

Tentative Rulings for August 2, 2016
Departments 402, 403, 501, 502, 503

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).)

- 12CECG02220 *Stonecrest Investments, LLC et al. v. Texas DCL, LLC et al.* (Dept. 503)
- 15CECG01696 *Kartar Trucking, Inc. v. Thomas* (Dept. 402)
- 15CECG01911 *Singh v. Bhatti & Sons et al.* (Dept. 403)
- 14CECG02408 *Rattan v. Singh* (Dept. 502)
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The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

- 09CECG02733 *Crop Production Services, Inc. v. EarthRenew, Inc.* is continued to Thursday, August 4, 2016 at 3:30 p.m. in Dept. 501.
- 15CECG00123 *Beal v. Beal Properties, Inc.* is continued to Thursday, August 4, 2016 at 3:30 p.m. in Dept. 501.
- 15CECG00641 *Martinez v. Williams et al.* continued to Thursday, August 4, 2016 at 3:30 p.m. in Dept. 501.
- 16CECG01874 *Flanigan v. Western Milling, LLC* is continued to Thursday, August 4, 2016 at 3:30 p.m. in Dept. 501.
- 16CECG01904 *Yolanda Garcia v. United Auto Inc.* is continued to Thursday, August 4, 2016 at 3:30 p.m. in Dept. 501.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

Tentative Rulings for Department 403

Tentative Ruling

(27)

Re: **James v. Wells Fargo Bank, N.A., et al.**
Court Case No. 15CECG01024

Hearing Date: **August 2, 2016 (Dept. 403)**

Motion: Plaintiff's motion for reconsideration of the order dated June 2, 2016

Tentative Ruling:

To Deny.

Explanation:

The entry of judgment divests the trial court of jurisdiction to hear a motion for reconsideration of a prior order. (*APRI Ins. Co. v. Sup. Ct. (Schatteman)* (1999) 76 Cal.App.4th 176, 182; see also *Banner v. Regents of University of California* (2009) 175 Cal.App.4th 1043, 1048 ["A motion to reconsider is not valid if it is filed after the final judgment is signed."].) Additionally, a judgment of fewer than all defendants constitutes a final judgment as to the dismissed defendants. (see *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, fn. 3.) Lastly, dismissals become judgments once the order of dismissal is signed by the court. (CCP § 581d.)

Here, the court signed the order dismissing Wells Fargo on June 2, 2016 after sustaining Wells Fargo's demurrer to the operative complaint without leave to amend. A notice of entry of judgment/order was filed June 13, 2016. In light of the signed order, this court no longer has jurisdiction to hear the present motion for reconsideration. (CCP § 581d; *APRI, supra*, 76 Cal.App.4th at 182.)

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this ruling will serve as the order of the court, and service by the clerk of the minute order will constitute notice of the order.

Tentative Ruling

Issued By: KCK on 08/01/16.
(Judge's initials) (Date)

(17)

Tentative Ruling

Re: ***WS Park, LLC v. State of California***
Court Case No. 15 CECG 00792

Hearing Date: August 2, 2016 (Dept. 403)

Motion: California Department of Transportation's Motion to Bifurcate

Tentative Ruling:

To grant.

Explanation:

Section 598 of the Code of Civil Procedure gives the trial court power to order that the trial of the issue of liability shall precede the trial of any other issue in the case. "Its objective is avoidance of the waste of time and money caused by the unnecessary trial of damage questions in cases where the liability issue is resolved against the plaintiff." (*Cohn v. Bugas* (1974) 42 Cal.App.3d 381, 385 (footnotes omitted).)

Condemnation proceedings are commonly bifurcated because, all issues except compensation are tried to the court and the issue of compensation is tried to the jury. (*People ex rel. California Department of Transportation v. Hansen's Truck Stop, Inc.* (2015) 236 Cal.App.4th 178, 198.) And where precondemnation damages are sought in a pending eminent domain action, "the appropriate procedure is to bifurcate the trial of the action so that the question of the liability of the public entity is first adjudicated by the court without a jury." (*City of Ripon v. Sweetin* (2002) 100 Cal.App.4th 887, 897–898.)

WS Park, LLC makes no legal arguments against bifurcation, arguing only that judicial economy is best served by holding trial on the issue of precondemnation damages concurrently with, or immediately prior to, the jury valuation trial. However, "[i]f liability for unlawful precondemnation conduct is not established by the court, the court should exclude evidence of alleged resulting damages from the jury." (*City of Ripon v. Sweetin, supra*, 100 Cal.App.4th at pp. 897–898.)

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: KCK on 08/01/16.
(Judge's initials) (Date)

Tentative Rulings for Department 501

Tentative Rulings for Department 502

(2)

Tentative Ruling

Re: **Daniel v. Schmidt**
Superior Court Case No. 15CECG02267

Hearing Date: August 2, 2016 (Dept. 502)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To deny without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of the amended petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

Explanation:

The attorney seeks \$50,000 in fees. This figure represents 25% of the gross settlement. The attorney is entitled to 25% of the gross settlement minus costs which is \$45,956.95.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(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: DSB on 07/29/16.
(Judge's initials) (Date)

(28)

Tentative Ruling

Re: **Kim v. LCN Ventures LLC**

Case No. 12CECG02471

Hearing Date: August 2, 2016 (Dept. 502)

Motion: By Defendant Lance-Kashian & Company for Summary Judgment.

Tentative Ruling:

To deny the motion.

Explanation:

To obtain summary judgment, "all a defendant needs to do is to show that the plaintiff cannot establish at least one element of the cause of action." *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853. If a defendant makes this showing, the burden shifts to the plaintiff to demonstrate that one or more material facts exist as to the cause of action or as to a defense to a cause of action. (CCP § 437(c), subdivision(p)(2).)

In a summary judgment motion, the pleadings determine the scope of relevant issues. (*Nieto v. Blue Shield of Calif. Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74.) A defendant need only "negate plaintiff's theories of liability as *alleged in the complaint*; that is, a moving party need not refute liability on some theoretical possibility not included in the pleadings." (*Hutton v. Fidelity Nat'l Title Co.* (2013) 213 Cal.App.4th 486, 493 (emphasis in original).)

The court examines affidavits, declarations and deposition testimony as set forth by the parties, where applicable. (*DeSuza v. Andersack* (1976) 63 Cal.App.3d 694, 698.) Any doubts about the propriety of summary judgment are to be resolved in favor of the opposing party. (*Yanowitz v. L'Oreal USA, Inc.* (2003) 106 Cal.App.4th 1036, 1050.)

A court will "liberally construe plaintiff's evidentiary submissions and strictly scrutinize defendant's own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiff's favor." (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.)

Here, Defendant largely bases its motion on the line of cases holding that it does not owe a duty of care to Plaintiff due to Plaintiff's status as an independent contractor, following the so-called "*Privette*" line of cases, after *Privette v. Superior Court* (1993) 5 Cal.4th 689 and subsequent related cases.

Defendant relies principally on *Tverberg v. Fillner Construction, Inc.* (2010) 49 Cal.4th 518, for the proposition that “[w]hen an independent contractor is hired to perform inherently dangerous construction work, that contractor, unlike a mere employee, receives authority to determine how the work is to be performed and assumes a corresponding responsibility to see that the work is performed safely. The independent contractor receives this authority over the manner in which the work is to be performed from the hirer by a process of delegation.” (*Id.* at 528.) As a result, a defendant general contractor could not be held vicariously liable on a theory of “peculiar risk” (which is defined as “neither a risk that is abnormal to the type of work done, nor a risk that is abnormally great” and for which hirers of independent contractors are liable to third parties for injuries resulting from the work). (*Id.* at 524, 528-29.) However, the *Tverberg* case left open the question of whether the hirer could be held *directly* liable on a theory that it retained control over safety conditions at the jobsite. (*Id.* at 529.)

However, although not briefed by either party, the *Privette* line of cases, as exemplified by *Tverberg* does not appear to be applicable to the present case. Such cases answer the question of whether and when the *hirer* of an independent contractor is liable for negligence as a result of work done by or work involving the independent contractor’s employees or subcontractors. (See, e.g., *Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 667-672 (listing cases).) *Kinsman* itself dealt with the question of what premises liability duty a landowner owes to the employee of an independent contractor when the *landowner hired the independent contractor*. (*Id.* at 672-73.) However, all of the *Privette* cases appear to be inapposite because Defendant did not hire Plaintiff, nor is there any evidence that Defendant was hired as the result of any contract between Defendant and any co-Defendant. Therefore, the relationship of hirer to independent contractor, and the damages caused by or involving the independent contractor’s works, are irrelevant to this case.

If this is the case, then the case is better analyzed as a simple negligence and premises liability case by an invitee against the landowner for an allegedly hazardous condition under the standards first set out in *Rowland v. Christian* (1968) 69 Cal.2d 108, 118-19 and followed in many other cases.

Therefore, the Court directed the parties to provide further briefing on whether the *Privette* line of cases is applicable to the current case and, if not, whether Defendant has carried its burden of negating the elements of the causes of action pleaded by Plaintiff in his complaint.

It appears that the parties in their briefing have conceded that *Privette* and its progeny do not control this case. Therefore, as stated above, the case is better analyzed as a premises liability case based on the duty a land-owner owes to an invitee.

“The elements of a negligence cause of action are the existence of a legal duty of care, breach of that duty, and proximate cause resulting in injury. The elements of a cause of action for premises liability are the same as those for negligence: duty, breach, causation, and damages.” (*McIntyre v. Colonies-Pacific, LLC* (2014) 228

Cal.App.4th 664, 671.) This is because premises liability is, essentially, a form of negligence. (*Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1619.)

The test for premises liability is as follows: “Where the occupier of land is aware of a concealed condition involving in the absence of precautions an unreasonable risk of harm to those coming in contact with it and is aware that a person on the premises is about to come in contact with it, the trier of fact can reasonably conclude that a failure to warn or to repair the condition constitutes negligence. Whether or not a guest has a right to expect that his host will remedy dangerous conditions on his account, he should reasonably be entitled to rely upon a warning of the dangerous condition so that he, like the host, will be in a position to take special precautions when he comes in contact with it.” (*Kinsman, supra*, 37 Cal.4th at 672 -73 (quoting *Rowland v. Christian* (1968) 69 Cal.2d 108, 118-19).)

As *Kinsman* points out: “A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and [(b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and (c) fails to exercise reasonable care to protect them against the danger.” Generally, if a danger is so obvious that a person could reasonably be expected to see it, the condition itself serves as a warning, and the landowner is under no further duty to remedy or warn of the condition. However, this is not true in all cases. [I]t is foreseeable that even an obvious danger may cause injury, if the practical necessity of encountering the danger, when weighed against the apparent risk involved, is such that under the circumstances, a person might choose to encounter the danger.” (*Id.* (internal citations and quotations omitted, citing Restatement of Torts, Second, §343.)

Here, Defendant has presented, and Plaintiff has admitted, in the separate statement, that “[t]he lack of safety equipment or a safety cage on the ladder was apparent by reasonable inspection.” (DSS No.10.) However, there is nothing in the evidence presented by Defendant that the height of the ladder was such that it was a danger “so obvious that a person could reasonably be expected to see it” and/or that the lack of safety equipment coupled with the height of the ladder would mean that a reasonable person should have been aware of the danger in using the ladder without a cage.

Moreover, there is nothing the Defendant has offered that would show that “the practical necessity of encountering the danger, when weighed against the apparent risk involved, is such that under the circumstances, a person might choose to encounter the danger” especially where there is evidence that this was the only ladder available to reach the roof of the building in question. (See Deposition of Kim, 39:3-10.)

As a result, Defendant has not presented evidence to negate an element of the claims for negligence or premises liability—that the duty of care established in *Rowland* was negated by the obvious risk defense.

(29)

Tentative Ruling

Re: ***Natividad Gutierrez v. Tanya Moore, et al.***
Superior Court Case No. 16CECG01327

Hearing Date: August 2, 2016 (Dept. 502)

Motion: Change venue; sanctions

Tentative Ruling:

To grant the motion to change venue. (Code Civ. Proc. §396b(a), (d).) To transfer the above-captioned action to the Superior Court of California, County of Santa Clara. To deny Defendants' request for sanctions. (Code Civ. Proc. §396b(b).)

Explanation:

Motion to change venue:

A defendant is entitled to have an action tried in the county of his or her residence unless the action falls within an exception to this general venue rule (e.g., cause of action for personal (physical) injury, contract to perform an obligation in another county, contract formed in another county). (Code of Civ. Proc. §395(a).) A defendant may only have one residence, a term generally considered synonymous with "domicile." (*Nadler v. California Veterans Board* (1984) 152 Cal.App.3d 707, 715, fn. 5.)

When several causes of action are alleged in a complaint and are governed by differing venue rules, the complaint is a "mixed action" and defendant's motion for change of venue must be granted on all causes if he or she is entitled to a change on any one cause. (*Capp Care, Inc. v. Superior Court* (1987) 195 Cal.App.3d 504, 508; *Brown v. Superior Court* (1984) 37 Cal.3d 477, 488.)

A motion for change of venue cannot be defeated on the ground of convenience of witnesses prior to defendant's answer being filed. (Code Civ. Proc. §396b(a), (d); see also *Cholakian & Associates v. Superior Court* (2015) 236 Cal.App.4th 361, 373; *Johnson v. Superior Court of Fresno County* (1965) 232 Cal.App.2d 212, 214; *Scribner v. Superior Court* (1971) 19 Cal.App.3d 764, 766.) The court in such an instance must grant the motion for change of venue, even where there exist grounds to retransfer the action back to the original court. (Code Civ. Proc. §396b(a); *Cholakian*, supra, 236 Cal.App.4th at p. 373; *Krosen v. Gordon* (1943) 61 Cal.App.2d 385, 387.) Moreover, where all defendants' answers have not been filed, the court may not consider opposition to a motion to change venue. (Code Civ. Proc. §396b(d); *Cholakian*, supra, 236 Cal.App.4th at p. 372.)

In the case at bar, Defendants Tanya and Kenneth Moore establish that they reside in Santa Clara County and that Defendant Moore Law Firm has its principal place of business also in Santa Clara County. (Decl. of T. Moore, ¶¶ 1, 3, 4; Decl. of K.

Moore ¶12.) Plaintiff's complaint alleges at least one cause of action that is properly venued in Defendants' county of residence. Defendants have not answered the complaint. The Court cannot at this time consider the points raised by Plaintiff in his opposition. Accordingly, Defendants' motion to change venue must be granted.

Objections:

Defendants' objections numbered 1, 3, 4, and 5 are sustained. All others are overruled.

Sanctions:

Plaintiff's counsel's choice to pursue the instant action in Fresno County, and to decline to stipulate to a transfer to Santa Clara County, do not strike the Court as having been made in bad faith. If the case was in a different procedural posture, i.e., if answers had been filed, *Figley v. California Arrow Airlines* (1952) 111 Cal.App.2d 285, 287-288 would provide a basis to retain the action in Fresno County and may provide a basis for a motion for retransfer once answers have been filed. Defendants' request for sanctions is denied. Defendants' answers not having been filed, the Court does not reach Plaintiff's request for sanctions in the opposition.

Pursuant to California Rules of Court, rule 3.1312, 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: DSB **on** 07/29/16.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: **John J. Morales v. Tanya Moore, et al.**
Superior Court Case No. 16CECG01328

Hearing Date: August 2, 2016 (Dept. 502)

Motion: Change venue; sanctions

Tentative Ruling:

To grant the motion to change venue. (Code Civ. Proc. §396b(a), (d).) To transfer the above-captioned action to the Superior Court of California, County of Santa Clara. To deny Defendants' request for sanctions. (Code Civ. Proc. §396b(b).)

Explanation:

Motion to change venue:

A defendant is entitled to have an action tried in the county of his or her residence unless the action falls within an exception to this general venue rule (e.g., cause of action for personal (physical) injury, contract to perform an obligation in another county, contract formed in another county). (Code of Civ. Proc. §395(a).) A defendant may only have one residence, a term generally considered synonymous with "domicile." (*Nadler v. California Veterans Board* (1984) 152 Cal.App.3d 707, 715, fn. 5.)

When several causes of action are alleged in a complaint and are governed by differing venue rules, the complaint is a "mixed action" and defendant's motion for change of venue must be granted on all causes if he or she is entitled to a change on any one cause. (*Capp Care, Inc. v. Superior Court* (1987) 195 Cal.App.3d 504, 508; *Brown v. Superior Court* (1984) 37 Cal.3d 477, 488.)

A motion for change of venue cannot be defeated on the ground of convenience of witnesses prior to defendant's answer being filed. (Code Civ. Proc. §396b(a), (d); see also *Cholakian & Associates v. Superior Court* (2015) 236 Cal.App.4th 361, 373; *Johnson v. Superior Court of Fresno County* (1965) 232 Cal.App.2d 212, 214; *Scribner v. Superior Court* (1971) 19 Cal.App.3d 764, 766.) The court in such an instance must grant the motion for change of venue, even where there exist grounds to retransfer the action back to the original court. (Code Civ. Proc. §396b(a); *Cholakian*, supra, 236 Cal.App.4th at p. 373; *Krosen v. Gordon* (1943) 61 Cal.App.2d 385, 387.) Moreover, where all defendants' answers have not been filed, the court may not consider opposition to a motion to change venue. (Code Civ. Proc. §396b(d); *Cholakian*, supra, 236 Cal.App.4th at p. 372.)

In the case at bar, Defendants Tanya and Kenneth Moore establish that they reside in Santa Clara County and that Defendant Moore Law Firm has its principal place of business also in Santa Clara County. (Decl. of T. Moore, ¶¶ 1, 3, 4; Decl. of K. Moore ¶12.) Plaintiff's complaint alleges at least one cause of action that is properly

venued in Defendants' county of residence. Defendants have not answered the complaint. The Court cannot at this time consider the points raised by Plaintiff in his opposition. Accordingly, Defendants' motion to change venue must be granted.

Objections:

Defendants' objections numbered 1, 3, 4, and 5 are sustained. All others are overruled.

Sanctions:

Plaintiff's counsel's choice to pursue the instant action in Fresno County, and to decline to stipulate to a transfer to Santa Clara County do not strike the Court as having been made in bad faith. If the case was in a different procedural posture, i.e., if answers had been filed, *Figley v. California Arrow Airlines* (1952) 111 Cal.App.2d 285, 287-288 would provide a basis to retain the action in Fresno County and may provide a basis for a motion for retransfer once answers have been filed. Defendants' request for sanctions is denied. Defendants' answers not having been filed, the Court does not reach Plaintiff's request for sanctions in the opposition.

Pursuant to California Rules of Court, rule 3.1312, 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: DSB **on** 07/29/16.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: **Daniel Delgado v. Tanya Moore, et al.**
Superior Court Case No. 16CECG01329

Hearing Date: August 2, 2016 (Dept. 502)

Motion: Change venue; sanctions

Tentative Ruling:

To grant the motion to change venue. (Code Civ. Proc. §396b(a).) To transfer the above-captioned action to the Superior Court of California, County of Santa Clara. To deny Defendants' request for sanctions. (Code Civ. Proc. §396b(b).)

Explanation:

Motion to change venue:

A defendant is entitled to have an action tried in the county of his or her residence unless the action falls within an exception to this general venue rule (e.g., cause of action for personal (physical) injury, contract to perform an obligation in another county, contract formed in another county). (Code of Civ. Proc. §395(a).) A defendant may only have one residence, a term generally considered synonymous with "domicile." (*Nadler v. California Veterans Board* (1984) 152 Cal.App.3d 707, 715, fn. 5.)

When several causes of action are alleged in a complaint and are governed by differing venue rules, the complaint is a "mixed action," and defendant's motion for change of venue must be granted on all causes if he or she is entitled to a change on any one cause. (*Capp Care, Inc. v. Superior Court* (1987) 195 Cal.App.3d 504, 508; *Brown v. Superior Court* (1984) 37 Cal.3d 477, 488.)

A motion for change of venue cannot be defeated on the ground of convenience of witnesses prior to defendant's answer being filed. (Code Civ. Proc. §396b(a), (d); see also *Cholakian & Associates v. Superior Court* (2015) 236 Cal.App.4th 361, 373; *Johnson v. Superior Court of Fresno County* (1965) 232 Cal.App.2d 212, 214; *Scribner v. Superior Court* (1971) 19 Cal.App.3d 764, 766.) The court in such an instance must grant the motion for change of venue, even where there exist grounds to retransfer the action back to the original court. (Code Civ. Proc. §396b(a); *Cholakian*, supra, 236 Cal.App.4th at p. 373; *Krosen v. Gordon* (1943) 61 Cal.App.2d 385, 387.) Moreover, where all defendants' answers have not been filed, the court may not consider opposition to a motion to change venue. (Code Civ. Proc. §396b(d); *Cholakian*, supra, 236 Cal.App.4th at p. 372.)

In the case at bar, Defendants Tanya and Kenneth Moore establish that they reside in Santa Clara County and that Defendant Moore Law Firm has its principal place of business also in Santa Clara County. (Decl. of T. Moore, ¶¶ 1, 3, 4; Decl. of K.

Moore ¶12.) Plaintiff's complaint alleges at least one cause of action that is properly venued in Defendants' county of residence. Defendants have not answered the complaint. The Court cannot at this time consider the points raised by Plaintiff in his opposition. Accordingly, Defendants' motion to change venue must be granted.

Objections:

Defendants' objections numbered 1, 4, 5, and 6 are sustained. All others are overruled.

Sanctions:

Plaintiff's counsel's choice to pursue the instant action in Fresno County, and to decline to stipulate to a transfer to Santa Clara County do not strike the Court as having been made in bad faith. If the case was in a different procedural posture, i.e., if answers had been filed, *Figley v. California Arrow Airlines* (1952) 111 Cal.App.2d 285, 287-288 would provide a basis to retain the action in Fresno County and may provide a basis for a motion for retransfer once answers have been filed. Defendants' request for sanctions is denied. Defendants' answers not having been filed, the Court does not reach Plaintiff's request for sanctions in the opposition.

Pursuant to California Rules of Court, rule 3.1312, 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: DSB on 07/29/16.
(Judge's initials) (Date)

Tentative Rulings for Department 503

(2)

Tentative Ruling

Re: ***Debem et al. v Estate of Paul A. Webb et al.***
Superior Court Case No. 15CECG02929

Hearing Date: August 2, 2016 (Dept. 503)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant. Order signed. Hearing off calendar.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(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: A.M. Simpson on 08/01/16.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Ordaz v. Disaster Restoration International, Inc.***
Court Case No. 16CECG01320

Hearing Date: **August 2, 2016 (Dept. 503)**

Motion: Defendant Disaster Restoration International, Inc.'s Motion to Change Venue

Tentative Ruling:

To grant the motion to transfer venue to Madera County. (Code Civ. Proc., §392, subd. (a)(1).) Plaintiff is ordered to pay the costs and fees of transferring the action within 30 days of this court's order, with the time to do so running from the service by the clerk of the minute order.

Explanation:

Actions concerning "injuries to real property" are deemed "local" actions, and must be tried in the county where the real property is located. (Code Civ. Proc. § 392, subd. (a)(1).) In contrast, a "transitory" action is subject to the general rule that actions should be tried in the county of residence of any defendant. (Code Civ. Proc. § 395, subd. (a).) Various statutes provide special venue rules, some of which provide that actions are triable either at defendant's residence or in certain other counties. (See, e.g., Code Civ. Proc. § 395.5—corporation can be sued, *inter alia*, where the corporation's principal place of business is situated.)

To determine whether an action is local or transitory, the court looks at the "main relief" sought. Where it is personal rather than related to real property the action is transitory; where it is related to rights in real property, the action is local. (*Cholakian & Associates v. Superior Court* (2015) 236 Cal.App.4th 361, 367-368.) And where an action joins both local and transitory causes of action, the transitory action controls for venue purposes. (*Central Bank v. Superior Court* (1973) 30 Cal.App.3d 913, 917-918—plaintiff cannot deprive defendant of right to have case tried in county of residence by joining transitory cause of action with a local one.)

Defendant argues that all allegations of the complaint are related to damages for injury to plaintiff's real property and thus the action is local and must be tried where the property is located. Plaintiff concedes that her earlier-filed action might have been local, but that with this complaint she has added claims which are personal in nature, which deal with injury to her person (i.e., emotional harm, homelessness) as well as damage to her personal property. She argues these new claims are transitory in nature and therefore this is a mixed action and should follow the transitory cause of action, which preferentially is where any of the defendants reside. DRI has an office in Fresno County, so venue is proper here, she argues. (Code Civ. Proc. §§ 395, subd. (a) and 395.5.)

