

TENTATIVE RULINGS

FOR: July 10, 2018

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.

PROBATE CALENDAR – Hon. Victoria Wood, Dept. C (Historic Courthouse) at 2:00 p.m.

Conservatorship of Lucy K. Clarke

18PR000104

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

APPEARANCE REQUIRED

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Estate of Patricia M. Norum

18PR000144

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

TENTATIVE RULING: GRANT Petition.

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In the Matter of the John and Joanne Pearson Family Trust

18PR000146

PETITION FOR ORDER DETERMINING TITLE TO PROPERTY

TENTATIVE RULING: GRANT Petition.
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In the Matter of the McSweeney Family Trust

18PR000148

PETITION FOR ORDER APPROVING MODIFICATION OF TRUST TERMS UNDER PROBATE CODE SECTION 15403

TENTATIVE RULING: GRANT Petition.

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Conservatorship of Nancy Wiloth

26-43036

PETITION FOR REAPPOINTMENT OF CONSERVATOR OF THE PERSON

APPEARANCE REQUIRED

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Estate of Aileen Plass

18PR000117

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

TENTATIVE RULING: GRANT petition. Petitioner shall file the proposed letters (Judicial Council form DE-150) conforming to the petition.

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In the Matter of the Jean R. Bowen Trust

18PR000147

PETITION FOR ORDER APPROVING MODIFICATION OF TRUST TERMS UNDER PROBATE CODE SECTION 15403

TENTATIVE RULING: GRANT petition.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. C (Historic Courthouse) at 2:00 p.m.

American Express Centurion Bank v. Timothy A Wilkens

16CV000098

MOTION FOR ORDER ENTERING JUDGMENT AGAINST DEFENDANT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 664.6¹

TENTATIVE RULING: Plaintiff American Express Centurion Bank’s motion for an order entering judgment against defendant Timothy A. Wilkens pursuant to Code of Civil Procedure section 664.6 is DENIED WITHOUT PREJUDICE. On April 3, 2018, the Court

¹ Plaintiff filed two motions: one filed on April 6, 2017 (served the same date) and the other filed on April 27, 2018 (served April 3, 2018). The April 27, 2018 motion is dismissed as duplicative.

(Hon. Stone) held: "Defendant was served with the motion at a mailing address in Napa while the demand letter informing him of the default was served to an email address (Exhibit B) listed in the stipulated agreement. If plaintiff elects to refile its motion, it shall first reserve the demand letter to defendant's Napa address and email. Following the cure period provided for in the stipulated agreement, plaintiff may then refile its motion. The motion shall be served on defendant at the mailing address in Napa and to the email address listed in the stipulated agreement."

Plaintiff did not fully comply with the Court's instructions. Plaintiff did not present evidence that it reserved the demand letter to defendant at his Napa address and email address as instructed in the Court's prior order. Plaintiff needs to follow the April 3, 2018 ruling.

The OSC re: Dismissal is continued to September 11, 2018, at 2 p.m. in Dept. C.

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In the Matter of Maria Talavera

18CV000666

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The Petition for Change of Name is GRANTED without need for appearance.

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Michael Venuta v. First American Title Company of Napa, et al.

18CV000095

(1) DEFENDANT FIRST AMERICAN TITLE COMPANY OF NAPA'S DEMURRER TO THE FIRST AMENDED COMPLAINT

TENTATIVE RULING: Defendant First American Title Company of Napa's ("First American") demurrer to the first cause of action for negligence [Civ. Code, § 1714, subd. (a)], second cause of action for negligent interference with economic relations [Civ. Code, § 3333], and third cause of action for intentional interference with economic relations on the ground of failure to state sufficient facts is OVERRULED. First American acted as the escrow holder for the seller, defendant In the Vines, LLC ("ITV"). (First Amended Compl., ¶ 3.) Plaintiff Michael Venuta was not a party to the escrow. (See *id.*) An escrow holder does not owe a duty to a third party to the escrow, even when that third party has an interest in the escrow that is known to the escrow holder. (See *Summit Fin. Holdings, Ltd. v. Cont'l Lawyers Title Co.* (2002) 27 Cal.4th 705, 715-16; *Markowitz v. Fid. Nat'l Title Co.* (2006) 142 Cal.App.4th 508, 525-29.)

Venuta, however, alleges the test from *Biakanja v. Irving* (1958) 49 Cal.2d 647, 650, imposes a duty on First American to him as a third party. There are six factors a court must weigh: (1) the extent to which the transaction was intended to affect the plaintiff; (2) the foreseeability of harm to the plaintiff; (3) the degree of certainty that the plaintiff suffered injury; (4) the closeness of the connection between the defendant's conduct and the injury suffered; (5) the moral blame attached to the defendant's conduct; and (6) the policy of preventing future harm. (*Id.*) Other than the first, Venuta alleges each of the other factors: the foreseeability of

harm was high because First American had actual knowledge of the existence of the loan and deed of trust; the certainty of harm was high because his obligation under the loan was not satisfied by First American; First American's conduct directly caused his injury; moral blame attaches to First American because it had actual knowledge of the loan and deed of trust; and the policy of preventing future harm points towards imposing liability where First American had actual knowledge of the loan and deed of trust but failed to satisfy it, and First American negligently prepared the escrow instructions.

Applying the *Biakanja* test to the case at bar requires a factual weighing of the relevant factors, which is inappropriate via a demurrer. Under the second factor, for example, First American contends it was not foreseeable under *Summit Financial* that IVT and defendant Lisa Mini would abscond with the excess funds rather than honoring the purported agreement with Venuto to pay off the loan. But it is entirely possible, and therefore foreseeable to First American, that a windfall of hundreds of thousands of dollars in extra funds from the sale would cause the other defendants to refuse to pay off the loan on Venuto's behalf. Due to this factual weighing, all that is necessary for purposes of the demurrer is to determine whether Venuta has properly alleged a duty based on *Biakanja* to escape the general rule that no duty is owed to a third party. He has done so, and the Court must accept those allegations as true. Indeed, none of the cases First American raises applied the *Biakanja* test to a demurrer. (See *Summit Fin.*, *supra*, 27 Cal.4th at p. 707 [summary judgment]; *Alereza v. Chicago Title Co.* (2016) 6 Cal.App.5th 551, 556 [motion for nonsuit]; *Markowitz*, *supra*, 142 Cal.App.4th at p. 512 [motion for nonsuit].)

First American shall file its answer within 10 calendar days of service of notice of entry of order.

(2) MOTION TO STRIKE

TENTATIVE RULING: Defendant First American Title Company of Napa's ("First American") motion to strike references to punitive damages (pages 8:25-9:1 and 10:5) from the first amended complaint is GRANTED WITHOUT LEAVE TO AMEND. Plaintiff Michael Venuta argues the punitive damage allegations are proper based on First American's promise in a letter to pay off the loan, which First American has failed to do. The statements made in the letter were mere "predictions regarding future events," which are "deemed to be mere opinions which are not actionable." (*Cansino v. Bank of Am.* (2014) 224 Cal.App.4th 1462, 1469; see First Amended Compl., Ex. 1 [December 13, 2017 letter from First American's president stating, "I have no doubt it will be paid"].) Thus, the statements in the letter cannot support the request for punitive damages.

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In the Matter of Trinidad DeLeon

18CV000615

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition is GRANTED without need for appearance.