

SLOAN v. FOX REALTY AND MANAGEMENT

22CV46287

DEBTOR'S CLAIM OF EXEMPTION

This is an action between a property owner and property management regarding a particular tenant and alleged property damage. Before the Court is the defendant-debtor's claim of exemption for funds held on bank deposit.

On 09/21/22, plaintiff effectuated substituted service of the summons and complaint on defendant Fox Realty and Management Co.

On 10/18/22, plaintiff effectuated personal service of the summons and complaint on defendant Cathy Nitchey.

On 01/09/23, this Court entered the default of both defendants. Although potential procedural and substantive issues appear on the face thereof, defendants did not seek relief.

On 01/23/23, this Court entered a default judgment in favor of plaintiff, and against both defendants, in the aggregate amount of \$49,960.00. Although potential procedural and substantive issues appear on the face thereof, defendants did not seek relief.

In April of 2023, the Amador County Sheriff's Office gave notice of intent to levy two accounts held at the Bank of Marin belonging to defendant Fox Realty, which collectively held funds in the amount of \$7,787.48.

On 04/26/23, defendant Fox Realty asserted a claim of exemption for that account, asserting that those accounts held only client trust funds, which are not subject to levy.

Pursuant to California Finance Code §17410(a), "escrow or trust funds are not subject to enforcement of a money judgment arising out of any claim against the licensee or person acting as escrow agent, and in no instance shall such escrow or trust funds be considered or treated as an asset of the licensee or person performing the functions of an escrow agent." In other words, if the funds belong to someone else, and are only temporarily in the debtor's possession as a fiduciary, that money is not available to satisfy the debtor's personal obligations. Although funds held by a licensed escrow agent in an escrow account are presumably exempt (see §17411.1), there is no prerequisite that the debtor have an escrow license (contrary to plaintiff's assertion). The funds could be client funds even if the debtor is "just" a real estate agent – depending on the nature of the account and the source of the funds. Nevertheless, defendant's contention that the levied funds were client trust funds presents a factual issue on which defendant has the burden of proof. (See CCP §703.580(b); *Schwartzman v. Wilshinsky* (1996) 50 Cal.App.4th 619, 626.)

Turning first to the claim itself, debtor provided the required citation, but failed to include “a statement of the facts necessary to support the claim.” (See CCP §703.520(b)(5) and (6).) Since it appears from the opposition that defendant is not a natural person (see CCP §703.020(a)), and does not hold an escrow agent license, the odds of this money righteously belonging to a client appear slim. Nevertheless, since both the claim and opposition are to be received in evidence, and debtor is allowed to offer additional evidence at the hearing, this Court concludes pursuant to CCP §703.580(c) that defendant has not made a sufficient showing on the papers to demonstrate that the subject monies belong to someone else. Absent properly requested and presented sufficient evidence to the contrary, the claim of exception is DENIED without prejudice.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

SANFILIPPO v. ARROWHEAD INSURANCE AGENCY

21CV45129

PLAINTIFF'S MOTION TO SUBSTITUTE

This is a professional negligence action. Plaintiff generally alleges that he relied on defendant's expertise as an insurance brokerage to secure "appropriate" casualty coverage for one of plaintiff's properties. After a fire destroyed said property, plaintiff learned that he was significantly underinsured for the loss.

Plaintiff died on 12/03/22.

Before the Court is a motion filed by plaintiff's son (Dennis Jr) to substitute in as plaintiff's successor-in-interest. Defendant opposes the motion, but seemingly concedes that someone will need to substitute.

Pursuant to CCP §377.31, "the court shall allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest." A decedent's personal representative is the person appointed by a probate court to take charge and control the estate, which is normally someone nominated by decedent to serve in that capacity or someone with a direct financial interest in decedent's estate. (See Probate Code §§ 58, 8420 *et seq.*) If no probate proceeding is commenced, any individual with a direct interest in decedent's estate can seek appointment as decedent's successor interest. (CCP §377.11.) To do so, that individual must "execute and file an affidavit or a declaration under penalty of perjury" containing specific items of information.

Here, there is a declaration from decedent's attorney of record advising that he is not aware of any probate proceedings and proffering Dennis Jr. as a successor in interest. This is not adequate. The declaration must be from Dennis Jr. himself, and similar to any probate petition for special appointment, and he must give notice to those with equal or greater priority consistent with Prob. Code §8461. He must also lodge a true and correct certified copy of the death certificate (though it appears there is no dispute about plaintiff's demise).

Motion DENIED without prejudice to refile and meeting the statutory requirements. The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal order shall be required.

WELLS FARGO BANK v. MARROQUIN

23CV46516

PLAINTIFF'S MOTION TO DEEM RFAS ADMITTED

This is a collections case involving an unpaid credit card account. Before the Court is plaintiff's motion to deem admitted all nine matters contained in plaintiff's Request for Admissions served by mail on defendant on 02/22/23. According to counsel, the RFAs were mail-served at defendant's address of record, but never responded to. Counsel further avers that a follow-up reminder letter was sent, without success. A review of the file confirms counsel's use of the proper address of record.

Pursuant to CCP §2033.280(c), if a party fails to timely respond to a set of RFAs, a trial court "shall" grant a motion to deem those matters admitted "unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response ... in substantial compliance with Section 2033.220." Since the responding party has up until the actual hearing on the discovery motion to moot portions thereof, a tentative ruling granting the motion remains tentative unless and until the Court determines at or after the hearing that substantially compliant responses were never served. (See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 778-780; *Tobin v. Oris* (1992) 3 Cal.App.4th 814, 827.) The tentative, at this time, is to GRANT the motion to deem the matters admitted (plaintiff is not seeking sanctions, so none are included).

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.