

## TENTATIVE RULINGS

**FOR: November 9, 2017**

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. F (Criminal Courts Bldg.-1111 Third St.)

**Conservatorship of Tamara Ann Porter**

**26-59602**

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 November 7, 2019 at 8:30 a.m. in Dept. F. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

### PROBATE CALENDAR – Hon. Mark Boessenecker, Dept. H (Criminal Courts Bldg.-1111 Third St.)

**Estate of Robert C. Hartwell**

**17PR000010**

MOTION TO TRANSFER, COORDINATE, AND CONSOLIDATE CASES

**TENTATIVE RULING:**

**A. Request for Judicial Notice, Joinder, and Evidentiary Objections**

Respondent Blanca Harwell individually, as successor trustee of the Hartwell Separate Trust, as successor trustee of the Hartwell Family Trust, as trustee of the Blanca Hartwell Separate Trust, and as trustee of the Blanca Hartwell Children's Trust (collectively "trustee") request for judicial notice of the May 3, 2017 Order Granting Motion for Change of Venue in Case No. 17PR000011 is GRANTED. (Evid. Code, § 452, subd. (d).)

Respondent Community Foundation of Napa Valley's (dba Napa Valley Community Foundation) joinder to the opposition is GRANTED.

Trustee's seven evidentiary objections to the amended Ghetaldi declaration are OVERRULED.

## **B. Background**

The Court previously granted trustee's motion to change venue of the trust matter (Case No. 17PR000011) to Riverside County. The motion was brought under Probate Code section 17005. The trust case was transferred, and currently is pending with the Riverside County Superior Court as *Matter of Hartwell Separate Trusts*, Case No. RIP1701169, while the instant probate matter (Case No. 17PR000010) remains in Napa County. In its order, the Court expressed its concern with the practical implications of granting the motion for change of venue since splitting the two cases to different courts could lead to inconsistent results. The Court, however, noted that § 17005(a)(1), under which the motion for change of venue was brought, provided no exception. Nor did the parties raise any authority giving this Court discretion to keep the trust case in Napa with the estate administration.

## **C. Motion to Transfer, Coordinate, and Consolidate**

Petitioners Bradford Hartwell and Mary Hartwell now seek to transfer the Riverside County case back to Napa County, and coordinate that case with the instant action and consolidate for all purposes. The motion is brought under Code of Civil Procedure section 403.

### **1. Motion to Coordinate**

Petitioners' motion to coordinate is DENIED. "Only cases that are 'complex' as defined by Judicial Council standards may be coordinated." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2017) ¶ 12:374.5; see Code Civ. Proc., §§ 403-404.) Petitioners acknowledge the cases at issue are not "complex" under the Judicial Council's definition. (Amended Ghetaldi Decl., ¶ 29.)

### **2. Motion to Transfer and Consolidate**

Petitioners' motion to transfer and consolidate is GRANTED. This Court may order the pending Riverside County case transferred back to Napa County if it: (1) involves a "common question of fact or law" with the Napa County case; (2) meets the criteria for coordination discussed in Code of Civil Procedure section 404.1; and (3) the cases are "not complex" under guidelines established by the Judicial Council. (Code Civ. Proc. § 403.)

The Court finds transfer and consolidation will promote the ends of justice. (Code Civ. Proc., § 404.1; Cal. Rules of Court, rule 3.500(d).) First, the Court finds the actions are not complex. (Cal. Rules of Court, rule 3.500(d)(1).) Second, the Court finds common questions of fact or law will predominate and are significant to the litigation. (*Id.*, rule 3.500(d)(2).) The probate matter relates to the validity of a will signed in December 2015 while the trust matter relates to the validity of a revocation of trust amendment signed in July 2015. Trustee argues that since undue influence and capacity must be determined at the time of execution, the two

dates are separate events and inquiries with separate factual support and separate witnesses. It is true the two matters concern two separate documents signed at different times. The dates on the documents, however, are close in time and intertwined in both cases. That is, both cases go to the heart of determining decedent's true testamentary intent and the same witnesses likely will be needed for both cases. Third, the Court finds the convenience of the parties, witnesses, and counsel (other than trustee's) will be better served litigating both matters in Napa County. (*Id.*, rule 3.500(d)(3); see Amended Ghetaldi Decl., ¶ 30.) It remains an open question whether trustee resides in Long Beach or Napa County. (See Amended Ghetaldi Decl., Ex. 7 [2017-18 property tax bill showing trustee's homeowner's exemption was for a property in Napa County, which only applies to a "primary residence"].) The sole connection to Riverside County appears to be trustee's law firm, which on its own, is not sufficient to counter the convenience to the other parties, witnesses, and counsel. Fourth, the Court finds the relative development of the actions and the work product of counsel still is in its infancy. (Cal. Rules of Court, rule 3.500(d)(4).) The Court only recently transferred venue of the trust case, and there is no indication the cases have advanced to the point that keeping the litigations separate would be beneficial. Fifth, the Court finds the efficient utilization of judicial facilities and staff resources for both superior courts will be promoted if the trust case is transferred to Napa County. (*Id.*, rule 3.500(d)(5).) As petitioners proffer, it clearly is more effective to have one court determine the common issues of law and fact than it is to have two courts make independent determinations. Sixth, the Court finds, based on petitioners' representation, that there are no significant calendar issues being experienced by the Riverside County Superior Court. This Court has no calendar issues. This factor, therefore, is neutral. (*Id.*, rule 3.500(d)(6).) Seventh, as noted, the Court already expressed its concern with the practical implications of granting the motion for change of venue since splitting the two cases to different courts could lead to inconsistent results. The Court now makes a finding that inconsistent rulings, orders, or judgments are likely if the trust case is not transferred to Napa County. (*Id.*, rule 3.500(d)(7).) Eighth, the Court finds that given the close relationship between the two cases, and given the likelihood of inconsistent rulings absent transfer and consolidation, settlement will be less likely if this motion is denied. (*Id.*, rule 3.500(d)(8).)

The Court does not consider this motion as one seeking reconsideration of the motion for change of venue. The statutory grounds for the two motions are different, and trustee cites no authority that the trust proceeding may not be transferred and consolidated.

Petitioners made a good-faith effort to obtain agreement of all parties to the proposed transfer and consolidation before filing their motion. (*Id.*, rule 3.500(b); Amended Ghetaldi Decl., ¶ 24.)

Petitioners filed a proof of service indicating the Riverside County Superior Court was served. (Code Civ. Proc., § 403 [providing the notice of the motion must be served on all parties to each action "and on each court in which an action is pending"].)

The Court notes trustee provided no declaration or other evidence to support the opposition.

Both actions (Case Nos. 17PR000010 and 17PR000011) present overlapping issues involving the validity of decedent's testamentary documents, decedent's desires, and the purported undue influence. Consolidation will avoid duplication and avoid the possibility of

inconsistent findings of fact and law. Case No. 17PR000010 will be designated as the lead case in this action.

A case management conference and transfer review status hearing are set for January 9, 2018, at 8:30 a.m. in Dept. H.

**CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)**

**John P. Sorin, et al. v. Wendell Coleman**

**17CV001154**

PETITION TO RELEASE PROPERTY FROM MECHANICS LIEN

**TENTATIVE RULING:** The unopposed Petition is GRANTED.

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

**Rebecca Rowan v. Richard Klein, et al.**

**17CV000389**

MOTION TO STRIKE

**TENTATIVE RULING:**

Defendants Richard Klein and Dot429, Inc.'s motion to strike all allegations and requests for attorney's fees in the first amended complaint is GRANTED WITH LEAVE TO AMEND. Plaintiff Rebecca Rowan concedes the pleading does not allege that any of the three contracts permit the recovery of attorney's fees. Nor are the agreements attached as exhibits to the first amended complaint to allow the Court to confirm that at least two of the contracts contain attorney's fee provisions. The Court cannot consider extrinsic evidence for purposes of this motion.

Defendants' motion to strike allegations relating to attorney's fees Rowan purportedly incurred prior to, and during the drafting of the alleged contracts is GRANTED IN PART WITHOUT LEAVE TO AMEND AND DENIED IN PART. The motion is granted as to paragraph 52 (p. 11:15-17). Rowan does not contest defendants' motion to strike the portion of paragraph 52 in which Rowan alleges attorney's fees and costs as damages under the bridge loan. The motion otherwise is denied. The allegations are not improper or irrelevant since they: (1) provide context for the contracts Rowan alleges were breached; and (2) relate to the alter ego theory that Dot429 was undercapitalized to the point it could not afford to pay its legal fees.

The case management conference is continued to December 20, 2017, at 8:30 a.m. in Dept. I.