Tentative Rulings for May 1, 2024
Department 403

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.***

23CECG02294 ***Raymond Douglas, M.D., Ph.D., A Professional Corporation v. Mendoza*. The parties are also directed to review the tentative ruling.**

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

23CECG00434 ***Amalia Aispuro v. Margarita Dinsdale*** **is continued to Tuesday, June 18, 2024, at 3:30 p.m. in Department 403**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

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(20) **Tentative Ruling**

Re: ***Huber v. Riar et al.***
Superior Court Case No. 23CECG02399

Hearing Date: May 1, 2024 (Dept. 403)

Motion: Motion for Reconsideration

Tentative Ruling:

To deny.

Explanation:

On 3/7/24 the court sustained the demurrer to the First Amended Complaint, without leave to amend. On 3/12/24 a judgment dismissing the action was submitted by defendant. On 3/13/24 plaintiff filed a motion for reconsideration. The judgment dismissing the action was entered on 3/19/24.

The motion must be denied because once judgment is entered, the court loses jurisdiction to rule on a motion for reconsideration. (*APRI Ins. Co. v. Superior Court* (1999) 76 Cal.App.4th 176, 181; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 859, fn. 29; *Ten Eyck v. Industrial Forklifts Co.* (1989) 216 Cal.App.3d 540, 545.) An order of dismissal is a judgment. (Code Civ. Proc., § 581d.) Therefore, a motion for reconsideration does not lie after a judgment of dismissal. (*APRI Ins. Co. v. Superior Court, supra,* at p. 181.)

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: JS on 4/22/2024 .
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Raymond Douglas, M.D., Ph.D., A Professional Corporation v. Mendoza***
Superior Court Case No. 23CECG02294

Hearing Date: May 1, 2024 (Dept. 403)

Motion: Default Prove Up

Tentative Ruling:

To deny without prejudice.

The hearing will go forward as noticed. Plaintiff does not need to call to request oral argument.

Explanation:

Plaintiff has not dismissed the Doe defendants, which prevents entry of default judgment at this time. (See Calif. Rules of Court, rule 3.1800(a)(7).) Proof of dismissal of Does 1-25 may be submitted at the hearing, in which case the Tentative Ruling denying the request for judgment will not be adopted.

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: JS (Judge's initials) on 4/30/2024 (Date).

(35)

Tentative Ruling

Re: ***Yang v. Lyons Magnus, LLC***
Superior Court Case No. 23CECG04739

Hearing Date: May 1, 2024 (Dept. 403)

Motion: By Defendant Lyons Magnus, LLC to Compel Arbitration

Tentative Ruling:

To deny, without prejudice.

Explanation:

In moving to compel arbitration, a defendant must prove by a preponderance of evidence the existence of the arbitration agreement and that the disputes are covered by the agreement. The party opposing the motion must then prove by a preponderance of evidence that a ground for denial of the motion exists (e.g., fraud, unconscionability, etc.) (*Hotels Nevada v. L.A. Pacific Center, Inc.* (2006) 144 Cal.App.4th 754, 758.)

Unless there is a dispute over authenticity, the mere recitation of the terms is sufficient for a party to move to compel arbitration. (*Sprunk v. Prisma LLC* (2017) 14 Cal.App.5th 785, 793.) The moving party has the burden of proving the existence of a valid arbitration agreement. (*Pinnacle Museum Tower Assn v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) A party opposing arbitration has the burden of showing that the arbitration provision cannot be interpreted to cover the claims in the complaint. (*Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 890.)

Here, defendant Lyons Magnus, LLC ("Defendant") attached a copy of the written agreement with Plaintiff Nhiashoua Khai Yang ("Plaintiff"). (Obregon Decl., ¶ 6, and Ex. A.)[1] This is sufficient prima facie evidence to support the present motion. (*Cox v. Bonni* (2018) 30 Cal.App.5th 287, 301.)

Plaintiff opposes. Plaintiff argues that the entity with which he made the written agreement is not Defendant, but Lyons Magnus, Inc., who is not a party to the action. A careful review of the arbitration agreement reveals that the contracting party is Lyons Magnus, Inc., with no statements about agents, assignment or succession on the part of either party. The written agreement is express that it covers only disputes between the employee and Lyons Magnus, Inc. that arise under the employment relationship.

[1] Plaintiff's Evidentiary Objections No. 1, 3 and 4 are overruled; No. 2 is sustained for lack of foundation as to the statement "Upon being hired, a Human Resources Generalist presented the ADR Agreement to Plaintiff and followed all standard procedures in doing so. I believe that Plaintiff executed the ADR Agreement after he had the time and the opportunity to review the ADR Agreement, as well as, ask questions about its terms."

On reply, Defendant argues that the doctrine of successor liability applies. The doctrine of successor liability is typically used by a plaintiff to establish liability by a successor entity for the liability of a predecessor entity. (*See generally Cleveland v. Johnson* (2012) 209 Cal.App.4th 1315, 1326.) The rule ordinarily applies to the determination of whether a corporation purchasing the principal assets of another corporation assumes the other's liability. (*Ray v. Alad Corp.* (1977) 19 Cal.3d 22, 28.) The general rule is that a purchaser does not assume the seller's liabilities unless (1) there is an express or implied agreement of assumption; (2) the transaction amounts to a consolidation or merger of the two entities; (3) the purchasing entity is a mere continuation of the seller; or (4) the transfer of assets to the purchaser is for the fraudulent purpose of escaping liability for the seller's debts. (*Ibid.*)

Defendant relies on the mere continuation basis. Where the purchasing corporation is a mere continuation of the seller, it has long been held that corporations cannot escape liability by a mere change of name or shift of assets when and where it is shown that the new corporation is, in reality, but a continuation of the old. (*Blank v. Olcovich Shoe Corp.* (1937) 20 Cal.App.2d 456, 461.) Mere continuation will be found upon a showing of either or both facts: (1) that no adequate consideration was given for the predecessor corporation's assets and made available for meeting the claims of its unsecured creditors; or (2) one or more persons were officers, directors, or stockholders of both corporations. (*Ray v. Alad Corp.*, *supra*, 19 Cal.3d at p. 29.)

Nothing in the briefing suggests that the doctrine of successor liability may be used by Defendant as a "shield" defense to an argument, rather than its traditional use by a plaintiff as a "sword" to attach liability. Moreover, as Defendant acknowledges, the application of the doctrine requires a factual inquiry. Specific to a finding of mere continuation, there is no evidence to suggest either that the change from Lyons Magnus, Inc. to Defendant occurred without any adequate consideration; or that the officers, directors, or stockholders remained the same. As noted above, the general rule is that a purchaser, assuming that a sale occurred here at all, is that liabilities do not flow. (*Ray v. Alad Corp.*, *supra*, 19 Cal.3d at p. 28.) At most, the evidence shows that Lyons Magnus, Inc., on September 30, 2017, made an election to convert and dissolve. (Chyorny Decl., ¶ 7, and Ex. 4 thereto.) Based on the evidence submitted, the court cannot conclude that the doctrine of successor liability applies to find that Defendant and Plaintiff have a valid arbitration agreement.

Defendant alternatively argues that even as a nonsignatory, it may enforce the agreement because Plaintiff is equitably estopped. "The *sine qua non* for allowing a nonsignatory to enforce an arbitration clause based on equitable estoppel is that the claims the plaintiff asserts against the nonsignatory are dependent on or inextricably bound up with the contractual obligations of the agreement containing the arbitration clause." (*Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 213-214.) Even if a plaintiff's claims touch matters relating to the arbitration agreement, the claims are not arbitrable unless the plaintiff relies on the agreement to establish its cause of action. (*Fuentes v. TMCSF, Inc.* (2018) 26 Cal.App.5th 541, 552.) "The reason for this equitable rule is plain: One should not be permitted to rely on an agreement containing an arbitration clause for its claims, while at the same time repudiating the arbitration provision contained in the same contract." (*DMS Services, LLC v. Superior Court* (2012) 205 Cal.App.4th 1346, 1354.)

Here, the claims of the Complaint do not appear to arise out of enforcement of the arbitration agreement or any written agreement. The claims of the Complaint are for wrongful termination based on Plaintiff's taking of protected leave. In other words, even though the claims arise from the employment relationship, it does not appear that Plaintiff relied on any terms from the written agreement to establish his causes of action. (*Compare Garcia v. Pexco, LLC* (2017) 11 Cal.App.5th 782, 786 [noting that the plaintiff's employment agreement contained the arbitration clause].) Plaintiff does not seek to enforce the written agreement, and the Complaint makes no inference to the existence of the written agreement, or any agreement. (*Compare Boucher v. Alliance Title Co., Inc.* (2005) 127 Cal.App.4th 262, 271-273 [noting the pleadings there reference the existence of an employment agreement to state claims for failure to pay accrued wages].) Accordingly, Defendant fails to demonstrate why equitable estoppel applies to enforce the written agreement against Plaintiff's claims. (*Fuentes v. TMCSF, Inc.*, *supra*, 26 Cal.App.5th at p. 552.)

For the above reasons, the court finds that Defendant fails to overcome Plaintiff's challenge as to why the written agreement is enforceable by Defendant. In the interests of the determination of whether the matter may proceed as filed, the motion to compel arbitration is denied, but without prejudice.

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: JS on 4/30/2024.
(Judge's initials) (Date)