

TENTATIVE RULINGS

FOR: March 29, 2018

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

PROBATE CALENDAR – Hon. Diane Price, Dept. C (Historic Courthouse)

Conservatorship of Eriq Migel Cruz Levva

18PR000032

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

TENTATIVE RULING: The Court will sign the proposed order appointing the Public Defender as counsel for the proposed conservatee. The matter is continued April 12, 2018, at 8:30 a.m. in Dept. C to allow the Public Defender time to review the case.

PROBATE CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)

Estate of Christopher J. Wright

18PR000057

PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: Pursuant to petitioner's request, the matter is continued to April 26, 2018, at 8:30 a.m. in Dept. I to allow petitioner to file a proof of publication and to serve Deborah Ann Ouchie with the petition. Moreover, George P. Wright, IV is listed as a co-executor in the will. Petitioner shall file a declaration explaining his status and whether he has any descendants entitled to notice. Petitioner also shall submit the: (1) Duties and Liabilities form (Judicial Council form DE-147); and (2) proposed order (DE-140) and letters (DE-150) conforming to the petition.

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Conservatorship of Vilchez, Nixon Christopher

26-16235

REVIEW HEARING

TENTATIVE RULING: After a review of the matter, the Court finds the Conservators are acting in the best interest of the Conservatee. Thus, the case is set for a biennial review hearing in two years, on March 26, 2020 at 8:30 a.m. in Dept. I. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)

Oakridge Berryessa Estates Inc. v. Angelo Tuvo, et al.

16CV000741

DEFENDANTS MOTION FOR PREVAILING PARTY DETERMINATION AND MOTION FOR ATTORNEY’S FEES AND COSTS

TENTATIVE RULING:

Defendants’ motion for prevailing party determination and motion for attorney’s fees and costs is DENIED. Defendants aver they are the prevailing party because the CC&Rs do not apply to defendants’ “second dwelling,” the CC&Rs are unenforceable against defendants, and the five-year statute of limitation bars the action. Based on these arguments, defendants maintain that for all practical purposes they prevailed in this matter since they have “established that the CC&Rs were unenforceable.” (Mem. at p. 4:21-23.) Defendants raise *Tract 19051 Homeowners Assn. v. Kemp* (2015) 60 Cal.4th 1135 in support.

The averments lack merit. Defendants’ arguments rest on evidence presented at trial and on purported factual determinations regarding those facts. But the Court has never made any such findings.¹ After trial, but before the Court rendered judgment or findings as to any of the facts presented at trial, defendants sold the property and filed a motion to dismiss the action as moot. The Court granted the motion on September 8, 2017, because there no longer was a justiciable controversy as to the injunctive relief plaintiff sought in light of the change of ownership. The Court never reached the “second dwelling” issue, never determined whether the CC&Rs were unenforceable, and never reached the statute of limitation question. Needless to say, it is a misrepresentation for defendants now to claim they are the prevailing party for “all practical purposes.”

¹ Defendants submitted no evidence to support their motion.

Consequently, defendants' reliance on *Tract 19051* is unpersuasive. Plaintiffs filed "an action to enforce the governing documents of a common interest development." (*Tract 19051, supra*, 60 Cal.4th at p. 1139.) The trial court concluded plaintiffs failed to establish that Tract 19051 constituted a common interest development within the meaning of the Davis-Sterling Common Interest Development Act and rendered judgment in favor of defendant homeowner and defendant subsequent purchaser. (*Id.* at p. 1138-39.) As part of the judgment, the trial court awarded attorney's fees. (*Id.* at p. 1139.) Here, however, the Court has made no findings about any of the issues raised at trial – upon which defendants' motion rests – and certainly has made no "conclusions" as the trial court did in *Tract 19051*.

Defendants contend they are the prevailing party under Code of Civil Procedure section 1032 because the case was dismissed. In opposition, plaintiffs assert defendants' reliance on section 1032 is misplaced because: (1) the definition for "prevailing party" under section 1032 does not define a "prevailing party" for fee awards under Civil Code section 5975; (2) the correct standard for a prevailing party motion requires the Court to determine whether a party prevailed on a practical level under Civil Code section 5975; and (3) the Court dismissed the case as moot (i.e. implying defendants did not voluntarily dismiss the case for section 1032 to apply). Since defendants did not address in their reply plaintiff's assertions or the authority raised, they have implicitly conceded the arguments are meritorious.² Nor have defendants raised any case law demonstrating section 1032 applies after a Court ordered dismissal following a party's motion.

Plaintiff's motion for prevailing party determination and motion for attorney's fees and costs is under submission.

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Napa County v. Monticello Property Investment Group, et al.

26-62413

MOTION TO ENFORCE STIPULATED JUDGMENT

TENTATIVE RULING: Plaintiff Napa County's motion to enforce the stipulated judgment pursuant to Code of Civil Procedure section 664.6 is DENIED WITHOUT PREJUDICE. Because the settlement agreement is not attached as an exhibit, the Court cannot address the merits of the motion. The Court notes defendant Cliff Reno did not comply with the March 1, 2018 Minute Order instructing him to file a proof of service. In light of the ruling, the proof of service issue is moot.

² The Court notes defendants, in their notice of motion, only moved for a determination they are the prevailing party under Civil Code section 5975. (Ntc. at p. 1:21-23.) Code of Civil Procedure section 1032 is not invoked as a basis for the motion.