

Tentative Rulings for November 17, 2021
Department 403

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: ***Burgess, Smith and Wathen VII v. Chris & Ken Enterprises, Inc.***
Superior Court Case No. 19CECG02950

Hearing Date: November 17, 2021 (Dept. 403)

Motion: Plaintiff's Motion for Summary Adjudication

Tentative Ruling:

To deny plaintiff's motion for summary adjudication of defendants' third, fourth, and seventeenth affirmative defenses, as well as their first, second, and fifth cross-claims in the cross-complaint, as plaintiff has failed to file a completed proof of service showing that the notice of motion and supporting documents were served on all defendants prior to the hearing. (Code Civ. Proc. § 437c, subd. (a)(2).)

Explanation:

Plaintiff moves for summary adjudication of defendants' third, fourth, and seventeenth affirmative defenses, as well as their first, second, and fifth cross-claims in their cross-complaint. Plaintiff alleges that it entered into a lease agreement with defendants for defendants to operate a dry cleaning business at 1225 North Willow Avenue in Clovis from 2007 to 2010. In 2010, the defendants moved their business to a different location within the same shopping center at 1215 North Willow Avenue. The parties entered into a new lease agreement with regard to the second location at 1215 North Willow.

In June of 2017, the parties entered into an agreement to terminate the lease at 1215 North Willow. The agreement included a general release of all claims related to the premises at 1215 North Willow, but it did not include a waiver of Civil Code section 1542, which provides that unknown claims are not released by a general release.

After defendants vacated the premises, plaintiff had testing done which found that the soil under the premises at 1225 North Willow contained hazardous chemicals from defendants' dry cleaning business. Plaintiff therefore filed the present action, seeking to hold defendants liable for the costs of cleaning up the chemicals. Defendants have filed an answer and cross-complaint, which allege that plaintiff cannot prevail on its claims and is guilty of breach of contract because it expressly waived any and all claims regarding the premises when it agreed to terminate the lease.

In its summary adjudication motion, plaintiff contends that defendants cannot prevail on several of their affirmative defenses or cross-claims that are based on the theory that plaintiff executed a release of all claims related to the leased premises when the parties agreed to terminate the lease in June of 2017. Plaintiff argues that the release only applied to the premises located at 1215 North Willow, not the subject premises at 1225 North Willow, which is where the hazardous chemicals were found. Plaintiff also points out that the lease termination agreement did not contain a waiver of Civil Code

(03)

Tentative Ruling

Re: **Merlo v. Pristine Surgery Center, Inc.**
Superior Court Case No. 18CECG03026

Hearing Date: November 17, 2021 (Dept. 403)

Motion: Application of Robert S. Peck to Appear as Counsel *Pro Hac Vice*

Tentative Ruling:

To grant the application of Robert S. Peck to appear as counsel *pro hac vice*. (Cal. Rules of Court, Rule 9.40.)

Explanation:

Under Rules of Court, Rule 9.40, subdivision (a), "A person who is not a member of the State Bar of California but who is a member in good standing of and eligible to practice before the bar of any United States court or the highest court in any state, territory, or insular possession of the United States, and who has been retained to appear in a particular cause pending in a court of this state, may in the discretion of such court be permitted upon written application to appear as counsel *pro hac vice*, provided that an active member of the State Bar of California is associated as attorney of record."

Under Rule 9.40, subdivision (c), "A person desiring to appear as counsel *pro hac vice* in a superior court must file with the court a verified application together with proof of service by mail in accordance with Code of Civil Procedure section 1013a of a copy of the application and of the notice of hearing of the application on all parties who have appeared in the cause and on the State Bar of California at its San Francisco office. The notice of hearing must be given at the time prescribed in Code of Civil Procedure section 1005 unless the court has prescribed a shorter period." (Rule 9.40, subd. (c).)

Also, under Rule 9.40, subdivision (e), "An applicant for permission to appear as counsel *pro hac vice* under this rule must pay a reasonable fee not exceeding \$50 to the State Bar of California with the copy of the application and the notice of hearing that is served on the State Bar."

Here, Mr. Peck has submitted a verified application to appear as counsel *pro hac vice* in the present case. The application meets the requirements of Rule of Court 9.40. He also states that the \$50 fee has been paid to the California State Bar, and that notice of the application was served on the State Bar. Therefore, the court intends to grant the application to allow Mr. Peck to appear as counsel *pro hac vice*.

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** **11/12/21** .

(Judge's initials)

(Date)