

Monday, October 25, 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.

16-CVC-09557 VANETTI, KELLEY VS. FARIDI, TARIQ

DEFENDANT’S MOTION TO VACATE OR SET ASIDE JUDGMENT

TENTATIVE RULING:

Defendant’s Motion to Set Aside and Vacate Judgment and Recall and Quash Writ of Execution is DENIED .

Request for Judicial Notice:

Plaintiff requests the court take judicial notice of the following documents pursuant to Evidence Code Sections 452(d) , 453(a) and (b):

- 1) Judgment Pursuant to CCP § 1710.25 (Sister State). (Opposition, Exh. 1.)
 - 2) Proof of Service of Summons re: “Notice of Entry of Judgment on Sister-State Judgment.” (Opposition, Exh. 2.)
- There is no objection. Plaintiff’s request for judicial notice should is GRANTED.

Law and analysis:

Defendant first seeks relief from the judgment under CCP § 473(b), for “mistake”. However, CCP § 473(b) provides, in part, “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.”

The sister state judgment entered on February 16, 2016. Defendant offers no legal authority as to how CCP § 473(b) is applicable to a sister state judgment and if so, applicable over four (4) years after entry.

Next, Defendant seeks relief under CCP § 473.5, lack of notice.

“Section 473.5 is addressed to motions to set aside a default or default judgment.... Section 473.5 is a procedural remedy by which a default or default judgment may be set aside and is inapplicable to a sister state judgment entered pursuant to the SSFMJA because it is not a default or default judgment.” (Conseco Marketing, LLC v. IFA & Ins. Services, Inc. (2013) 221 Cal.App.4th 831 at 844, citing Fidelity Creditor Service, Inc. v. Browne (2001) 89 Cal.App.4th 195, at 203.)

Defendant further seeks relief under either CCP § 473(d) as “void since the legal papers were not served on Defendant at all or were improperly served”. (Amended Mtn., p.2, lines 6-7.)

Defendant’s declaration(s) do not specify what, if any, legal papers were not served on Defendant, or were improperly served. The Proof of Service of Summons by substitute service filed on May 13, 2016 appears to be valid on its face.

Lastly, Defendant seeks relief from the judgment and writ of execution under CCP § 128(a)(8) and CCP § 86(b)(3), based on external fraud or intrinsic mistake making the judgment void and therefore improper issuance of the writ of execution. Defendant fails to set forth admissible evidence as to external fraud or intrinsic mistake causing the court to exercise its authority to vacate the judgment, or further that if given a new trial, the result would likely result in a judgment favorable to him.

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-FCD-07348 LADY, RANDALL VS. BAROCIO, EDUARDO

FAMILY LAW MOTION TO COMPEL

TENTATIVE RULING:

Plaintiffs' unopposed Motion to Compel Discovery Responses and for Attorney's Fees is GRANTED, in part.

Sanctions are awarded to Plaintiff. The court finds it reasonable and supportable to order Defendant to pay sanctions in the amount of \$1,035, which represents attorney's fees and costs necessarily expended on the instant motion. The court finds that three (3) hours to prepare the motion was necessary. The two (2) additional hours to travel to and from the hearing on an unopposed motion are unnecessary. Sanctions shall be paid to Plaintiff's counsel within thirty (30) days.

Plaintiff's unopposed Motion to Compel Preliminary Financial Disclosures is MOOT. The court file indicates Respondent filed an FL-141 on August 2, 2021, with preliminary disclosures having been served by mail on July 29, 2021, prior to this motion being filed.

Moving party shall submit to the court proposed orders conforming to the court's ruling.

This ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.