Tentative Rulings for July 17, 2024
Department 503

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)

**** THIS COURT IS PRESENTLY IN A JURY TRIAL. IF YOU ARE REQUESTING ARGUMENT ON ONE OF THE BELOW TENTATIVES, YOU MUST REQUEST IT TIMELY PURSUANT TO THE CRC AND LOCAL RULES AS IF THE HEARING WAS TO BE HELD ON THE ABOVE DATE. ALL HEARINGS TIMELY REQUESTED WILL BE HELD THURSDAY JULY 18, 2024 AT 3:30 P.M.**

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 503

Begin at the next page

(03)

Tentative Ruling

Re: ***Jimenez v. Karimpour***
Case No. 22CECG03412

Hearing Date: July 17, 2024 (Dept. 503)

Motion: Defendant/Petitioner Christina Jimenez's Motion to Realign Herself as a Plaintiff in the Action

Tentative Ruling:

To grant nominal defendant Christina Jimenez's motion to realign herself as a plaintiff in the action.

Explanation:

Nominal defendant Christina Jimenez is entitled to the relief she seeks, since she is properly a plaintiff in the action due to being a surviving child of the decedent; she was only named as a defendant because she was not willing to join the case when it was first filed. "If the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint…" (Code Civ. Proc., § 382.) "[H]eirs who file a wrongful death action 'have a mandatory duty to join all known omitted heirs in the "single action" for wrongful death. If an heir refuses to participate in the suit as a plaintiff, he or she may be named as a [nominal] defendant so that all heirs are before the court in the same action. An heir named as a defendant in a wrongful [death] action is, in reality, a plaintiff.'" (*Hall v. Superior Court* (2003) 108 Cal.App.4th 706, 715, footnotes and citations omitted.)

Here, Christina Jimenez apparently did not originally want to be named as a plaintiff in the action even though she would have been a proper plaintiff in the action as a surviving child of the decedent. Thus, she was named as a nominal defendant instead. Now, she wishes to be designated as a plaintiff to reflect her actual status in the action. Such relief is proper, as Ms. Jimenez is properly a plaintiff. Therefore, the court intends to grant the motion to re-designate defendant as a plaintiff in the action.

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: jyh (Judge's initials) on 7/15/24 (Date).

(37)

Tentative Ruling

Re: ***Violet Peloyan v. Ryan Jones***
Superior Court Case No. 24CECG00831

Hearing Date: July 17, 2024 (Dept. 503)

Motion: By Defendant Ryan Jones to Set Aside Entry of Default and to Quash Service of Summons

Tentative Ruling:

To grant the motion to set aside Entry of Default as to defendant Ryan Jones. (Code Civ. Proc., § 473, subd. (b).) Defendant Ryan Jones is to file and serve his answer on plaintiff within 10 days of the clerk's service of the minute order.

To find the motion to quash moot based on the Proof of Service of the Summons and Complaint filed June 10, 2024.

To deem the Proof of Service filed April 26, 2024 as to defendant RJ Freight LLC defective. To find the Entry of Default as to defendant RJ Freight LLC entered on April 26, 2024 void.

Explanation:

Set Aside

The trial court has broad discretion to vacate the judgment and/or the clerk's entry of default that preceded it. However, that discretion can be exercised only if the moving party establishes a proper ground for relief, by the proper procedure, and within the statutory time limits. (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495.)

Here, defendant Ryan Jones has moved to set aside default entered against him on February 28, 2024, pursuant to the discretionary relief afforded under Code of Civil Procedure section 473, subdivision (b). First, default was not entered against defendant Jones on February 28, 2024, but on April 26, 2024. The complaint was filed on February 28, 2024. The court is construing this as a motion to set aside the entry of default as to defendant Ryan Jones entered April 26, 2024.

A motion for relief from default based on discretionary relief must be filed within six months after the entry of default. (Code Civ. Proc., § 473, subd. (b).) Here, default was entered on April 26, 2024 and this motion was filed one week later on May 3, 2024. As such, it is timely.

The court is empowered to relieve a party "upon any terms as may be just … 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 made within a reasonable time, in no case exceeding six months, after the judgment,

dismissal, order, or proceeding was taken." (Code Civ. Proc., § 473, subd. (b).) Policy strongly favors trial and disposition on the merits and doubts in the application of Code of Civil Procedure section 473 must be resolved in favor of the party seeking relief. (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233 [superseded by statute on other grounds]; *Fasuyi v. Permatex, Inc*. (2008) 167 Cal.App.4th 681, 696.) Where the party seeking relief seeks such relief promptly and no prejudice will result to the opposing party, "very slight evidence will be required to justify a court in setting aside the default." (*Elston v. City of Turlock, supra*, 38 Cal.3d 227, 233.)

In order to demonstrate mistake, inadvertence, surprise, or excusable neglect, the moving party must include declarations or other evidence demonstrating such. Here, defendant Jones has included his own declaration stating that his 84-year-old grandmother was served with the papers and did not know what she was signing and that he did not receive them until after he returned from a truck driving job. (Jones Decl.) In response, plaintiff has filed her own declaration stating that she reviewed the documents with defendant's grandmother, that the grandmother agreed to serve defendant, and that service happened on March 2, 2024 by defendant going to the grandmother's to receive the documents. (Peloyan Decl.) Neither party has provided a declaration from Norma Kemmer, defendant's grandmother. Plaintiff does not declare that she was personally present when defendant was served by his grandmother and it is unclear when the grandmother provided the signed proof of service to plaintiff for filing purposes. Defendant does not specify when he returned from the truck driving trip and became aware of the summons and complaint. Here, no prejudice will result to plaintiff by granting defendant relief. As such, very slight evidence is required to justify the court in setting aside the default. The court finds that it has sufficient evidence to set aside default here.

Code of Civil Procedure section 473, subdivision (b) specifies that the application for relief shall be accompanied by a copy of the proposed answer. The term "accompanied" is interpreted liberally and relief may be granted where an answer is filed separately from the notice of motion, but before the hearing. (*Austin v. Los Angeles Unified School Dist*. (2016) 244, Cal.App.4th 918, 933.) Such filing constitutes substantial compliance with the requirements of Code of Civil Procedure section 473. (*Ibid*.) The purpose behind the requirement of including the proposed pleading is to show good faith and readiness to file the proposed pleading. (*Ibid*.) Here, defendant filed an answer on May 12, 2024, which was deemed void on May 30, 2024. As such, he has substantially complied with the requirement to include the proposed pleading.

The court will set aside the entry of default as to defendant Jones entered April 26, 2024.

Quash

Defendant Jones has moved to quash the service of the summons and complaint as to him filed on April 16, 2024. Plaintiff has re-served the summons and complaint on defendant Jones with a new proof of service filed June 10, 2024. As such, the motion to quash service based on the April 16, 2024 proof of service is moot.

Defective Service and Entry of Default as to Defendant RJ Freight LLC

A Proof of Service was filed on April 26, 2024 indicating that defendant RJ Freight LLC was served with the Summons and Complaint on March 7, 2024 by personally serving the Agent for Service of Process, Koy Saechoa at 2710 Gateway Oaks Drive in Sacramento, California. However, the California Secretary of State business search indicates that the proper agent for service of RJ Freight LLC is 1505 Corporation, listing the following as agent authorized employees Joyce Yi, Sandra Menjivar, Jesse Camarena, and Arielle Devay at 101 North Brand Boulevard in Glendale, California. It does not appear the service is appropriate on Koy Saechoa. As such, the Proof of Service filed April 26, 2024 is deemed defective.

Where service is defective as to RJ Freight LLC, the Entry of Default on April 26, 2024 as to RJ Freight LLC is void. (Code Civ. Proc., § 473, subd. (d).) Where there is not a valid service of summons, any judgment violates due process of law. (*Peralta v. Heights Med. Ctr., Inc*. (1988) 485 U.S. 80, 84-85.; *Calvert v. Al Binali* (2018) 29 Cal.App.5th 954, 960-961.) As it has been determined that the service of summons is invalid, the court is setting aside the Entry of Default.

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: jyh (Judge's initials) on 7/15/24 (Date).

(34)

Tentative Ruling

Re: ***Brizuela v. Williams Scotsman, Inc., et al.***
Superior Court Case No. 22CECG00821

Hearing Date: July 17, 2024 (Dept. 503)

Motion: by Defendant Kaiser Foundation Health Plan, Inc for Order Determining Good Faith Settlement

Tentative Ruling:

To grant Defendant's motion for order determining good faith settlement. To find that the settlement between Plaintiffs and Defendant Kaiser Foundation Health Plan, Inc is in good faith.

Explanation:

Under Code of Civil Procedure section 877.6, "Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005." (Code Civ. Proc. § 877.6(a)(1), emphasis added.)

"The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counter affidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing." (Code Civ. Proc. § 877.6(b).)

"A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault." (Code Civ. Proc. § 877.6(c).)

"The party asserting the lack of good faith shall have the burden of proof on that issue." (Code Civ. Proc. § 877.6(d).)

"[T]he intent and policies underlying section 877.6 require that a number of factors be taken into account including a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants. [Citation.] Finally, practical considerations obviously require that the evaluation be made on the basis of information available at

the time of settlement. '[A] defendant's settlement figure must not be grossly disproportionate to what a reasonable person, at the time of the settlement, would estimate the settling defendant's liability to be.' [Citation.] The party asserting the lack of good faith, who has the burden of proof on that issue (§ 877.6, subd. (d)), should be permitted to demonstrate, if he can, that the settlement is so far 'out of the ballpark' in relation to these factors as to be inconsistent with the equitable objectives of the statute. Such a demonstration would establish that the proposed settlement was not a 'settlement made in good faith' within the terms of section 877.6." (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.)

"Another key factor is the settling tortfeasor's potential liability for indemnity to joint tortfeasors. The trial court calculates 'the culpability of the [settling] tortfeasor vis-à-vis other parties alleged to be responsible for the same injury. Potential liability for indemnity to a nonsettling defendant is an important consideration for the trial court in determining whether to approve a settlement by an alleged tortfeasor.'" (*Long Beach Memorial Medical Center v. Superior Court* (2009) 172 Cal.App.4th 865, 873, internal citations and italics omitted.)

"Section 877.6 and *Tech–Bilt* require an evidentiary showing, through expert declarations or other means, that the proposed settlement is within the reasonable range permitted by the criterion of good faith." (*Mattco Forge, Inc. v. Arthur Young & Co.* (1995) 38 Cal.App.4th 1337, 1351, internal citations omitted.) "If 'there is no substantial evidence to support a critical assumption as to the nature and extent of a settling defendant's liability, then a determination of good faith based upon such assumption is an abuse of discretion.'" (*Id.* at p. 1350, internal citation and italics omitted.)

In the case at bench defendant Kaiser Foundation Health Plan, Inc. ("KFPH") is settling with plaintiffs Eduardo and Irene Brizuela for $175,000 in exchange for a dismissal with prejudice from their complaint and release of all claims against Kaiser-affiliated entities. Plaintiff's worker's compensation claim is excluded from the release.

KFPH argues it owed a limited duty, if any, to plaintiffs under the theories asserted by plaintiffs in the complaint and as articulated in discovery responses. Plaintiffs assert KFHP is liable due to having "negligently supplied, designed, manufactured, assembled, provided, and constructed" the Spruce Building such that plaintiff fell through a concealed hole in the roof. (Do Decl., Exh. 1, Complaint, ¶ 8.) When asked to articulate the duty plaintiffs believe are owed by KFHP those duties are based in KFHP's ownership and control of the premises where the incident occurred. KFHP has demonstrated it did not own the premises at the time of the incident, rather ownership had been transferred to plaintiff Eduardo Brizuela's employer, Kaiser Foundation Hospital. Defendant asserts the scope of its involvement was limited to the hiring of subcontractors for the construction project and final approval before transfer to Kaiser Foundation Hospital.

Defendant estimates the total value of plaintiffs' claims to be $1,100,000.00. This approximation is based on the August 2, 2023 lien in the amount of $74,064.85 in worker's compensation benefits paid, written discovery, subpoenaed medical records and comparing plaintiffs' claims to jury verdicts in cases with similar claims. Based on its limited role and "buying peace" with this settlement, KFHP proposes the hypothetical that the eight defendants share equal liability to plaintiffs and its proportionate share of liability

would be $137,500.00. Allocation of the settlement is believed to be unnecessary as only nominal damages are estimated for Mrs. Brizuela's loss of consortium claim. Defendant's settlement higher than its estimated proportional liability would not bar finding the settlement was made in good faith. There are no financial concerns or insurance limitations effecting the amount of the settlement.

There is no evidence or assertion of collusion or fraud.

There is no discussion of whether there are indemnity claims between the joint tortfeasors.

The motion is opposed by defendants Williams Scottsman, Inc., Western Pacific Mobile Services, Inc., Showtime Concrete, Inc., Whitley Evergreen, Inc., and Allstate Roofing Specialists, Inc. These non-settling defendants oppose the settlement on the basis that KFHP has downplayed its role in the construction of the building and shares a greater proportion of liability than it has allocated itself. They point out that no other defendants have been deposed. Defendant Showtime Concrete, Inc. additionally challenges the basis of allocating fault evenly between the eight defendants and argues it has no liability for plaintiffs' damages. Additionally, the non-settling defendants challenge the estimated total recovery as neither plaintiff has been deposed. As the parties challenging the settlement, they bear the burden of demonstrating the settlement submitted for approval is too far out of the ballpark to be found to have been reached in good faith.

Moving defendant KFHP argues it is buying peace with this settlement as it owes no duty to plaintiffs under the multiple theories asserted in the complaint. KFHP acknowledges its role in hiring all subcontractors involved in the design, manufacture, and assembly of the Spruce Building. Although the nonsettling defendants challenging the settlement assert is it grossly out of proportion with plaintiff's asserted damages, they have not contradicted KFHP's premise that it is not liable to plaintiffs under the theories articulated in the complaint. No opposition has clearly set forth authority to support finding KFHP as general contractor liable for the alleged negligence of the subcontractors in executing their role within the project.

KFHP bases its hypothetical proportion of liablity on a jury finding all defendants are equally responsible for plaintiffs' damages. This premise appears flawed, as there is evidence to support finding at least one defendant may have no liability for plaintiffs' damages. Although equal liability may not be appropriate, the oppositions have not demonstrated that the settlement reached between plaintiffs and KFHP is grossly disproportionate or too far out of the ballpark to be considered reasonable based on the information available at this time. The court intends to grant KFHP's motion to find its settlement was reached in good faith.

Nonsettling defendants' requests to continue the hearing on this motion in order to conduct further discovery are denied. The trial date for this matter is approximately four months away. The parties appear to have exchanged extensive written discovery. The failure to conduct depositions over the last year is not a reason to delay the hearing on this 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 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: jyh on 7/15/24.
(Judge's initials) (Date)