration in support of its motion from Mark Stevenson, who testifies to some of the facts underlying the purchase agreement and its amendments, including the inclusion of the liquidated damages clause. However, many of the facts in CMG's separate statement are only supported by citations to its own First[1] and Second Amended Complaints. For example, CMG's undisputed fact numbers 1, 1A, 1B, 2, 3, 4, 5, 7, 8, 9, 9A, 27B, 32 and 33 are only supported by citations to the Second Amended Complaint and its exhibits. Such allegations in an unverified pleading are not evidence and do not support the assertedly undisputed facts. Therefore, since CMG has not supported many of its admittedly material facts with admissible evidence, and instead improperly relies on the allegations of its own First and Second Amended Complaints, CMG has failed to establish those facts. Where a moving party has not established all of its purportedly undisputed facts, the court may deny the motion for summary judgment. (Weil & Brown, Cal. Prac. Guide: Civil Procedure Before Trial, *supra*, Ch. 10-C, ¶ 10:95.1, citing *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252; *Insalaco v. Hope Lutheran Church of West Contra Costa County* (2020) 49 Cal.App.5th 506, 521.) As a result, since CMG and Stevenson have not supported many of their material facts with admissible evidence, the court intends to find that they have not met their burden of showing that they are entitled to summary adjudication, and it will deny their motion.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order

[1] The citations to the First Amended Complaint are also improper, since that pleading has been superseded by the Second Amended Complaint.

adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 4/14/2025.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Oracle Anesthesia, Inc. v. Central Valley Advanced Nursing Practice, Inc.***
Case No. 22CECG02097

Hearing Date: April 17, 2025 (Dept. 501)

Motion: by Defendants Bassi Nursing Anesthesia, Inc., Anesthesia USA, Inc., and Simranjit "Sam" Bassi for Judgment on the Pleadings

Tentative Ruling:

To deny the motion as to the second cause of action for breach of contract. To grant the motion as to the seventh cause of action for breach of fiduciary duty against defendant Sam Bassi. To grant leave to amend. Plaintiffs shall file and serve their first amended complaint within 10 days of the date of service of this order.

Explanation:

Motion for Judgment on the Pleadings as to the Second Cause of Action: Defendants Sam Bassi, Bassi Nursing Anesthesia, Inc., and Anesthesia USA, Inc., contend that plaintiffs have failed to state a valid claim for breach of the partnership agreement because the agreement expressly permits the Executive Committee for Central Valley Anesthesia Partners (CVAP) to remove a partner from CVPA with or without cause. While plaintiffs have alleged that the Executive Committee did not have cause to remove Oracle Anesthesia, Inc., from the partnership, defendants contend that they did not need to show good cause under the express terms of the partnership agreement. Therefore, they conclude that plaintiffs have not and cannot state a claim for breach of the agreement.

"A cause of action for damages for breach of contract is comprised of the following elements: (1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff." (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1388, citations omitted.)

Here, plaintiffs allege that the Executive Committee was the sole entity with the authority to remove a partner. (Complaint, ¶ 49.) The Executive Committee itself voted to retain Oracle; it was the general partnership that later voted to "uphold the agreement" and remove Oracle. (*Id*. at ¶ 50.) Thus, the partners breached the partnership agreement by voting to remove Oracle, when it was the Executive Committee rather than the general partnership that had the sole power to remove a partner. (*Ibid*.)

Plaintiffs also allege that the partners violated the partnership agreement without cause in violation of the partnership agreement, because none of the events that

constitute "cause for removal" under the agreement had occurred. (*Id*. at ¶ 51.) "Neither Oracle nor Juve suffered revocation or suspension of a license to practice nursing, or cancellation, non-renewal, or reduction of malpractice insurance. Juve did not suffer loss or limitation of staff privileges at any facility. Oracle did not attempt to transfer its interest in CVAP, nor did Juve try to transfer his interest in Oracle. Neither Oracle nor Juve breached duties owed to CVAP, or repeatedly failed to perform their professional duties. Neither Oracle nor Juve engaged in any criminal act, fraud, or embezzlement, and neither has been convicted of any crime of moral turpitude. Oracle nor Juve engaged in CRNA services for compensation outside of the Partnership Agreement at any of the Designated Facilities specified therein. Lastly, neither Oracle nor Juve failed to comply with medical staff bylaws or anesthesia department rules and regulations at any facility." (*Ibid*.)

Thus, plaintiffs have sufficiently alleged that defendants breached the partnership agreement when they voted outside their roles in the Executive Committee to remove Oracle from the partnership. While they had the authority to vote to remove Oracle with or without cause as part of the Executive Committee, plaintiffs allege that they did not vote as part of the Executive Committee when they voted to remove Oracle, and instead voted as part of the general partnership. Also, while they could have removed Oracle without cause, plaintiffs allege that defendants attempted to justify their decision by claiming that Juve and Oracle had engaged in fraudulent double-billing of CVAP, or possibly because Juve had been working for another entity as well as CVAP in violation of the partnership agreement. (Complaint, ¶¶ 32-33.) Bassi allegedly told CMAC, Community Health, other members of the medical community, and the public that Juve had defrauded or embezzled CVAP and that was the reason why he was removed. (*Id*. at ¶¶ 33-35.)

In other words, while defendants were part of the Executive Committee, which had the power to remove Oracle without cause, they chose to remove him for cause instead. Once they made the decision to remove Oracle for cause, plaintiffs contend that defendants were obligated to show that cause existed for Oracle's removal under the terms of the partnership agreement. Since they made no effort to show cause for the removal, plaintiffs contend that defendants breached the agreement by removing Oracle. They also breached the agreement by acting outside of the Executive Committee when they voted to remove Oracle. As a result, plaintiffs have sufficiently alleged their claim for breach of contract, and the court intends to deny the motion for judgment on the pleadings as to the second cause of action.

Motion as to Seventh Cause of Action: On the other hand, plaintiffs have failed to allege a valid claim for breach of fiduciary duty against defendant Sam Bassi. "'The elements of a claim for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) its breach, and (3) damage proximately caused by that breach.'" (*O'Neal v. Stanislaus County Employees' Retirement Assn.* (2017) 8 Cal.App.5th 1184, 1215, quoting *Mendoza v. Continental Sales Co.* (2006) 140 Cal.App.4th 1395, 1405.)

Here, plaintiffs have not alleged facts showing that Bassi owed them a fiduciary duty. While partners in a partnership owe each other fiduciary duties (Corp. Code, § 16405), plaintiffs do not allege that Bassi, as an individual, was a partner in CVAP. Instead, they allege that Bassi Nursing was a partner in CVAP. (Complaint, ¶ 15.) Bassi is the sole

officer, sold director, and sole shareholder of Bassi Nursing, but he is not alleged to be a partner in CVAP himself. (*Ibid*.) Nor is there any other allegation that tends to show that Bassi personally owed any fiduciary duty to plaintiffs. Instead, the Complaint only shows that Bassi Nursing owed a fiduciary duty to plaintiff Oracle, as they were both partners in CVAP. Consequently, since Bassi is not a partner in CVAP, and there are no other facts indicating that he owed a fiduciary duty to plaintiffs, he cannot be liable for breaching a fiduciary duty owed to them.

Nevertheless, plaintiffs argue that they have stated a valid claim against Bassi individually because they have alleged facts showing that he was an alter ego of Bassi Nursing. They point out that Bassi is alleged to be the sole shareholder, officer and director of Bassi Nursing, and that he directed its actions and made all decisions for the company, so he owed the same fiduciary duty to plaintiff that Bassi Nursing owed and he is equally liable for its breaches of duty.

Yet simply alleging that a person is the sole shareholder, officer and director of a corporation is not enough to show that the person is the corporation's alter ego. "'The allegation that a corporation is the alter ego of the individual stockholders is insufficient to justify the court in disregarding the corporate entity in the absence of allegations of facts from which it appears that justice cannot otherwise be accomplished' [¶] In order to prevail in a cause of action against individual defendants based upon disregard of the corporate form, the plaintiff must plead and prove such a unity of interest and ownership that the separate personalities of the corporation and the individuals do not exist, and that an inequity will result if the corporate entity is treated as the sole actor. Respondent's pleadings and the evidence he presented at the default hearing fell far short of meeting these requirements." (*Vasey v. California Dance Co.* (1977) 70 Cal.App.3d 742, 749, citations and footnote omitted.)

"The court will not disregard the corporate entity unless it is necessary in order to prevent fraud or injustice. Mere ownership of all the stock and control and management of a corporation by one or two individuals is not of itself sufficient to cause the courts to disregard the corporate entity.'" (*Meadows v. Emett & Chandler* (1950) 99 Cal.App.2d 496, 498–499, citations omitted, italics in original.)

In the present case, plaintiffs only allege that Bassi was the sole officer, directo, and shareholder of Bassi Nursing, and that he directed the actions of Bassi Nursing. (Complaint, ¶ 15.) Since they have not alleged any of the other facts that might tend to show that Bassi is the alter ego of Bassi Nursing, the court finds that plaintiffs have not stated sufficient facts to state a claim against Bassi individually for breach of fiduciary duty. As a result, the court intends to grant the motion for judgment on the pleadings with regard to the seventh cause of action against Bassi. The court will grant leave to amend, since it is possible that plaintiffs might be able to allege more facts to support their claim if given leave to do so.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order

adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 4/14/2025.
(Judge's initials) (Date)