

Tentative Rulings –December 8, 2005

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.

Penrose v. Moore, et al.: 05-CV-3856

Defendants' Motion to Compel Arbitration and Stay Proceedings

Defendants Kevin Walsh and Prudential Realty's Motion to Compel Arbitration and Stay Proceedings, in which Defendants Susan and Wayne T. Moore joined, is hereby granted in part.

Defendants Robert Penrose and SCV Homebuyers are nonsignatories to the arbitration provision of the purchase agreement. One must be a party to an arbitration agreement to be bound by the same. (Buckner v. Tamarin (2002) 98 Cal.App.4th 140.) Absent a written agreement or a pre-existing relationship or authority to contract for another, the court cannot compel a third party nonsignatory to arbitrate a dispute. (County of Contra Costa v. Kaiser Foundation Health Plan Inc. (1996) 47 Cal.App.4th 237.) However, there are exceptions to the rule prohibiting the invocation of an arbitration agreement against a nonsignatory. A nonsignatory, who is a third party beneficiary of the contract, may be compelled to submit to arbitration. (Id.) In addition, a nonsignatory may be compelled to arbitrate a dispute if there is a preexisting confidential relationship, such as an agency relationship, between the nonsignatory and a party to the arbitration agreement, and said relationship makes it equitable to compel arbitration of the matter. (Westra v. Marcus & Millichap Real Estate Company, Inc. (2005) 129 Cal.App.4th 759.) Neither exception is applicable to the facts of the instant matter. Thus, as nonsignatories, Defendants Penrose and SCV Homebuyers cannot be bound to the arbitration agreement.

Thus, all parties to this litigation, save Defendants Penrose and SCV Homebuyers, are ordered to submit this matter to arbitration. The instant litigation is stayed pending the outcome of the litigation.

Moving Defendants to prepare an order in compliance with California Rules of Court, Rule 391.

Network Commercial Service v. Muhareb: 05-CV-3672

Plaintiff's Motion to Tax Costs

On November 14, 2005, Plaintiff Network Commercial Services, Inc. filed a notice of appeal from the judgment of this court. As the determination of attorney's fees and costs was part of the judgment rendered by this court, this matter shall be stayed pending the outcome of the appeal. (Code of Civ. Proc. §916.)

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.

Bravot v. California Dept. of Corrections, et al.: 05CV3687

Defendant Aceituno's Demurrer to Complaint

There is no tentative ruling in this matter pursuant to Amador County Local Rule 4.03, subdivision (F).