Tentative Rulings for April 11, 2024
Department 501

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

21CECG00818 ***Matthew Hiatt v. Terry McCoy, et al.***

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

23CECG04170 ***Dante DiPinto v. WTG Unlimited, Inc.*** **is continued to Tuesday, May 21, 2024, at 3:30 p.m. in Department 501**

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Tentative Rulings for Department 501

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Tentative Ruling

Re: ***Antonio Delgado v. Kubota Tractor Corporation***
Superior Court Case No. 21CECG01467

Hearing Date: April 11, 2024 (Dept. 501)

Motions: 1) by Defendant John P. Nale for Summary Judgment or, in the Alternative, Summary Adjudication
2) by the Kubota Defendants for Summary Judgment
3) Joinder by Pioneer Farm Equipment Co. to the Kubota Defendants' Motion for Summary Judgment

Tentative Rulings:

To continue defendant John P. Nale's alternative motion to Wednesday, April 24, 2024, at 3:30 p.m. in Department 501. No later than Thursday, April 18, 2024, defendant Nale is to provide a supplemental brief addressing the portions of the opposition for which he did not have timely service.

To deny the Kubota defendants' motion for summary judgment.

To deny summary judgment as to Pioneer Farm Equipment Co.

Explanation:

Evidentiary Objections

For plaintiffs' evidentiary objections numbers 1-3, these were not dispositive to the motion and therefore the court need not rule on them. For numbers 4-7, these objections are all overruled.

For the Kubota defendants' evidentiary objections numbers 1-3, these are all overruled.

Merits

A trial court shall grant summary judgment where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., §437c, subd. (c).) In determining a motion for summary judgment, the court views the evidence "in the light most favorable to the plaintiff", liberally construing plaintiff's evidence and strictly scrutinizing the defendant's evidence. (*Nazir v. United Airlines, Inc*. (2009) 178 Cal.App.4th 243, 254.) The court does not weigh evidence or inferences (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 856), nevertheless, the court shall consider all inferences reasonably deducible from the evidence unless it is controverted by other inferences or evidence. (Code Civ. Proc., § 437c, subd. (c).) Doubts as to whether there is a triable issue of fact are resolved in favor of the opposing party. (*Ingham v. Luxor Cab Co., supra*, 93 Cal.App.4th 1045, 1049.)

Here, the Kubota defendants and Pioneer Farm Equipment Co., by way of joinder, argue that they should have summary judgment granted in their favor because plaintiffs cannot rely on speculation and conjecture for the issue of causation. These defendants argue that an absence of evidence on the issue of causation warrants summary judgment. Defendants rely on *Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 483-484, for the position that they are entitled to summary judgment where plaintiffs cannot present evidence of why and how a plaintiff fell from the subject tractor.

The court in *Leslie G.* noted that a "moving defendant may point to *the absence of evidence to support plaintiff's case*." (*Id*. at p. 482.) When a moving defendant points to the absence of evidence, then the burden would shift to the plaintiff to present evidence showing a triable issue of material fact. (*Ibid*.) In considering whether a plaintiff has met the burden of proof, the court considers direct and circumstantial evidence. (*Id*. at p. 483.) In doing this, it also considers "all reasonable inferences to be drawn from both kinds of evidence, giving full consideration to the negative and affirmative inferences." (*Ibid*.) The court will not "draw inferences from thin air." (*Ibid*.) Defendants argue that plaintiffs are asking the court to draw inferences from thin air regarding how and why plaintiff fell from the tractor, noting that plaintiff cannot recall how it happened, there were no witnesses, and no problems with the tractor prior to this incident.

Plaintiffs argue that they have presented sufficient circumstantial evidence to believe that plaintiff was struck by a tree limb or branch which caused him to fall from the tractor. Plaintiffs also argue that defendants' reliance on Leslie G. is misplaced and that a more recent case, *Camacho v. JLG Industries Inc*. (2023) 93 Cal.App.5th 809, is on point.

The *Leslie G.* case is a landlord tenant case for negligent failure to repair a broken security gate, where plaintiff asserted this caused a rapist to enter the building and rape her. (*Leslie G. v. Perry & Associates, supra*, 43 Cal.App.4th 472, 472.) There, the rapist was never found and there was no evidence from which the court could infer the causation issue. (*Id*. at p. 484.) In *Camacho*, the court was considering whether a scissor lift was defectively designed causing that plaintiff to fall from the lift. (*Camacho v. JLG Industries Inc., supra*, 93 Cal.App.5th at p. 812-813.) Regarding causation, the court in *Camacho* noted that plaintiffs are not required to disprove alternative theories of explanation for the injury, but that causation may be "logically and reasonably inferred from the circumstantial evidence." (*Id*. at p. 817.) The court would note that the *Leslie G.* matter was addressing the issue of negligence and the *Camacho* matter addresses strict products liability, both of which are alleged against these defendants. Defendants have only sought summary judgment, so if they fail in their motion on either cause of action, the entire motion must fail.

Strict Product Liability

Products liability cases come in various forms. A plaintiff may point to a malfunction of the product, may allege the absence of warnings or directions, or may seek to establish causation based on a failure to provide a safety device. (*Campbell v. General Motors Corp.* (1982) 32 Cal.3d 112, 119-120.) For the third type, "[u]nless very unusual circumstances exist, this type of claim presents a factual issue which can only be

resolved by the trier of fact." (*Id*. at p. 120.) As the court in *Campbell* noted, "When a child is drowned in a swimming pool, no one can say with certainty that a lifeguard would have saved him; but the experience of the community is that with guards present people are commonly saved, and this affords a sufficient basis for the conclusion that it is more likely than not that the absence of the guard played a significant part in the drowning. *Such questions are peculiarly for the jury*." (*Ibid*, emphasis in original.) *Campbell* further states, "It is particularly appropriate that the jury be allowed to determine the inference to be drawn when the evidence indicates that a safety device, designed to prevent the very injury that occurred was not present. (*Id*. at p. 121.) Taking such a case from a jury "simply because the plaintiff could not prove to a certainty that the device would have prevented the accident would enable the manufacturer to prevail on the basis of its failure to provide the safeguard." (*Ibid*.)

Here, plaintiffs have provided evidence that a safeguard may have been reasonably available which would have prevented his injury, including an engine kill system, a cab, and limb lifters. (Sevart Decl., ¶¶ 12-18.) Defendants argue that plaintiffs, fatally, cannot show why or how plaintiff Delgado fell from the subject tractor. However, the wisdom of *Campbell* is instructive here. Plaintiffs acknowledge that plaintiff Delgado has no memory of the accident and there were no witnesses. However, they point to circumstantial evidence that plaintiff was likely struck in the face by a branch: he had an abrasion on his nose, he was barely able to speak and had no memory of falling, there was compressed dirt on his left shoulder and his left shirt sleeve was torn, his glasses were off, there was tree debris in the tractor, and the previous day he had been hit by a branch[1]. Defendants argue that this evidence could lead to a different conclusion. In situations such as this, where there is a certain degree of mystery as to causation, this mystery is better left in the hands of a jury. Additionally, defendants' own arguments show that there is a dispute as to how the evidence may be interpreted. As such, the motion for summary judgment is denied.

Negligence

Here, defendants have relied on the *Leslie G*. case, arguing that plaintiffs' inferences are drawn from thin air. Defendants argue that there are several ways that plaintiff Delgado may have exited the tractor—jumping off, being bumped off, being pulled off, or falling. Defendants argue that determining how plaintiff ended up off the tractor is pure conjecture. However, the court would disagree that plaintiffs' inferences are drawn from thin air. Plaintiffs and defendants have presented plausible explanations for how plaintiff fell from the tractor *based on the observable information and circumstances the day of the incident*. As such, defendants have not shown that plaintiffs' have a true absence of evidence on the issue of causation. The summary judgment motion is also denied for this reason.

Loss of Consortium

Defendants have not addressed the loss of consortium claim.

[1] There is also a dispute as to the question of whether there had been previous issues with the tractor. (See Material Fact No. 6.)

Summary judgment is denied.

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: DTT on 4/9/2024.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Estate of Clarence Richard Billingsley v. Davis, et al.***
Superior Court Case No. 20CECG01179

Hearing Date: April 11, 2024 (Dept. 501)

Motion: by Plaintiff for Relief from Judgment pursuant to Code of Civil Procedure section 473, subdivision (b)

Tentative Ruling:

To deny.

Explanation:

Plaintiff moves pursuant to Code of Civil Procedure section 473, subdivision (b), to set aside four court orders stemming from the failure to timely file an opposition to defendants' motion for summary judgment. Specifically, plaintiff seeks to set aside (1) the court's order denying the January 24, 2024, ex parte application to continue the hearing for summary judgment pursuant to Code of Civil Procedure section 437c, subdivision (h); (2) the court's denial of plaintiff's untimely request for oral argument on the January 25, 2024, motion for summary judgment; (3) the January 25, 2024, order granting defendants' motion for summary judgment; and (4) the February 8, 2024, judgment entered against plaintiff.

Plaintiff seeks mandatory relief under Code of Civil Procedure section 473, subdivision (b), arguing that defendants' motion was granted *by default* as a result of their failure to file an opposition. This expansion of the term default within the statute is not supported by case authority, which specifically limits the meaning of "default" to a judgment entered after the defendant has failed to answer the complaint and the defendant's default has been entered. (*English v. IKON Business Solutions, Inc*. (2001) 94 Cal.App.4th 130, 143-144.) "By its very nature, a summary judgment is distinct from both a 'default' and a 'default judgment' as those terms are used in section 473(b)." (*Id*. at p. 144.) Thus, mandatory relief is not available to plaintiff for any of the four actions plaintiff seeks to set aside.

Plaintiff additionally seeks discretionary relief pursuant to Code of Civil Procedure section 473, subdivision (b). Plaintiff argues attorney Strongin's failure to confirm his associate attorney Crockett had timely filed the opposition was an excusable mistake. Likewise, plaintiff argues attorney Crockett's failure to timely file the opposition due to Covid-19 illness, the mistaken belief he could work through his illness, and his failure to notify his colleagues is an excusable mistake.

In opposition, defendants submit a significant number of emails between counsel that additionally demonstrate attorney Crockett was seeking to continue the hearing on the motion for summary judgment and the trial by stipulation of the parties in advance of the opposition coming due. (Nicholson Decl., ¶¶ 4-5, 15, Exhs. A and G.) These emails,

which include multiple deposition notices served by email on January 10, 2024, and responses to discovery, are submitted to demonstrate the consistent communications from Crockett before and after the opposition was due. (Nicholson Decl., Exh. D.) The evidence provided calls into question Crockett's attestations to limited ability to work and "limited ability to utilize email correspondence" during the time of his illness. (Strongin Decl, Exh. 2, Crockett Decl., ¶¶ 8-9.)

In support of the motion, plaintiff offers emails from December 6, 2023, demonstrating attempts to schedule depositions argued to be necessary to oppose the motion for summary judgment. (See, Strongin Decl., ¶ 8, Exh. 3.) The emails sent before the January 11, 2024, due date for the opposition demonstrate counsel's continued belief that additional discovery was necessary to oppose the motion, including one such email sent on January 11, 2024. (See Nicholson Decl. Exh. G [p. 206 of 534 of the declaration].) Despite arguing that a continuance of the hearing on defendants' motion for summary judgment was necessary to conduct additional discovery, plaintiff failed to file an ex parte application requesting such a continuance on or before the date the opposition was due. (Code Civ. Proc. § 437c, subd. (h).) Subdivision (h) also allows the party to submit the required affidavit demonstrating that additional discovery is necessary to oppose the motion as its opposition to the motion for summary judgment but plaintiff failed to do so.

It was not until January 24, 2024, the day before the hearing on defendants' motion, that plaintiff filed an ex parte application to continue the hearing date pursuant to subdivision (h). Attorney Strongin attests to his "mistaken belief" that a request to continue the motion for summary judgment due to the need to conduct additional discovery could be made at any time prior to the hearing on the motion. (Strongin Decl., ¶ 9.) Attorney Strongin expressed the same understanding in an email on January 12, 2024, stating, "we will seek to have the court consider our opposition regardless of the fact that we will be filing the opposition on Tuesday [January 16, 2024]. I have little doubt that the court will grant such relief." (Nicholson Decl., Exh. G [p. 261 of 534].)

Counsel's misunderstanding of the law is not a basis for finding counsel's mistake was excusable under Code of Civil Procedure section 473, subdivision (b). " 'Mistake is not a ground for relief under section 473, subdivision (b), when "the court finds that the 'mistake' is simply the result of professional incompetence, general ignorance of the law, or unjustifiable negligence in discovering the law …."'[Citation]" (*Henderson v. Pacific Gas & Electric Co.* (2010) 187 Cal.App.4th 215, 229.)

Attorneys for plaintiff believed additional discovery was necessary to oppose the motion for summary judgment well in advance of attorney Crockett's Covid-19 diagnosis. In a clear misunderstanding of the plain language Code of Civil Procedure section 437c, subdivision (h), plaintiff failed to timely make its ex parte request in addition to failing to timely file an opposition to defendants' motion for summary judgment. The correspondence provided by the parties demonstrates plaintiff's failure to timely oppose was guided by counsel's inexcusable misunderstanding of the statute and a belief that relief was available after the date to file the opposition had passed.

Similarly, counsel attests to a misunderstanding of the court's process for requesting oral argument in believing a request for a remote hearing appearance is

sufficient to request oral argument. (Strongin Decl., ¶ 10.) This failure to understand the court's rules is an inexcusable mistake.

Plaintiff focuses on Mr. Crockett's illness as a circumstance out of their control resulting in the failure to timely file an opposition. However, even with counsel's illness, the failure to file the opposition timely could have been avoided with ordinary prudence. (*Henderson v. Pacific Gas & Electric Co., supra*, 154 Cal.App.4th at p. 232.) What counsel describes as "mistakes," including Crockett failing to notify his colleagues of his inability to work and Strongin's failure to check in with his associate to confirm the opposition would be timely filed, are descriptions of those things a reasonably prudent person would have done under the circumstances to avoid the situation plaintiff found itself in.

Plaintiff has not demonstrated that the denial of the January 24, 2024, ex parte application to continue the hearing on defendants' motion for summary judgment, the court's denial of plaintiff's untimely request for oral argument, the January 25, 2024, order granting defendants' motion for summary judgment, or the February 8, 2024, judgment thereon were entered as a result of counsel's mistake, inadvertence or excusable neglect. As a result, the court intends to deny the request for discretionary relief.

The court previously considered plaintiff's January 30, 2024, ex parte application for relief under 473(b)'s mandatory provisions with regard to the January 25, 2024, order granting summary judgment and denied the application for relief. Defendants argue the motion at bench is an improper motion for reconsideration of that order. The court agrees, however the motion at bench also requests relief with regard to the February 8, 2024, entry of judgment as well as the January 24, 2024, ex parte application which was not considered at the time of the court's ex parte ruling. As outlined above, mandatory relief is not available for the orders at issue. The court's February 27, 2024, ruling on plaintiff's ex parte application seeking the same relief as is sought in this motion was limited to finding there was no exigency. As such, the motion at bench is not improperly requesting reconsideration of the order.

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: DTT on 4/9/2024.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Olsen v. LED Greenlight International. LLC, et al.***
Superior Court Case No. 24CECG01108

Hearing Date: April 11, 2024 (Dept. 501)

Motions: (1) by Plaintiff for Trial Setting Preference
(2) by Plaintiff for an Order to Preserve Testimony
(3) Ex Parte Application of Plaintiff to Take Deposition During the First 20 Days After Service of Summons

Tentative Rulings:

To sustain defendant LED Greenlight EAAS, LLC's objections to the evidence submitted in support of plaintiff's motion for preference and continue the hearing on plaintiff's motion for preference to Friday, April 12, 2024 at 10:00 a.m. in Dept. 501 to allow for the submission of admissible evidence. (Code Civ. Proc. §36, subd. (d).)

To grant plaintiff's ex parte application to serve deposition notices fewer than 20 days after service of summons. (Code Civ. Proc. § 2025.210, subd. (b).)

To deny without prejudice plaintiff's motion to use deposition testimony at trial. (Code Civ. Proc. § 2025.620.)

Explanation:

Preference

Under Code of Civil Procedure section 36, subdivision (d),

> "In its discretion, the court may also grant a motion for preference that is accompanied by *clear and convincing medical documentation* that concludes that one of the parties suffers from an illness or condition raising substantial medical doubt of survival of that party beyond six months, and that satisfies the court that the interests of justice will be served by granting the preference."

(Code Civ. Proc., §36, subd. (d), emphasis added.)

In support of his motion, plaintiff attaches only his own declaration stating that his is currently admitted to Saint Alphonsus Regional Medical Center in Boise, Idaho and has been told by his doctors he is not expected to live six months. (Olson Decl., ¶ 2.) Plaintiff's own declaration is hearsay and does not meet the standard of "clear and convincing medical documentation" necessary to support the motion under subdivision (d). With his ex parte application, plaintiff included a letter from Wesley Jones, DO, attached to the declaration of his attorney, Kenneth J. Catanzarite, as evidence to support good cause

to shorten time to hear the motions now before the court. (Catazarite Ex Parte Decl., ¶ 8, Exh. D.)

Defendant LED Greenlight EAAS, LLC, specially appearing, has objected to the letter from Dr. Jones and argues the letter is not a declaration signed under penalty of perjury sufficient to constitute clear and convincing medical documentation. The court agrees and sustains the objection. The letter is not a declaration, and is not sufficient to constitute clear and convincing medical documentation for purposes of plaintiff's motion for trial setting preference.

The court will continue the hearing on plaintiff's motion for preference to allow the moving party to file admissible, clear and convincing medical documentation to support his motion.

Plaintiff's Deposition

Plaintiff is moving pursuant to Code of Civil Procedure section 2025.620 for an order that his deposition be taken to preserve testimony. The statute cited provides that the court may order the use of deposition testimony at trial in lieu of live testimony where the deponent is unavailable. A ruling on this motion is premature at this stage. To the extent plaintiff is seeking an order that his own deposition be expeditiously taken due to his poor health, the court is not aware of the requirement for such an order before the deposition can be noticed or taken. The motion is denied without prejudice as premature.

Plaintiff's ex parte application included a request to take plaintiff's deposition during the first 20 days after service of summons pursuant to Code of Civil Procedure section 2025.210, subdivision (b). That statute does not provide authority to take a deposition within the first 20 days after service of summons. Rather, the statute provides authority to *serve a deposition notice* on a date that is less than 20 days after the service of summons on defendant upon a showing of good cause. Such motion may be made with or without notice. (Code Civ. Proc. § 2025.210, subd. (b).)

Here, defendant LED Greenlight EAAS, LLC was served on March 21, 2024, and defendants LED Greenlight CA, LLC and LED Greenlight International, LLC were served on March 25, 2024. Twenty days' time will have passed as of Wednesday April 10, 2024, as to LED Greenlight EAAS, LLC, rendering moot this motion as to this defendant. The twenty days will have expired as of April 14, 2024, as to LED Greenlight CA, LLC and LED Greenlight International, LLC.

Based on the evidence of plaintiff's medical prognosis, there is good cause to grant plaintiff leave to serve the notice of his deposition sooner than 20 days after the service of summons on defendants LED Greenlight CA, LLC and LED Greenlight International, LLC.

The court has the authority to shorten the 10 days' time required between the service of the notice of deposition and the date for which the deposition is noticed. (Code Civ. Proc. § 2025.270, subd. (d).) The motion may be made on notice or by ex parte application and granted upon a showing of good cause. (*Ibid*.) In the event plaintiff and defendants cannot come to an agreement as to the date of plaintiff's

deposition due to an objection that it is being set with fewer than 10 days' notice the court will entertain an ex parte application for relief under this provision.

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: DTT on 4/10/2024.
(Judge's initials) (Date)