SMITH v. CARTWRIGHT CASES

21CV45132, 21UD13373, 21UD13416

MOTIONS TO WITHDRAW AS COUNSEL

These civil actions each relate to an alleged rent-to-own agreement for certain real property located at 5348 Messing Road in Valley Springs. According to Smith, Cartwright reneged on the agreement, and secretly recouped rent from tenants occupying a second structure on the property. The history between the parties is complex, as reflected in the various legal proceedings between them (see 20CH45068, 21UD13373, 21UD13416, and 21CH45278).

Before the Court is a motion by Attorney Loving to withdraw from his ongoing representation of Smith in cases 21CV45132, 21UD13373, and 21UD13416. No opposition is noted from Smith himself. The motion filed in 21UD13373 is MOOT in light of the recently-filed substitution of attorney.

An attorney may withdraw as counsel of record if the client breaches the agreement to pay fees, insists on pursuing invalid claims or an illegal course of conduct, or when other conduct by the client renders it unreasonably difficult for the attorney to do his job, including when there is a breakdown in the attorney-client relationship. If the attorney does not have the client's consent, he or she must proceed by way of noticed motion consistent with CCP §§ 284 and 1005, CRPC 1.16 and CRC 3.1362. The motion must be verified, must utilize the designated Judicial Council forms MC-051 – MC-053, and must set forth sufficient detail to permit a trial court to discharge its duty of inquiry regarding the grounds for the motion. (See *Flake v. Neumiller & Beardslee* (2017) 9 Cal.App.5th 223, 230; *Rus, Miliband & Smith v. Conkle & Olesten* (2003) 113 Cal.App.4th 656, 673-675; *Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1134-1136; *Aceves v. Superior Court* (1996) 51 Cal.App.4th 584, 592-593.)

Counsel has demonstrated a sufficient basis for permissive withdrawal. (See Loving Declaration Paragraphs 2 and 7.) Counsel provided proper proof of service on the client. There are no upcoming dispositive matters that would expose the client to undue prejudice. The motions to withdraw in 21CV45132 and 21UD13416 are GRANTED. However, the withdrawals are not effective until proof of service of a signed order for withdrawal has been served on the client and filed with this Court for each case. See CRC 3.1362(e).

The Clerk shall provide notice of this Ruling to the parties forthwith. The Court intends to sign the submitted formal Orders.

CAVALRY SPV I LLC v. FOWLER

22CF14037

DEFENDANT'S MOTIONS IN LIMINE TO EXCLUDE EVIDENCE

This is a limited jurisdiction collections case involving a debt owed to Citibank, and allegedly assigned to plaintiff. Before the Court is defendant's "motion in limine" to exclude evidence not disclosed by plaintiff during discovery.

Motions in limine are designed to facilitate management of a case by deciding difficult issues in advance of trial by allowing more careful consideration outside the heat of battle during trial. Motions in limine minimize sidebar conferences and disruptions during trial, enhance efficiency of the trial process, reduce the need for special limiting instructions, and – in some cases – reduce the number of appellate concerns.[1] There are two types of motions in limine: evidentiary, and dispositive. Defendant's motion is evidentiary, which is presumptively authorized by Evidence Code §353 (objection waived if not timely raised). (See *Schweitzer v. Westminster Investments* (2007) 157 Cal.App.4th 1195, 1214.) Since those types of objections are waived unless made before or during trial, they can technically be made at any time (even though "in limine" motions are typically brought only at the threshold of trial, which in this case is still several weeks away).

The motion in limine is DENIED without prejudice to renew as an oral motion during trial. It is improper to bring a motion in limine seeking to exclude unspecified evidence without factual support or argument suggesting the nature and type of evidence that is subject to exclusion and for which the moving party has a good faith belief that the opponent will try to admit. (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 671.) In order to secure a blanket order that evidence not disclosed in discovery must be excluded, the moving party must show by clear evidence that (1) the moving party made a request for that information, (2) the responding party failed to disclose it, and (3) the moving party exercised appropriate diligence in trying to secure the information pre-trial.[2] Although defendant offers considerably more detail regarding her concerns in the reply papers, matters raised for the first time in reply papers are properly disregarded unless there is adequate time for a continuance and additional

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[1] See *Tung v. Chicago Title Company* (2021) 63 Cal.App.5th 734, 758; *McMillin Companies, LLC v. American Safety Indemnity Co.* (2015) 233 Cal.App.4th 518, 529; *K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.* (2009) 171 Cal.App.4th 939, 948; *Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515, 530; *Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582, 1593; *Greer v. Buzgheia* (2006) 141 Cal.App.4th 1150, 1156.

[2] See, *e.g., Reales Investment, LLC v. Johnson* (2020) 55 Cal.App.5th 463, 474-475; *Pina v. County of Los Angeles* (2019) 38 Cal.App.5th 531, 551-552; *Mitchell v. Superior Court* (2015) 243 Cal.App.4th 269, 272-273.

briefing.[3] As such, and based on the motion and opposing papers only, any alleged misuse of the discovery process will have to be addressed with specifics.

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

[3] See *Carbajal v. CWPSC, Inc.* (2016) 245 Cal.App.4th 227, 241; *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538; *Mansur v. Ford Motor Co.* (2011) 197 Cal.App.4th 1365, 1387-1388; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 548; *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 763-766; *Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.