

Superior Court of California County of San Benito



Tentative Decisions for September 11, 2024

Courtroom #1: Judge Thomas Breen

CU-22-00259 BlackSand Builders Inc. v John Mendoza, et al. 9-11-24

On for Claim of Exemption

Plaintiff: Linda Keny, Lawrence P. Ramirez

Defendant: John Mendoza, Sally Mendoza, Tom Mendoza in Pro Per.

This case is post-judgment. Default Judgment was entered against Defendants on June 21, 2023, for \$5,864,239.21. After the issuance of the Abstract of Judgment on July 7, 2023, several writs of execution issued which are not the subject of this hearing. A writ of execution was issued on June 11, 2024, naming John Mendoza as judgment debtor, with Sally Mendoza and Tom Mendoza as additional Judgment debtors. On July 24, 2024, the Plaintiff's applied for an order for the sale of a dwelling, pursuant to CCP §704.750-704.770, specifically the real property located at and commonly known as 1260 Mulberry Circle, Hollister, CA 95023 for the outstanding judgment. The San Benito County Sheriff levied on the interests pursuant to Plaintiff's instruction on July 10, 2024, under the 6-11-24 writ of execution, and notice was given to the Defendants on July 10, 2024.

Plaintiff avers that the dwelling is subject to an order for sale and execution as the property of the defendants in this action and has been duly levied on pursuant to the writ of execution. The underlying judgment is not for consumer debt. Further, reasonable search of the county assessor's records indicates there is no current homeowner's exemption or disabled veteran's exemption for the dwelling, and a search of the Records of the County Recorder do not show a homestead declaration has been recorded for this dwelling. Moreover, further search of the records of the County Recorder shows no liens on the dwelling other than the subject notice of levy. Thus, on information and belief, the Plaintiff asserts the dwelling is a homestead and the amount of the exemption is defined pursuant to 704.730. The Defendants filed a claim of exemption, received by the San Benito County Sheriff on July 16, 2024, and which was received by the Plaintiff's counsel on July 31, 2024. The reason for the exemption sought are that the Defendant avers that the Judgment was obtained through false accusations and is a default

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judgment. Such argument is not appropriate in a hearing on a homestead exemption. Plaintiff notes that Defendants had notice and ample opportunity to participate in the case, but never filed an answer, nor did they comply with multiple court orders with respect to the Orders of Examination.

Legal Authority. As a general matter, exemptions for property described in any statute as exempt must be claimed within the time and in the manner prescribed by the applicable enforcement procedure, otherwise the exemption is waived, and the property is subject to enforcement. (CCPS703.030 sub (a); *Imperial Bank v. Pim Elec., Inc.* (1995) 33 Cal. App. 4th 540, 548-549.) The homestead exemption is governed by Code of Civil Procedure sections 704.710 to and including 704.850. If a judgment creditor is trying to reach the property by a procedure other than by levying under a writ, a court hearing is required. There are two types of homestead exemptions, declared and automatic. (*Fidelity National Title Ins. Co. V. Schroeder* (2009) 179 Cal. App. 4th 834, 843-844.) A declared exemption protects property from judgment lien, except that such lien may attach to the homestead in the amount of any surplus over the total of prior liens and encumbrances and the homestead exemption. (CCPS704.950 (c).) It applies to both forced and voluntary sales of property. An automatic exemption applies only to the forced sale of the property and requires 1) continuous residence from the date of the Judgment creditor's lien attaches to the date the court determines that the dwelling is a homestead. If a creditor attempts to sell the home, the burden of proof is on the *homeowner* to prove to the court that an automatic homestead exemption exists, whereas if there is a declared exemption, the burden of proof rests with the creditor.

The automatic homestead exemption does not prevent the attachment of a judgment lien against a dwelling, but it does afford protection when a judgment creditor seeks a court ordered sale of the dwelling after notice of a levy. (*Id.* at 844.) The creditor must follow the court ordered sale process. (*Id.* at 844, note 5; see also CCPS704.740 sub. (a).) Homeowners have the automatic homestead exemption even if they do not record a homestead declaration. The exemption amounts are the greater of the following 1) the countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000.00); or 2) three hundred thousand dollars (\$300,000.00). (CCPS704.720 to 704.730.) The requirements for a homestead exemption are 1) the residence must be the principal dwelling of the judgment debtor or his or her spouse; 2) the judgment debtor or their spouse, must reside at the dwelling on the date the judgment creditor's lien attached; and 3) the Judgment debtor and/or their spouse must reside continuously thereafter until the date of court's determination that the dwelling is a homestead. (CCPS 704.710.)

Analysis: The court notes an application for order to sell the property pursuant to Code of Civil Procedure section 704.760 sub parts (a) through (d) state what a judgment creditor must include order for the sale of a dwelling to issue. These elements have been met by the judgment creditor's application filed July 24, 2024, as noted above. The court is likewise inclined to agree with the Plaintiff that the Defendants' argument that the judgment was obtained through "false accusations. Default judgment," are not proper arguments to make at this juncture. There is no declared exemption, and thus this is a matter of an automatic exemption, and the Judgment Debtor bears the burden of proof in this matter. The only information available regarding the

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Defendant's arguments do not support a reason to either deny the enforcement action or support any alternate theory regarding the kind of exemption applicable. Thus, the only question for the court to determine is 1) a homestead; and 2) whether the exemptions should be applied, and if so, 3) the amount of the exemptions.

Based on the foregoing information it appears that the dwelling levied upon is a homestead, and the Defendants have not recorded a homestead declaration, and the Judgment in this matter was entered in 2023. The claim of exemption was received by the county sheriff on July 16, 2024. The court notes that the homestead exemption does not prohibit the sale of property, it merely ensures that the homeowner receives the amount of the exemption before the creditors are paid from the sales proceeds. It does not apply to 1) Judgments obtained prior to the recording of the homestead declaration; 2) Debts secured by encumbrances on the premises executed by the owner before the declaration was recorded, and obligations secured by mechanics' liens on the premises, voluntary encumbrances (such as mortgages, deeds of trust), or Judgments for child, family, or spousal support. However, as to automatic exemption applies when a person's homestead is involuntarily sold to satisfy a debt. (CCP §704.720 sub (b).) As its name indicates, the protection thus provided is automatic in the sense that it requires no affirmative action by the debtor to make it effective- it applies automatically to any dwelling that meets the definition of homestead.

Proposed ruling: It appears that the court should grant the automatic exemption in the subject property as the law does not require the judgment debtor to record a homestead declaration.

CU-23-00052 Reinhard EC Holdings, LLC, a Washington limited liability company, formerly known as Ernie's Cardlock, L.L.C., a Washington limited liability company v. California Rock Transportation, LLC, a California limited liability company, Austin Grimsley, Stephen Grimsley (a.k.a. Steve Grimsley, a.k.a. Steven Grimsley), and Does 1-50.

On for: Plaintiff's Motion for Summary Judgment, or Summary Adjudication in the Alternative.

Plaintiff: Sheryl D. Noel

Defendants: Ralph P. Guenther (Stephen Grimsley); Defendants California Rock Transportation LLC, Austin Grimsley were defaulted as of 5-23-24

This case arises from the Plaintiff's claims that Defendants, and each of them, executed a credit application on or about 6-21-21 to purchase fuel and agreed to pay for that fuel pursuant to the terms of the credit application. On various dates thereafter until January 13, 2023, Defendants allegedly purchased and received fuel through the CFN cardlock systems at Plaintiff's expense pursuant to the terms of the application. Defendants allegedly failed to make payments when due. This action followed.

3-16-23 Complaint alleges the following causes of action: 1) Breach of Contract; 2) Common Counts (Open Book); 3) Common Counts (Account Stated); 4) Common Counts (Goods Sold and Delivered); 5) Common Counts (Money Paid).

7-19-23 Defendant Stephen Grimsley files a general denial.

- 1) 6-5-24 Plaintiff's motion for Summary Judgment / Summary Adjudication, UMF, and supporting declarations filed. Motion made pursuant to CCP §437c . In this case there are no triable issues of material fact, which entitles Plaintiff to Summary Judgment. It is their burden to show that Stephen cannot either establish one or more elements of a cause of action or cannot refute affirmative defenses. Defendant asked Plaintiff to extend credit and allow D to purchase fuel through the CNF cardlock system on an open account basis. Defendant did so on various dates after 6-21-21 through 1-13-23. Defendant issued a personal continuing guarantee in favor of Plaintiffs which was included in the agreement, and this was to induce the extension of credit on an open account basis. (Wong Dec ¶¶10-12; ex A through C.) The Defendant breached the agreement on 8-7-22 by failing to pay and refusing to perform, and the Plaintiff has been damaged as alleged. (Wong Dec ¶¶17-21.) The defenses alleged are inapplicable or without evidentiary support, and additionally P is entitled to interest, attorney's fees and court costs. There is no triable issue of material fact, and they are thus entitled to Summary Judgment pursuant to CCP§437c, as a matter of law.
- 2) Defendant's opposition: plaintiff meets their burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to a judgment on that cause of action (CCP§437c sub (p)(1).) If they do so, the burden shifts to the defendant to show a triable issue of one or more material facts exist as to that cause of action or defense to the same. The interpretation of contract and the determination of whether the written contract is a complete expression of all terms agreed upon are questions of law for the court. (*Kaufman & Broad Building Co. v. City & Suburban Mortgage Co.* (1970) 10 Cal. App. 3rd 206, 215-216.) IF a contract term or provision is ambiguous or uncertain, the trial court has the duty to construe it after the parties are provided a full opportunity to produce evidence of the facts, circumstances and conditions surrounding its execution as well as the conduct of the parties to the K. (*Walter E, Heller Western, Inc. v. Tecrim Corp.* (1987) 196 Cal. App. 3rd 149, 158.) A question of fact may become a question of law if only one inference can be drawn from all the facts. (*Tryer v. Ojai Valley School* (1992) 9 Cal. App. 4th 1476, 1480.) D argues that he never agreed to provide P a promissory note and deed of trust for the amounts P claims are owed. He thought that there was only a small balance owed. P's argument regarding the authentication of the agreement is without merit. EV §1414 provides a writing may be authenticated by evidence that a) the party against whom it is offered has at any time admitted its authenticity, or b(the writing has been acted upon as authentic by the party against whom it is offered. (See also *Ambriz v. Kekegian* (2007) 146 Cal. App. 4th 1519, 1527.) Plaintiff relies upon §1415 (b) (Ex A to Wong Dec.) alleging Stephen authenticated the agreement when he contacted Plaintiff and asked to make a payment on Defendant's account and to charge his personal credit card to make a payment. This is both factually inaccurate and in dispute. This requires trial on the merits.

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3) Reply: A contract between two parties in CA is considered complete when there is mutual consent or assent to the terms of the agreement. This is typically demonstrated through the process of offer and acceptance, and it is determined based on the outward manifestations or expressions of the parties, such as their words and actions, rather than their unexpressed intentions. (*DeLeon v. Verizon Wireless, LLC* (2012) 207 Cal. App. 4th 800). The contract was executed, Stephen's signature is on the signature line and no evidence has been presented that would indicate forgery, fraudulent procurement, or that it simply didn't belong to him. Moreover, he had a copy of the K and began using the cards issued for the purchase of fuel, his conduct belies his argument. At the outset of the business relationship, the privileges associated with the account were conditioned on a personal guarantee, and as a managing partner in CRT, that personal guarantee was executed, HE agreed to provide a promissory note or deed of trust as consideration for the fuel cards, but despite this agreement, he did not provide such to P, and no evidence has been presented otherwise. Self-serving declarations are inadmissible in evidence (*Wilcox v. Salomone* (1953) 118 Cal. App. 2nd 704, 711.)

UMFS: Plaintiff's UMF: The court notes that the Defendant's dispute with the Plaintiff's statement of undisputed material facts is premised on his self-serving claim that he never signed the agreement and personal guarantee in question. However, this claim is made without any evidentiary foundation in support of that claim. As noted, a self-serving declaration, which Defendant refers to in making his opposition, is not admissible as evidence. (*Wilcox v. Salomone* (1953) 118 Cal. App. 2nd 704, 711.) A statement of undisputed material fact or opposition thereto must be supported by admissible evidence. The opposition presented to Plaintiff's UMF lacks that support. Defendant's evidentiary objection to the Plaintiff's UMF is overruled.

Plaintiff's evidentiary objections to Defendant's Declaration are sustained.

4) Legal Authority: Summary Judgment pursuant to CCP§437c, allows for judgment as a matter of law where there is no triable issue of material fact entitling the requestor to judgment. The court must determine the existence of a triable issue of material fact by examining the affidavits, evidence, and reasonable inferences that may be drawn from the facts. (*Compton v. City of Santee* (1993) 12 Cal App. 4th 491, 595.) When a motion is supported by sufficient evidence, the burden of proof shifts to the opposing party to show a triable issue of material fact exists. (*Chern v. Bank of America* (1976) 15 Cal. 3rd 866, 873.) The court must determine the existence of a triable issue of material fact by examining the affidavits, evidence, and reasonable inferences that may be drawn from the facts. (*Compton v. City of Santee* (1993) 12 Cal App. 4th 491, 595.) When a motion is supported by sufficient evidence, the burden of proof shifts to the opposing party to show a triable issue of material fact exists. (*Chern v. Bank of America* (1976) 15 Cal. 3rd 866, 873.) Summary Judgment cannot be avoided by conjecture or reliance on speculation. (*Pena v. W.H. Douhitt Steel & Supply Co.* (1986) 179 Cal. App. 3rd 917, 931.) It thus falls to the Plaintiff in moving for summary judgment to demonstrate that the Defendant is unable to establish "one or more of the elements of the cause of action or cannot refute an affirmative defense established by the [opposing party]" (CCP§437c subd (o)); see also *Slovensky v. Friedman* (2006) 142 Cal. App. 4th 1518, 1522.) Motion for summary adjudication functions similarly to a motion for summary judgment, but rather than disposing of a case entirely, the motion for summary adjudication allows disposition of one or more of

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- the causes of action. (CCP§437c sub (f)(1).) The motion may be brought where it completely disposes of an entire cause of action and can be raised alone or in the alternative to a motion for summary judgment
- 5) Analysis: Plaintiff has met their initial burden of persuasion and proof. The only apparent issue is whether Stephen's defense that he did not sign the agreement and personal guarantee that is the subject of this suit on or about 6-21-21. The court notes that per 1414(b) of the evidence code a writing may be authenticated by evidence that the writing has been acted upon as authentic by the party against whom it is offered. Here Defendant Stephen Grimsley argues that there is a triable issue of fact as to the authenticity of the contract, specifically alleging that he did not sign it or agree to the personal guarantee that is part of the underlying contract. However, it appears that despite this fact he not only allowed CRT to transact on the CBT fuel system, but also personally authorized the use of a personal credit card used to pay business expenses to pay down the balance on the account. This conduct is inapposite to the defense provided and allows the proper inference to be drawn that not only is this contract and personal guarantee authenticated and that the Defendant transacted business on this contract according to its terms. Additionally, the court notes that the Defendant has not presented any admissible evidence other than his own self-serving, and thus inadmissible declaration in support of his opposition to the Plaintiff's statement of material fact.
- Proposed Ruling: The court grants the Plaintiff's motion for Summary Judgment.

END OF TENTATIVE RULINGS

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