

Tentative Rulings for May 4, 2022
Department 403

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.

20CECG03699	<i>CargoBarn, Inc. v. Bulara Express, Inc.</i> , the Motion for Summary Judgment is continued to June 30, 2022 at 3:30 p.m. in Department 403.
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Tentative Ruling

Re: **CargoBarn, Inc. v. Bulara Express, Inc.**
Superior Court Case No. 20CECG03699

Hearing Date: May 4, 2022 (Dept. 403)

Motion: Plaintiff's Motion to Strike Defendants' Answers, Dismiss Cross-Complaint and Enter Default

Tentative Ruling:

To grant. Leave to amend is granted. Defendants Bulara Express, Inc. and Gurfateh Express, Inc. are granted 30 days leave to file a First Amended Answer with representation by counsel. The time in which the answers can be amended will run from service by the clerk of the minute order.

Explanation:

"As a general rule, it is well-established in California that a corporation cannot represent itself in a court of record either in propria persona or through an officer or agent who is not an attorney." (*Caressa Camille v. Alcoholic Beverage Control Appeals Bd.* (2002) 99 Cal.App.4th 1094, 1101.) Pleadings filed by a corporation without attorney representation are subject to a motion to strike. (*CLD Construction, Inc. v. City of San Ramon* (2004) 12 Cal.App.4th 1141, 1150.) However, the court may allow the corporation reasonable time to cure the defect. (*Id.* at p. 1146-1147 ["It is generally an abuse of discretion to deny leave to amend, because the drastic step of denial of the opportunity to correct the curable defect effectively terminates the pleader's action."].)

Here, Defendants Bulara Express, Inc. and Gurfateh Express, Inc. have proceeded without counsel since its former attorney was relieved on July 16, 2021. Accordingly, the motion to strike the answers and cross-complaint by defendants is granted. (Code of Civ. Proc. § 436(a); *Caressa Camille v. Alcoholic Beverage Control Appeals Bd.*, *supra*, 99 Cal.App.4th 1094, 1101.) Since the defect can be cured, Bulara Express, Inc. and Gurfateh Express, Inc. are granted 30 days to retain counsel and file first amended answers. (*CLD Construction, Inc. v. City of San Ramon*, *supra*, 12 Cal.App.4th 1141, 1146-1147.)

In the event defendants fail to hire new counsel and file an amended answer within the time allowed, plaintiff shall move forward with entering their defaults and taking the summary judgment motion off calendar, since plaintiff cannot proceed with that motion if defendants are defaulted.

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Tentative Ruling

Re: ***In Re: Adrian Gutierrez-Jimenez***
Superior Court Case No. 22CECG01086

Hearing Date: May 4, 2022 (Dept. 403)

Motion: Petition to Compromise Claim of Minor

Tentative Ruling:

To deny without prejudice. In the event that oral argument is requested minor is excused from appearing.

Explanation:

Medical Liens:

The petition does not provide sufficient evidence to show that all of the medical providers have agreed to the reduced amounts in payment as stated in the petition. The petition provides that there were a number of negotiated reductions in medical liens by the following providers: Restoration Health Center and Medi-Cal. If a provider agreed to negotiate its bill, this must be substantiated. The court acknowledges that the petition has substantiated the reduction by Medi-Cal, but no similar proof of agreed reduction was shown as to Restoration Health Center.

Proposed Order Approving Compromise:

The proposed order approving compromise is defective. No amount is provided for Item 6. Additionally, the box indicating further information is continued on Attachment 8a(3) is checked. However, the court finds that no such attachment was filed.

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: KCK **on** 05/02/22 .
(Judge's initials) (Date)

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Tentative Ruling

Re: **FCERA Realty Group, LLC v. Boardwalk at Palm Bluffs, LP**
Superior Court Case No. 19CECG01169

Hearing Date: May 4, 2022 (Dept. 403)

Motion: By Defendant Target Constructors, Inc. for Summary
Adjudication

Tentative Ruling:

To deny, without prejudice. (Code Civ. Proc., § 437c, subd. (h)).

Explanation:

"A motion for summary adjudication ... shall proceed in all procedural respects as a motion for summary judgment[]" (Code Civ. Proc., § 437c, subd. (f)(2)), and thus the essential function "is not to try any factual issues, but to ascertain whether any triable issues of fact exist." (*Kelsey v. Waste Management of Alameda County* (1999) 76 Cal.App.4th 590, 597.)

Accordingly, the trial court does not make findings of fact in determining a motion for summary adjudication, and may not grant the motion on its evaluation of weight of evidence or witness credibility, nor may it grant the motion "based simply on its opinion that plaintiff's claims are 'implausible,' if a reasonable factfinder could find for plaintiff on the evidence presented." (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 840.) The trial court's task in deciding of a motion for summary adjudication is to "ascertain whether any triable issues of fact exist." (*Kelsey v. Waste Management of Alameda County, supra*, 76 Cal.App.4th at p. 597.) In making this determination the trial court examines "the 'affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice shall or may be taken.' [Citation.]" (*Desuza v. Andersack* (1976) 63 Cal.App.3d 694, 698.)

In addition, causes of action premised on intentional and/or negligent misrepresentation both require a false or untrue statement. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638; *Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230-231; *Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 173 [noting that negligent misrepresentation differs from intentional misrepresentation in that it does not require the element of scienter or intent to defraud].)

Defendant's motion for summary adjudication contends that plaintiff cannot prove falsity and that "[t]he overall increase estimated by the contractors to have this project converted to a prevailing wage job seemed appropriate and reasonable for this project." (Mtn. p. 8:15-16.) However, whether a statement is false or intended to defraud are generally questions of fact precluding summary judgment/adjudication. (See *Intieri v. Superior Court* (2004) 117 Cal.App.4th 72, 86; see also *Cummings v. Fire Ins. Exchange* (1988) 202 Cal.App.3d 1407, 1417 [insurance claim context].) Nevertheless, defendant

Although plaintiff asserts expert opinion disputing that the increase was expected and reasonable, there is no precise evidence offered that Mr. Archer knew the increase was so contextually false that his representations to the seller constituted fraud. Nevertheless, plaintiff's request to deny the motion pending Mr. Archer's deposition appears necessary considering that defendant's motion relies on evidence of his solicitation, evaluation, and forwarding of the subcontractors' proposals, i.e. circumstances which could be elucidated through disposition.

Plaintiff's opposition asserts a declaration from its attorney Marisa Balch, who attests that Mr. Archer's deposition is anticipated and will address circumstances relevant to plaintiff's opposition. (Balch Decl. ¶ 22.) Therefore, defendant's motion for summary adjudication is denied, without prejudice, pending plaintiff's taking of David Archer's deposition.

Tentative Ruling

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Tentative Ruling

Re: **Kaur v. Freshco Food Center**
Superior Court Case No. 20CECG00815

Hearing Date: May 4, 2022 (Dept. 403)

Motion: Plaintiff's Motion for Reconsideration

Tentative Ruling:

To deny.

Explanation:

The court's order dismissing this action was filed on June 24, 2021, which functions as a judgment of dismissal. (Code Civ. Proc., § 581d.) Once judgment is entered, the court cannot entertain or decide a motion for reconsideration. (*APRI Ins. Co. v. Superior Court* (1999) 76 Cal.App.4th 176, 181; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 859, fn. 29; *Ten Eyck v. Industrial Forklifts Co.* (1989) 216 Cal.App.3d 540, 545.) While plaintiff moved to set aside this dismissal, which was denied on September 30, 2021, and this is the ruling about which plaintiff seeks reconsideration, it appears that the court lacks jurisdiction to entertain the motion.

Moreover, even if considered on the merits, there is no basis for reconsideration. The only new fact offered by plaintiff is that she called for oral argument as set forth in the court's Local Rules, but when she showed up for the hearing the courtroom was closed. However, a "new" or "different" fact under Code of Civil Procedure section 1008 does not apply to a fact that is collateral to the merits of the underlying motion. The lack of a chance for oral argument has been found to be "clearly collateral to the merits," and therefore is not a ground for reconsideration. (*Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500; *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 691.) So even if the court found that it had jurisdiction to consider this motion for reconsideration, there is no basis shown to warrant it.

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 05/03/22
(Judge's initials) (Date)