

Tentative Rulings for December 9, 2021
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.

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Tentative Ruling

Re: **Ackerman et al. v. Bonadelle Homes, Inc. et al.**
Superior Court Case No. 18CECG03693

Hearing Date: December 9, 2021 (Dept. 403)

Motion: Stonetech Fabrication, Inc.'s Motion for Determination of Good Faith Settlement

Clovis Sanger Cabinet Manufacturing, Inc.'s Motion for Determination of Good Faith Settlement

Ken Perry Tile, Inc.'s Motion for Determination of Good Faith Settlement

Tentative Ruling:

To grant each motion. (Code Civ. Proc. § 877 et seq.)

Explanation:

Under Code of Civil Procedure section 877.6, any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005. (Code Civ. Proc. § 877.6, subd. (a)(1).) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counter affidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing. (Id., § 877.6, subd. (b).) Where the motion for good faith settlement is not contested, a barebones motion which sets forth the ground of good faith, accompanied by a declaration which sets forth a brief background of the case, is sufficient to meet the settling party's burden of showing good faith. (*City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1261.)

Each of the motions by Stonetech, Clovis Sanger, and Ken Perry is uncontested. The court finds that each motion is sufficient to establish a prima facie showing of good faith.

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 12/07/21
(Judge's initials) (Date)

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Tentative Ruling

Re: **GPH Fresno LP v. William-Foster Group, LLC**
Superior Court Case No. 21CECG00315

Hearing Date: December 9, 2021 (Dept. 403)

Motion: By Plaintiffs for Summary Judgment

Tentative Ruling:

To deny, without prejudice. (Code Civ. Proc., § 437c, subd. (h)). To overrule defendants' evidentiary objections as immaterial to the court's determination. (Code Civ. Proc., §437c, subd. (q).)

Explanation:

In ruling on a motion for summary judgment or summary adjudication, the court must "consider all of the evidence' and all of the 'inferences' reasonably drawn there from and must view such evidence and such inferences 'in the light most favorable to the opposing party.'" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.)

"If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just." (Code Civ. Proc., § 437c, subd. (h), emphasis added.)

In addition, " '[t]hough often said, it appears necessary to again reiterate that a summary judgment is a drastic measure which deprives the losing party of trial on the merits.' [Citations.]" (*Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 395.) "To mitigate summary judgment's harshness, the statute's drafters included a provision making continuances—which are normally a matter within the broad discretion of trial courts—virtually mandated ' "upon a good faith showing by affidavit that a continuance is needed to obtain facts essential to justify opposition to the motion." [Citation.]'" (*Ibid.*) Furthermore, where "discovery is incomplete, the motion for summary judgment should not be granted." (*Krantz v. BT Visual Images, LLC* (2001) 89 Cal.App.4th 164, 174.)

Accordingly, even where "a party submits an affidavit demonstrating that facts essential to justify opposition may exist but have not been presented to the court because the party has not been diligent in searching for the facts through discovery, the court's discretion to deny a continuance is strictly limited." (*Insalaco v. Hope Lutheran Church of West Contra Costa County* (2020) 49 Cal.App.5th 506, 519.) It should be noted, however, that although a summary judgment motion is denied, it may be renewed and determined at a subsequent hearing. (*Graham v. Hansen* (1982) 128 Cal.App.3d 965, 971; *Darling, Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1156.)

