

Superior Court of California County of San Benito



Tentative Decisions for July 10, 2024

Courtroom #1: Judge Pro Tempore Page Galloway

10:30 a.m.

CU-23-00071

Better San Benito v. County of San Benito

7-10-24

On for the Plaintiff's renewed motion enforcing this Court's order of 10-17-23 regarding the production for inspection of public records.

Plaintiff: Bailey W. Heaps

Defendant: Barbara J. Thompson

This case arises from Plaintiff's petition for a writ of mandate and complaint for declaratory relief. Plaintiffs assert that the Strada Verde project for development of a warehouse complex north of Hollister poses significant health and safety concerns. The proposed site of the development is adjacent to the TriCal industrial chemical plant. The Plaintiffs have requested certain public records regarding the development, related ballot initiatives regarding land use, and other communications regarding the proposed project. Responding party denies the Plaintiffs' characterization of the requests for public records as "basic" and denies the assertion that they have withheld non-exempt documents responsive to the Plaintiffs' requests.

On 10-17-23 This Court issued an order regarding the schedule of production of non-exempt documents responsive to the Plaintiff's requests pursuant to the Public Records Act. The court ordered that the County of San Benito "shall begin its production of non-exempt records responsive to Better San Benito's February 17, 2023, Public Records Act request no later than September 29, 2023..." Additionally, the Court ordered the County to produce "all non-exempt records responsive" to Plaintiffs' February 17, 2023, Public Records Act request no later than December 22, 2023; and, that the County "shall serve a code-compliant log on Better San Benito of withheld or redacted public records no later than January 10, 2024."

4-24-24: In light of the objection regarding insufficient service, matter is continued on the motion to enforce and for CMC to 5-1-24.

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5-1-24: The court Granted Plaintiff's motion to Enforce the Court's Prior Orders in part. 10-17-23 the court previously ordered Defendant to produce all non-exempt records responsive to Plaintiff's Public Records Act Request no later than December 22, 2023, and serve code compliant withholding and redaction logs no later than 1-10-24. Plaintiff asserts that Defendant's logs omitted any of the information necessary to justify a claim of privilege or to analyze the propriety of the same. The court ordered that Defendant was to produce a fully compliant log within 30 days, with sufficient specificity to permit the Plaintiff the meaningful opportunity to contest the withholding and for the court to determine whether the exemption applied.

6-12-24 Plaintiffs filed their renewed motion seeking enforcement of the October 17, 2023, order, asserting that the Respondents have not complied in full with this order because the log of documents withheld and/or redacted is not code compliant, and that the Respondent must therefore produce the over 13,000 documents referenced therein. Respondents argue that these are two very different things, a request for a code-compliant log of withheld and redacted documents does not necessarily equate to a required production of all the disputed documents. The deadline to comply with the most recent order has come and gone, without compliance. Further the County after being granted extension produced fewer documents than the initial production. The 782 entries in their amended log do not differ from the original log. After twice failing to produce compliant logs, all remaining documents should be disclosed.

County opposes the motion, stating the proposed remedy is extreme, and that they have worked consistently for over a year to produce tens of thousands of documents responsive to Plaintiff's requests. There are additional technical issues with the program of which Plaintiffs have been apprised as they continue to comply and produce further tranches of documents. In complying with the prior orders, the prior duplication of documents has been corrected, thus reducing the entries from 13, 579 to 782. They note if they choose to release documents which may not be required under the act to produce, the reason why is not relevant, the decision was made to withhold only closed session item documents from the initial exemption log, thus reducing the number of documents in the log.

7-2-24: Plaintiff notes that they are entitled to assume the defendant is being truthful when they say they are withholding certain documents, and the job of their counsel to determine that they are only claiming to have withheld what they actually withheld. Nor can they take on the job of determining the adequacy of their identification of withheld documents, as that information is in the hands of the Defendant, moreover the redaction of records produced scrubbed the metadata needed to determine if these are the same files from the exemption logs, produced by Defendant without a redaction log as the court previously ordered. It is on the county to show if a communication is privileged, and cursory review show many entries under attorney client privilege do not show an attorney involved, nor which attorneys were involved in preparation. The most recent production is not just duplicates, but it also includes documents from the amended log which the Defendant is aware don't belong in it. However, they are being put in the position to search for that production and others to determine which exemption disputes are ongoing.

Legal Basis: The public records act requires that governmental agencies make public records promptly available. (Gov't. Code §7922.530 sub. (a).) If the agency in question is to avoid the

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production of a record responsive to the request made, it bears the burden of demonstrating “that the record in question is exempt under express provisions” of the Public Records Act. (Gov’t. Code §7922.000.) Exemptions include, for example, a traditional claim of privilege (*id.* at 7927.705); or falling within the elements of a statutorily defined exemption. (*Id.* §7927.500 [preliminary drafts exemption.], for example.) The failure to meet the burden in establishing the applicability of an exemption can result in disclosure of the records withheld by the public agency. (*County of Santa Clara v. Sup. Ct.* (2009) 170 Cal. App. 4th 1301, 1321 [Trial court order affirmed to produce responsive documents because the public agency failed to meet their burden establishing an exemption applied].) For example, if a personnel records or personal privacy exemption is claimed, the agency bears the burden of showing disclosure of these records would constitute “an unwarranted invasion of personal privacy” balanced against the public’s interest in disclosure. (Gov’t. Code §7927.700.) Records claimed exempted under the preliminary drafts, notes or memos exemption requires a showing that the record is a preliminary draft, note, or memo; that the document is not retained in the ordinary course of business by the entity; and that the public interest in withholding clearly outweighs the interest in disclosure. (Gov’t. Code §7927.500)

In this instance the Court provided the Responding party the opportunity to meet that burden by serving a “code compliant” privilege log.

Analysis: The Public Records Act is clear in its requirements that timely production of public records responsive to a request for the same must be provided, unless the records fall within a statutory exemption. The case law is clear that the burden of showing that the requested records fall within that exemption rests with the party claiming the records are exempt from disclosure. The court in its October 17, 2023, order provided the Respondents with the mechanism by which they could assert an exemption applies by requiring the preparation of a withholding and redactions log. The rationale is relatively simple-if an exemption is asserted there needs to be sufficient information provided which supports its assertion such that the court can analyze whether it applies or not should an objection be raised.

The party seeking to avoid disclosure under the Public Records Act bears the burden to “describe the justification for nondisclosure with reasonably specific detail and demonstrate that the information withheld is within the claimed privilege or exemption. (*Golden Door Properties, LLC. v. Superior Court of San Diego County* (2020) 53 Cal. App. 5th 733, 790.) Contrary to the assertions of the Respondents, the case is not solely about or relevant to pretrial discovery in CEQA litigation. The section of note to this court and referenced here, addresses the Public Records Act Exemptions, though the focus of the discussion was on preliminary draft exemptions and deliberative process. What stands in the Court of Appeals analysis is that the party asserting the exemption bears the burden of showing the documents withheld fall within that exemption and must establish the elements of each exemption claimed. (*Ibid.*) Here, the parties’ attached declarations and documentation track that the Respondents have continued throughout in their efforts to comply with this court’s previous orders, including purchasing and utilizing new software to perform the necessary searches, removing duplications, and providing clearer logs.

Proposed Tentative Ruling: The court orders that the Respondents will continue in their compliance with this court's prior 10-17-23 orders, as evidenced by the current logs provided as an exhibit to the Respondent's counsel's declaration, and from the correspondence referenced by each party's attorney and provided to the court for review. The court expects the Defendant to go through its own logs, and fully comply with this court's prior orders, including but not limited to stating the names of attorneys involved when attorney client privilege is claimed, ensuring that a proper redactions log is provided, as previously ordered. The Defendant will comply within 30 days of this order.

3:30 p.m.

CU-24-00070

Francisca, Solis Millan v. Michael Acosta

7-10-24

Plaintiff: Pro Per

Defendant: Jeremy Liem

On calendar for Defendant's motion to set aside default and default judgment pursuant to CCP §473(b).

This case arises from Plaintiff's request for a civil harassment restraining order. There was no proof of service in the file, however the Plaintiff produced proof of service at the hearing. The case was heard on 5-3-24 at which time the court granted the Plaintiff's request for a restraining order for a period of five years, including personal conduct orders, orders not to harass, strike, or threaten, disturb the peace, surveil, among other acts, the Plaintiff and other protected parties. Defendant was restrained from contacting the protected persons and ordered to stay 5 yards away from the protected parties, their home, workplace, vehicle, children's school or childcare, and the Petitioner is permitted to record all unlawful communication. The court also issued a firearms restriction order. The Defendant did not appear at the hearing. The Plaintiff was ordered to serve the Defendant with a copy of the new restraining order after which this motion was filed on 5-16-24

The motion was served on 5-22-24; Responsive pleading was due 6-28-24. No responsive pleading has been filed.

5-16-24 Defendant alleges that his default was taken by fraud as a result of defective service, and he therefore seeks the set aside and the payment of \$5000 in attorneys' fees to Defendant's attorney, and any such payment is a predicate for pursuing the underlying request for civil harassment restraining order. He requests in addition that Plaintiff be sanctioned \$1000 for filing a fraudulent proof of service, and the payment of both the fees and penalty must be paid prior to pursuing the underlying request for restraining orders. Respondent was never properly served, and even had he been properly served the notice did not include the date of the hearing. Service was accomplished by drop service, with the server tossing the documents to Defendant's mother's feet. Moreover, the service was untimely with the server backdating the proof of service to fall within the 5 days allowed by the court. The only thing the proof of service shows is that a copy of the Request for orders was served, but not the temporary order nor the notice of hearing.

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As far back as 1857 the courts recognized that a court order setting aside default and judgment is appropriate where there has been no proper service of summons on the defendant. (*Pico v. Carillo* (1857) 7 Cal. 30.) CCP 473 sub (c)(1) authorizes the court to sanction the other party up to \$1000.00 and grant other appropriate relief when relieving the defendant of Default.

Legal Analysis.: A judge may, on any terms as may be just, relieve a party or a party's attorney from an order taken against them through the party's or attorney's mistake, inadvertence, surprise, or excusable neglect. (CCP§473 (b).) This statute provides both discretionary and mandatory relief. (*Paganini v. Union Bank, N.A.* (2018) 28 Cal. App. 5th 298, 302.) The provisions of CCP §473 (b) must be liberally construed to implement the policy favoring determination of actions on their merits. (*Rodriguez v. Brill* (2015) 234 Cal. Ap. 4th 715, 725.) The court has broad discretion in determining whether to grant relief. Relief has been granted on a showing of mistake of fact. (*Romadka v. Hoge* (1991) 232 Cal. App. 3rd 1231, 1235. [motion to vacate voluntary dismissal with prejudice should have been granted when attorney mistakenly marked 'with prejudice' instead of box 'without prejudice:']) On showing of excusable mistake of law, when the issue involved is complex and debatable. The controlling factors in determining if a mistake of law is excusable are the reasonableness of the misconception and the justifiability of the failure to determine correct law. (*Toho-Towa Co. Ltd v. Morgan Creek Prods., Inc.* (2013) 217 Cal. App. 4th 1096, 1111.) Inadvertence may be permitted, when arising from a misunderstanding as opposed to mere forgetfulness. (*Benjamin v Dalmo Mfg. Co.* (1948) 31 Cal. 2nd 523, 527.) Surprise, meaning a condition or situation where a party is unexpectedly placed to their detriment, without any default or negligence against which ordinary prudence could not have protected them. (*County of Los Angeles v. Financial Cas. & Sur. Inc.* (2015) 236 Cal. App. 4th 37, 44. [failure to appear after being misinformed by the court clerk that the case had been taken off calendar]) Generally, the court must vacate a default or dismissal when a motion for relief is filed under this statute within six months after the entry of the default or dismissal.

The other section of note is CCP §473 sub (d), which allows the court on a party's motion or the court's own motion to set aside a void order at any time. (*Rodriguez v. Cho* (2015) 236 Cal. 4th 742,749.) The power of the court to grant relief is discretionary, as noted in the language of the statute, the court "may" also allow such order to stand. (*Nixon Peabody LLP v. Superior Court* (2014) 230 Cal. App. 4th 818, 822.) However, despite this pronouncement, the orders at issue where the court has declined to grant relief under this section were determined to not be void. In determining if an order is void for the purpose of this section a distinction is made between orders which are void on the face of the record and orders that appear valid on the face of the record but are shown to be invalid by extrinsic evidence (*Pittman v Beck Park Apts. Ltd.* (2018) 20 Cal. App. 5th 1009,1020.) Only void orders, not voidable orders, may be set aside under CCP 473 sub (d). If a summons is not properly served the default judgment entered is void.

Analysis: The argument presented by counsel is premised on CCP section 473 sub (b), allowing the court to set aside a default taken against a party as a result of surprise, mistake, or excusable neglect. None of these are shown by the Defendant's declaration, nor are they supported by the arguments laid out in the Defendant's memorandum of points and authorities. The argument here is not that his default was taken through his mistake, surprise, his neglect, or his excusable

negligence, but rather that he did not have proper notice of the hearing because the underlying service upon him was defective.

This is thus more properly a motion under CCP section 473 subsection (d). The court under this section has the power to set aside any void judgment or order. It is axiomatic to state that a judgment entered without proper service of summons is void and without effect. Without addressing the allegations of fraud in the motion, the court in reviewing the proof of service in this matter, which functions in the manner of a proof of service of summons, given the summary nature of the proceedings, required documents were not served upon the Defendant. Specifically, he was not served with the Temporary Orders issued by the court, nor was he served with mandatory notice of the hearing, which functions as a trial on the request for a Civil Harassment Restraining Order. The court thus determines that the order issued was void.

The court notes that attorney's fees under CCP 473 sub. (c) the court may impose a penalty of up to \$1000.00 on the offending attorney or party. However, without testimony from the process server regarding their actions in serving the defendant, the court must presume that the document signed under penalty of perjury by the person serving process is an accurate and truthful statement of the service. THE court is therefore not inclined to grant any penalty against the Plaintiff. The court also defers the issue of attorneys' fees.

Proposed ruling: The court grants the Defendant's motion to set aside the permanent Civil Harassment Restraining order issued on May 3, 2024, as void for defective service on the Defendant. The court reinstates the temporary orders issued in this case and sets a new hearing on the underlying request on July 26, 2024, at 8:30 a.m. The court denies the request for sanctions against Plaintiff under CCP section 473 sub (c) and defers the Defendant's request for attorney's fees and costs.

CU-24-00098 Alliant Credit Union v. Jorge Carranza Estrada

7-10-24

Plaintiff: Arden D. Burstein

Defendant: Pro Per

On calendar for Plaintiff's 5-29-24 Application for Writ of Possession. Opposition due 6-28-24; Reply due 7-5-24. The application is presently unopposed.

4-19-24 Plaintiff's complaint asserts 1) Claim and Delivery of Personal Property; 2) Money on Contract; and requests as relief the issuance of the writ of possession, judgment of \$66247.83 plus reasonable collection expenses, interest as allowed by law, reasonable attorneys' fees, costs of suit, and any other relief the court deems just. The underlying facts are that the Plaintiff became owner of the written contract between Defendant and Plaintiff's assignor for the Defendant's purchase of a 2020 GMC Sierra 1500, as identified, including timely payment of all amounts due under the contract. Plaintiff is thus effectively the legal owner of the vehicle pursuant to the certificate of title and perfected security interest. Defendant defaulted on the contract on or about 12-17-23, accelerating the obligation and entitling Plaintiff to immediate possession of the vehicle. This suit follows.

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Legal Authority: Writ of possession may be obtained if a complaint is filed to recover possession of personal property (CCP§512.010.) The code section requires that an application for writ contain:

1. Showing of the basis of the plaintiff's claim and that the plaintiff is entitled to possession of the property claimed. IF the basis of the plaintiff's claim is a written instrument, a copy of the instrument shall be attached.
2. A showing that the property is wrongfully detained by the Defendant, of the manner in which the defendant came into possession of the property, and according to the best knowledge, information, and belief of the plaintiff, of the reason for the detention.
3. A particular description of the property and a statement of its value.
4. A statement, according to the best knowledge, information, and belief of the plaintiff, of the location of the property, and if the property, or some part of it, is within a private place which may have to be entered to take possession, a showing that there is probable cause to believe that such property is located there.
5. A statement that the property has not been taken for a tax assessment, or fine, pursuant to statute; or seized under an execution against the property of the plaintiff; or if so seized, that it is by statute exempt from such seizure.

(CCP§512.010 (b).)

Further, the requirements of CCP§512.010 (b) as rendered above may be satisfied by one or more affidavits filed with the application. The remedy for claim and delivery can be sought by anyone who, at the time of the action for recovery of the personal property is initiated, has a right to possession of the tangible personal property involved. (Commercial Discount Co. v. Cowen (1941) 18 Cal. 2nd 610, 613.) It may be sought against one who has either constructive or actual possession of the property. (*Phillips Aviation v. Sup. Ct.* (1966) 246 Cal. App. 2nd 46, 53.) CCP §512.060 provides that the writ of possession will be issued if the plaintiff establishes the validity of its claim of possession to the property and that an undertaking, if necessary, has been provided. Under CCP §511.090 probable validity is established by a showing that it is more likely than not that the plaintiff will prevail on the claim at judgment. A defendant is determined to be unlawfully detaining a plaintiff's personal property after the plaintiff has demanded return of the property before suit is filed. (*U.S. Roofing Inc. v. Credit Alliance Corp.* (1991) 228 Cal. App. 3d 1431.)

A bond for the issuance of a writ of possession *may* be required under CCP§512.060. The amount of the bond required is an amount which is twice the Defendant's "equity" in the subject property, if such exists (CCP§515.10.) This requires a showing of the values estimated for the collateral, and the possible equity in the property for the Defendant, if any to determine if a bond should be required. Finally, if a writ of possession is ordered, the court may also order that the defendant transfer possession of the property to the plaintiff. Any such order must contain an advisement that the failure of the defendant to comply and turn over possession to the plaintiff may subject the defendant to being held in contempt of court. (CCP§512.070.) Such orders are not in lieu of a writ of possession but rather made in addition to or to aid a writ, allowing the plaintiff to use more informal and less expensive means to secure possession. (Cal. Law. Revision Com.; CCP §512.070.)

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Analysis

The writ requires that the P establish the probable validity of its claim and that it is entitled to immediate possession for the collateral. P is the holder of a perfected purchase money security interest in the collateral, to wit, the aforementioned 2020 GMC Sierra. Plaintiff has described the property sought by the writ of possession and its probable location. To the best of Plaintiff's knowledge and belief, the collateral has not been taken for any tax assessment, fines, pursuant to statute, or seized in an execution against the property of the Plaintiff. Plaintiff presents a strong argument and documentation supporting their claim that they will prevail on their suit to recover possession at trial. It appears the requirements for a writ of possession and turn over have been met.

Plaintiff's application for the writ of possession is compliant with the requirements of CCP§512.010 subsections (b), (c). The declaration provided by Plaintiff and the exhibits attached thereto. (Chism Dec, attached to MPA, Ex A-C) The Plaintiff has established the claim and their entitlement to possession of the claimed property, as well as providing the copies of the relevant written instruments. The declaration provided provides a showing that the property has been wrongfully detained by the Defendant, the manner in which Defendant came to possess the property, and the reasons for its detention. The documentation provided and the declaration describe the property and provide a statement attesting to the value of the subject vehicle. An estimate of the balance due against the estimated value of the property, indicates that the Defendant would not have equity in the vehicle, as the loan amount exceeds reasonable value of the vehicle (EX B.) The Plaintiff avers that after the costs of their fees and costs to recover possession of the collateral in each of the Agreements, the equity would be nominal at best, and does not state if they would offer bond, nor whether they ask that bond be waived. Notably there is no cost estimate for either of these sums. The declarations provide statements that provide on the Plaintiff's best knowledge, information, and belief of the location of the property, and that that property has not been taken for tax assessment, fine, or been seized for execution against the Plaintiff's property.

Tentative ruling: The writ of possession shall be issued for the subject vehicle. In light of the lack of equity value given the value of the defaulted loan exceeds the value of the subject vehicle.

CU-23-000282 In re Matter of Ingrid Sywak, et al. v City of Hollister, et al. 7-10-24

Petitioner: Christine Breen (NATMAR, L.P; Alexander Sywak, Ingrid Sywak)

Respondent: City of Hollister, City Council of Hollister

Note initial complaint also named individual City Council Members and the Mayor of Hollister; the Petitioner subsequently dismissed the individually named defendants, after which the individually named defendants withdrew their Demurrer and Special Motions to strike.

The case arises from Petitioner's 12-20-23 Petition for 1)Writ of Administrative Mandamus (CCP §1094.5);2) Declaratory Relief, and3) Complaint for regulatory taking/inverse condemnation and damages.

Defendant City of Hollister/ Hollister City Council demurred to the 2nd and 3rd causes of action on 2-8-24. The named defendants filed their demurrer and special motion to strike on 4-25-24 and 4-29-24 which time the court continued the hearing on the petition out. Subsequently, Petitioner dismissed the named defendants, who then withdrew their demurrer and special motion to strike.

In light of the pending demurrer and the availability of the regular judicial officer in this matter, the court continues the ruling on the Respondent's Demurrer and the Writ Petition to 7-31-24 at 10:30 a.m.

CU-24-00076

In re the Matter of Gabriel E. Zapien

7-10-24

Petitioner : Gabriel. E. Zapien

On calendar for Petitioner's Order to Show Cause for Change of Name.

The court finds that the proof of service by publication in this matter is proper and complete. The court grants change of name in favor of the Petitioner as prayed in the Petition. The Petitioner's name is GABRIEL E. ZAPIEN.

CU-24-00130

In re the Matter of Lidia Bermudez Ramos

7-10-24

Petitioner: Michael J. Czeshinski

Matter on calendar for Approval of Compromise of Claim or Action/Disposition of Proceeds of a Judgment for Minor or Person with a Disability.

After reviewing the Petition in Compromise of the Minor's claim and approves the proposed compromise as reasonable, fair, and in the best interests of the claimant.

END OF TENTATIVE RULING