TENTATIVE RULINGS

FOR: September 4, 2019

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. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

In the Matter of Christine Montelli 1990 Inter Vivos Trust **19PR000052**

[1] FIRST ACCOUNT AND REPORT AND PETITION FOR ITS APPROVAL

APPEARANCE REQUIRED: The Court notes the Objections filed August 29, 2019 by John Montelli. The Court directs the parties to appear in order to schedule an evidentiary hearing on the matter.

[2] PETITION TO REMOVE TRUSTEE AND TO APPOINT SUCCESSOR TRUSTEE

APPEARANCE REQUIRED: The Court notes the Reply Brief filed August 29, 2019 by John Montelli. The Court directs the parties to appear in order to schedule an evidentiary hearing on the matter.

Conservatorship of Antoine C. Farray **26-63646**

AMENDED FOURTH ACCOUNT AND PETITION REQUEST APPROVAL

TENTATIVE RULING: The Court notes that the May 5, 2014 order appointing the conservator included an order declaring that the conservatee is not capable of completing an affidavit of voter registration. The prayer in the current petition for such an order is therefore MOOT. With this exception, The Petition is GRANTED as prayed.

After a review of the matter, the Court finds the conservator is acting in the best interest of the conservatee. Thus, the matter is set for a biennial review hearing and an accounting in two years on June 16, 2021 at 8:30 a.m. in Dept. A. All accounting documents must be filed at least 30 days prior to the hearing. 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. A (Historic Courthouse) at 8:30 a.m.

Amar Singh Mathfallu v. Kay Pacey, et al. **18CV000144**

MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING: The motion is GRANTED. The Court orders hearing on an OSC Re: Dismissal set for October 10, 2019, 8:30 a.m. in Dept. A.

The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Defendants' counsel is directed to contact Plaintiff's counsel forthwith and advise Plaintiff's counsel of Local Rule 2.9 and the Court's tentative ruling procedure. If Defendants' counsel is unable to contact Plaintiff's counsel prior to the hearing, Defendants' counsel shall be available at the hearing, in person or by telephone, in the event Plaintiff's counsel appears without following the procedures set forth in Local Rule 2.9.

Background

Defendants Kay Pacey and Kay Pacey Insurance Services, Inc. move for summary judgment pursuant to Code of Civil Procedure § 437, subdivision (c). Defendants are insurance brokers. In or about 2016, Plaintiff engaged Defendants to procure insurance coverage for his vacant bowling alley building in Susanville, California. Coverage was ostensibly obtained on or around November 30, 2016 through the Hanover Insurance Group (Hanover) as agent for the policy issuer AIX Specialty Insurance Company (AIX). On December 17, 2016 the building was damaged by fire. After a thorough investigation, on June 18, 2019, Hanover notified Plaintiff, by letter, that it was rescinding the policy for material misrepresentations in the application, and independently denying coverage for loss or damage stemming from the fire, based on Hanover's assertion that Plaintiff had failed to satisfy a condition precedent to coverage, provided in the policy.

Plaintiff filed the present suit on February 1, 2018 asserting four causes of action: breach of contract, breach of fiduciary duty, negligence, and negligent misrepresentation.

Legal Analysis

The party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) A defendant meets this burden by showing that one or more elements of plaintiff's cause of action cannot be established, or that there is a complete defense thereto. (*Ibid.*) The moving party also bears an initial burden of production to make a prima facie showing of the nonexistence of any

triable issue of material fact. (*Id.* at p. 850-51.) If the party carries this burden, there is a shift and the opposing party is then subjected to a burden of production to make a prima facie showing. (*Ibid*.) "In ruling on the motion, the trial court views the evidence and inferences therefrom in the light most favorable to the opposing party." (*Collin v. CalPortland Co.* (2014) 228 Cal.App.4th 582, 588.)

Here, Defendants are entitled to summary judgment because they have demonstrated that there is no triable issue as to causation – an essential element in each of Defendant's causes of action. According to the Complaint, the immediate cause of Plaintiff's alleged losses was the destruction, by fire, of his building. (Complaint at ¶¶ 23, 28, 33, and 37.) Plaintiff alleges in each cause of action that Defendants are liable for those losses because, as a result of Defendants' wrongful acts and/or omissions, "Hanover rescinded the Hanover Policy and there was no coverage for replacement of the building due to the fire loss, or any coverage, for Plaintiff's loss by fire to the Property." (Complaint at ¶¶ 23, 28, 33, and 37.) Under this theory of liability, Plaintiff must prove that, but-for Defendants' alleged acts and/or omissions, Plaintiff would have been covered under the Hanover policy for his losses from the fire. (See *Roger H. Proulx & Co. v. Crest-Liners, Inc.* (2002) 98 Cal.App.4th 182, 195, held plaintiff could recover on negligence cause of action against insurance broker only if it could show that, but-for the broker's negligence, plaintiff would have had coverage under the insurance policy at issue; *St. Paul Fire & Marine Ins. Co. v. American Dynasty Surplus Lines Ins. Co.* (2002) 101 Cal.App.4th 1038, 1061, held no damages under breach of contract claim for subcontractor's failure to provide liability policy where plaintiff could not show such policy would have provided coverage of loss.)

Plaintiff admits that the Hanover policy required that he maintain an operational burglar alarm in order to receive policy benefits. (See Opposition to Separate Statement (OSS) at ¶ 20.) Defendants present evidence that Hanover asserted, as an independent ground for denying coverage for the fire under the policy, Plaintiff's failure "to maintain and keep in complete working order the burglar alarm listed in the Schedule as required by [the policy]." (See Compendium at p. 96 (Exh. C, 57:17-60:10), p. 322 (Exh. Q, at pp 6-7).) Plaintiff does not dispute this fact.[1]

Plaintiff does not dispute that, on December 1, 2016, he received an email from Defendants that attached a copy of an endorsement to the coverage providing, "[a]s a condition of this insurance, you are required to maintain and keep in complete working order" certain protective devices, explicitly including, "Fully operational Central Station Burglar Alarms." (OSS at § 21, see also Pace Decl. at ¶ 22, Compendium of Evidence at p. 264 - Exh. N.) Plaintiff's opposition to the Separate Statement asserts as follows. "Objection. In addition, the material fact is misleading because it implies that the 'relevant endorsement' was somehow attached to the email. In fact, attached was sixty-one (61) pages of policy language." While this is true, the uncontested evidence shows that the relevant endorsement is a part of those 61 pages

[1] Through his Opposition to the Separate Statement, Plaintiff asserts, "Objection. Calls for a legal conclusion." (OSS at ¶ 30.) It is unclear to the Court precisely what Plaintiff objects to; Plaintiff provides neither authority nor explanation for his objection. The Court finds no legal conclusion in Hanover's declaration of its determination of coverage under a policy it administers, particularly where there is no suggestion, let alone evidence, that Plaintiff or anyone else has ever questioned the legality of that determination (denying coverage). Based on the foregoing, Plaintiff's objection is OVERRULED.

of policy language. As a result, Plaintiff's objection that the statement is misleading and is OVERRULED. (Pacey Decl. at ¶ 22, Compendium of Evidence at p. 264 - Exh. N.)

Defendants' Separate Statement further asserts that in that December 1, 2016 email to Plaintiff, "Pacey reminded Mathfallu to immediately provide proof of the activation of the burglar alarm…." (Separate Statement at ¶ 21.) Plaintiff disputes this assertion, claiming, "[t]he cited evidence does not state that Mathfallu was requested by Pacey to immediately provide proof of the activation of the burglar alarm." (OSS at ¶ 21.) The Court agrees. As it relates to the burglar alarm, that email states, "if you can send the Central Alarm System proof of activation once you have it from your tenants, that would be great!" (Compendium of Evidence at p. 246 - Exh. N.) However, this distinction does not create a triable issue as to causation, particularly in light of the fact (admitted by Plaintiff) that Plaintiff had previously informed Defendants that his new tenant would be moving into the Property on the very day (December 1, 2016) the email was sent, and that the burglar alarm would be activated at that time. (See OSS at ¶ 16.) Neither this (December 1, 2016) email, nor any other evidence before the Court, tends to show that Defendants, or any of them, misrepresented the Hanover policy requirement that, as a condition precedent to coverage, Plaintiff keep and maintain a functional burglar alarm.

There is no dispute that Hanover denied coverage for the fire loss based on Plaintiff's failure to keep and maintain the burglar alarm system, and such denial was independent of any acts or omissions by Defendants. In this context, Plaintiff fails to produce evidence to create a triable issue as to whether Defendants' alleged acts or omissions were a but-for or proximate cause of Plaintiff's losses.

Based on the foregoing, Defendants' motion for summary judgment is GRANTED.

PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

In the Matter of the A.I. Weber Trust **19PR000163**

PETITION FOR ORDER DETERMINING TRUST'S TITLE TO PROPERTY

TENTATIVE RULING: The notice does not advise interested parties they may file a response to the petition in accord with Probate Code section 851, subdivision (c)(3). The matter is continued to October 11, 2019, at 8:30 a.m. in Dept. B to allow petitioner time to provide proper service.

CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Bruce Tucker Construction, Inc. et al. v. The Reliant Group, et al. **17CV000421**

BRUCE TUCKER CONSTRUCTION'S MOTION TO DEEM CASE COMPLEX

TENTATIVE RULING: Good cause appearing, and no opposition having been filed, the motion is GRANTED IN PART. The Court is unclear why discovery should be stayed until 90 days prior to trial, as set forth in the proposed order. Rather, the Court is inclined to stay discovery pending the appointment of a Special Master to oversee discovery. Absent opposition on this issue, Plaintiff is directed to file a new proposed order with this modification.

The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Plaintiff's counsel is directed to contact defendants' counsel forthwith and advise defendants' counsel of Local Rule 2.9 and the Court's tentative ruling procedure. If plaintiff's counsel is unable to contact defendants' counsel prior to the hearing, plaintiff's counsel shall be available at the hearing, in person or by telephone, in the event defendants' counsel appears without following the procedures set forth in Local Rule 2.9.

Jefferson De Azevedo v. Leticia Perez Rodriguez **18CV001509**

MOTION FOR AN ORDER COMPELLING PLAINTIFF'S FURTHER DEPOSITION TESTIMONY, TO DELINEATE THE DISCOVERABLE SCOPE OF PLAINTIFF'S PRIOR INJURY HISTORY, AND TO CONTINUE THE TRIAL DATE TO COMPLETE DISCOVERY

TENTATIVE RULING: The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Defendant's counsel is directed to contact plaintiff's counsel forthwith and advise plaintiff's counsel of Local Rule 2.9 and the Court's tentative ruling procedure. If defendant's counsel is unable to contact plaintiff's counsel prior to the hearing, defendant's counsel shall be available at the hearing, in person or by telephone, in the event plaintiff's counsel appears without following the procedures set forth in Local Rule 2.9.

Defendant Leticia Perez Rodriguez's motion to compel plaintiff Jefferson De Azevedo's further deposition pursuant to Code of Civil Procedure section 2025.480 is DENIED. Section 2025.480 does not authorize a further deposition. (See Code Civ. Proc., § 2025.480, subd. (a) [if a deponent fails to answer any question specified in the deposition notice, the party seeking discovery may move to compel that answer].)

Moreover, a motion brought under section 2025.480 must be made no later than 60 days after the completion of the record of the deposition. Azevedo's deposition occurred on June 4, 2019. (Easterwood Decl., ¶ 4, Ex. 6.) Rodriguez filed the motion on August 8, 2019, which means the motion may be untimely. Rodriguez's attorney did not state in her declaration when the deposition record was completed. Rodriguez, therefore, has not made the prerequisite

showing that the motion is not time-barred. Finally, California Rules of Court, rule 3.1345(a)(4), provides that motions to compel answers at a deposition require the filing of a separate statement. Rodriguez did not file a separate statement indicating what deposition questions are at issue. Nor is it apparent what specific questions are at issue from Rodriguez's papers. The Court will not venture to guess what questions are before it based on the questions raised in the opposition.

Rodriguez's motion to delineate the discoverable scope of Azevedo's prior injury history is DENIED. Rodriguez cites no code provision authorizing the relief she seeks.

Rodriguez's motion to continue the trial date to complete discovery is DENIED. Rodriguez has not shown good cause for the relief she seeks.

The meet-and-confer efforts were adequate.

Rodriguez's attorney represents in her supplemental declaration that opposing counsel was "less than courteous" during the deposition and suggested his client physically assault her. The Court takes such accusations seriously. But Rodriguez has not cited to where the offending behavior occurred. As for the threat of physical violence, the Court reviewed the transcript at page 53 and it is inconclusive, without more, whether a threat occurred. (Goldman Decl., Ex. B.)

Rodriguez's request for monetary sanctions is DENIED. Rodriguez did not successfully bring the motion. (Code Civ. Proc., § 2025.480, sub. (j).)

The Court elects not to address Azevedo's twenty-nine evidentiary objections as he provides no authority that filing objections is permitted under the Discovery Act.