

Tentative Rulings – April 1, 2004

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.

Williams v. Sutter Amador Hospital 03CV2675- Defendant's Motion for Summary Judgment

The motion of Peter Sfakianos, M.D., for summary judgment is granted. The declaration of Paul Hazelrig, M.D. establishes Dr. Sfakianos is entitled to judgment as a matter of law. The plaintiff filed a Statement of Non-Opposition in response to the motion. Therefore, the plaintiff failed to meet his burden of raising a triable issue of material fact.

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.

Al-Saadoon v. DeGussa – 03CV2642 – Defendants' Motion for Mental Examinations

The defendants' motion for mental examinations of the plaintiffs is granted. The court notes that defendants failed to file a separate statement as required by Rule 335. However, the issues in dispute are well defined and plaintiffs addressed the substantive issues raised in the motion. The Court finds the defendants made a good faith attempt to resolve this matter informally.

The Court notes that the plaintiffs agreed to submit to mental examinations and that the issues that remain in dispute are limited. As to those issues the court finds as follows:

Pursuant to Code of Civil Procedure Section 2032(h) the plaintiffs are entitled to a copy of a detailed written report setting out the history, examinations, findings, including the results of all tests made, diagnoses, prognoses and conclusions of the examiner. The reports shall be delivered to plaintiffs' counsel within 30 days of the examination. The defendants failed to establish by competent evidence that the results of tests performed by Dr. Smith are proprietary or otherwise exempt from production pursuant to Code of Civil Procedure Section 2032(h). The plaintiffs are not entitled to the tests results within 48 hours of the examination.

The examinations shall take place at the office of Dr. Smith, 1375 Sutter St., Suite 304, San Francisco, CA, on the condition that the defendants advance reasonable travel expenses and costs to the plaintiff. Given that the exam is scheduled to last more than 6 hours and will occur more than 100 miles from the plaintiffs' residence, the court finds reasonable travel expenses shall include, but are not limited to the reasonable cost of a one-night stay in San Francisco, as well as round-trip mileage. Unless otherwise agreed by the parties, advance payment should be made to plaintiffs' counsel, at least five days prior to the scheduled date of the exam. The examination of plaintiff Jaleela Al Saadoon shall take place on April 20, 2004 at 9:00 a.m. The examination of plaintiff Karen Wood shall take place on April 27, 2004.

Pursuant to Code of Civil Procedure Section 2032(g), the plaintiffs may record the entire examination on audiotape. However, there is no statutory authority for a videotape of the examination. No third-party will be allowed to attend the examination.

Dr. Smith's letter to Mr. Jacobson dated November 5, 2004 (Exhibit C to defendants' motion for medical examinations) sets forth in reasonable detail the nature and scope of his examination.

The Court finds both parties acted with substantial justification and neither party is entitled to sanctions.

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.

Al-Saadoon v. DeGussa – 03CV2642 – Defendants' Motion to Compel Further Discovery Responses

The court rules on the defendants' motion to compel further discovery responses as follows:

Special Interrogatory No. 21 – The court sustains the plaintiff's objection to this interrogatory. If the reference to Form Interrogatory 8.4 is omitted, the interrogatory is overly broad and vague as to time frame.

Special Interrogatory No. 22 – The plaintiff's objections to this interrogatory are overruled. Omitting the reference to Form Interrogatory No. 8.7, the interrogatory seeks the production of all documents the plaintiff contends support her wage loss claim of \$280,000.00. This is a permissible interrogatory in terms of scope and form. The objection based on attorney Work product is without merit. To the extent documents exist that are responsive to this request, the plaintiff is ordered to provide further response.

Special Interrogatory No. 23 – For the reason set forth in the court's ruling on Special Interrogatory No. 23, the plaintiff is ordered to identify all documents that support her future wage loss claim of \$500,000.00 per year.

Requests for Production No. 10 –19 The plaintiffs' objections to these requests are overruled. Given the nature and size of the plaintiff's claim for loss of earnings and loss of future earnings capacity, the plaintiff's client contracts are reasonably calculated to lead to the discovery of admissible evidence. Plaintiff, Karen Wood, is ordered to provide further response to these requests, without objections within 20 days of the date of this ruling.

Documents produced pursuant to these requests may only be used for purposes of the litigation between the parties. The defendants may not disclose the documents or the contents of any document to any third party, with the exception of experts or consultants retained for the purpose of evaluating the plaintiff's economic damages. The defendants are ordered to provide notice of this protective order to any expert or consultant to whom the documents are disclosed.

Requests for Production No. 20 –28 – The plaintiffs' objections to these requests are overruled. Given the nature and size of the plaintiff's past financial statements are reasonably calculated to lead to the discovery of admissible evidence, if not directly relevant themselves. Plaintiff, Karen Wood, is ordered to provide further response to these requests, without objections within 20 days of the date of this ruling.

If plaintiff does not have documents responsive to this request, she shall state this in her verified responses. To the extent plaintiff produced redacted financial statements in response to any request, the court finds the response is insufficient. The plaintiff shall produce copies of financial statements without alteration or redaction.

Documents produced pursuant to these requests may only be used for purposes of the litigation between the parties. The defendants may not disclose the documents or the contents of any document to any third party, with the exception of experts or consultants retained for the purpose of evaluating the plaintiff's economic damages. The defendants are ordered to provide notice of this protective order to any expert or consultant to whom the documents are disclosed.

The plaintiff's opposition was partially justified. Accordingly, the court awards the defendant sanctions in the amount of \$500.00 for attorney fees and costs related to the filing of the motion.

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.

Al-Saadoon v. DeGussa – 03CV2642 – Defendants' Motion for a Protective Order

On the Court's own motion this matter is continued to April 15, 2004, at 3:15 p.m., and is subject to the Court tentative ruling procedures.

Weber v. Rollston – 02CV2319 – Defendants’ Motion for Summary Judgment

The defendants’ motion for summary judgment is denied. The court finds there is a triable issue of fact as to the scope of defendants’ initial representation of the plaintiff. This finding is based on the dispute regarding defendants’ Undisputed Material Facts (“UMF”) No. 26 and No. 27. Defendants contend the parties orally agreed in September or October of 2000 that Rollston would file a complaint in the underlying action involving Kirkwood Meadows Association (“KMA”) and Kevin Blackwell (“Blackwell”). Weber disputes this fact based on his deposition testimony that he never agreed to be a party to a lawsuit against KMA and Blackwell, was not aware of the lawsuit and was not provided with a copy of the complaint until after it was filed. (Weber Deposition, p. 87, ll. 6 – 19.) Plaintiff’s contention that he never expressly authorized Rollston to file a complaint on his behalf and a complaint was filed, contradicts Rollston’s contention that the scope of his representation was limited to mediation.

The court find that there is a disputed issue of material fact as to whether Rollston acted within the applicable standard of care. Rollston’s opinion that he acted within the applicable standard of care is disputed by the declaration of plaintiff’s counsel, Matthew Durket. In ruling on a motion for summary judgment, the court does not weigh the evidence, but determines whether a triable issue fact exists. Mr. Durket’s declaration creates a triable issue of fact.

The defendants have not met their initial burden of negating the element of causation. It is undisputed that Weber first met with Rollston in March 1999. Although disputed by plaintiff, the defendants contend Weber was aware in August 1996 that the new Blackwell house would block his view. (UMF No. 18.) The court takes judicial notice of the filing of the underlying complaint on October 12, 2000, and the prayer for money damages, which is an available remedy in an action for nuisance. (Newhall Land & Farming Co. v. Superior Court (1993) 19 Cal.App.4th 334.) When Weber first met with Rollston in March 1999, the statute of limitations on his cause of action for nuisance had not expired. Therefore, the evidence in support of the motion does not negate the element of causation. Because the defendants have not met their initial burden, the plaintiff is not required to come forward with evidence to raise a triable issue of fact. (Duckett v. Pistorosi Ambulance (1993) 19 Cal.App.4th 1525.)

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.

Citibank v. Raper – 03CV2719 – Plaintiff’s Motion to for Terminating Sanctions

The plaintiff’s motion for terminating sanctions is granted. The court orders the defendant’s answer stricken and a default judgment entered against the defendant in the amount of \$6,495.28 plus costs of \$258.00.

Unless a hearing is requested, this tentative ruling shall be considered the order of the court. Plaintiff is ordered to give notice of this ruling.

Village Concepts v. Charter Mortgage – 98CV3064 – Plaintiff’s Motion for Reconsideration

The plaintiff’s motion for reconsideration is denied. The plaintiff failed to establish new facts that did not exist at the time the motion was originally heard.

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.

Ruben Hernandez v. Mule Creek State Prison – 03CV3064 – Defendant’s Demurrer to the Complaint

There will be no tentative ruling in this matter. Appearances are required.