

TENTATIVE RULINGS

FOR: April 20, 2017

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. C (Historic Courthouse)

Megan Porsley, et al. v. William Katsaros, et al.

17CV000061

DEMURRER TO THE COMPLAINT

TENTATIVE RULING:

Plaintiffs Megan Prosley and Michael Snyder's request for judicial notice of three statements of information from the California Secretary of State is GRANTED.

Defendant Gregory Owen's demurrer to each cause of action in the complaint on the ground of uncertainty is OVERRULED. An uncertainty demurrer is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures. (See *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616.) A demurrer for uncertainty should only be sustained when the complaint is so bad that the defendant cannot reasonably respond. (*Id.*) Here, the complaint is certain enough to allow Own to understand the nature of the allegations, and the theories of liability in order to fashion an appropriate response.

Owens shall file his answer within 10 calendar days of service of notice of entry of order.

PROBATE CALENDAR – Hon. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

Estate of Lewis A. Rommel

17PR000054

PETITION FOR LETTERS OF ADMINISTRATION AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: There is no proof of publication on file. If a proper proof of publication is filed prior to the hearing, the petition shall be GRANTED. Otherwise, the petition shall be DENIED, without prejudice.

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Conservatorship of Guadalupe Torres

26-50344

REVIEW HEARING

TENTATIVE RULING: After a review of the matter, the Court finds the co-conservators are acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on April 23, 2019, at 8:30 a.m. in Dept. F. The court investigator shall prepare a biennial investigator report for the next hearing date. In addition, before the next hearing, the co-conservators shall file Notice of Conservatee’s Rights (Judicial Council form GC-341) mailed to relatives of the conservatee within the second degree. The clerk is directed to send notice to the parties.

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

Capital Insurance Group v. Jeanne Schwartz Drew

26-63600

MOTION TO STRIKE COSTS OR, IN THE ALTERNATIVE, TO TAX COSTS

TENTATIVE RULING:

Plaintiff Capital Insurance Group’s motion to strike costs is GRANTED. Plaintiff argues defendant waived the cost issue by not raising it in arbitration. The Court agrees. The parties stipulated to “submit the dispute at issue” to binding arbitration. (Kelly Decl., Ex. A at p. 1.) The use of this language indicates the *entire* dispute was submitted to binding arbitration. (*Maaso v. Signer* (2012) 203 Cal.App.4th 362, 379 [“[W]hat the court can do, the arbitrator can also do. The most logical way to read this parallel language is that in cases tried to the court, the court makes the decisions about awarding CCP § 998 costs connected with the case, while in cases that are arbitrated, those decisions belong to the arbitrator.”].) Indeed, the parties did not carve out a provision omitting the issue of costs from the purview of the arbitrator.

Although the arbitrator never saw the stipulation between the parties sending this case to arbitration, the arbitrator used language in her interim and final arbitration awards inviting

defendant to raise her costs issue. (See *id.*) The arbitrator stated in her interim arbitration award that “[t]o the extent there are any remaining issues for decision by the Arbitrator, the award will remain open for 30 days for the filing of any post-arbitration motions.” (Kelly Decl., Ex. B. at p. 5.) The arbitrator noted in the final arbitration award that no motions were filed during the 30-day window for filing of post-arbitration motions. (*Id.*, Ex. C.) This 30-day time period – in which the arbitrator invited motions on “any remaining issues” – is when defendant should have raised her costs issue. Defendant failed to do so. Thus, defendant waived the costs issue.

The Court finds support in its conclusion regarding waiver due to the underlying policy that the arbitrator is in the best position to determine the necessity of any costs: “[I]t makes sense that only the arbitrator decides section 998 costs incurred in arbitration because an award of expert witness costs, and the amount, is discretionary under section 998. ‘[N]ot only is the determination as to the amount [of attorney fees and costs] properly within the purview of the arbitrator, but we observe it is the arbitrator, not the trial court, which is best situated to determine the amount of reasonable attorney fees and costs to be awarded for the conduct of the arbitration proceeding.’” (*Maaso v. Signer* (2012) 203 Cal.App.4th 362, 379, quoting *DiMarco v. Chaney* (1995) 31 Cal.App.4th 1809, 1816-17; see *id.* [“It is not logical to . . . invit[e]” defendant “to forum shop between the court and the arbitrator, and to bring the request to whichever forum that party believes is most likely to make a favorable award.”].)

Plaintiff’s alternative request to tax costs is MOOT.