

Tentative Rulings for March 24, 2022
Department 502

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.

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Tentative Rulings for Department 502

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(24)

Tentative Ruling

Re: ***Dodson v. Polaris Industries, Inc.***
Superior Court Case No. 21CECG02884

Hearing Date: March 24, 2022 (Dept. 502)

Motion: Applications of (1) Scott A. McMillin, (2) Sheila M. Prendergast, and (3) Laura A. Seferian to Appear *Pro Hac Vice* on Behalf of Defendant Polaris Industries Inc.

Tentative Ruling:

To grant all three applications. Applicants have satisfied the requirements of California Rules of Court, Rule 9.40. The court will sign the orders provided.

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: RTM on 3/16/2022.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: **Gonzales v. D'Oros, Inc.**
Superior Court Case No. 22CECG00244

Hearing Date: March 24, 2022 (Dept. 502)

Motion: By Defendants to expunge lis pendens and to declare plaintiff Johnny Gonzales a vexatious litigant

Tentative Ruling:

To grant defendants' motion to expunge the lis pendens. (Code Civ. Proc., § 405.31; *Rey Sanchez Investments v. Superior Court* (2016) 244 Cal.App.4th 259, 263.) Attorney fees and costs of \$1,935 are awarded to defendants as the prevailing parties on this motion. (Code Civ. Proc., § 405.38.) Plaintiffs shall pay this amount to the Donna Standard, Esq. within 30 days from the date of this order.

To grant defendants' motion to declare plaintiff, Johnny Gonzales, a vexatious litigant and to order plaintiff Johnny Gonzales to post security of \$25,000, within 30 days of the date of service of this order, in order to continue litigating the present action. (Code Civ. Proc., § 391.1.) The 30-day time limit will run from the service of the minute order by the clerk. (Code Civ. Proc., § 1013, subd. (a).) This action is stayed pending proof that such security has been furnished, and if no security is posted within the time allowed, the case shall be dismissed by the court upon ex parte application therefor by defendants. (Code Civ. Proc., § 391.4; *Singh v. Lipworth* (2005) 132 Cal.App.4th 40, 44.)

Explanation:

Motion to Expunge Lis Pendens

A lis pendens is functionally the same as a notice of pendency. (*Grinnell Fire Protection System Co. v. American Sas. & Loan Assn.* (1986) 183 Cal.App.3d 352, 354.) A party to an action affecting a real property claim may record a lis pendens to provide "constructive notice that an action has been filed affecting title to or right to possession of the real property described in the notice." (*Urez Corp. v. Superior Court* (1987) 190 Cal.App.3d 1141, 1144; Code Civ. Proc., § 405.20.) The application of the lis pendens remedy is restrictive, rather than broad, in light of the pressure it places on a defendant to preserve marketable title and be coerced into settling unmeritorious claims. (*Kirkeby v. Superior Court* (2004) 33 Cal.4th 642, 651 [noting the potential for abuse associated with lis pendens].)

There are specific statutory requirements prior to recording a notice of pendency of action. Particularly, "[a] notice of pendency of action shall not be recorded unless (a) it has been signed by the attorney of record, (b) it is signed by a party acting in propria persona and approved by a judge as provided in this section, or (c) the action is subject to Section 405.6." (Code Civ. Proc., § 405.21.) Prior to recording, a copy of the notice

must be mailed to parties claiming an interest in the property, and after recording, the notice must be filed with the court. (Code Civ. Proc., § 405.22.)

Defendants have submitted evidence that the attorney who purportedly signed plaintiffs' notice of pendency of action is deceased, and challenge the validity of the attorney signature on that basis by submitting an uncontroverted record entry from the state bar as evidence. (See Request for Judicial Notice, Ex. 2; see also *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 754 [The court may take judicial notice of the facts derived from the legal effect of judicially noticeable documents].) Defendants also challenge the veracity of the service of the lis pendens, noting the proof of service fails to identify any addressees (Request for Judicial Notice, Ex. 1; Points & Authorities, p. 7:11-19), and conclude that the lis pendens must be "declared void or invalid." (*Id.* at p. 8:1-7.)

Plaintiffs have not submitted any evidence rebutting defendants' evidence of insufficient compliance with Code of Civil Procedure section 405.21 and 405.22. Consequently, defendants have shown that the lis pendens is void and invalid, and thus should be expunged. (See Code Civ. Proc., 405.23 ["Any notice of pendency of action shall be void and invalid as to any adverse party or owner unless the requirements of Section 405.22 are met ...; *Rey Sanchez Investments v. Superior Court*, *supra*, 244 Cal.App.4th at p. 263.]

Defendants also challenge whether plaintiffs have adequately presented a real property claim sufficient to support a lis pendens. A real property claim is defined as "the cause or causes of action in a pleading which would, if meritorious, affect (a) title to, or the right to possession of, specific real property" (Code Civ. Proc., § 405.4), and "[i]f the pleading filed by the claimant does not properly plead a real property claim, the lis pendens must be expunged upon motion under [Code of Civil Procedure section] 405.31." (*Kirkeby v. Superior Court*, *supra*, 33 Cal.4th at p. 647.)

In addition, "[u]nlike most other motions, when a motion to expunge is brought, the burden is on the party opposing the motion to show the existence of a real property claim." (*Kirkeby*, *supra*, 33 Cal.4th at p. 647.) The court conducts a "demurrer-like" analysis but, "'[r]ather than analyzing whether the pleading states any claim at all, as on a general demurrer, the court must undertake the more limited analysis of whether the pleading states a real property claim.'" [Citation.] (*Id.* at p. 648.) Furthermore, "[r]eview 'involves only a review of the adequacy of the pleading and normally should not involve evidence from either side, other than possibly that which may be judicially noticed as on a demurrer.'" [Citation.] (*Ibid.*) Accordingly, simply asserting a title claim is insufficient and the complaint must allege sufficient facts, which if proven, would support such a remedy. (*Campbell v. Superior Court* (2005) 132 Cal.App.4th 904, 922 [because the facts alleged would not support imposition of a constructive trust, the complaint failed to assert a title claim sufficient to justify lis pendens].)

Defendants contend plaintiffs' complaint is unintelligible and thus does not establish a claim to title of real property or support a lis pendens. (See e.g. *BGJ Associates v. Superior Court* (1999) 75 Cal.App.4th 952, 967 [even where the complaint is clear, a lis pendens cannot be maintained where the substance of the dispute is essentially for money damages].) In addition, even if secured by real property, simply alleging a loan

default does not affect title unless foreclosure is sought. (*Bolton v. Logan* (1938) 30 Cal.App.2d 30, 33 [foreclosure is the relevant "links" in the chain of title].)

Plaintiffs Johnny Gonzales and Philip Marin captioned their first amended complaint as one to quiet title and separately identified the residence at 4755 E. Braly in Fresno as the subject property. (See First Amended Complaint, ¶13.) However, the first amended complaint prays for money damages consisting of principal and interest arising from an undescribed and unalleged "note," and fails to provide facts linking plaintiff Marin to the dispute altogether. Accordingly, it is not clear from the first amended complaint, even in generalized terms, what claims are being made or what relief is sought. Consequently, the first amended complaint does not establish a real property claim sufficient to justify the *lis pendens*.

Therefore, defendants' motion to expunge the *lis pendens* is granted. Although reasonable attorney fees and costs are authorized for the prevailing party (Code Civ. Proc., § 405.38), defendants have not provided an attorney declaration explaining the calculation of the \$3,000 requested in attorney fees. Accordingly, the court adjusts the award downward to \$1,500 (6hrs x \$250 per hr.) plus the \$435 filing fee. The total attorney fees and costs awarded is \$1,935.

Motion to Require Plaintiff Gonzales to Furnish Security as a Vexatious Litigant

Although there are two plaintiffs, the portion of defendants' unified motion addressing vexation is directed solely at the filings of plaintiff Johnny Gonzales. Relief is sought under two of the applicable definitions set forth under Code of Civil Procedure 391.

"The vexatious litigant statutes were created to curb misuse of the court system by those acting in *propria persona* who repeatedly file groundless lawsuits or attempt to relitigate issues previously determined against them." (*Goodrich v. Sierra Vista Regional Medical Center* (2016) 246 Cal.App.4th 1260, 1265 (*Goodrich*).) The statutes were intended to "address the problem created by the persistent and obsessive litigant who constantly has pending a number of groundless actions and whose conduct causes serious financial results to the unfortunate objects of his or her attacks and places an unreasonable burden on the courts." (*Ibid.*)

If the court finds a plaintiff to be a vexatious litigant and finds that there is no reasonable probability plaintiff will prevail against the moving defendant, the court can require him or her to furnish security to cover the reasonable costs, including attorneys' fees, incurred in defending against the vexatious litigation. (Code Civ. Proc., §§ 391, subd. (c), 391.1, 391.3.) If the security is not furnished as ordered, the action will be dismissed as to the moving defendant. (*Id.*, § 391.4.) The court may also, on its own motion or at moving party's request, enter a prefiling order prohibiting the vexatious litigant from filing any new litigation in this state in *propria persona* without first obtaining leave of court where the litigation is proposed to be filed. (*Id.*, § 391.7.) Defendants' motion here seeks all three forms of relief: (1) that plaintiff Johnny Gonzales be found to be a vexatious litigant; (2) that he be made to furnish security to be allowed to continue prosecuting this action or face dismissal of it; and (3) that a prefiling order be entered.

There are four separate bases given in Code of Civil Procedure section 391, subdivision (b) for designating a self-representing plaintiff to be a vexatious litigant. Plaintiff's litigation conduct must fall within at least one of these four definitions, and the court may not blend or augment portions of each definition. (*Holcomb v. U.S. Bank Nat. Assn.*, 129 Cal.App.4th 1494, 1501.)

- *Plaintiff is Vexatious Under subdivision (b) of Code of Civil Procedure, section 391*

Under section 391, subdivision (b), "Vexatious litigant" means a person who does any of the following: (1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing. This includes any civil action or proceeding commenced, maintained or pending in any state or federal court, and includes an appeal or civil writ proceeding filed in an appellate court. (§ 391, subd. (a); *Fink v. Shemtov* (2010) 180 Cal.App.4th 1160, 1173-1174.) A litigation is finally determined adversely to a plaintiff if they do not prevail, including voluntarily dismissals. (*Tokerud v. Capitolbank Sacramento* (1995) 38 Cal.App.4th 775, 779.)

Defendants request the court take judicial notice¹ of at least five proceedings commenced within the previous seven years by plaintiff Johnny Gonzales in both state and federal courts and subsequently dismissed by him. Furthermore, those proceedings all address the same dispute alleged by plaintiffs in this proceeding, i.e. plaintiff Johnny Gonzales' eviction from 4755 E. Braly. In particular, the United States Bankruptcy Court for the Eastern District of California issued a written ruling finding that the foreclosing entity had "full authority to foreclose" and dismissed Gonzales' complaint. (See Request for Judicial Notice, Ex. 18.)

Accordingly, on this basis alone, plaintiff Johnny Gonzales must be found to be a vexatious litigant.

- *Plaintiff is Vexatious Under Section 391, Subdivision (b)(3)*

A plaintiff will also be found vexatious if he is in propria persona and repeatedly files unmeritorious motions, pleadings, or papers or otherwise engages in tactics that are frivolous or solely intended to cause unnecessary delays. (Code Civ. Proc., § 391, subd. (b)(3).) Defendants have provided substantial evidence of this as well because the cases submitted all involve essentially the same dispute – plaintiff Johnny Gonzales' eviction from 4755 E. Braly - which has already been adjudicated. Therefore, plaintiff is vexatious under this category, as well.

¹ The court grants defendants' request to take judicial notice. (Evid. Code, §452, subds. (c) and (d).)

Furnishing Security

One purpose of the vexatious litigant statute is to address the "serious financial results to the unfortunate objects of [the vexatious litigant's] attacks". (*Goodrich, supra*, 246 Cal.App.4th at p. 1265.) The statute empowers the court to require a vexatious litigant to furnish a security to cover the reasonable costs, including attorney's fees, incurred in defending against vexatious litigation. (§ 391.3, subd. (a).) If a plaintiff is declared vexatious, and the Court finds there is no reasonable probability she will prevail, the plaintiff must furnish security. (*Ibid.*) When determining whether Plaintiff's action has no reasonable probability of success, the court is permitted to weigh the evidence and does not need to assume the truthfulness of plaintiff's complaint. (*Moran v. Murtaugh Miller Meyer & Nelson, LLP* (2007) 40 Cal.4th 780, 782.) "'Security' means an undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant." (Code Civ. Proc., § 391, subd. (c).)

Considering the uncertainty of plaintiffs' first amended complaint and the absence of any cognizable claim for legal relief, there is no reasonable probability that plaintiffs will prevail in this case. Furthermore, it appears that any interests that plaintiffs might have been able to claim in 4755 E. Braly have already been determined through the bankruptcy and unlawful detainer actions. Accordingly, requiring plaintiff Johnny Gonzales to furnish security is justified in this case. Furthermore, the amount requested - \$25,000 – does not appear excessive and appears to be commensurate with the principle that the undertaking is to secure defendants against expenses incurred because of plaintiffs' litigation conduct.

Prefiling Order

The vexatious litigant statutes also authorize the court to enter a prefiling order which prohibits a vexatious litigant from filing new actions in propria persona without first obtaining leave of the presiding judge or justice. (§ 391.7, subd. (a).) As amply demonstrated above, the court finds that a prefiling order is sensible and necessary in order to prevent plaintiff Johnny Gonzales from filing further frivolous actions in propria persona.

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: RTM **on** 3/22/2022.
(Judge's initials) (Date)