Tentative Rulings for December 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)

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

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<u>Tentative Ruling</u>				
Re:	De Santis v. De Santis Case No. 19CECG01922 (lead case, consolidated with case nos. 19CECG04121 and 20CECG02264)			
Hearing Date:	December 17, 2024 (Dept. 503)			
Motion:	Receiver's Motion to Approve His Final Report and Accounting			

If oral argument is timely requested, it will be entertained on Tuesday, January 7, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

(03)

To grant the motion to approve the receiver's final report and accounting. However, the court intends to modify the proposed order, as discussed below.

Explanation:

Under Code of Civil Procedure section 564, the court has the power to appoint a receiver in certain circumstances. (Code Civ. Proc. § 564.) The court's power also includes the inherent power to discharge the receiver when his services are no longer necessary. (Sly v. Superior Court of California in and for Los Angeles County (1925) 71 Cal.App. 290, 294.) The receiver may be discharged and his bond exonerated after the court approves his final report and accounting. (Aviation Brake Systems, Ltd. v. Voorhis (1982) 133 Cal. App. 3d 230, 232.)

Under Rule of Court 3.1184(a), "A receiver must present by noticed motion or stipulation of all parties: (1) A final account and report; (2) A request for the discharge; and (3) A request for exoneration of the receiver's surety." (Cal. Rules of Court, rule 3,1184(a), paragraph breaks omitted.) "No memorandum needs to be submitted in support of the motion or stipulation served and filed under (a) unless the court so orders." (Cal. Rules of Court, rule 3.1184(b).) "Notice of the motion or of the stipulation must be given to every person or entity known to the receiver to have a substantial, unsatisfied claim that will be affected by the order or stipulation, whether or not the person or entity is a party to the action or has appeared in it." (Cal. Rules of Court, rule 3.1184(c).) "If any allowance of compensation for the receiver or for an attorney employed by the receiver is claimed in an account, it must state in detail what services have been made to the receiver or attorney and the amounts." (Cal. Rules of Court, rule 3.1184(d).)

Here, the property that the receiver was appointed to manage has been sold and control over the property has been transferred to the new owners, with the exception of two parcels which the receiver has been unable to sell. Apparently there has been very little interest in the two parcels, which have limited value and are roughly the same value. The receiver has proposed to split ownership of the parcels evenly between the two

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parties, with ownership being determined by drawing a piece of paper from a hat and awarding the parcel drawn from the hat to the plaintiff. Plaintiff has agreed to this procedure, but defendants have not responded to the receiver's inquiry regarding the proposed property division. All parties who have an interest in the properties have been served with the receiver's motion, and no opposition has been filed.

Therefore, it appears that the receiver's services will no longer be needed to manage or sell the properties. All properties have been sold or transferred, with the exception of the two small parcels discussed above. The receiver has proposed distributing the remaining two parcels among the parties equally by drawing one of the properties from a hat and awarding that parcel to the plaintiff. This method seems to be the simplest and most cost effective way of resolving the dispute over the properties. Once the properties have been disposed of, there will be no further need to have the receiver manage them, and he should be discharged from his duties.

The receiver's final report and accounting appears to be in order. Also, the receiver's fees, including his attorney's fees, appear to be reasonable, so the court intends to approve them. Furthermore, the court intends to exonerate the receiver's bond, since it is no longer required.

Finally, the court intends to correct the proposed order submitted by the receiver, as it incorrectly refers to "Defendants" in several places, when it should state "parties". For example, on page 2, lines 15-17, the proposed order states that, "Any funds that remain in or subsequently are received by the Receivership Estate, after payment of fees and costs as herein approved, shall be disbursed 50% to each Defendant." (Italics added.) The order should state that the remaining funds should be disbursed 50% to each "party", not each "defendant". Likewise, on page 2, lines 18-19, the order states that "The remaining two pieces of real property (Pine Flat and Alpaugh) be divided one property each to the Defendants by the Receiver drawing names from a hat." (Italics added.) The properties should be divided between the parties, not between the defendants. Finally, on page 2, line 28 to page 3, lines 1-2, the order states that Defendants shall defend, indemnify, and hold the Receiver harmless from and against all claims and costs, including attorneys' fees and costs, arising out of or related to his duties as Receiver." (Italics added.) The order should state that "the parties" shall defend, indemnify, and hold the receiver harmless, not just the defendants. Therefore, the court intends to modify the order to refer to "parties" rather than "defendants."

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	12/16/24	<u> </u>		
	(Judge's initials)		(Date)			

(20)	Tentative Ruling		
Re:	Cruz v. Fresno Ambulatory Surgery Center Superior Court Case No. 23CECG01792		
Hearing Date:	December 17, 2024 (Dept. 503)		
Motion:	By Defendant for Judgment on the Pleadings on First Am ended Complaint		

If oral argument is timely requested, it will be entertained on Tuesday, January 7, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To grant judgment on the pleadings as to the cause of action for Intentional/Negligent Fraud/Deceit Based on Concealment, with plaintiff granted 20 days' leave to file a second amended complaint. (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii).) The time in which the complaint (second cause of action only) may be amended will run from service of the order by the clerk. All new allegations shall be in **boldface** type.

Explanation:

This is a medical negligence action arising out of a procedure performed on decedent Julia de la Cruz on 5/11/2020. Plaintiff alleges that decedent passed away on 5/13/2020 as a result of the negligence by defendant Fresno Ambulatory Surgery Center. The second cause of action alleges that defendants concealed the fatal risk of internal bleeding, told plaintiff "that there was no risk of internal bleeding at all, that initial external bleeding was normal which they had resolved by stitching, that there would be no further problems except maybe some swelling, and assured Plaintiff that the surgery had been a great success and no further post-surgery care would be necessary. Decedent died 2 days later of internal bleeding from the surgery."

Defendant moves for judgment on the pleadings on the ground that the cause of action for "Intentional/Negligent Fraud/Deceit Based on Concealment" does not comply with the heightened pleading requirements applicable to claims of fraud.

To make a claim for "fraud and deceit based on concealment," the plaintiff must assert: (1) the defendant intentionally "concealed or suppressed a material fact"; (2) the defendant had "a duty to disclose" to the plaintiff; (3) the defendant "[intended] to defraud the plaintiff"; (4) the plaintiff was "unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact"; and (5) the plaintiff suffered damages as a result. (Boschma v. Home Loan Center, Inc. (2011) 198 Cal.App.4th 230, 248.)

The court finds the allegations of concealment of the risk of internal bleeding to be sufficiently pled. A physician must disclose the risk attendant to a procedure. (*Flores* v. *Liu* (2021) 60 Cal.App.5th 278, 297.) Plaintiff alleges that this risk was not disclosed. Furthermore, plaintiff alleges that defendant falsely told plaintiff that the initial external bleeding was normal and had been resolved, and no further care would be required. Yet decedent died two days later. While more detail *could* be alleged, it is noteworthy that the patient has passed away. a common exception to the particularity requirement is when defendant presumptively would know. (E.g., *Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 158.) No doubt further discovery will be required for plaintiff to flesh out the details of the non-disclosures and alleged false disclosures. The court finds the allegations sufficient at the pleading stage to apprise defendant of the substance and nature of the nondisclosure and allegedly false statements that they must defend against. (*Murphy v. BDO Seidman* (2003) 113 Cal.App.4th 687, 693.)

While the substance of the concealment and/or representations are sufficiently alleged, plaintiff must allege who failed to disclose or made misrepresentations. The sole defendant is Fresno Ambulatory Surgery Center, "a business organization, form unknown." (FAC \P 5.)

"The requirement of specificity in a fraud action against a corporation requires the plaintiff to allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." (*Tarmann, supra*, at p. 157.)

It is unclear whether the communications or nondisclosures alleged were made to decedent, the actual patient, or plaintiff Frank Cruz. Nor is it alleged that those who communicated with plaintiff or the decedent about the procedure were employees of defendant, such that defendant would be liable. Accordingly, the court intends to grant the motion with leave to amend.

Despite plaintiff's objection in his late-filed opposition (Code Civ. Proc., § 1005, subd. (b)), the motion is timely. No pretrial conference order has been entered, and the motion is not set within 30 days of the trial date. Plaintiff does not substantively respond to the motion. (See Code Civ. Proc., § 438, subd. (e).)

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	12/16/24	<u> </u>
	(Judge's initials)		(Date)	