

MULRY, JR. v LAKESIDE MOBILE ESTATES, LLC

23CV47109

PLAINTIFF/CROSS-DEFENDANT'S DEMURRER AND MOTION FOR RECONSIDERATION

This action is one of a number of matters arising from disputes concerning ownership and management of Beach Lake Village mobile home park in Mokelumne Hill. Plaintiff/cross-defendant has demurred to the cross-complaint and filed a motion for reconsideration of the Court's May 14, 2024, order striking the Request to Enter Default against Defendant Bonnie K. Hurley.

Defendants' request for judicial notice is granted.

First, neither the motion nor demurrer comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3.3.7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court [emphasis in original.]

Failure to include this language in the notice may be a basis for the Court to deny the motion.

Plaintiff/cross-defendant previously filed a demurrer to the cross-complaint that was denied for failure to comply with Local Rule 3.3.7. Plaintiff has once again filed a notice and demurrer that fails to include this mandatory language and the demurrer is therefore, again, overruled. Local Rule 1.7 authorizes the Court to impose sanctions on an attorney that fails to comply with any requirements in the Local Rules. Plaintiff as a pro se litigant is held in notice that any further failures to comply with the local rules will result in sanctions.

Based on the foregoing, the demurrer is **OVERRULED**. Cross-defendant must answer the cross-complaint within twenty (20) calendar days.

Plaintiff/Counter-Defendant Edward J. Mulry Jr. ("Plaintiff") moves for reconsideration of the Court's May 14, 2024 Order striking the Request to Enter Default against Defendant Bonnie K. Hurley.

Code of Civil Procedure section 1008(a) provides, in relevant part:

(a) When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.

Section 1008(e) provides further that "no application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to this section."

A motion for reconsideration must be made within 10 days after service upon the moving party of written notice of entry of the order. (Code Civ. Proc. § 1008(a).) Here, the Court Clerk served notice of the Court's May 14, 2024 minute order striking the default on May 14, 2024. Plaintiff's motion was filed on June 24, 2024, thus the motion is untimely.

Accordingly, Plaintiff's motion for reconsideration is **DENIED**.

The Clerk shall provide notice of the Ruling forthwith. No further formal Order is required.