Tentative Rulings for April 12, 2022
Department 501

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.

16CECG01159 ***Sandoval v. City of Fresno*** **is continued to Thursday, May 5, 2022 at 3:30 p.m. in Dept. 501**

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Tentative Rulings for Department 501

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(03)

Tentative Ruling

Re: ***BMY Construction Group, Inc. v. Pacific Choice Brands, Inc.***
Superior Court Case No. 20CECG02998

Hearing Date: April 12, 2022 (Dept. 501)

Motion: by Plaintiff to Amend Judgment to Add Pacific Choice Brands, LLC as a Judgment Debtor

Tentative Ruling:

To grant plaintiff's motion to amend the judgment to add Pacific Choice Brands, LLC as a judgment debtor. (Code Civ. Proc. §187.)

Explanation:

"'When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.' (Code Civ. Proc., § 187 (section 187).) Buried in this opaque language is the power of a trial court to amend a judgment by adding judgment debtors." (*Danko v. O'Reilly* (2014) 232 Cal.App.4th 732, 735.)

"'"Under section 187, the trial court is authorized to amend a judgment to add additional judgment debtors.... As a general rule, 'a court may amend its judgment at any time so that the judgment will properly designate the real defendants.' ... Judgments may be amended to add additional judgment debtors on the ground that a person or entity is the alter ego of the original judgment debtor.... 'Amendment of a judgment to add an alter ego "is an equitable procedure based on the theory that the court is not amending the judgment to add a new defendant but is merely inserting the correct name of the real defendant.... 'Such a procedure is an appropriate and complete method by which to bind new ... defendants where it can be demonstrated that in their capacity as alter ego of the corporation they in fact had control of the previous litigation, and thus were virtually represented in the lawsuit.' ..." ...'" [Citations.] "The decision to grant an amendment in such circumstances lies in the sound discretion of the trial court. 'The greatest liberality is to be encouraged in the allowance of such amendments in order to see that justice is done.'" ' " (*Id*. at pp. 735–736, internal citation omitted, see also *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 508.)

"In order to prevail in a motion to add judgment debtors, [the plaintiff] must show that (1) the parties to be added as judgment debtors had control of the underlying litigation and were virtually represented in that proceeding; (2) there is such a unity of interest and ownership that the separate personalities of the entity and the owners no longer exist; and (3) an inequitable result will follow if the acts are treated as those of the entity alone." (*Relentless Air Racing, LLC v. Airborne Turbine Ltd. Partnership* (2013) 222

Cal.App.4th 811, 815–816, internal citation omitted.) The plaintiff does not have to show that the debtors acted with wrongful intent, however. It only has to show that an inequitable result would follow if the court treats the entities as separate. (*Id*. at p. 816.)

Here, plaintiff has met its burden of showing that the judgment should be amended to add Pacific Choice Brands, LLC as a judgment debtor. At his debtor examination hearing on August 20, 2021, defendant Bonifacio Villalobos admitted that Pacific Choice Brands, Inc., had been purchased by Triple H Processors, LLC in August of 2019, before the subject contract was entered into by Pacific Choice Brands, Inc. At the same time as the purchase of Pacific Choice Inc., Triple H formed a new company, Pacific Choice Brands, LLC. Triple H also ceased operations of Pacific Choice, Inc. Pacific Choice, Inc., is now a suspended corporation. However, Pacific Choice, LLC was essentially identical to Pacific Choice, Inc., as it continued the same business operations in the same building, using the same equipment, the same customers, the same client lists, the same business model, and producing the same products as Pacific Choice, Inc. Villalobos became the President of Pacific Choice, LLC, after having been the Vice President of Operations for Pacific Choice, Inc.

Notably, Pacific Choice, Inc., had already ceased operations in November of 2019 when it purported to enter into the construction contract with plaintiff, as Pacific Choice, LLC was the entity conducting business at the property after August of 2019. Villalobos was in charge of Pacific Choice, LLC's operations when he entered into the contract with plaintiff, purportedly on behalf of Pacific Choice, Inc. He was still in charge of operations of Pacific Choice, LLC when he and the corporation were sued by plaintiff for breach of contract, and he chose to allow a default judgment to be entered against himself, his wife, and the corporation. He has never denied that he and the corporation owed the debt under the contract to plaintiff, and in fact he has offered several times to pay off the debt, but has failed to actually do so.

Thus, plaintiff has met its burden of showing that Pacific Choice, LLC was virtually represented in the underlying litigation, as Villalobos and Pacific Choice, Inc., were essentially acting as representatives of Pacific Choice, LLC when they failed to pay the amount owed under the contract, were sued by plaintiff, and allowed themselves to be subjected to a default judgment for they debt they incurred. Pacific Choice, LLC also benefitted from the contract that was later breached by defendants, as it used and continues to use the same facility that plaintiff contracted to repair. Under the circumstances, it would not be unfair or a violation of due process to add Pacific Choice, LLC as a judgment debtor, as it was essentially represented by Villalobos and Pacific Choice, Inc. the litigation, and it could have stepped forward and been added to the case at any time if it had chosen to be forthcoming and admitted that it was the beneficiary of the contract.

Plaintiff has also shown that there is a unity of interest between Pacific Choice Brands, Inc., and Pacific Choice Brands, LLC such that there is no distinction between the two entities. Again, Villalobos admitted in his examination that the two companies make and sell the same products, have the same customers, use the same facilities and equipment, and have at least one of the same officers in common. They are also both owned by the same parent company, Triple H. Pacific Choice, Inc., essentially ceased to exist or conduct operations after it was bought out by Triple H, and Pacific Choice, LLC

was created immediately thereafter, at which point it took over the operations and facilities run by Pacific Choice, Inc. Thus, the two companies are for all intents and purposes one and the same, with the only real difference being that one is labeled a corporation, whereas the other one is a limited liability company. Given their identical operations, business model, products, facilities, equipment, officers, and ownership by the same company, it appears that the companies are alter egos of each other, and there is no reason to recognize the fiction that they are separate entities.

Finally, plaintiff has shown that an inequitable result would follow if the court were to treat Pacific Choice Brands, LLC as a separate entity from Pacific Choice Brands, Inc. Pacific Choice Brands, Inc., has ceased to operate as a corporation, and has been suspended by the Secretary of State. It apparently has no assets to pay the judgment against it. Consequently, there is little chance that plaintiff will ever be able to collect the debt against Pacific Choice Brands, Inc.

On the other hand, Pacific Choice Brands, LLC continues to operate and has property and equipment worth in excess of $1 million. Pacific Choice Brands, LLC is also a beneficiary of the contract with plaintiff, as it continues to operate in the facility that plaintiff repaired. It would be unjust for Pacific Choice Brands, LLC to benefit and continue operating in a facility that plaintiff spent considerable time and money repairing, especially since Pacific Choice Brands, Inc., and Villalobos have admitted that they owe the debt and that they have failed to repay it. Continuing to recognize the fiction of separateness between the corporation and the LLC would sanction an unjust and inequitable result, as it would allow Pacific Choice Brands, LLC to avoid paying a debt that was incurred by its sister corporation and its President that was intended to benefit, and did in fact benefit, Pacific Choice Brands, LLC. Therefore, the court intends to grant the motion to amend the judgment to add Pacific Choice Brands, LLC as a debtor.

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 4/8/2022.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***In re: Tani'yah Tamacina Guadalupe Perry***
Case No. 22CECG00880

In re: Tyler Glenn Brown, Jr.
Case No. 22CECG00882

Hearing Date: April 12, 2022 (Dept. 501)

Motion: Petitions to compromise minors' claims

Tentative Ruling:

To deny without prejudice. In the event oral argument is timely requested, the minors are excused from appearing.

Explanation:

The petitioner, Flora Moya, is the minors' grandmother, and thus is not able to compromise the minors' claims without being appointed as guardian ad litem. (Prob. Code, § 3411, subd. (a) [Parent entitled to custody or (*inter alia*) guardian *of the estate* may file petition]; Code Civ. Proc., § 372, subd. (a) [guardian *of the estate* or (*inter alia*) guardian ad litem has power to compromise claim].) While petitioner holds herself out to be the minors' guardian in Item 1 of the Petition, Item 18b indicates that there is no guardianship of the estate of the minors.

Petitioner has not yet been appointed as guardian ad litem, and cannot be appointed as such at this juncture because she is self-represented. A non-attorney appointed as guardian ad litem cannot act in pro per, since doing so would constitute the unlawful practice of law. (Bus. & Prof. Code, § 6125; *J.W. v. Superior Court* (1993) 17 Cal.App.4th 958, 965.) The court realizes that Ms. Rueger cannot represent Ms. Moya since she represents the insurer for the at-fault driver and vehicle owner. Even so, Ms. Moya, as grandmother, has no power to compromise the claims without appointment as guardian ad litem, and she cannot be so appointed without being represented by an attorney.

Also, there is no information provided as to whether the settling at-fault driver, Catherina Monson, has other assets from which to pay a wrongful death settlement. Item 10 of the Petition indicates that petitioner has investigated issues such as this, but since there is no independent counsel representing petitioner, the court must see some evidence regarding Ms. Monson's ability or inability to provide settlement funds from sources other than her insurance policy. At the very least, petitioner should present a declaration from Ms. Monson on this issue.

Finally, the court is concerned about the disposition of the settlement proceeds. The balance of $15,000 per minor is a significant sum of money, yet the petitions propose depositing the funds in blocked accounts. As the minors are very young, the money

would be sitting in a low interest bank account for around 14 and 16 years. At a time of low interest rates and high inflation, an annuity would seem to be a better option. Counsel shall obtain quotes for annuities and in an amended petition, if petitioner still wants the money deposited in a blocked account, explain why that is a better option.

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 4/8/2022.
(Judge's initials) (Date)

(5)

Tentative Ruling

Re: ***Cal LeDuc et al. v. Infinity Select Insurance Company et al.***
Superior Court Case No. 19CECG01278

Date: April 12, 2022 (Dept. 501)

Motion: by Defendant Infinity Select Insurance Company and related entities seeking leave to file a Cross-Complaint against the LeDuc Plaintiffs

Tentative Ruling:

To grant.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subd. (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 4/11/2022 .
(Judge's initials) (Date)