

TENTATIVE RULINGS

FOR: November 16, 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. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. 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. I (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.

Estate of Antonio Visoso Castro

18PR000161

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

TENTATIVE RULING: The petition is DENIED due to the settlement agreement.

(2) PETITION FOR APPROVAL OF SETTLEMENT; AND FOR APPOINTMENT OF ADMINISTRATOR

TENTATIVE RULING: GRANT petition. Objector shall file the proposed letters (Judicial Council form DE-150).

.....
Conservatorship of Joshua Tanseco

18PR000221

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE ESTATE

APPEARANCE REQUIRED. The proposed conservatee need not appear.

PROBATE CALENDAR – Hon. Victoria Wood, Dept. D (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.

Conservatorship of Andrew Lunceford

17PR000168

REVIEW HEARING

APPEARANCE REQUIRED

.....

Conservatorship of Knox, Kevin Douglas

PR22014

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 October 22, 2020 at 8:30 a.m. in Dept. C. 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. Victoria Wood, Dept. D (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.

Robert Davis, M.D., Inc. v. Brent Loftis, D.O., Inc., et al.

18CV001038

DEMURRER TO THE VERIFIED COMPLAINT

TENTATIVE RULING: Defendants Brent Loftis, D.O., Inc. and Brent Loftis, D.O.ø demurrer to the first cause of action for breach of oral contract, second cause of action for breach of written contract, and third cause of action for conversion on the ground of uncertainty is **OVERRULED**. An uncertainty demurrer is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures. (See *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616.) A demurrer for uncertainty should only be sustained when the complaint is so bad that the defendant cannot reasonably respond. (*Id.*) Here, the complaint is certain enough to allow defendants to understand the nature of the allegations, and the theory of liability in order to fashion an appropriate response.

Defendantsø demurrer to the first cause of action for breach of oral contract and second cause of action for breach of written contract on the ground of inability to ascertain from the pleading whether the contract is written, oral, or implied by contract is **OVERRULED**. Defendants maintain plaintiff övacillatesö as to the form of the purported contract, rendering it impossible to ascertain whether it is oral or written. Not so. The first claim is based on

allegations the parties entered into an agreement that they would share joint office expenses. (Compl., ¶ 13.) The pleading clearly alleges this agreement was not rendered into a document signed by the parties, and the cause of action itself is labeled in bold as "breach of oral contract" in all capital letters. (*Id.*, ¶ 15, p. 6:1.) Likewise, the second claim is labeled as "breach of written contract," and is based on a lease agreement to add defendants as tenants to the dermatology office. (*Id.*, ¶¶ 17-18, 35, p. 6:11.)

Defendants' demurrer to the first cause of action for breach of oral contract on the ground of failure to state sufficient facts is **OVERRULED**. Defendants argue plaintiff failed to plead the material terms (duration, provisions regarding terms of termination, and obligation to pay joint expenses) of the oral contract. Defendants have not shown these are elements of a breach of contract claim for purposes of demurrer. "The elements of a breach of oral contract claim are the same as those for a breach of written contract: a contract; its performance or excuse for nonperformance; breach; and damages." (*Stockton Mortgage, Inc. v. Tope* (2014) 233 Cal.App.4th 437, 453.) Plaintiff alleges the parties agreed to share the costs of running the dermatology office, but defendants breached the agreement when they left the office without paying more than \$40,000 of their share of the incurred expenses. (Compl., ¶¶ 13-14, 16, 23-26, 29-32.) Based on these allegations, plaintiff has adequately pled a claim for breach of oral contract. Whether the allegedly unpaid expenses were incurred prior to defendants' departure, or after the departure through the end of the lease, can be adequately fleshed out through discovery. If the breach is based on unpaid expenses during the latter period, there is an implicit allegation that the agreement was to share office expenses through the end of the lease term. Again, this issue can be adequately clarified through discovery.

Defendants' demurrer to the second cause of action for breach of written contract on the ground of failure to state sufficient facts is **OVERRULED**. Defendants assert the lease agreement was between the landlord and the tenants, and since defendants only co-signed the lease as a tenant, the only obligation and assumed liability is with the landlord instead of with plaintiff as the other co-tenant. Defendants' assertion ignores the allegations in the pleading. Defendants agreed to assume any obligations under the lease agreement, jointly and severally with plaintiff. (*Id.*, ¶ 18.) Plaintiffs allege they had to pay defendants' share of the amounts due under the lease after defendants vacated the lease premises six months before the expiration of the lease. (*Id.*, ¶ 36.)

Defendants' demurrer to the third cause of action for conversion on the ground of failure to state sufficient facts is **OVERRULED**. "Conversion is the wrongful exercise of dominion over the property of another." (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 451.) A plaintiff must allege: (1) their ownership or right to possession of tangible property at the time of the conversion; (2) defendant's conversion (wrongful taking or disposition); and (3) damages. (*Id.*) Defendants contend there are no facts whatsoever supporting the claim. According to defendants, the complaint simply claims they removed products and supplies from the office, "with nothing more," and thus, plaintiff has not alleged the essential element of wrongful exercise of dominion over property of another. Defendants' contention fails. Plaintiff alleges defendants removed \$2,592.50 worth of products and supplies from the office shortly after defendants departed the practice. (Compl., ¶ 28.) What defendants fail to mention, however, is the allegation that plaintiff was the *owner* of this property contained in the office.

(*Id.*, ¶ 41.) The complaint goes on to allege defendants wrongfully took possession of the property without plaintiff's consent, and plaintiff was damaged in the amount of \$2,592.50. (*Id.*, ¶¶ 42, 44.) The Court must assume the truth of the facts pled, without regard to defendants' argument to the contrary.

Defendants shall file their answer within 10 calendar days of service of notice of entry of order.