

AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS

Monday, June 7, 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.

20-CVC-11644

BESHEARS, MARY

VS.

KAVANAGH, RUTH

CIVIL MISCELLANEOUS MOTION - DEFENDANTS

TENTATIVE RULING:

Defendant's Motion to Set Aside Entry of Default is DENIED.

CCP 473(b) provides, in relevant part:

The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken. (Emphasis added.)

In this case, Judgment entered on September 16, 2020 and was mailed to Defendant on September 22, 2020. Defendant filed this motion on April 1, 2021, after the six month timeframe under CCP § 473(b) had passed and failed to include a copy of the answer or other pleading proposed.

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.

21-CVC-12101

DOYLE, AARON

VS.

IHEART HOMES CORPORATION

MOTION TO QUASH

TENTATIVE RULING:

Defendant's Motion to Set Aside Right to Attach Order, Quash the Writ of Attachment and Release any Property Levied Upon Pursuant to the Writ is denied.

Request for Judicial Notice

1. Defendant requests the court take judicial notice under Evidence Code Sections 451 and 452 of Doyle v. Lee (Wash.Ct.App.2012) P.3d 256 wherein Plaintiff brought suit against county prosecutor to prevent disclosure of details of improper conduct at his last job to defense counsel in cases where officer testified. (Exh. A.)
Objection Although the court may take judicial notice of the decision law of another jurisdiction, defendant does not proffer its first two requests for judicial notice for that purpose (there are no citations to the proffered authority in its supporting memorandum of points and authorities.) (See Evid. Code Section 452.) Instead, defendant presumably seeks to use the hearsay within those two decisions to discredit plaintiff. That is not the proper subject of a request for judicial notice.

Request for judicial notice denied.

2. Defendant requests the court take judicial notice under Evidence Code Sections 451 and 452 of Doyle v. Gonzales (E.D. Cal., Sept. 7, 2022, No. S-11-0066 GEB GGH) 211 WL 3925045 in which City contends Plaintiff did not disclose in job application, background investigation or polygraph that he was terminated from previous job as a Sierra County Deputy Sheriff for giving false and misleading testimony during an Internal Affairs investigation and deleting nearly 1,000 police department files without authority). (Exh. B.)

Objection Although the court may take judicial notice of the decision law of another jurisdiction, defendant does not proffer its first two requests for judicial notice for that purpose (there are no citations to the proffered authority in its supporting memorandum of points and authorities.) (See Ev. Code Section 452.) Instead, defendant presumably seeks to use the hearsay within those two decisions to discredit plaintiff. That is not the proper subject of a request for judicial notice.

Request for judicial notice denied.

3. Defendant requests the court take judicial notice of the Ex Parte Writ of Attachment, filed with Amador Superior Court, April 9, 2021, Case no. 21 CV 12101. (Exh. C.)

Judicial notice of documents in the courts file is unnecessary, but there is no objection.

Request for judicial notice granted.

Evidentiary Objections

The court rules on Plaintiff's evidentiary objections to Defendant's motion as follows:

Objection No. 1 - MVV Decl. at p. 1:26-27: "iHeart Homes acts as the owner of the properties and exclusively contracts with a licensed contractor to construct the projects." Lack of foundation. Defendant presents no foundational facts for this conclusion.

Objection Sustained.

Objection No. 2 - MVV Decl. at p. 2:3-5 & Exhibit A: "iHeart Homes renovated the property, iHeart utilized the services of Dave Evans, a licensed contractor (license #1045414) to perform all work required a license. (See March 26, 2020 Application for Permit attached as Exhibit A). Lack of foundation. Defendant presents no foundational facts for this conclusion. Statement is equivocal in that defendant must contend that some work does not require a license. Objection Sustained.

Objection No. 3 - MVV Decl. at p. 7:20-25: All of paragraph 47: Lack of personal knowledge, speculation, and hearsay. Objection Sustained.

Objection No. 4 - MVV Decl. at p. 7:26-8:2: All of paragraph 48: Lack of personal knowledge, speculation, and hearsay.

Objection Sustained.

Objection No. 5 - MVV Decl. at p. 8:3-8: All of paragraph 49: Lack of personal knowledge, speculation, and hearsay. Objection Sustained.

Objection No. 6 - MVV Decl. at p. 8:9-12: All of paragraph 50: Lack of personal knowledge, speculation, and hearsay. Objection Sustained.

Writ of Attachment

Any time after a defendant's property is attached under writ of attachment, defendant may bring a motion to set aside the right to attach order, quash the writ of attachment and have the attached property released from levy. (CCP Section 481.190.)

In determining, on application for right to attach order, probable validity of a claim where the defendant makes an appearance, court must consider relative merits of the positions of the respective parties and make determination of the probable outcome of the litigation. (Loeb and Loeb v. Beverly Glen Music, Inc. (1985) 166 Cal.App.3d 1110.)

CCP Section 483.010(a) provides:

Except as otherwise provided by statute, an attachment may be issued only in an action on a claim or claims for money, each of which is based upon a contract, express or implied, where the total amount of the claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars (\$500) exclusive of costs, interest, and attorney's fees.

Plaintiff's claim(s) against iHeart is based on (1) a claim for money based on a contract; (2) a fixed or ascertainable sum of \$500 or more and (3) is unsecured. (CCP Section 483.010.)

If the claim meets this standard, plaintiff must then show the probable validity of that claim. A claim has a "probable validity"

where it is more likely than not that the plaintiff will obtain a judgment against the defendant on that claim . (CCP Section 481.190.)

Defendants argue the disgorgement claim and levy in the full amount of the contract, \$502,000, is improper and plaintiff has no standing to sue for disgorgement as the only contract between the parties is one for the sale of real property not for compensation for defendant for performing services requiring a license under Bus. Prof. Code Section 7031. Further, that the claim for damages would be based in cost of repair or diminution in value, which plaintiff does not offer sufficient extrinsic evidence to support a fixed or readily ascertainable amount.

Plaintiff's first cause of action alleges defendants acted as contractors in violation of Contractor License Law, whether or not this is a proper allegation may be dealt with in other motions.

The court finds the evidence offered by plaintiff, both in its application for Writ of Attachment and Opposition, are sufficient in setting forth the probable validity of his claims.

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.