

**Calaveras Superior Court**  
**Probate Law & Motion Calendar**  
**Friday, July 23, 2021 at 10:00 AM**  
**Hon. David M. Sanders, Courtroom 2**

10:00 AM 20PR8284 Motion to Strike Cross-Complaint; 06/04/2020  
Motion for Judgment on the Pleadings; &  
Petition Hearing

Ptff/Pet: Griffin, Carol

Atty: Law Office Of Louise Longley

Def/Res: Yanez, Rachel; Yanez, Rachel

Atty: Bernheim, William Stewart

TENTATIVE RULING: Petitioner Carol Griffin moves, pursuant to Code of Civil Procedure section 438 (c)(1)(B)(i), for an order granting judgment on the pleadings in her favor on the Cross-Complaint filed by Respondent Rachel Yanez. Petitioner so moves on the grounds that the Court has no jurisdiction over the subject of the cause of action alleged therein.

Petitioner also moves, pursuant to CCP sections 435 (b)(1), 436 (a), and 437 (b), for an order striking the Cross-Complaint in its entirety, or in the alternative, striking paragraphs 12, 20, 23-29, 38, 41, and 45-47, on the grounds that they contain false, irrelevant, or improper matters.

The motions share a central argument – that issues that are foundational to the Cross-Complaint have been fully litigated and ruled upon in case number 20PR8355 pending before this Court.

As framed in the Cross-Complaint, “[t]he issue in this complaint is whether or not the [Community Property] Declaration gives rise to constructive trust allowing enforcement of the provision in the decedent’s Will to pass his share of community property to the Living Trust where in turn the decedent’s community property would pass to the Bypass Trust.” (Cross-Complaint at Para. 30.)

Through these motions, Petitioner asserts that the specific issues regarding the meaning and legal effect of that Community Property Declaration (CPD) raised in the Cross-Complaint were at issue in and necessarily decided on by the Court’s resolution of Petitioner’s Spousal Property Petition (SPP) in case number 20PR8355 pending in this Court involving these same parties. Petitioner contends that these issues relating to the CPD were central to the SPP opposition and reply papers, were argued at hearing, and were central to the Court’s February 5, 2021, Order after hearing on the SPP. (See, e.g., Support Memo Motion for JOP at 2:3-3:16.)

In seeking judgment on the pleadings, Petitioner argues that the Court lacks jurisdiction over the Cross-Complaint in this action, because it is, in reality, an effort to have the Court reconsider the findings upon which the 2/5/21 Order in Case 8355 was based, and that any such effort must be made as a motion for reconsideration in that action pursuant to Code of Civil Procedure section 1008. (See id. at 5:9-22.)

In seeking to strike portions of the Cross-Complaint, Petitioner argues that Respondent’s failure to acknowledge the Court’s ruling in Case 8355 renders the Cross-Complaint a “sham pleading.” (See Support Memo Motion to Strike at 3:18-4:10.)

Respondent appears to acknowledge that issues relating to the CPD were central to the Court’s analysis and resolution of the SPP. (See, e.g. Opposition at 2:3-14.)

The Court agrees with Petitioner that the issues relating to the CPD raised in the Cross-Complaint were raised by Respondent in opposition to the SPP, and fully argued in that context by the parties. (See, e.g., Opposition to Spousal Property Petition filed in Case 8355, at 2:5-23; Reply to Opposition to Special Property Petition in Case 8355 at ¶¶ 8-11.) The Court recalls that Respondent also argued at the hearing on the SPP that the CPD required the four categories of assets be transferred into the bypass trust by way of the family trust. In granting the SPP, the Court overruled these arguments and awarded the four categories of property to Petitioner.

Neither party elected to have a Court Reporter at the hearing on the SPP. The Court’s recollections regarding the nature of the arguments presented at that hearing, the effect of the ruling, and the interpretation of the CPD, are all consistent with those set forth by Greg Petersen through his declaration in support of the present motion.

What is missing from the analysis is authority, whether pursuant to Section 1008 or otherwise, that provides that because these issues were litigated and ruled upon in Case 8355, the Court may refuse to reconsider them in this action. Petitioner cites to no such authority, and the Court is unable to find any. Similarly, the Court is not convinced by the authority cited by Petitioner that Respondent’s failure to allege the Court’s ruling on the SPP in Case 8355 renders the Cross-Complaint a sham pleading.

However, the Court finds no reason to permit these common issues to be litigated in separate parallel cases. The doctrine of issue preclusion (collateral estoppel) serves to block litigation of an issue in a second suit “(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party.” (DKN Holdings LLC v. Faerber (2015) 61 Cal.4th 813, 825.)

It appears that issues identical to those raised in the Cross-Complaint have been actually litigated and necessarily decided in Case 8355 and are now being asserted against Petitioner who is also a party in Case 8355. The only element missing is final adjudication.

The Court therefore orders the present motions CONTINUED, and this action STAYED, pending final adjudication of Case 8355 for purposes of applying collateral estoppel.

The clerk shall provide notice of this ruling to the parties forthwith. Petitioner to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.