

# **IRBC Properties LLC v. Larry Foster**

**21CV45174**

## **DEFENDANT'S MOTION TO QUASH SERVICE OF SUMMONS**

Defendant Larry Foster moves to quash service of summons and/or to stay or dismiss the action.

Defendant failed to comply with Local Rule 3.3.7, enacted January 1, 2018, in that the Notice of Motion does not include the mandatory language regarding the Court's tentative ruling system. Pursuant to said local rule, lack of compliance provides a specific ground to deny any such procedurally-deficient motion. Based solely upon moving party's failure to comply with Local Rule 3.3.7, the motion is DENIED, without prejudice to refile, to the extent it otherwise is timely and appropriate pursuant to all relevant statutes.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal order is required.

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## **DEMURRER**

Defendant Larry Foster demurs to the Complaint on the grounds that Plaintiff has no capacity to sue.

There is no proof that adequate notice was provided. “Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing.” (Code Civ. Proc. §1005, subd. (b).) The Proof of Service on file indicates that Defendant provided only 14 court days’ notice of the hearing.

Additionally, the demurrer appears to be MOOT. As noted hereinabove, the Demurrer indicates that it is made as to the Complaint; however, on July 7, 2021, Plaintiff filed a first Amended Complaint in the action, which thus became the operative pleading.

Finally, Defendant failed to comply with Local Rule 3.3.7, enacted January 1, 2018, in that the Notice of Motion does not include the mandatory language regarding the Court’s tentative ruling system. Pursuant to said local rule, lack of compliance provides a specific ground to deny any such procedurally-deficient motion. Based solely upon moving party’s failure to comply with Local Rule 3.3.7, the motion is DENIED, without prejudice to refile, to the extent it otherwise is timely and appropriate pursuant to all relevant statutes.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal order is required.