Tentative Rulings for September 12, 2024
Department 503

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

22CECG00720 ***Raven v. Anderson***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

22CECG01710 ***Mike Karbassi v. Esmeralda Soria*** **is continued to Wednesday, October 2, 2024, at 3:30 p.m. in Department 503**

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Tentative Rulings for Department 503

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Tentative Ruling

Re: ***Nolan Thomas, Inc. v. Emerzian Woodworking, Inc., et al.***
Superior Court Case No. 24CECG01902

Hearing Date: ~~September 12, 2024 (Dept. 503)~~ *see below*

Motion: (1) Defendants Emerzian Woodworking, Inc., Thomas P. Emerzian and Gail A. Emerzian's Demurrer to Complaint

(2) Defendant Westamerica Bank's Demurrer to Complaint

Tentative Ruling:

To find the demurrers are moot and take off calendar.

Explanation:

A party may amend its pleading any time after a demurrer or motion to strike is filed but before the demurrer or motion to strike is heard if the amended pleading is filed and served no later than the date for filing an opposition. (Code Civ. Proc., § 472, subd. (a).) The court, upon its own motion, has discretion to shorten the filing period. (Code Civ. Proc., § 1005, subd. (b); Cal. Rules of Court, rule 3.1300(b).)

In this case, the plaintiff filed a first amended complaint on September 4, 2024, six court days before the hearing, instead of nine court days before, as required by Code of Civil Procedure section 1005, subdivision (b). The untimely filing causes no prejudice to the defendants discernable to the court. The court finds good cause exists to shorten the time period set forth in Code of Civil Procedure section 1005, subdivision (b).

The filing of the amended complaint renders a demurrer to the original complaint moot since an amended pleading supersedes the original one, which no longer performs any function as a pleading. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884; *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1054 [filing amended complaint renders moot demurrer to original complaint].) The court finds that plaintiff exercised its right to file an amended pleading in lieu of an opposition, and finds the present demurrers are moot. Such a result promotes efficiency and judicial economy. Accordingly, the demurrers are taken off calendar.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh (Judge's initials) on 9/11/24 (Date).

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Tentative Ruling

Re: ***Nathanial Gonzalez v. Najafi Enterprises, LLC***
Superior Court Case No. 23CECG03529

Hearing Date: September 12, 2024 (Dept. 503)

Motion: By Plaintiff for Entry of Default Judgment

Tentative Ruling:

To deny Plaintiff's request for entry of judgment quieting title, reforming instruments, and declaratory relief, without prejudice.

Explanation:

No Request for Court Judgment

As the court explained in its August 20, 2024 minute order, Plaintiff has not filed and served on defendant the Request for Court Judgment (Judicial Council form CIV-100), which is mandatory. (*Simke, Chodos, Silberfeld & Anteau, Inc. v Athans* (2011) 195 Cal.App.4th 1275, 1287; *Candelaria v. Avitia* (1990) 219 Cal.App.3d 1436, 1444.) While Plaintiff used this form when requesting default, this dual-purpose form must be used again when requesting judgment. The "Application for Entry of Default Judgment" Plaintiff filed, while containing useful information, does not substitute for the use of the CIV-100 form. "A party seeking a default judgment on declarations must use mandatory form CIV–100." (*Holloway v. Quetel* (2015) 242 Cal.App.4th 1425, citing Cal. Rules of Court, rule 3.1800(a)].)

Prove-up Brief and Evidence

Plaintiff has submitted a prove-up brief that discusses the general requirements for a default judgment, but includes no analysis about its quiet title, declaratory relief, and reformation claims, including the requirements to obtain a quiet title judgment or a judgment to reform an instrument relating back to a date before the filing of the complaint. Plaintiff's prove-up brief must address the authority for the relief Plaintiff requests. It should also identify and summarize the evidence presented to prove Plaintiff's claims.

Plaintiff has submitted his attorney's declaration, which includes an exhibit from the Fresno County Assessor, Property Transfers Division, explaining how the mistake occurred (although the document is not properly authenticated). In the complaint, Plaintiff alleges the Fresno County *Recorder* cannot enter the proper information. In the exhibit, Plaintiff provides evidence that the Fresno County *Assessor* is unable to correct the error without the cooperation of others.

Plaintiff has failed to submit a request for judicial notice of the relevant deeds, including the deed with the incorrect legal description, which is identified in the complaint by document number, but with no reference to the county office where the document was recorded. (See Comp., ¶ 8.)

Furthermore, in a quiet title action, the court must hold a hearing in open court and hear the evidence of title presented at the hearing, including such evidence as may be presented by any defaulting defendant, if such a defendant chooses to appear. (*Bailey v. Citibank* (2021) 66 Cal.App.5th 335, 347.)

No Costs on Default

Plaintiff continues to request costs in the proposed judgment. As noted in the court's August 20, 2024 order, in a quiet title action Plaintiff cannot recover his costs against any defaulting defendants, which includes Najafi Enterprises, LLC (Najafi). (Code Civ. Proc., § 761.030, subd. (b).)

Proposed Judgment

Plaintiff has submitted a proposed judgment against Najafi, which includes the unrecoverable costs, but fails to include the language quieting title as requested in the complaint.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh on 9/11/24.
(Judge's initials) (Date)