Tentative Rulings for April 29, 2025
Department 502

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.***

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 502

Begin at the next page

(03)

Tentative Ruling

Re: ***Adrian Medina v. General Motors, LLC***
Superior Court Case No. 23CECG01836

Hearing Date: April 29, 2025 (Dept. 502)

Motion: Defendant's Motion for Summary Judgment, or in the Alternative, Summary Adjudication

Tentative Ruling:

To deny defendant's motion for summary judgment, or in the alternative summary adjudication, as defendant failed to serve the motion at least 81 days before the hearing as required under the amended version of Code of Civil Procedure section 437c, subdivision (a)(2).

Explanation:

Under the recently amended version of Code of Civil Procedure section 437c, subdivision (a)(2), "Notice of the [summary judgment] motion and supporting papers shall be served on all other parties to the action at least 81 days before the time appointed for hearing. … If the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required 81-day period of notice shall be increased by two court days." (Code Civ. Proc., § 437c, subd. (a)(2).) Thus, the amendment extended the service time period for summary judgment motions, which was previously 75 days. The amended version of section 437c went into effect on January 1, 2025, so the longer service period applies to the present motion, which was filed on February 19, 2025.

Here, defendants served their motion for summary judgment on February 11, 2025 by email. However, their motion is set for hearing on April 29, 2025, which is less than 83 days after the motion was served. Therefore, the motion was not timely served under the newly amended version of section 437c. Also, plaintiffs have not filed opposition or waived the defect in service. As a result, the court intends to deny the motion for summary judgment, and the alternative motion for summary adjudication, as the motion was not timely served.

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 (Judge's initials) on 04/21/25 (Date).

(20)

Tentative Ruling

Re: ***Bryce Cannell v. Andrew Crosby***
Superior Court Case No. 24CECG05345

Hearing Date: April 29, 2025 (Dept. 502)

Motion: By Defendant Andrew Crosby to Quash Service of Summons

Tentative Ruling:

To deny.

Explanation:

Plaintiff has neither served nor purported to have served Andrew Crosby with the summons and complaint. There is nothing to quash.

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 04/21/25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***EBF Holdings, LLC v. Sulakhan Singh***
Superior Court Case No. 24CECG05085

Hearing Date: April 29, 2025 (Dept. 502)

Motion: by Plaintiff to Strike Answer

Tentative Ruling:

To grant and strike the answer of defendant North East Business Management, Inc.

Explanation:

On January 7, 2025, an answer was filed on behalf of defendants Sulakhan Singh and North East Business Management, Inc., a corporation. The answer was filed in propria persona and signed by a non-attorney, Sulakhan Singh. The corporation was served on December 16, 2024. Plaintiff now moves to strike the answer as to the corporation.

Since the defendant is a corporation, it cannot represent itself in pro per, nor can it be represented by someone who is not an attorney. (*Merco Constr. Engineers, Inc. v. Municipal Court* (1978) 21 Cal.3d 724, 729.) When a corporation attempts to appear without an attorney, the opposing party should file a motion to strike the corporation's complaint, answer, or other pleading. (*Himmel v. City Council* (1959) 169 Cal.App.2d 97, 100.)

In light of the fact that answer for the defendant corporation was filed by a non-attorney, it will be stricken.

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 04/25/25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***In Re: Isaiah Luis Salinas***
Superior Court Case No. 25CECG00576

Hearing Date: April 29, 2025 (Dept. 502)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To grant the petition. Petitioner must file by Wednesday, April 30, 2025 at 5:00 p.m. the updated Order Approving Compromise of Claim (Judicial Council Form MC-351) and Order to Deposit Funds in Blocked Account (Judicial Council Form MC-355) consistent with the filed Application.

Pursuant to Superior Court of Fresno County, Local Rules, Rule 2.8.4, the court sets a Case Status Minors Comp hearing on Tuesday, July 22, 2025, at 3:30 p.m. in Department 502 for confirmation of deposit of the minors' funds into a blocked account. If petitioner files the Acknowledgments of Receipt of Order and Funds for Deposit in Blocked Account (Judicial Council Form MC-356) at least ten (10) court days before the hearing, the status conference will come off calendar.

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 04/25/25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Abdo Saeed v. City of Huron***
Superior Court Case No. 24CECG02366

Hearing Date: April 29, 2025 (Dept. 502)

Motion: by Defendant to Expunge Lis Pendens

Tentative Ruling:

To deny. (Code Civ. Proc., § 405.32.)

Explanation:

Legal Standard

At any time after notice of pendency of action has been recorded, any party may apply to the court to expunge the notice. (Code Civ. Proc. § 405.4.) The court shall expunge the lis pendens unless (1) the pleading contains a real property claim; and (2) plaintiff provides, by a preponderance of the evidence, the probable validity of plaintiff's real property claim. (Code Civ. Proc. § 405.3.)

Application

Real Property Claim. A real property claim is one that, if meritorious, affects title to, or the right of possession of, specific real property, or the use of an easement, identified in the pleading. (Code Civ. Proc. § 405.4.) A claim for specific performance is a real property claim. (*Hilberg v. Superior Court* (1989) 215 Cal.App.3d 539, 542.)

Here, the moving party does not appear to dispute that the complaint alleges a real property claim. At issue is the City Property identified by APN 075-110-26. Plaintiffs' second cause of action in their complaint is for specific performance following a breach of contract, with the end result ultimately being the exchange of the City Property for the plaintiffs' Myrtle Property. There is a real property claim.

Probable Validity. Expungement of an improper lis pendens is mandatory, not discretionary. If the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim, the lis pendens must be expunged. (Code Civ. Proc. § 405.32.) Thus, a motion to expunge under section 405.32 requires an evidentiary hearing on the probability that the plaintiff will be able to establish a valid real property claim. (*BGJ Associates, LLC v. Superior Court* (1999) 75 Cal.App.4th 952, 957.) "'Probable validity,' with respect to a real property claim, means that it is more likely than not that the claimant will obtain a judgment against the defendant on the claim." (Code Civ. Proc., § 405.3.)

"Unlike other motions, the burden is on the party opposing the motion to expunge—i.e., the claimant-plaintiff—to establish the probable validity of the underlying

claim. The claimant-plaintiff must establish the probable validity of the claim by a preponderance of the evidence… That is, the plaintiff must 'at least establish a prima facie case. If the defendant makes an appearance, the court must then consider the relative merits of the positions of the respective parties and make a determination of the probable outcome of the litigation.'" (*Howard S. Wright Construction Co. v. Superior Court* (2003) 106 Cal.App.4th 314, 319, internal citations and footnotes omitted, emphasis added.) "Thus, a showing of good faith and a proper purpose are no longer sufficient to overcome a motion to expunge. The claimant must show a probably valid claim." (*Palmer v. Zaklama* (2003) 109 Cal.App.4th 1367, 1378, internal citation omitted.)

Here, plaintiffs have opposed the motion, and argue that there is probable validity of their claim for specific performance. "To obtain specific performance after a breach of contract, a plaintiff must generally show: '(1) the inadequacy of his legal remedy; (2) an underlying contract that is both reasonable and supported by adequate consideration; (3) the existence of a mutuality of remedies; (4) contractual terms which are sufficiently definite to enable the court to know what it is to enforce; and (5) a substantial similarity of the requested performance to that promised in the contract.'" (*Real Estate Analytics, LLC v. Vallas* (2008) 160 Cal.App.4th 463, 472.)

Plaintiffs argue the well-known principle that there is a presumption of uniqueness and therefore inadequacy of damages when the subject matter is real property. The contract is reasonable, as the consideration for the underlying contract is an exchange of property for property, which is adequate consideration. Plaintiffs assert that mutuality of remedies exists as both parties undertook reciprocal obligations to convey their respective parcels. Such mutuality is unrefuted by defendant. The agreement identifies the two specific parcels of land to be exchanged and presents essential terms of the contract to be followed. There is a similarity of contract and requested performance as the exchange sought by plaintiffs is that which is outlined in the parties' agreement.

As plaintiffs can establish a prima facie case for their claim of specific performance, the court must consider the merits of the respective positions of the parties. The parties are in dispute as to when and if the agreement was properly executed. Plaintiffs' position is that the City and one of the plaintiffs executed the agreement on June 26, 2023, six days after the date for close of escrow contemplated by the agreement (i.e. June 20, 2023). (Saeed Decl., ¶ 4.) Plaintiffs state that the City knew and agreed for the other plaintiff to sign the agreement on his later return to the country. (*Id*., ¶ 5.) Plaintiffs claim they didn't know the City didn't intend to proceed with the deal until October 25, 2023. (*Id*., ¶ 8.) Plaintiffs offer deposition testimony of Juanita Veliz (City Clerk of the City of Huron) and Rey Leon (Mayor of the City of Huron) to argue that the date of execution of the agreement by *both* parties is in question.

Defendant relies on the e-mail sent by Juanita Veliz on June 12, 2023 to counter that the agreement was already "corrected and signed" by the City when picked up by plaintiffs or their representatives. (Costanzo Decl., ¶ 10.) Defendant contends that it was solely the plaintiffs who did not provide the City with a fully executed copy of the agreement prior to October 26, 2023. (*Id*., ¶ 11.) Defendant indicates it was understood to be the City's responsibility to deposit the agreement into escrow. (*Id*., ¶ 12.) Defendant's position is that it could not be done without receipt of the fully executed

agreement. It's not made clear when the agreement fully executed by all parties was finalized, but it appears to be at least on or prior to October 26, 2023. (*Id*., ¶ 11.)

Considering the present issues of fact and the parties' conflicting evidence, defendant has not sufficiently demonstrated that plaintiffs prima facie case for specific performance cannot stand. There is a fully executed agreement before the court and a showing that plaintiffs were ready and willing to perform the contract. At this time, the court is inclined to find that plaintiffs' claim of specific performance has probable validity and deny the motion to expunge lis pendens.

Attorney's Fees

Under Code of Civil Procedure section 405.38, "[t]he court *shall direct* that the party prevailing on any motion under this chapter be awarded the reasonable attorney's fees and costs of making or opposing the motion unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust." (Code Civ. Proc., § 405.38, italics added.) Thus, an award of fees is mandatory unless the court specifically finds that plaintiffs acted with substantial justification or there are other circumstances that would make the imposition of fees unjustified.

Here, plaintiff does not request any costs or fees. The court will not speculate to award attorney's fees and costs, without prejudice to the prevailing party bringing a separate fees motion.

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 04/28/25.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***Valley Unique Electric, Inc. v. PCD, a California corporation***
Superior Court Case No. 22CECG03223

Hearing Date: April 29, 2025 (Dept. 502)

Motion: By Defendant PCD Attorney Fees and Costs

Tentative Ruling:

To deny attorney fees. To grant costs as claimed in the unchallenged memorandum of costs in the sum of $10,158.58 (as set forth in the Memorandum of Costs).

Explanation:

This is an action by plaintiff Valley Unique Electric, Inc. ("VUE") for promissory estoppel and breach of implied contract. On 9/23/24 the case went to trial. The proposed statement of decision issued on 1/13/25 became the ultimate decision of the court on 2/14/25. The Court found that VUE had not relied on PCD's Quote given the quote's condition for a negotiated contract and VUE partial acceptance construed as an unaccepted counteroffer. The court held the proof did not support promissory estoppel. The court also found that that the express language of VUE's Purchase Order ("PO") stating the PO was an "offer," were contrary to any implied contract arising from the PO. Based on other testimony and documents, the court found that no contract was ever formed. Final Judgment was entered on 3/3/25, and notice of entry of judgment on 3/10/25.

PCD now moves for an award of attorney fees and costs pursuant to Civil Code section 1717, contending that because VUE sought attorney fees pursuant to the PO, PCD is entitled to an award of fees, even though it does not constitute a contract between the parties.

"Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties, but parties to actions or proceedings are entitled to their costs, as hereinafter provided." (Code Civ. Proc., § 1021.)

"In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs." (Civ. Code, § 1717, subd. (a).)

PCD relies on *International Billing Services, Inc. v. Emigh* (2000) 84 CA4th 1175, 1187-1189 ("*International Billng*"), which stated that in a breach of contract action, a party claiming entitlement to fees under the contract was judicially estopped from contesting,

after judgment was entered against that party, either the existence or the validity of the fee provision on which it relied. However, that same court later declined to follow the *International Billing* ruling, not that it was dicta. (*M. Perez Co., Inc. v. Base Camp Condominiums Ass'n No. One* (2003) 111 Cal.App.4th 456, 465 ["we believe *International Billing Services* sweeps too broadly and decline to follow it …"].) The *Perez* court held there is no judicial estoppel effect against a losing party who sought attorney fees under circumstances where that party would not have been entitled to fees had it prevailed. (*Id.* at p. 470; see also *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 CA4th 858, 899, fn. 12 [the "better rule is … party claiming fees under (§ 1717) must establish that the opposing party *actually* would have been entitled to receive them if he or she had been the prevailing party" (emphasis in original; internal quotes omitted)].)

Here, the PO did not constitute a contract, so even if the indemnity provision relied upon by PCD was broad enough to allow an award of fees, it was not part of an actual contractual agreement. Nor does PCD's quote contain an attorney fees provision. Accordingly, there is no contractual agreement providing for recovery of attorney fees.

Additionally, even if the PO were a contract, it does not include an attorney fees provision that would apply to the claims brought in this action. The applicable provision reads,

> 3. Indemnity. Vendor hereby assumes the risk in furnishing the goods, services, equipment and materials ordered hereunder, and agrees to defend, indemnify, hold harmless VUE against any and all claims, losses, damages, or liabilities of any kind whatsoever, including reasonable attorneys fees and costs and expert/consultants fees, which arise directly or indirectly out of the performance or nonperformance of this Purchase Order by Vendor. Further, Vendor shall be obligated under this agreement to defend, indemnify and hold VUE harmless for the sole negligence or willful misconduct of Vendor's agents or employees.

The court agrees with VUE that this provision is not one to enforce a contract, and does not encompass contract claims by parties to the contract (if a contract formed). Instead it creates an obligation to indemnify and hold VUE harmless from certain claims.

Indemnity provisions are distinguished from general attorney fees clauses. A standard indemnity clause containing provision for recovery of attorney fees does not entitle a party to fees on a contract claim. (*Carr Business Enterprises, Inc. v. City of Chowchilla* (2008) 166 Cal.App.4th 14, 19-20.) "Generally, the inclusion of attorney fees as an item of loss in a third-party claim-indemnity provision does not constitute a provision for the award of attorney fees in an action on the contract which is required to trigger section 1717." (*Id*. at p. 20.)

Here, while the provision at issue does include language "any and all claims," that is modified by the agreement to "defend, indemnify, hold harmless VUE against any and all claims, losses, damages, or liabilities of any kind whatsoever …." Such language did not convert the indemnity provision into an attorney's fee clause. (See *Carr*, *supra*, at p. 23 ["there is no express language authorizing recovery of fees in an action to enforce the contract."]) Contrast *Baldwin Builders v. Coast Plastering Corp.* (2005) 125 Cal.App.4th

1339, 1342, where the indemnity clause included attorney fees to "enforce the indemnity agreement." There is no such language here to make this a general attorney fees provision.

As pointed out in *Alki Partners, LP v. DB Fund Services, LLC* (2016) 4 Cal.App.5th 574, if parties to a contract intend to provide for attorney's fees to enforce a contract, that is easily stated. Using an indemnity provision is too convoluted or obtuse; it lacks certainty of outcome. (*Id.* at p. 604.)

Even if the PO constituted a contract between the parties, it does not provide for recovery of attorney fees in a claim on the contract. As VUE did not have a right to enforce a contract and collect its attorney fees, neither does PCD. Accordingly, the court intends to deny the motion.

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 04/28/25.
(Judge's initials) (Date)