

FOSTER v. IRBC 2 PROPERTIES

21CV45573

DEFENDANT'S MOTION FOR LEAVE TO FILE AMENDED ANSWER

This is a wrongful foreclosure case. Defendant wishes to file an amended answer to the second amended complaint (SAC) to “explain, clarify and simplify the denials and affirmative defenses to the causes of action pleaded against each defendant by making the additions, deletions and edits as well as adding supplemental affirmative defenses ... , and the finality of the judgment in IRBC 2 Properties LLC, v Foster in Calaveras County Superior Court Case No.20 UD13121.”

All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3.3.7 Tentative Rulings (Repealed Eff. 7/1/06; As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court. [Emphasis in original.]

Failure to include this language in the notice may be a basis for the Court to deny the motion.

Based on defendant's failure to comply with the local rule, the motion is DENIED, without prejudice, to renew in compliance with Rule 3.3.7.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal Order is required.

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GENTILE, et al. v. JOHNSON, et al

23CV46817

**PLAINTIFFS' MOTION TO EXPUNGE
DEFENDANT'S INVALID LIENS**

Plaintiffs move to expunge liens recorded by the defendant Cali Designs against the subject real property for \$150,000. This motion to expunge is made under *Lambert v. Superior Court* (1991) 228 Cal.App.3rd 383 and California Code of Civil Procedure Sections 484.010 et seq. Defendant Cali Design is a corporation hired for a home construction project; plaintiffs are the property owners.

Plaintiffs argue that *Lambert* entitles them to the expungement of the recorded mechanic's lien for two reasons: (1) the lien is unjustified because defendant was not licensed during the subject construction project; and (2) the amount of the lien, is overstated (and therefore unjustified).

A *Lambert* motion to remove a mechanic's lien is recognized as a device that allows the property owner to obtain speedy relief from an unjustified lien, or a lien of an unjustified amount, without waiting for trial on the action to foreclose the lien. (*Connolly Devel., Inc. v. Superior Court of Merced County* (1976) 17 Cal.3rd 803, 822-823; *Howard S. Wright Construction Co. v. Superior Court* (2003) 106 Cal.App.4th 314, 318; *Lambert v. Superior Court* (1991) 228 Cal.App.3rd 383.)

In over 700 pages of declarations and/or judicially noticed materials (the Court grants both sides' respective requests) plaintiffs argue the invalidity of the mechanic's lien by defendant Cali Design's inclusion of billings for unlicensed labor on the project. The primary evidence for defendant's opposition is the declaration of Jared Trew, a licensed general contractor and supervisor on this particular project. Plaintiffs in turn attack the propriety of Trew's declaration. However, the Court finds Trew's declaration directly addresses the merits of the claims, and suffices at this stage of the proceedings.

A motion for expungement of lis pendens "should be granted only when the lienholders fail to make a threshold showing of the probable validity of the lien." (*Manela v. Stone* (2021) 66 Cal.App.3rd 383, 387.) "[T]he question presented is not the ultimate merit of the contractor's claim, but whether the contractor should be entitled to retain the security of the mechanic's lien . . . pending resolution of the matter." (*Cal. Sierra Construction, Inc. v. Comerica Bank* (2012) Cal.App.4th 841, 850.)

Despite the substantial argument and evidentiary support for plaintiffs' opposition to the Trew declaration, the construction contract and Trew's assertions establishes pleading stage viability for the lien and meets the threshold showing to maintain the lien pending resolution on the merits.

Based on the foregoing, plaintiffs' motion to expunge is DENIED.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant Cali Design to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

WALKER v. YADAV ENTERPRISES, INC.

23CV46729

“MOTION” FOR ADMISSION OF MELISSA CIZMORRIS TO THE BAR OF THIS COURT PRO HAC VICE

Melissa L. Cizmorriss of Akerman LLP, applies to appear as counsel pro hac vice to represent defendants in association attorney of record pursuant to California Rule of Court 9.40.

All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3.3.7 Tentative Rulings (Repealed Eff. 7/1/06; As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

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Failure to include this language in the notice may be a basis for the Court to deny the motion.

The filed “motion” fails to contain this language; however, the Court views this labeling of the matter as a misnomer, as a pro hac vice request is an application that can even be submitted on an ex parte basis, and therefore the Court addresses the merits.

Counsel who are not active members of the California State Bar and have not been granted permission to appear pro hac vice are prohibited from representing a party in California courts. (*Gentis v. Safeguard Bus. Systems, Inc.* (1998) 60 Cal.App.4th 1294, 1308.) Counsel licensed in another state may, in the court's discretion, be permitted to appear as counsel pro hac vice if counsel is associated with an attorney of record who is an active member of the California bar. (Cal. Rules of Court, rule 9.40(a).)

Based on the verified application of Melissa Cizmorris, the request is GRANTED.

The Clerk shall provide notice of this Ruling to the parties forthwith. The Court will sign the Order submitted by defendants.

DELING v. CORSON

22CV46366

MOTION OF PLAINTIFF'S COUNSEL TO BE RELIEVED

Attorney Gregory E. Martin moves to be relieved as counsel of record for plaintiff pursuant to Code of Civil Procedure Section 284 and Rule of Court 3.1362.

Based on counsel's filed declaration which meets the statutory requirements, the motion is GRANTED.

The Clerk shall provide notice of this Ruling to the parties forthwith. The Court will sign the Order submitted by counsel.

**THE LAKES TREATMENT CENTER, INC v.
BLUE CROSS OF CALIFORNIA**

23CV46918

**DEFENDANT'S MOTIONS TO SEAL AND TO COMPEL
ARBITRATION; PLAINTIFF'S MOTIONS FOR ATTORNEY'S
FEES AND FOR PRELIMINARY INJUNCTION**

These motions are all continued to February 16, 2024, at 9:00 a.m. in Department 2.