

AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS

Monday, November 8, 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-11803

BRENNAN, TAMARA

VS.

RAY PROPERTIES KIT CARSON INC

CIVIL MISCELLANEOUS MOTION - DEFENDANTS

TENTATIVE RULING:

Plaintiff's Motion to Strike Petitioner to Compel Arbitration is DENIED.

Defendant's Motion to Compel Arbitration and Request to Stay Entire Action is GRANTED.

Request for Judicial Notice:

Plaintiff requests the court take judicial notice of the following, pursuant to Evidence Code §§ 451 and 452.

1. The Complaint filed in this case. No objection, Plaintiff's request is granted.
2. All pleading and papers filed in this case. No objection, Plaintiff's request is granted.
3. The court's order dated April 19, 2021 granting Plaintiff's Motion to Compel the Deposition of Debbie LaVielle and Production of Documents and the court's order dated August 23, 2021, granting Plaintiff's Motion to Compel the Deposition of the PMK regarding Admission and resetting the Motion to Strike and Request for Sanctions to October 4, 2021. No objection, Plaintiff's request is granted.

Plaintiff requests the court take judicial notice of the following, pursuant to Evidence Code § 452(d).

4. "The arbitration agreement cited in Defendants' (Bartlett Care Center, LLC, dba French Park Care Center; Sun Mar Management Services Sun-Mar Health Care, Inc.), Notice of Petition and Petition to Compel Binding Arbitration in Jasmine Lopez v. Bartlett Care Center, Orange County Case No. 30-2018-00965892."

Denied. The court may take judicial notice of records of any court of this state under 452. However, it is unclear what exact document Plaintiff is requesting the court take judicial notice of, and no documents are attached to the request. Further, such other trial orders are irrelevant. "A written trial court ruling in another case has no precedential value." (Budrow v. Dave & Buster's of California (2009) 171 Cal.App.4th 875, 885; Santa Ana Medical Hospital Center v. Belshé (1997) 56 Cal.App.4th 819, 831.)

5. The court order denying Defendants' Petition to Compel Arbitration in Jasmine Lopez v. Bartlett Care Center, Orange County Case No. 30-2018-00965892, 2018 WL 10125169.

Denied. The court may take judicial notice of records of any court of this state under 452. However, it is unclear what exact document Plaintiff is requesting the court take judicial notice of, and no documents are attached to the request. Further, such other trial orders are irrelevant. "A written trial court ruling in another case has no precedential value." (Budrow v. Dave & Buster's of California (2009) 171 Cal.App.4th 875, 885; Santa Ana Medical Hospital Center v. Belshé (1997) 56 Cal.App.4th 819, 831.)

Petition to Compel Arbitration/Motion to Strike:

In moving to compel arbitration, a defendant must prove by a preponderance of evidence the existence of the arbitration agreement and that the disputes are covered by the agreement. The party opposing the motion must then prove by a preponderance of evidence that a ground for denial of the motion exists (e.g., fraud, unconscionability, etc.) (Rosenthal v. Great Western Fin'l Securities Corp. (1996) 14 Cal.4th 394, 413-414; Hotels Nevada v. L.A. Pacific Ctr., Inc. (2006) 144 Cal.App.4th 754, 758; Villacreses v. Molinari (2005) 132 Cal.App.4th 1223, 1230.) Unless there is a dispute over authenticity, the mere recitation of the terms of the governing provision is sufficient for a party to move to compel arbitration. (Sprunk v. Prisma LLC (2017) 14 Cal.App.5th 785, 793.)

The petitioner has the burden of proving the existence of a valid arbitration agreement. (Pinnacle Museum Tower Assn v. Pinnacle Market Development (US), LLC (2012) 55 Cal.4th 223, 236.)

Here, defendant provided a copy of the written agreement, and explained the process by which the agreement was generated, reviewed, and executed. (Lavielle Decl. ¶¶ 1-6, Exh. A; Burns Decl. Exh. A.) This is sufficient evidence to support the present petition. (Cox v. Bonni (2018) 30 Cal.App.5th 287, 301.)

A party opposing arbitration has the burden of showing that the arbitration agreement is unenforceable. (Condee v. Longwood Management Corp. (2001) 88 Cal.App.4th 215, 219.)

In response to the motion, Plaintiff filed a motion to strike the arbitration agreement or in the alternative compel the deposition of Debbie Lavielle and the production of documents. The court ordered the deposition of both Debbie LaVielle and Plaintiff Tamara Brennan. Debbie LaVielle was unavailable to be deposed and the court ordered Defendant to produce the PMK regarding admissions. Defendant produced Grace Wong, an employee of Eva Care Group who was the person who trained and currently trains Admissions Coordinators and Business Office Managers regarding admissions documents on September 15, 2021 for deposition. (Decl. Burns Reply, ¶ 8.)

Plaintiff did not produce Tamara Brennan for deposition as ordered, arguing that Defendant did not produce the PMK for the deposition, instead producing the LMK (least most knowledgeable). (Opp to Compel, p. 1 lines 9-12.)

In opposition to the motion, Plaintiff argues that the arbitration agreement is unconscionable due to "oppression" and "surprise" in that Tamara Brennan alleges the arbitration agreement was buried in 50 pages of other documents and Ms. LaVielle barely, and inaccurately, described it at all, calling it a "non-binding process" that takes place "before court" and made no mention of the costs of arbitration. (Brennan Decl. ¶ 8.)

The arbitration agreement itself, signed by Tamara Brennan, states all the relevant conditions to the agreement including:

- "Residents shall not be required to sign this arbitration agreement as a condition of admission to this facility." in bold print at the top of the first page. (Reply, Exh. C.)
- "Both parties to this contract, by entering into it, are giving up their constitution right to have any such dispute decided in a court of law before a jury, and instead are accepting the use of arbitration." Article 1. (Reply Exh. C.)
- "This Agreement is binding on all parties, including the Resident's representatives, executors, family members, and heirs." Article 4. (Reply Exh. C.)

CIVIL MISCELLANEOUS MOTION - PLAINTIFF**TENTATIVE RULING:**

Parties are ordered to appear remotely or in person. After review of the pleadings in this matter, the court is inclined to grant the unopposed Motion for Order for Prejudgment Possession, finding Plaintiff has met the requirements of Code of Civil Procedure section § 1255.410.

However, the court does not find a valid proof of service has been filed. All four (4) Notice and Acknowledgment of Receipts filed on August 2, 2021 indicate each Defendant received "1. A copy of the summons and complaint" and "2. Other: See attached list of pleadings". The filed Acknowledgments do not have a list of pleadings attached, so the court is unable to determine whether the Motion for Order for Prejudgment Possession and other related pleadings were properly served.

If Plaintiff files valid proofs of service showing that each Defendant was served with the Motion for Order for Prejudgment Possession and other specified related pleadings the court shall sign the proposed Order lodged in the court file at the time of the hearing.

If not, the court shall continue the motion out forty-five (45) days to allow sufficient time for service. Plaintiff shall provide notice.