CAPITAL ONE v. COWAN

22CF14002

DEBTOR'S CLAIM OF EXEMPTION

This is a limited-jurisdiction, collections case. Before the Court is the defendant-debtor's wage garnishment claim of exemption.

On 02/07/23, this Court entered a clerk's judgment by default in favor of plaintiff, against defendant, in the amount of $6,052.75.

On 04/26/23, defendant filed a wage garnishment claim of exemption. Therein, she advised that she was unwilling to agree to *any* withholding. She states the following as her finances:

- Monthly income: $3,797.25
- Spouse income: $1,751.00
- Adult son income: zero
- Savings: negligible
- Assets: real and personal property > $260,000
- Monthly expenses: $5,700.00 (approx)

A certain portion of a judgment debtor's wages are automatically exempt (*Sourcecorp, Inc. v. Shill* (2012) 206 Cal.App.4th 1054, 1058), leaving the *lesser* of: (1) 25% of the employee's disposable earning for that week; or (2) the amount by which the disposable earning for the week exceeds 30 times the federal minimum hourly wage, or stated another way 50% above the state minimum hourly wage. (CCP §706.050.) "Disposable earnings" are those earnings remaining after deduction of any amounts required by law to be withheld including social security, federal and state income taxes, and state disability insurance. (*Ahart*, Cal. Prac. Guide, *Enforcing Judgments and Debts*, § 6:1171.) Based on her filings, defendant has disposable income of $3,227.03, leaving her with a baseline garnishment ceiling of $806.76. Although plaintiff contends that defendant earns more than stated in her claim form, there is no evidence of this. The difference, however, is not material for present purposes.

Additional amounts from the baseline ($806.76) may be exempt to the extent they are necessary for the support of the judgment debtor or her immediate family. (CCP §706.051(a)(b).) There is no precise definition of what is "necessary" for the support of a judgment debtor/family. (*Ahart*, Cal. Prac. Guide, *Enforcing Judgments and Debts*, § 6:1179.) "Necessary" expenses normally include housing costs, food, insurance, automobile costs, and the like, but the court must consider the circumstances surrounding each individual case. (*J.J. MacIntyre Co. v. Duren* (1981) 118 Cal.App.3d Supp. 16, 18.) Although the burden of proof lies with the party claiming the extra

necessities, exemption statutes are generally construed in favor of the debtor. (*Kono v. Meeker* (2011) 196 Cal.App.4th 81, 86.)

In terms of the necessary line items, defendant's PERS and LTD qualify as necessities, but unsecured installment repayment obligations (4.j.) are not. That comes to $350.25. As for household expenses, when the debtor is not the sole breadwinner in the house, household expense are first credited to the other adult's income, and then split: $4,841 (expenses) - $1,751 (Matt income) - $190 (4.j.) /2 = $1,450 (defendant share). This Court agrees that food, utilities and transportation are on the higher side, and reduces defendant's share to $1,000. This Court sees no reason for defendant to cover Brett's living expenses for free, so this Court imputes to defendant additional financial assistance from Brett of $800/month. That brings defendant's baseline to $256.51.

While mortgage and property taxes are necessary, using them means that this Court can consider the sizable equity ($250,000) defendant holds in the residence because paying a mortgage and taxes on real property is an investment that can be liquidated (via HELOC) to pay secured debts. In addition, defendant can sell one of her three vehicles (see 3.c.) and make a serious dent in this debt.

Based on the whole of the withholding evidence, this Court concludes that defendant has a sufficient financial position to absorb $250/month as a wage garnishment. That shall be the order. The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

DeREIS v. BURKE

21CV45133

CROSS-COMPLAINANT'S MOTION FOR LEAVE TO FILE AN AMENDED PLEADING

This is an action for partition of real property. There was a probate action related hereto (10PR7129). Before the Court is a motion by defendant and cross-complainant Deborah Burke for leave to file a Second Amended Cross-Complaint (hereinafter SAXC). In particular, cross-complainant wishes to augment the description of property allegedly converted by cross-defendant, which forms the basis for her second cross-action for conversion. Cross-complainant also wishes to augment the amount in controversy. Service appears to be proper. No opposition appears in the Court's registry of action.

To amend a pleading already at issue, the sponsoring party is required first to seek leave of court by way of noticed motion. (CCP §473(a)(1).) Pursuant to CRC 3.1324, the moving party must: (a) specify in the moving papers by page, paragraph, and line number the allegations proposed to be added and/or deleted; and (b) include with the moving papers a copy of the proposed amended pleading and a declaration specifying (1) the effect of the amendment(s); (2) why the amendment is necessary and proper; (3) when the facts giving rise to the amended allegations were discovered; and (4) the reasons why the request was not made earlier. Although the supporting declaration fails to explain when the new facts came to light, and why the amendment was not made earlier in this action, the absence of opposition tells this Court that no party is concerned. Thus, this Court will move on to the substantive merits.

Motions for leave to amend a pleading are directed to the sound discretion of the court. CCP §§ 473(a)(1) and 576. This discretion, however, is to be exercised liberally in favor of allowing amendments. (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428; *Central Concrete Supply Co v. Bursak* (2010) 182 Cal.App.4th 1092, 1101-1102.) Courts may permit amendments at any stage in the proceedings, up to and including trial, so long as there is no prejudice to the adverse party. (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761.) Prejudice exists where amendment would require delaying the trial, resulting in loss of critical evidence, or significant added litigation burden/costs. (*Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 486-488.) Prejudice is rare when the facts supporting a new cause of action first come to light during discovery. (*South Bay Building Enterprises, Inc. v. Riviera Lend-Lease, Inc.* (1999) 72 Cal.App.4th 1111, 1124-1125.) Although unexcused delays and lack of diligence may be considered, they alone are insufficient to deny leave. (See *Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 175; *Honig v. Financial*

Corp. of America (1992) 6 Cal.App.4th 960, 967; *Leader v. Health Industries of America, Inc*. (2001) 89 Cal.App.4th 603, 613.)

Motion GRANTED. Cross-complainant to file SAXC within 5 days. The Clerk shall provide notice of this Ruling to the parties forthwith. Cross-complainant to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

HESSLER v. KAUTZ VINEYARDS et al

21CV45613

DEFENDANT'S DISCOVERY MOTIONS

This is a personal injury, premises liability action. Plaintiff generally alleges that she was attending an event at defendant's venue when she and another guest lost their footing/balance near a rope barricade, resulting in injury to plaintiff.

Before the Court are the following discovery motions:

1. Defendant's motion to compel an initial response to form interrogatories;
2. Defendant's motion to compel an initial response to special interrogatories;
3. Defendant's motion to compel an initial response to RPDs;
4. Defendant's motion to have the RFAs deemed admitted.

In addition to discovery orders, defendant also seeks a total of $1,600.00 in sanctions.

One of the motions is technically deficient in that it combines three distinct motions in one. (See CCP §1003.) Pursuant to Govt Code §70617, defendant was required to tender $60 for each motion seeking an order even if the motions are heard together. In other words, although one commingled memorandum is permissible (CRC 3.1112(c)), counsel still had to tender three filing fees. Defense counsel is directed to the clerk's office to pay the requisite additional $120 in filing fees.

The overdue discovery was first served on plaintiff via electronic mail on 05/11/22, and re-served on counsel on 07/07/22 (following some concern that the email attachments did not go through). That same day, plaintiff died. Since then, this case has remained in quasi-limbo waiting for plaintiff's successor in interest to assume control of the litigation. Much to this Court's concern, and despite a warning to the parties that cooperation needs to take place for a successor in interest to take over (see Minute Order dated 12/02/22), nothing has been done until just recently. As explained by plaintiff's counsel in her recent filing, a personal representative has yet to be appointed, despite there being an active probate case filed in Sacramento County (see 34-2023-00336226). Although counsel expected the family to agree to allow Stephanie to serve as successor in interest in this case, that agreement was apparently not quickly forthcoming, thus requiring additional court effort in Sacramento. Given that plaintiff died almost 11 months ago, this Court can see no cogent reason for why no personal representative has been appointed. Certainly, plaintiff's counsel has not offered any explanation for the delay.

While this Court understands defendant's frustration – waiting 12 months for basic discovery responses – defendant never moved (CCP §377.31) for an order of substitution (CCP §377.33). Since orders deemed prejudicial to the decedent are voidable if entered prior to the appointment of a successor in interest (see *Sacks v. FSR Brokerage, Inc.* (1992) 7 Cal.App.4th 950, 957-960), defendant had just as much incentive as plaintiff (if not more) to get a successor in interest appointed. Since defendant opted to wait for plaintiff's estate to figure representation out, it cannot now be a basis to complain of the delay. Moreover, since the failure to respond appears to be a direct result of plaintiff's death, the discovery itself may not actually be delinquent.

Motions DENIED, without prejudice. Plaintiff is hereby ordered to commence and expedite an §§ 8540, 8544(a)(3) petition in this county for the appointment of a personal representative with special powers. If such an action is not commenced within 30 calendar days, this Court will consider a motion for an OSC re: sanctions and/or abandonment (see CCP §§ 583.410, 583.420(a)(2), and CRC 3.1340) and dismissal of the action. The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

CONNOLLY v. DE LA CRUZ

23CV46549

CROSS-DEFENDANT'S DEMURRER TO CROSS-COMPLAINT

This civil action stems from a dispute over easement rights. Before the Court is a demurrer to the operative cross-complaint filed 03/09/23. Just days ago, this Court received an opposition to the demurrer. While it is obviously late, and objected to by cross-defendant, this Court notes that the question of standing – which forms the entire basis for the demurrer – is heavily fact-dependent. For that reason, this Court prefers to consider the opposition rather than give the moving party a temporary victory. To permit adequate time, and to coordinate with other motions, the hearing on this demurrer is hereby continued to 07/07/23 at 9:00 a.m. in Dept. 2, to be heard with another pending demurrer in this case. Cross-defendant is granted leave to file a reply brief to the opposition, pursuant to Code, based on the new hearing date.

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

BADGEROW et al v. STATE OF CALIFORNIA

23CV46681

PETITION FOR ORDER PERMITTING LATE CLAIM

This is a special proceeding pursuant to Govt. Code §946.6 for leave to submit a late GCA claim for an incident involving a runaway golf cart.

Background

On 05/22/22, at approximately 1 p.m., petitioners Rachael Badgerow, Erin Cheney and David Brown were eating lunch at the Calaveras County Fairgrounds when an unmanned golf cart crashed into them, causing injuries. The CHP was summoned to investigate, and a report was taken. The investigating officer noted that the golf cart operator was at fault for failing to set the parking brake when leaving the cart at the top of an embankment. The officer further noted in the report that the golf cart was insured through the California Fair Service Authority.

On 12/09/22, petitioners submitted to the County of Calaveras an application to present a late claim for damages associated with the gold cart incident. Petitioners were informed at that time that the 39th District Agricultural Association – an agency arm of the State of California – was responsible for the premises upon which the incident occurred. The County asked petitioners' counsel to withdraw the application (the outcome of which is unknown).

On 12/15/22, petitioners submitted to the State of California an application to present a late claim for damages associated with the gold cart incident. According to petitioners, State never responded in any manner, leading to a *de facto* rejection.

On 04/05/23, petitioners filed the pending petition for relief.

Petition for Relief

The purpose of the Governmental Claims Act (GCA) is to provide the public entity sufficient information to enable it to (1) investigate/settle claims without the expense of litigation, (2) plan for potential fiscal liabilities, and (3) avoid similar liabilities in the future. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 738.) As such, no suit for money or damages may be maintained against a governmental entity unless a formal claim has been presented to such entity within six months of accrual of the cause of action. (Govt. Code §911.2.) If the claimant fails to file within six months, he or she may apply in writing to the public entity for permission to file a late claim. (Govt. Code §911.4; see *J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648,

656.) If the public entity denies the application to file a late claim, the claimant may petition the court for relief within 6 months thereafter. (Govt. Code §946.6; *Coble v. Ventura County Health Care Agency* (2021) 73 Cal.App.5th 417, 425.)

Here, petitioners concede that they failed to present a claim for damages within the statutory six-month window for claims against the government. According to petitioners' counsel, the delay of a few weeks was due to a human data-entry error in the office, amplified by office software and office procedures regarding manually-created excel spreadsheets. (See Knapp Declaration Paragraphs 5-8 and Platt Declaration Paragraphs 3-7.) Counsel's paralegal Ms. Platt expressed she misidentified the case as garden-variety "accident" without tagging it as being against a government entity, and then forgot to also write it in the office excel spreadsheet for filing deadlines. She did, however, check in with the clients monthly and perform routine file reviews, and it was during the combination of this effort that the lightbulb went on and she (and counsel) realized that this "accident" case was against a defendant protected by statutory filing deadlines.

Respondent opposes the petition on the singular ground that the explanation provided by petitioners' counsel did not rise to the level of excusable neglect because counsel said nothing of his own diligence in the months leading up to the failed tickler (citing *Tackett v. City of Huntington Beach* (1994) 22 Cal.App.4th 60, 66). Although respondent's position is understandable, the test it offers is incomplete. The board reviewing applications for late filing "shall" grant the application if (1) the failure to present the claim during the initial six months was through mistake, inadvertence, surprise, or excusable neglect, and the public entity was not prejudiced, or (2) the claimant was a minor during the entire six-month window. (Govt. Code §§ 911.6(b).) Petitioner Rachael was indisputably a minor during the six months between injury and the closing of the window to present, which alone means that the State was required to accept her late filing. (See *Hernandez v. County of Los Angeles* (1986) 42 Cal.3d 1020, 1027-1028.) As for Erin and David, the calendaring errors committed by counsel – especially the failure to manually write in the case on the excel spreadsheet show – shows mistake and inadvertence. State does not allege prejudice, let alone prove its existence. Petitioners presented more than enough to trigger State's mandatory obligation to accept the late filing, and State failed to comply. It was not necessary for petitioners to also show excusable neglect, though the errors made here were isolated and something that any reasonably prudent paralegal might make, and therefore excusable. Counsel was otherwise diligent in handling the file (see reply brief page 2-3). (See *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 234; *Benjamin v. Dalmo Mfg. Co.* (1948) 31 Cal.2d 523, 526-527; *Comunidad en Accion v. Los Angeles City Council* (2013) 219 Cal.App.4th 1116, 1134-1135; *Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681, 694; *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1782; *Flores v. Board of Supervisors* (1970) 13 CaL.App.3d 480, 483; *Nilsson v. City of Los Angeles* (1967) 249 Cal.App.2d 976, 980; *Bernards v. Grey* (1950) 97 Cal.App.2d 679, 683-686.) Since State was mandated to consider the late filing of a claim, and failed to do so, State has lost the opportunity to insist on compliance with the claims presentation

requirements. (See Govt. Code §946.6(c).) For that reason, petitioners are allowed to pursue their action. (See Govt. Code §946.6(f); *Ard v. County of Contra Costa* (2001) 93 Cal.App.4th 339, 343.)

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

HAMPTON v. EAST BAY MUNICIPAL UTILITY DISTRICT

22CV46329

DEFENSE MOTION FOR SUMMARY JUDGMENT

This is a personal injury action. Plaintiff generally alleges that while recreating along the south shore of Lake Camanche, near the Arrowhead campground, he dove into the water from a rock wall and struck a submerged boulder, resulting in quadriplegia.

Before the Court is a motion for summary judgment. Co-defendant Urban Park Concessionaires ("UPC") contends that it is entitled to summary judgment/adjudication because neither of the two causes of action stated in the operative First Amended Complaint (negligence and premises liability) can succeed against it. According to UPC, it did not owe plaintiff any duty of care to protect him from injuries caused by diving into a submerged boulder because:

1. UPC had no control over the water level in the lake, and thus had no ability to warn or guard against a boulder that became invisible;
2. Plaintiff's injury was the result of a volitional act of diving into unfamiliar waters and colliding with an open and obvious danger; and/or
3. Plaintiff's injury was the result of an inherent/unavoidable risk associated with shallow-water diving, and UPC did nothing to increase that risk.

As noted in the recent ruling regarding EBMUD's demurrer to the same pleading, there is evidence referenced by plaintiff that this Court has yet to actually see, to wit: evidence that someone actually placed the boulders at the base of the rock wall. This evidence would negate both the natural condition immunity (not relevant for this motion) but more importantly would be evidence of someone having increased the risk of injury associated with diving. While defendants focus on many "comparative fault" factors that may impact plaintiff's recovery, the focus here needs to be on who performed the subsequent remedial measure (the "no diving" sign) and who put the boulder along the edge of the lake. This is an important observation since plaintiff asks this Court for additional time to marshal evidence of these things, the representation being that the evidence exists but has yet to be uncovered.

If it appears from the evidence submitted in opposition to a motion for summary judgment "that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented," this court must either deny, or continue, the motion. (CCP §437c(h).) The purpose of this provision is to mitigate the harshness of summary judgment for a party who has not had the opportunity to marshal evidence to oppose the motion. (*Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 253.) Although plaintiff has not provided enough information by which to secure a mandatory continuance (see *Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 715), plaintiff's failure to meet

the requirements of sub (h) for a *mandatory* continuance does not preclude application of this Court's inherent authority to grant a continuance of the hearing for good cause. (*Wachs v. Curry* (1993) 13 Cal.App.4th 616, 624.) Courts analyzing requests for continuances for cause look to CRC 3.1332 for guidance. (*Cotton v. StarCare Medical Group, Inc.* (2010) 183 Cal.App.4th 437, 444.) Pursuant thereto, circumstances indicating good cause include the interests of justice. (id at 3.1332(d)(10).) As noted by the court in *Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 398–399: "Judges are faced with opposing responsibilities when continuances for the hearing of summary judgment motions are sought. On the one hand, they are mandated by the Trial Court Delay Reduction Act to actively assume and maintain control over the pace of litigation. On the other hand, they must abide by the guiding principle of deciding cases on their merits rather than on procedural deficiencies. Such decisions must be made in an atmosphere of substantial justice. When the two policies collide head-on, the strong public policy favoring disposition on the merits outweighs the competing policy favoring judicial efficiency." (See *Futrell v. Payday California, Inc.* (2010) 190 Cal.App.4th 1419, 1438.)

In an abundance of caution, and noting there is no pending trial date, this Court will continue the hearing on this motion to permit plaintiff additional time to seek the evidence needed to address any duty to warn for open and obvious conditions, UPC's control over the water's edge, and increasing the risk by placing the boulder. Defendants are ordered to cooperate with any additional discovery plaintiff seeks. The continued hearing shall take place on August 18, 2023, at 9:00 a.m. in Dept. 2. Any supplemental papers that plaintiff wishes this Court to consider must be filed and served at least 12 court days prior thereto. Any responsive papers by the defense must be filed and served at least 6 court days prior thereto.

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