

TENTATIVE RULINGS—MAY 25, 2007

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.

Amador Water Agency v. Mondani: 06CV4173

Plaintiff's Motion to Compel

First, the plaintiff failed to file and serve a memorandum of points and authorities in support of the motion to compel. Plaintiff did submit a separate statement in support of the motion to compel. However, there is no authority stating that the separate statement waives the requirement of a memorandum of points and authorities. The failure to submit a memorandum of points and authorities may be considered a statement that the motion has no merit. (CRC 3.1113.) However, for the sake of judicial economy and because the plaintiff did submit a separate statement, the Court will consider the motion, despite the lack of memorandum of points and authorities.

Second, there is a dispute over whether the defendant's responses were timely. Plaintiff contends the responses were untimely, based upon a service by fax date of January 16, 2007 for the interrogatories. Plaintiff contends that the last day for the defendant to serve responses was February 20, 2007. Plaintiff states the responses were not received until February 21, 2007 and the verifications and proof of service are both dated February 21, 2007.

Based upon a service date of January 16, 2007, via fax, the last day for the defendant to respond would be February 20, 2007 (30 days plus two court days for fax). Regardless of whether the parties have an agreement to serve by fax, as required by CRC 2.306 and C.C.P. §1013, the fact both the interrogatories and the responses were served by fax estops either party from arguing fax service is inappropriate.

Neither party provided a copy of the proof of service of the interrogatories or the responses to interrogatories to the Court. Plaintiff provided a copy of the defendant's verification to the special interrogatories in Exhibit 7. The document is dated February 21, 2007. However, this document indicates the document was faxed from 530-694-2325 on February 20, 2007 at 4:38 p.m. Said fax number is the fax number of record for the defendant's counsel. Based upon this information, it is reasonable to conclude that the responses were timely. Therefore, the defendant's objections were not waived.

As to the merits of the motion, C.C.P. §2017.010 outlines the scope of discovery:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible or evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, of any document, tangible thing, or land or other property.

In this case, it is clear that the information sought in the interrogatories is relevant to the subject matter of the action. Whether the defendant has had conversations with Amador County Planning Department, etc. is relevant to the issue of reasonably foreseeable future uses of the property. The defendant's allegations to the contrary are without merit.

Defendant objected based upon the interrogatories being overly broad due to the lack of time restraints.

A court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. (C.C.P. §2017.020.)

However, the defendant has not objected or made the argument that responding to the interrogatories, as phrased, would be burdensome and oppressive. The interrogatories in question request information regarding any communications with relevant County Agencies since Defendant Zelda Mondani owned the property.

Based upon the foregoing, the motion to compel further responses is granted. Defendant is to provide further verified responses to special interrogatories, numbers 26-33 within 20 days.

In addition, Plaintiff is awarded sanctions in the amount of \$840.00.

Plaintiff is to prepare an order in compliance with Rule 3.1312.

Capitol One Bank v. Bailey: 06CV4385

Plaintiff's Motion for Summary Judgment

Plaintiff's unopposed motion for summary judgment is granted. Plaintiff has met its burden of demonstrating that there is no triable issue of fact and Plaintiff is entitled to judgment as a matter of law. Defendant applied for a credit card or accepted an offer of credit, Plaintiff sent the defendant the credit card with the Cardmember agreement and disclosure statement, Defendant used the credit card and incurred charges on the account, and the defendant defaulted by failing to pay the amount due, as documented by the regular statements sent to the defendant.

Once Plaintiff met its burden, the burden shifted to the defendant to demonstrate there is a triable issue of material fact. Defendant did not oppose the motion and, therefore, failed to show there is a triable issue of material fact. Accordingly, the motion is granted.

Pursuant to the Cardmember agreement, Plaintiff is entitled to interest, attorney's fees, and costs. However, the declaration submitted by the plaintiff regarding interest calculation and attorney's fees is not competent. Two persons, in the alternative, submitted said declaration. An alternative/dual declaration is improper. Therefore, Plaintiff will need to submit an appropriate motion and/or memorandum of costs to support the interest, fees, and costs claimed.

Plaintiff is to prepare an order in compliance with Rule 3.1312.