<u>Tentative Rulings for November 10, 2021</u> <u>Department 403</u>

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 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 403

Begin at the next page

(03)

Tentative Ruling

Re: Abrew v. Michael

Superior Court Case No. 599556-8

Hearing Date: November 10, 2021 (Dept. 403)

Motion: Receiver's Motion for Instructions Re: Distribution of Proceeds

Tentative Ruling:

To deny the receiver's motion for instructions regarding the distribution of sales proceeds from the sale of the partnership's assets.

Explanation:

The receiver moves for an order giving him instructions on the proper distribution of the funds from the sale of the partnership's real property. A dispute remains regarding whether the remaining funds should go directly to Roger Abrew's children or to the Roger J. Abrew Trust. He seeks guidance from this court as to the proper distribution of the funds.

However, the receiver has not provided the court with any facts or authorities that would allow the court to make an informed decision about the proper distribution of the sales proceeds. Also, there is a pending probate case in Solano County regarding the same issue raised by the receiver's motion. The parties in that case have submitted a stipulation to the Solano court that would resolve their dispute over the distribution of the funds. However, the Solano court has not yet filed the stipulated order.

The issue is best resolved by the Solano court, which already has a pending motion and stipulation by the parties regarding the same issue that the receiver seeks to resolve here. If this court rules on the receiver's motion before the Solano court has made its decision, there is a risk of inconsistent rulings between the two courts that would cause further confusion and that might lead to future disputes between the parties.

Joseph Abrew has requested that this court enter an order that adopts the stipulation of the parties that was submitted to the Solano court. However, since the stipulation is already pending with the Solano court, it would be premature for this court to adopt the stipulation as its order here.

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	11/09/21		
-	(Judge's initials)		(Date)		

(27)

Tentative Ruling

Re: Calderon v. Foster Farms, LLC

Superior Court Case No. 20CECG00546

Hearing Date: November 10, 2021 (Dept. 403)

Motion: Plaintiff's Motion to Substitute Alfonso Nevarez Diaz in place

of Deceased Plaintiff Jose Manuel Nevarez

Tentative Ruling:

To grant, provided that the moving party submits proof that the papers were timely served on the opposing parties. If the moving party does not submit such proof at or before the hearing, the motion shall be denied without prejudice.

Explanation:

A pending action does not abate by reason of the death of a party if the cause of action survives. (Code Civ. Proc. § 377.21.) Instead, the cause of action passes to the decedent's successor(s) in interest. (Code Civ. Proc. § 377.30.) After the death of a person who commenced an action or proceeding, the successor can file a noticed motion to be substituted in place of that person. (Code Civ. Proc. § 377.31.) The motion must be accompanied by a declaration/affidavit of the proposed successor in interest. (Code Civ. Proc. § 377.32.) The declaration of Alfonso Nevarez Diaz satisfies the requirements of the statute.

However, there is no proof of service included in the motion papers, nor was there one filed five days before the hearing. (Cal. Rules of Court, rule 3.1300(c).) Therefore, the motion will only be granted if the moving party submits proof of timely service. (Code Civ. Proc., § 1005, subd. (b).)

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	11/09/21		
,	(Judge's initials)		(Date)		

(35)

Tentative Ruling

Re: City of Fresno et al. v. Kevorkian et al.

Superior Court Case No. 21CECG02816

Hearing Date: November 10, 2021 (Dept. 403)

Motion: by the City of Fresno to Abate Substandard Buildings; for

Appointment of Receiver; and for Attorney's Fees

Tentative Ruling:

To grant the petition to abate substandard building and for appointment of California Receivership Group, Inc., through Mark S. Adams, Esq., as receiver as to respondents' properties located at 104 East Sierra Avenue, Fresno, California. To grant petitioners' request for attorney's fees and costs from respondents.

Explanation:

Abatement and Receivership

Under Health and Safety Code section 17980.6:

If any building is maintained in a manner that violates any provisions of this part, the building standards published in the State Building Standards Code relating to the provisions of this part, any other rule or regulation adopted pursuant to the provisions of this part, or any provision in a local ordinance that is similar to a provision in this part, and the violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered, the enforcement agency may issue an order or notice to repair or abate pursuant to this part.

Such notice to abate must be provided by, among other means, posting a copy of the notice in a conspicuous place on the property, and in a prominent place on each affected residential unit. (Health & Saf. Code § 17980.6.) The notice shall include the name, address and telephone number of the agency issuing the notice; the date, time and location of any public hearing or proceeding concerning the notice; and information that the lessor cannot retaliate against a lessee pursuant to Civil Code section 1942.5. (Ibid.) If the owner fails to comply within a reasonable time with the terms of the notice to abate, the enforcement agency may seek, and the court may order, the appointment of a receiver. (Id., § 17980.7, subd. (c).) The enforcement agency must provide proof of notice of intent to seek the appointment of a receiver posted in a prominent place, and mailed first-class to all persons with a recorded interest in the real property. (Ibid.)

Here, several violations of the Health and Safety Code at a mobile home park located at 104 East Sierra Avenue, Fresno California (the "Property") were cited following various inspections by the California Department of Housing and Community

Development beginning in July 2020 through June 2021. (Declaration of Michael Barberi, ¶¶ 1-3, 6, 9-10, and Ex. 12, 13 to the Petition.) Thereafter, on July 28, 2021, petitioners issued Notices to Abate pursuant to Health and Safety Code section 17890.6. (Declaration of Amanda Yanovsky, ¶ 11, and Ex. 6 to the Petition.) On September 14, 2021, petitioners issued a 72-hour notice of intent to file the instant petition. (*Id.*, ¶ 14, and Ex. 9 to the Petition.) On September 21, 2021, service of the same to the real property owners of record was made on Emory Wishon, who accepted service on their behalf. (Declaration of Christina A. Roberson, ¶ 13, and Ex. F thereto.) On September 24, 2021, petitioners filed the present action.

Petitioners demonstrate sufficient compliance with the Health and Safety Code to seek appointment of a receiver. The Property has multiple code violations, including excess trash, rubbish, tent-like structures, abandoned or inoperable vehicles, and combustible materials; abandoned, inoperable or improperly parked vehicles blocking access to lots, egress and ingress, common areas, and fire lanes; unmarked roadways that do not show direction of traffic or where parking is prohibited; no visible lot address numbers; substandard units; damaged and deteriorated roadways resulting in lack of proper grading; and no posted emergency preparedness plan. (See, e.g., Yanovsky Decl., ¶¶ 11-12, and Ex. 6 to the Petition.) It appears that the violations are serious enough to pose a significant health and safety risk to the tenants of the Property, including increased unlawful activity and fire hazards. (Declaration of Dustin Freeman, ¶¶ 1-3, 5-8; Declaration of Jay Tracy, ¶¶ 1-3, 5-8.) Further, petitioners complied with the notice provisions of the statutes.

Respondents oppose the present petition.¹ Respondents concede that their efforts to abate the issues cited have been slow, but are committed and willing to address all of the issues. Respondents state that roadways have been striped to indicate direction of traffic, fire lane parking restrictions have been marked, lots have received number identifiers, substandard units have been removed of refuse, the mobile homes damaged due to fire have been completely removed, some roads have been repaved, and the ones that have not will be repaved once the source of nuisance water is corrected by the adjacent mobile home via legal action, an emergency preparedness plan was posted, and legal actions will be initiated to cause the various tenants to comply with clearing excess refuse. (See Declaration of John H. Frost, ¶¶ 1-2, 6-15, and exhibits thereto; Declaration of Judy Chi-Dee Tsai, ¶¶ 1-2, 4-9, 21-22.) Respondents argue that, though they have been slow to act, petitioners share blame in the delay.

Though respondents argue that the Barberi Declaration fails to establish that the California Department of Housing and Community Development notices issued satisfy Civil Code section 798.56, respondents cite no authority to support any finding that the Department was under any obligation to initiate terminations of tenancy on behalf of respondents as management. (See Civ. Code § 798.56.) Rather, petitioners declare, and respondents do not refute, that investigations of the conditions of the Property have been ongoing since July 2019. (Barberi Decl., ¶ 5.) Petitioners further submit, and respondents do not refute, that several inspections noting violations occurred, with notice to

¹ Though the opposition is untimely under Health and Safety Code section 17990, the court exercises its discretion and considers the opposition. (Cal. Rules of Court, Rule 3.1300(d).)

respondents. (E.g., id., ¶ 9, and Ex. 12 to the Petition; Yanovsky Decl., ¶ 11, and Ex. 8 to the Petition [certified mail receipts to respondents].)

Based on the above, it does not appear that respondents are going to correct the violations on their own, despite multiple citations (see generally Barberi Decl.), a revocation of permission to operate as a mobile home park (id., ¶ 7, and Ex. 11 to the Petition), and recent fires on the Property, one of which resulted in a fatality (Tracy Decl., ¶ 5-6). Though respondents' dilatory efforts demonstrate a willingness to cooperate, the amount of delay between citation and effort is substantial. For example, respondents' retained architect noted that though he has acted in an advisory capacity since May 3, 2021, it was not until September 9, 2021 that he was retained to address issues raised as early as July 29, 2019. (Frost Decl., ¶ 7; Barberi Decl., ¶ 5-6, 8-9, and Ex. 12 to the Petition.) Therefore, petitioners have met the requirements of section 17980.6 and 17980.7 and the court approves the appointment of a receiver to abate the nuisances on the Property.² Based on the Declaration of Mark Adams, the court finds the nominated receiver to be well qualified to manage the Property. The court further grants the request to allow the receiver to issue receiver's certificates to finance any improvements or repairs to the property. (Health & Saf. Code § 17980.7, subd. (c)(4)(G).)

County of Fresno Clarification Regarding Tax Lien Priority

The County has filed notices of non-opposition to the petitions, but notes that its non-opposition is contingent on its tax liens having first priority over the receiver's liens. Petitioners' proposed order does reflect that federal, state and county tax liens will have priority over the receiver's liens, so it appears that the County's concern in this regard has been addressed.

Attorney's Fees

Petitioners are also entitled to an award of their attorney's fees and costs from respondents. (Health & Saf. Code § 17980.6, subd. (c)(11).)

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	11/09/21	
	(Judge's initials)		(Date)	

² Petitioners submitted a second Declaration of Amanda Yanovsky in support of their reply to the opposition. The court declines to consider this second declaration on reply.

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Tentative Ruling

Re: In re Carlos Rodriguez

Superior Court Case No. 21CECG02536

Hearing Date: November 10, 2021 (Dept. 403)

Motion: Petition to Compromise Disputed Claim of Minor

Tentative Ruling:

To deny without prejudice.

Explanation:

The petitioner, Andrea Rodriguez is the minor's grandmother, and thus is not able to compromise the minor's claim without being appointed as guardian ad litem. (Prob. Code, § 3411, subd. (a) [Parent entitled to custody or (inter alia) guardian of the estate may file petition]; Code Civ. Proc., § 372, subd. (a) [guardian of the estate or (inter alia) guardian ad litem has power to compromise claim].) While petitioner was once the minor's guardian (Fresno Superior Court Case No. 08CEPR00639), that case has now been dismissed, and furthermore it was a guardianship of the person, only, and not of the minor's estate.

Petitioner has not yet been appointed as guardian ad litem, and cannot be appointed as such at this juncture because she is self-represented. A non-attorney appointed as guardian ad litem cannot act in pro per, since doing so would constitute the unlawful practice of law. (Bus. & Prof. Code, § 6125; J.W. v. Superior Court (1993) 17 Cal.App.4th 958, 965.) The court realizes that Mr. DeMaria cannot represent Ms. Rodriguez since he represents the insurer for the at-fault driver. Even so, Ms. Rodriguez, as grandmother, has no power to compromise the claim without appointment as guardian ad litem, and she cannot be so appointed without being represented by an attorney. The belated filing of an amended petition and a new application for appointment of guardian ad litem which deletes reference to Mr. DeMaria in the box at the top of the first page is inadequate to address this issue.

Also, there is no information provided as to whether the settling at-fault driver, Raul Morales, has other assets from which to pay a wrongful death settlement. Item 10 of the Petition indicates that petitioner has investigated issues such as this, but since there is no independent counsel representing petitioner, the court must see some evidence regarding Mr. Morales' ability or inability to provide settlement funds from sources other than his insurance policy. At the very least, petitioner should present a declaration from Mr. Morales on this issue.

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 Ruli	ing			
Issued By:	KCK	on	11/09/21	
-	(Judge's initials)		(Date)	