

## **Tentative Rulings – May 22, 2003**

To request a hearing on any matter on this calendar, you must call the Court at (209) 223-6360 by 4:30 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

### **Ordonez v. Weller – 02CV2357 – Sharon Sample's Motion for Summary Judgment**

Sample's motion for summary judgment is denied. The court finds Sample met her initial burden by establishing that she was entitled to judgment as a matter of law. Sample's declaration presented competent expert testimony to establish she was not negligent and her negligence did not cause the damages claimed by the Ordonez. The motion was sufficient to shift the burden to Ordonez to present evidence of a triable issue of material fact.

The court finds the declaration of Rudy Ortega creates triable issues of material fact on the issue of whether Sample was negligent and whether her negligence caused Ordonez' damages. More specifically, a triable issue of fact exists as to Sample's Undisputed Material Fact No. 8. The Ortega declaration creates a triable issue as to whether the work performed by Sample caused or contributed to the damages claimed by Ordonez.

The court finds Ortega competent to render an expert opinion as to whether Sample conformed with the applicable architectural standard of care when she rendered services related to the design of Ordonez' building. Ortega is a licensed architect. He is qualified to provide expert testimony based on his education, experience and training as stated in his declaration. Sample's objection of lack of foundation based on Ortega's qualifications go to the weight and not the admissibility of his testimony.

The court also finds sufficient foundation for the opinions offered by Ortega. As noted, Ortega is a licensed architect who inspected the Ordonez building and who is familiar with the standard of care for architects in this area.

According to Ortega, Sample's services fell below the standards required of an expert in several respects. (Ortega declaration, p. 4, ll. 5-25; p. 5, ll. 1-2 and 12-25; p. 6, ll. 1-12.) This creates a triable issue regarding Samples negligence. (Hanson v. Grode (1999) 76 Cal.App.4th 601.)

In his declaration Ortega states he observed damage to the foundation area of the Ordonez building caused by moisture, which is consistent with poor ventilation. (Ortega declaration, para. 4.) From this evidence, the court can reasonably infer that Sample's negligence was substantial factor in causing the plaintiff's damage. (Hanson v. Grode, supra.)

The court rules as follows on Samples objections to Ortega's declaration:

- Para. 3 and 4 – Overruled, the testimony is based on personal knowledge and is permissible expert opinion.
- Para 5. – Overruled, the statement is permissible expert opinion. The objection goes to the weight of the testimony.
- Para 6. - Overruled, the statement is permissible expert opinion. The objection goes to the weight of the testimony.
- Para 7. – Overruled. The best evidence rule does not apply. The testimony is permissible expert opinion based on a hypothetical set of facts, which assumes Weller told Sample not to prepare the foundation plans.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.