

AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS

Monday, March 22, 2021

TO REQUEST A HEARING ON ANY MATTER ON THIS CALENDAR, YOU MUST CALL THE COURT AT (209) 257-2692 BY 4:00 P.M. ON THE DAY PRECEDING THE HEARING. NOTICE OF THE INTENTION TO APPEAR MUST ALSO BE GIVEN TO ALL OTHER PARTIES.

IF THE CLERK IS NOT NOTIFIED OF A PARTY'S INTENTION TO APPEAR, THERE WILL BE NO HEARING AND THE TENTATIVE RULING WILL BECOME THE ORDER OF THE COURT. NO FURTHER NOTICE OF THE COURT'S RULING WILL BE PROVIDED.

05-CVC-03846

KINNE, JOHN

VS.

DEFENDANT'S MOTION TO VACATE OR SET ASIDE JUDGMENT

TENTATIVE RULING:

Defendant's Motion to Vacate or Set Aside Judgment is DENIED

Request for Judicial Notice

Defendant's request for judicial notice of US Bankruptcy Court Eastern District of California (Sacramento) Bankruptcy Petition #11-20860 is unsupported by legal authority. Defendant's request is denied.

Timeliness of Judgment Renewal

Defendant argues that Plaintiff's renewal of judgment was not timely filed within the 10 year period of enforceability provided by CCP § 683.130(a):

(a) In the case of a lump-sum money judgment or a judgment for possession or sale of property, the application for renewal of the judgment may be filed at any time before the expiration of the 10-year period of enforceability provided by Section 683.020 or, if the judgment is a renewed judgment, at any time before the expiration of the 10-year period of enforceability of the renewed judgment provided by Section 683.120.

The second amended judgment entered on April 19, 2010. Plaintiff's declaration indicates that the renewal was served and mailed to the court on April 7 and April 8, 2020, and stamped received on April 13, 2020. (Opp. p.2 lines 12-15.) The clerk sent a letter dated April 14, 2020 rejecting the renewal due to Plaintiff's having an attorney of record and Plaintiff was filing the renewal pro per. (Opp. Exh. A.) Plaintiff received the letter on April 22, 2021 and contacted his attorney of record, who sent the renewal documents, priority mail to the court on April 23, 2020. The court filed the renewal on April 27, 2020 (Opp. Exh. B.)

Effective March 19, 2021, civil filings in this court were suspended. On April 8, 2020, California Emergency Rules of Court 1-9 were enacted and incorporated into a general order. The court issued General Order 20-006 continuing all civil matters and limiting civil filings. The clerk's counter was closed during this period of time and all filings were conducted via mail or drop box.

In reviewing the totality of the circumstances regarding the court closure, delay in processing civil filings and the backlog of filings, the lack of access by litigants to the clerk's counter during that time, and the emergency rules issued by the Judicial Council extending the statute of limitations in many circumstances for civil cases, the court should find the renewal of judgment was correctly filed.

Defendant's request to vacate renewal of the judgment pursuant to CCP § 683.130(a) is denied, based on the unprecedented nature of the circumstances.

Bankruptcy Discharge

Defendant also moves to set aside the renewal of the judgment based on a discharge of that debt on May 6, 2011 in their bankruptcy case. However, Defendant offers no legal authority for this request.

CCP §683.170 provides in relevant part: "(a) The renewal of a judgment pursuant to this article may be vacated on any ground that would be a defense to an action on the judgment, including the ground that the amount of the renewed judgment as entered pursuant to this article is incorrect, and shall be vacated if the application for renewal was filed within five years from the time the judgment was previously renewed under this article." "The judgment debtor bears the burden of proving, by a preponderance of the evidence, that he or she is entitled to relief under statute governing motions to vacate renewal of a judgment. (Fidelity Creditor Service, Inc. v. Browne (2001) 89 Cal.App.4th 195.)

The declaration of Defendant Dora Devai indicates that Plaintiff, John Kinne, attended the meeting with the bankruptcy trustee, the judicial lien of Defendant's residence was avoided, and a discharge was received on May 6, 2011. (Dora Devai Decl. p.1 lines 21-25, Exh 2.)

In opposition, Plaintiff argues that that Defendants' individual bankruptcy is irrelevant and Plaintiff is not attempting to enforce the judgment on the property referred to in Exh. 2. (Opp. p.3, lines 9-10.) Further that fraud is non-dischargeable under 11 U.S.C. § 523, including punitive damages based on fraud or willful deceit. (Opp. p.3, lines 10-12.)

In reply, Defendant argues that Plaintiff did not file a complaint to determine the dischargeability of a debt prior to the deadline of April 25, 2011 and offers the PACER docket of the bankruptcy case in support. Defendant's request for judicial notice of that document is denied.

Defendant fails to meet the burden of proof proving, by a preponderance of the evidence, that they are entitled to relief under statute governing motions to vacate renewal of a judgment.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

18-CVC-10654

BLAKE, MICHAEL

VS.

YARBOROUGH, JUSTIN

CIVIL MISCELLANEOUS MOTION

TENTATIVE RULING:

On the court's own motion, Defendant CROCKER'S motion Objection to the Application of Good Faith Settlements by Co-Defendants, Plaintiff's motion for Sanctions pursuant to CCP § 128.7, and Trial Setting Conference are continued to April 12, 2021 at 8:30 a.m. in Department 1.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

MOTION FOR SUMMARY JUDGMENT**TENTATIVE RULING:**

A motion for summary judgment shall be granted when the moving party demonstrates "that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." CCP §437c(c). In making its decision the court may rely on affidavits, declarations, or matters of which judicial notice may be taken. CCP §437c(b).

Once the moving party has met the burden of negating one necessary element of a claim, the responding party must then show that a triable issue of material fact exists as to the questioned cause of action. Otherwise summary judgment must be granted. CCP §437c(o)(2). Any opposition to a motion for summary judgment must be filed and served not less than 14 days preceding the noticed date of hearing. CCP§437c(a)(2).

The moving party has met its burden and Plaintiff has failed to file a response .

Accordingly, the moving party's Motion for Summary Judgment is GRANTED as to Defendant SUTTER MEDICAL FOUNDATION and SUTTER VALLEY HOSPITALS dba SUTTER AMADOR HOSPITAL.

The moving party is ordered to prepare a judgment and dismissal conforming to the court's order within 10 days of the hearing date.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

20-CVC-11797

CARL JON KAMMEN EXECUTOR OF THE
ESTATE OF DOUGLAS

VS.

HANS, APRIL

CIVIL DISCOVERY MOTION - PLAINTIFFS**TENTATIVE RULING:**

Plaintiff's unopposed Motion to Compel Production of Documents and Imposing Monetary Sanctions is GRANTED.

A party to whom a request for production is served shall respond with a statement that the party will comply with the demand ; a representation that the party lacks the ability to comply; or an objection to the particular demand. (CCP §2031.210(a).)

The party who fails to respond waives any right to object, including objections based on privilege or the protection for work product. (CCP § 2031.300(a).)

Although Plaintiff did make some attempt to meet and confer before filing the instant motion , meet and confer efforts are not mandatory where no responses whatsoever have been received. (Leach v. Superior Court (1980) 111 Cal.App.3d 902, 905-906.) Where no response is received, the party making the demand may move for an order compelling response to the demand. (CCP §2031.300(b).)

Sanctions

CCP 2030.290(c) states:

The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to sanction acted with substantial justification, or that other circumstances make the imposition of the sanction unjust. Parallel language is found at section 2031.300(c) mandating sanctions in conjunction with a motion to compel a response to request for production.

Counsel submits a declaration in support of the request for sanctions. Counsel indicates an hourly billable rate of \$600 per hour and anticipates a total of one (1) hour associated with the motion, plus the \$60 filing fee. The billable rate of \$600 is high, but the time spent is minimal. Overall, the amount requested of \$660.00 is fair and reasonable. Sanctions shall be payable within thirty (30) days of the order.

Moving party to prepare an order consistent with this ruling.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.