

Tentative Rulings for June 6, 2023
Department 403

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.

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Tentative Ruling

Re: ***Bank of America, N.A. v. Freddie Fabionar***
Superior Court Case No. 22CECG00439

Hearing Date: June 6, 2023 (Dept. 403)

Motion: Default Prove-Up

Tentative Ruling:

To deny without prejudice, unless counsel appears at the hearing and, at minimum, cures the deficiencies identified in the Order Denying Application for Default Judgment filed on December 29, 2022.

Explanation:

On December 29, 2022 the court issued an Order Denying Application for Default Judgment clearly describing deficiencies with plaintiff's default application. In particular, default had not been entered as to unknown defendants, live testimony was required, and there was no stipulation re defendant Freddie Fabionar.

Counsel has set the subject hearing, but no Judicial Council Form CIV-100 – Request for Court Judgment has been filed. In addition to being a required form, the Request for Court Judgment would likely inform the court if the previously deficiencies have been cured.

The hearing on June 6, 2023 will proceed. However, at minimum, judgment will only be entered if the previous deficiencies are cured.

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: JS on 6/2/2023.
(Judge's initials) (Date)

Tentative Ruling

(37)

Re: **Cindy Chamberlin v. Central California Conference of Seventh-Day Adventists**
Superior Court Case No. 22CECG00593

Hearing Date: **June 6, 2023 (Dept. 403)**

Motion: Defendant Central California Conference of Seventh-Day Adventists' Demurrer to Plaintiff's

Tentative Ruling:

To sustain the demurrer to the first cause of action. Plaintiff is granted 10 days' leave to file the First Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

Explanation:

The Fair Employment and Housing Act ("FEHA") exempts religious associations or corporations which are not organized for private profit. (Gov. Code, § 12926, subd. (d).) Plaintiff concedes that the religious exemption in FEHA would normally apply to defendant, but that defendant's acts of displaying anti-discriminatory posters constitutes a waiver of the religious organization exemption and that defendant should be estopped from asserting the exemption.

Plaintiff relies on *E.D. McGillicuddy Constr. Co. v. Knoll Recreation Assn., Inc.* (1973) 31 Cal.App.3d 891, 900-901 for the assertion that waiver applies here. This case involved mechanics liens regarding condominium sales and did not involve a religious organization. (*Id.* at 898.) It does state, "Waiver is the intentional relinquishment of a known right." (*Id.* at p. 900.) However, it continues,

"It cannot be established without clear showing of intent to give up such right. [Citations.] In addition, a waiver will not be implied contrary to the intention of the party whose rights would be injuriously affected unless by his conduct the opposite party was misled, to his prejudice into the honest belief that such waiver was intended."

(*Id.* at p. 901.)

The purpose of estoppel is to prevent someone from taking an unfair advantage, not to give an unfair advantage. (*Honeywell v. Workers' Comp. Appeals Bd.* (2005) 35 Cal.4th 24, 38.) Equitable estoppel requires 1) the party to be estopped is apprised of the facts, 2) that party must intend for its conduct to be acted upon, 3) the other party must be ignorant of the true facts, and 4) must detrimentally rely on the other party's conduct. (*Moncada v. West Coast Quartz* (2013) 221 Cal.App.4th 768, 782; *Mathews v. Happy Valley Conference Center, Inc.* (2019) 43 Cal.App.5th 236, 259.)

The court in *Mathews v. Happy Valley Conference Center, Inc.*, *supra*, 43 Cal.App.5th 236, 258 found that the religious organization had not waived the FEHA religious exemption where the handbook never explicitly referenced FEHA and made no promise that the organization would be bound by FEHA. The court noted that nothing in the handbook showed a knowing and voluntary waiver of the exemption. (*Ibid.*) The court also found that estoppel is only available defensively, not offensively. (*Id.* at p. 259.) It found that it was error for the trial court to apply estoppel where plaintiff invoked it offensively to prevent defendants from relying on a valid defense to FEHA liability. (*Ibid.*) The court noted that even if estoppel were available offensively, the employee handbook still lacked affirmative representations that the organization was submitting to FEHA liability. (*Ibid.*) Therefore, there was no conduct that caused detrimental reliance. (*Ibid.*)

Here, plaintiff has not alleged that defendant affirmatively waived the religious exemption available in FEHA specifically. While plaintiff has alleged that there were posters displaying anti-discriminatory policies, she has not alleged that defendant's posters were specifically discussing FEHA. Nor has plaintiff pointed to any other statement or conduct by defendant which specifically addressed a waiver of the religious exemption available in FEHA. As such, plaintiff has not sufficiently alleged either waiver or estoppel regarding her FEHA claims. Defendant's demurrer as to the first cause of action is sustained with leave to amend.

Regarding the issue of ministerial exemption, plaintiff has not presented any argument to challenge its applicability. Plaintiff may concede that her role as the Vice President of Communications would fall under this exemption. (*Alicea-Hernandez v. Catholic Bishop of Chicago* (7th Cir. 2003) 320 F.3d 698, 703.) Otherwise, the court has insufficient information regarding plaintiff's roles and duties to assess whether the ministerial exemption would apply.

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: JS **on** 6/2/2023 .
(Judge's initials) (Date)

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Tentative Ruling

Re: ***In re: 5952 North Greenwood Avenue, Clovis, California 93611***
Superior Court Case No. 22CECG02714

Hearing Date: June 6, 2023 (Dept. 403)

Motion: Hearing on Claim of Susan Portillo for Surplus Funds

Tentative Ruling:

To grant claimant Susan Portillo's motion for disbursement of surplus funds from the foreclosure sale of the property located at 5952 North Greenwood Avenue, Clovis California, 93611, in the amount of \$156,227.47.

Explanation:

The surplus funds held by the Trustee were ordered to be deposited pursuant to Code of Civil Procedure, section 2924j, subdivision (d), on September 22, 2022. Susan Portillo's motion claiming entitlement to the funds was filed on September 6, 2022, so it was timely filed. No other claims have been made on the surplus funds, despite the court attempting to give notice, at several addresses, to the trustor under the deed of trust, Maricela De Los Santos.

Once the trustee deposits surplus funds pursuant to Code of Civil Procedure section 2924j, it is discharged of further responsibility for the disbursement of the sale proceeds. (*Id.*, subd. (c), second par.) Within 90 days after the deposit of the funds with the clerk, the court shall consider all claims to the funds that are filed at least 15 days before the date of the hearing scheduled by the court. (*Id.*, subd. (d), second par.) Susan Portillo's motion claiming entitlement to the funds was filed on September 6, 2022, so it was timely. No other claims have been made on the surplus funds, despite the court attempting to give notice, at several addresses, to the trustor under the deed of trust, Maricela De Los Santos.

Surplus proceeds of a non-judicial foreclosure sale must be distributed pursuant to Civil Code section 2924k, subdivision (a), which provides, in pertinent part, that "the clerk of the court upon order to the clerk pursuant to subdivision (d) of Section 2924j," shall distribute the proceeds in the following order of priority: (1) to costs and expenses of sale, including trustee's fees and attorney's fees; (2) to payment of obligations secured by deed of trust or mortgage which instigated the sale; (3) to satisfy "the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority[;]" and (4) to the trustor or the trustor's successor in interest. (*Id.*, subd. (a)(1)-(4).)

Here, the trustee's petition to deposit the funds established that the costs and expenses of sale and the payment to the foreclosing party had been satisfied, as well as payment of liens of the Internal Revenue Service and the Franchise Tax Board. Thus, Susan Portillo's claim, as the holder of a recorded Abstract of Judgment against the trustor, is in the next line of priority.

The trustee's petition to deposit the funds identified a conflict between potential claimants to the surplus proceeds, and at Attachment 11b (.pdf p. 30) it described the dispute. However, it appears this was more the trustee's dispute over Ms. Portillo's status as a valid claimant to the surplus funds rather than a dispute between her and Ms. De Los Santos. The court has reviewed each argument made by the trustee, and finds that these do not provide any basis for preventing Ms. Portillo from being entitled to distribution of the Surplus funds.

First, the trustee argued that because Ms. Portillo did not record a "Request for Notice" pursuant to Civil Code section 2924b, subdivision (a), she was not entitled to recover from the surplus funds, and it cited to *Banc of America Leasing & Capital, LLC v. 3 Arch Trustee Services, Inc.* (2009) 180 Cal.App.4th 1090, 1106 ("*Banc of America*") as supporting this proposition. That is a holding in that case, however, it is inapplicable here because that case was on different footing. There, a junior lienholder sued the trustee for breach of its statutory duties for having distributed the surplus funds to the trustor, even though the lienholder had recorded an abstract of judgment. The trial court had found, on summary adjudication, that the trustee owed the lienholder a "heightened duty" to search public records for lienholders before distributing the sale proceeds, so judgment was entered in its favor and against the trustee. (*Id.* at p.1096.) This was overturned on appeal, since the trustee's duties were defined by the statutory scheme, and its duties about giving notice of default and sale was actually limited. Under the statutes, lienholders had the option of requesting special notice in order to what their debtors in order to have their claims considered for disbursement of surplus funds, and they had other remedies as well. (*Id.* at pp. 1105-1106.)

Here, however, there is no claim of liability being asserted against the trustee, and in fact (as noted above), the trustee has been discharged from further responsibility regarding disbursement of the funds. The lienholder here filed a timely claim, asking the court for release of the funds. It is not clear that, if this was the situation confronting the court in *Banc of America*, it would have found a blanket prohibition of a lienholder making a claim under Civil Code section 2924j simply because the lienholder had not requested special notice. The court there was not considering this factual scenario. "Language used in any opinion is of course to be understood in the light of the facts and the issue then before the court, and an opinion is not authority for a proposition not therein considered." (*Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn 2.)

Second, the trustee argued that the 2020 Abstract of Judgment recorded by the claimant, issued in Fresno Superior Court case number 11CECG03051, might not be valid because it did not contain the last four digits of the judgment debtor's social security number, which must be included, if known. (Code Civ. Proc., § 674, subd. (a)(6).) Instead, the abstract had the "unknown" boxes checked. The trustee argued that since Thomas Renteria and Susan Portillo had previously recorded abstracts against the property which included this information, this means they knew this information and thus were required to include it. However, it is unclear whether there was a change of attorneys preparing the different abstracts, or some other explanation for why this information was "unknown" when the 2020 abstract was prepared. On its face, the abstract complies with the statute because it states the judgment creditor does not know

this information, which is allowed by the statute. This does not, without more evidence, serve to invalidate the abstract and thus invalidate the lien.

Third, the trustee argued that the underlying judgment did not “comply with Enforcement of Judgment laws” because after the death of judgment debtor Joseph De Los Santos, Ms. Portillo did not make a claim against his probate estate. This argument is unavailing. First, it is a collateral attack on a final judgment, by someone without standing to do so. Second, Ms. Portillo is not making a claim against the estate of Mr. De Los Santos, and his death could not invalidate the judgment as to Maricela De Los Santos.

Fourth, the trustee argued that Ms. Portillo filed a Request for Dismissal on January 4, 2021, and this somehow invalidates the judgment. It does not. The parties in this action settled before trial, and even though the court order acknowledging this settlement, dated December 16, 2013, states the case “shall be dismissed without prejudice,” subject to the court’s retention of jurisdiction over the matter for enforcement of the settlement under Code of Civil Procedure section 664.6, the case was apparently never actually dismissed. In June 2020, Ms. Portillo requested and obtained a judgment pursuant to section 664.6 after defendants breached the settlement agreement. This still left the case at open status, with the court setting dismissal hearings. Ms. Portillo filed the 2021 request for dismissal of the complaint as to the deceased defendant, Joseph De Los Santos, and the corporate defendant Jodan WiFi, LLC, only. This appears to have brought the case to “inactive” status. But nothing about this invalidates the 2020 judgment, especially as it relates to Maricela De Los Santos. And again, this is a collateral attack on a final judgment by someone without standing.

The court finds that Ms. Portillo is entitled to the entirety of the surplus funds.

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: JS **on** 6/2/2023.
(Judge's initials) (Date)