

TENTATIVE RULINGS

FOR: February 1, 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. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)

Estate of Wallace Eugene Platner

17PR000276

PETITION FOR LETTERS OF ADMINISTRATION AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT – WITH LIMITED AUTHORITY

TENTATIVE RULING: There is no proof of publication on file. If a proper proof of publication is filed prior to the hearing, the petition shall be GRANTED. Otherwise, the petition shall be DENIED, without prejudice. The Court notes that although the petition did not check the box in the heading to indicate that petitioner is seeking to be appointed the administrator, it is clear from the other documents that petitioner is seeking that relief.

.....
Conservatorship of George Ferrero

26-50397

REVIEW HEARING

TENTATIVE RULING:

Based on the report of the court investigator, the Court determines by clear and convincing evidence that conservatee cannot communicate, with or without reasonable accommodation, a desire to participate in the voting process, and therefore orders conservatee disqualified from voting pursuant to Elections Code section 2208.

After a review of the matter, the Court finds the conservator is acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on February 4, 2020, at 8:30 a.m. in Dept. I. At least 30 days before the next hearing, the conservator shall

file Notice of Conservatee's Rights (Judicial Council form GC-341) and Determination of Conservatee's Appropriate Level of Care (Judicial Council form GC-355). 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.)

Atha Jo Mallare v. Divina B. Samson

17CV000868

MOTION TO COMPEL FURTHER RESPONSES

APPEARANCE REQUIRED

.....
Bella Casa Property Services v. Michael Bello, et al.

26-67815

DEFENDANT PREFERRED BANK'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

TENTATIVE RULING: Defendant's Motion for Summary Judgment is GRANTED. Defendant's Request for Judicial Notice is GRANTED. "A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c(p)(2).) In Defendant's Motion, Defendant has shown that Plaintiff cannot prove its Fourth Cause of Action for Aiding and Abetting Fraud and Deceit, Fifth Cause of Action for Negligent Misrepresentation, and Sixth Cause of Action for Unfair Competition against Defendant.

In Plaintiff's Fourth Cause of Action for Aiding and Abetting Fraud and Deceit, Plaintiff alleges that Defendant allowed Michael Bello to open the Walldesign account using his personal address and added Nancy Bello as a signer on the account without reviewing any corporate documents. Plaintiff alleges that Defendant therefore allowed the Bellos' "fraudulent transfers to occur under the guise of legitimacy."

"Liability may ... be imposed on one who aids and abets the commission of an intentional tort if the person (a) knows the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act or (b) gives substantial assistance to the other in accomplishing a tortious result and the person's own conduct, separately considered, constitutes a breach of duty to the third person. [Citations.]" (*Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 846.) "California courts have long held that liability for aiding and abetting depends on proof the defendant had actual knowledge of the specific primary wrong the defendant substantially assisted." (*Casey v. U.S. Bank Nat. Assn.* (2005) 127 Cal.App.4th 1138, 1145 (*Casey*)). In its Motion, Defendant shows that while it did open an account for Walldesign pursuant to Michael Bello's request and that it did add Nancy Bello as a signer on

the account, Defendant had no knowledge of any improper or fraudulent purpose or use of the Walldesign account.

In Plaintiff's Fifth Cause of Action for Negligent Misrepresentation, Plaintiff alleges that Defendant had a duty to investigate and require proper documentation before opening the Walldesign account, and that Defendant made negligent misrepresentations by issuing checks for the Walldesign account and leading Plaintiff to believe the checks were written on an authorized and legitimate bank account, and would not be voided. "Negligent misrepresentation is a form of deceit, the elements of which consist of (1) a misrepresentation of a past or existing material fact, (2) without reasonable grounds for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) ignorance of the truth and justifiable reliance thereon by the party to whom the misrepresentation was directed, and (5) damages. [Citation.]" (*Fox v. Pollack* (1986) 181 Cal.App.3d 954, 962.) Fraudulent misrepresentation requires knowledge of the falsity. (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1469.) Defendant has made a showing that it had no knowledge of any improper or fraudulent purpose or use of the Walldesign account, and that it had no intent to facilitate any improper or fraudulent use of the Walldesign account, or to induce Plaintiff to rely on any false statements or misrepresentations.

Plaintiff's Sixth Cause of Action for Unfair Competition relies on Plaintiff's claims in the Fourth and Fifth Causes of Action above, and Defendant therefore shifts the burden to Plaintiff on that cause of action as well.

"Once the defendant or cross-defendant has met [its] burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." (Code Civ. Proc., § 437c(p)(2).) Plaintiff has failed to show that a triable issue of material fact exists. Plaintiff's Request for Judicial Notice is DENIED. Plaintiff's Objections to Evidence are OVERRULED. Defendant's Evidentiary Objection No. 1 is OVERRULED and No. 2 is SUSTAINED.

In support of its Fourth Cause of Action for Aiding and Abetting Fraud and Deceit, Plaintiff points to Defendant's own policies to argue that Defendant's failure to follow its policies allowed the improper and fraudulent Walldesign account to be opened. This exact argument was raised and dismissed in *Software Design & Application v. Hoefer & Arnett* (1996) 49 Cal.App.4th 472, 481-482 (*Software Design*). There, the Court of Appeal found that a bank's "failure to follow internal procedures and industry standards when opening an account" was irrelevant as there was no duty to the noncustomer. (*Id.*) Plaintiff was not a customer of Defendant, and Plaintiff has not alleged any "extraordinary and specific facts which would give rise to liability to a noncustomer for mishandling the accounts by honoring customer withdrawals." (*Id.* at p. 481.)

In support of its Fifth Cause of Action for Negligent Misrepresentation, Plaintiff fails to reference any evidence that would create a triable issue of fact, and again argues that issuance of the check constitutes a misrepresentation, and that Defendant owed Plaintiff a duty. Plaintiff is incorrect. "[U]nder California law, a bank owes no duty to nondepositors to investigate or

disclose suspicious activities on the part of an account holder.” (*Casey, supra*, 127 Cal.App.4th at p. 1149.)

Plaintiff’s Additional Material Facts submitted in opposition, all from the Declaration of Carrie Edwards, fail to show that a triable issue of material fact exists.