Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR DEPARTMENT CM05
HON. Judge Ebrahim Baytieh

Date: 04/10/2024

Court Room Rules and Notices

#	Case Name	Tentative
1	Mivehchi – Trust (2022-01256408)	**DEMURRER AND MOTION TO STRIKE** Before the court is Respondent Vincent M. Mivehchi's Demurrer to (ROA 142) and Motion to Strike (ROA 143) the Third Amended Petition (ROA 122). On May 5, 2023, this court overruled Respondent's demurrer to the First Amended Petition ("FAP") with regard to the issue of standing, finding that Ali Mivehchi had standing to petition in his own name as the attorney-in-fact of real party in interest Ashraf Mivehchi. The appellate court disagreed. (ROA 102.) As directed by the appellate court (ROA 102), on August 18, 2023, this court ordered that the petitioner in this case should be "Ashraf Mivehchi, by and through her attorney-in-fact" rather than Ali Mivehchi in his own name. (RJN, Ex. 4.) This court, thus, sustained the demurrer to the FAP with leave to amend to correct the defect. (Id.) The court further issued an order striking the Second Amended Petition ("SAP") filed on May 25, 2023, in Ali Mivehchi's name alone before the writ had issued. (Id.; ROA 96.) Instead of filing the Third Amended Petition ("TAP") in Ashraf Mivehchi's name by and through her attorney-in-fact, it appears that Ali Mivehchi's counsel is now representing Ashraf Mivehchi independently and has filed the TAP in Ashraf Mivehchi's name alone. Respondent demurrers to and moves to strike the entire TAP on the grounds that Ashraf Mivehchi must appear by and through her court-appointed Guardian Ad Litem ("GAL"), Dawn Thorson, pursuant to Probate Code section 1003 and Code of Civil Procedure section 372. The court is not so persuaded. Probate Code section 1003 permits the court to appoint a GAL on its own motion. Code of Civil Procedure section 372 provides that a person having a GAL must appear in court through the GAL. However, the legislative comments to Probate Code section 1003 state in relevant part, "The general provisions for appointment of a guardian ad litem in Code of Civil Procedure Sections 372-373.5 **do not apply** to the appointment of a guardian ad litem under this code. See Section 1000 (general rules of civil practice apply unless this code provides a different rule)." (Emphasis added.)

		Nonetheless, to the extent the ward has independent counsel, the GAL is to oversee the attorney when it comes to litigation related interests. (See A.F. v. Jeffrey F. (2023) 90 Cal.App.5th 671, 693 ["[A] GAL oversees litigation-related interests."].) Moreover, the GAL "should be apprised of the matters which the [ward] communicates to the attorney for the purpose of prosecuting or defending the action." (De Los Santos v. Superior Court (1980) 27 Cal.3d 677.) The GAL's role is distinct from that of the ward's counsel. The latter must advocate for the client's wishes, while the former serves as an agent of the court to ensure the ward's bests interests are being protected. (McClintock v. West (2013) 219 Cal.App.4th 540, 549-550; Torres v. Friedman (1985) 169 Cal.App.3d 880, 887.) Here, Ms. Thorson, as the GAL, has filed a confidential report clearly stating that she has not been apprised of the TAP. Ms. Thorson states Ashraf Mivehchi is not even aware of the pending litigation. The report also strongly indicates that it is **not** in Ashraf Mivehchi's best interest to be represented by the same counsel as Ali Mivehchi. Ms. Thorson is requesting a 120-day stay of all proceedings including discovery, as well as a toll of any statute of limitations for Ashraf Mivehchi. At this stage of the proceedings, the court is inclined to **GRANT** the stay and tolling orders requested by Ms. Thorson, albeit only until the next review hearing, which is currently set for **May 23, 2024, at 9:00 a.m. in Dept. CM03**. The court at the next review hearing may decide to further extend the stay and tolling period after hearing from all parties. The Demurrer and Motion to Strike are **CONTINUED** to **June 7, 2024, at 10:00 AM in Dept. CM0**5 and may be further continued depending on the court's issuance of a further stay. Respondent is directed to give notice.
2	LaRosa – Trust (2023-01305396)	Petitioners **Michael La Rosa, Nicholas La Rosa, and Victor La Rosa** ("Petitioners") are the subjects of three separate sets of similar motions. The relevant factual and procedural background, as well as the applicable law, relating to these three sets of motions are similar, therefore the ruling below on the motions applies to each of the three Petitioners. **MOTIONS FOR RELIEF FROM WAIVER** The Petitioners' motions for relief from waiver of objections pursuant to Code of Civil Procedure section 2031.300(a) are **GRANTED.**

		A party who fails to timely respond to interrogatories, a request for production of documents, or a request for admissions waives any objection to the discovery, including objections based on privilege or work product. The court may relieve the party from this waiver if it finds that (1) the party subsequently served responses that were substantially Code-compliant, and (2) the party's failure to timely respond was the result of mistake, inadvertence, or excusable neglect. (Code Civ. Proc. §§ 2020.290(a), 2031.300(a), and 2033.280(a).) The evidence before the court is that on September 20, 2023, Respondent Candace La Rosa ("Respondent") propounded form interrogatories, special interrogatories, requests for production of documents, and requests for admission on Petitioners. The discovery was served on Petitioners' former counsel Noah Herbold ("Herbold"). Responses were due on October 25, 2023. On October 11, 2023, Rutan & Tucker, LLP ("Rutan") substituted in as new counsel for Petitioners. Rutan requested, and believed it had received, the entire client file from Herbold. In fact, Herbold had neglected to turn over the subject discovery. Neither Petitioners nor Rutan knew about the subject discovery until November 20, 2023, when Respondent filed and served motions to compel responses. On November 22, 2023 and December 7, 2023, Rutan reached out to Respondent's counsel Law Stein Anderson, LLP("LSA") (formerly, Law & Stein, LLP) to meet and confer about an extension to provide discovery responses. Such efforts were ignored by LSA, who then moved, on an ex parte basis, to advance the hearing on the discovery motions. LSA then agreed to grant an extension of time for Petitioners to respond to discovery, albeit without objections. On January 12, 2024, Rutan served Petitioners' responses to discovery which are substantially Code-compliant. Herbold's failure to advise Rutan of the outstanding discovery does not appear to be excusable. However, Petitioners' failure to serve timely responses is clearly excusable, as it resulted from no fault of their own or of the counsel representing them when the responses were due. Based thereon, the court finds grounds to relieve Petitioners from the waiver of objections. **MOTIONS TO DEEM REQUESTS FOR ADMISSION ADMITTED** Respondent Candace La Rosa's motions to deem admitted the requests for admission propounded on Petitioners are **DENIED**. Petitioners served responses in substantial compliance with the Code before the hearing on these motions. (Code Civ. Proc. § 2033.280(c).) "It is mandatory that the court impose a monetary sanction … on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion." (Id.)

Petitioners' prior counsel, Noah Herbold, states in his declaration that he was representing Petitioners at the time the discovery was served. Mr. Herbold states that the discovery was served on his office by mail and e-mail. Electronic service was made to Mr. Herbold, a paralegal who was on leave, and two other legal assistants who were no longer employed by Mr. Herbold's firm. Respondent produced evidence that someone from Mr. Herbold's office viewed and downloaded the e-served discovery on September 20, 2023, and September 21, 2023. Thus, it appears that Mr. Herbold was aware of the discovery as soon as it was served. Mr. Herbold admits that he did nothing to inform Petitioners or their new counsel Rutan & Tucker, LLP ("Rutan") about the discovery. Petitioners and Rutan declare that they did not know about the outstanding discovery until they were served with notice of these motions.

Based on the foregoing, the court finds that Mr. Herbold necessitated the filing of these motions. However, the court is without jurisdiction to impose sanctions on Mr. Herbold, as he is no longer the attorney of record.

Respondent's moving papers request that sanctions be imposed on Petitioners and/or Rutan. However, any such order could surely be set aside pursuant to Code of Civil Procedure section 473(b) ["The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect."]. The law does not do or require futile acts. (Civ. Code § 3532.) Thus, the court declines to impose monetary sanctions on Petitioners and/or Rutan.

MOTIONS TO COMPEL

Respondent Candace La Rosa's motions to compel Petitioners to respond to form interrogatories, special interrogatories, and requests for production of documents, are **DENIED AS MOOT**. Petitioners served responses on January 12, 2024.

Respondent's request for monetary sanctions against Petitioners and/or Rutan & Tucker, LLP ("Rutan') are **DENIED.**

Sanctions are mandatory in connection with motions to compel responses to interrogatories and requests for production of documents against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel, unless the court "finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc. §§ 2030.290(c); 2031.300(c); see also California Rules of Court, Rule 3.1348(a) ["The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel

		discovery, even though . . .the requested discovery was provided to the moving party after the motion was filed.") Petitioners' prior counsel, Noah Herbold, states in his declaration that he was representing Petitioners at the time the discovery was served. Mr. Herbold states that the discovery was served on his office by mail and e-mail. Electronic service was made to Mr. Herbold, a paralegal who was on leave, and two other legal assistants who were no longer employed at Mr. Herbold's firm. Respondent produced evidence that someone from Mr. Herbold's office viewed and downloaded the e-served discovery on September 20, 2023, and September 21, 2023. Thus, it appears that Mr. Herbold was aware of the discovery as soon as it was served. Mr. Herbold admits that he did nothing to inform Petitioners or Rutan about the discovery. Petitioners and Rutan declare that they did not know about the outstanding discovery until they were served with notice of the motions to compel. Based on the foregoing, the court finds it would be unjust to impose sanctions on Petitioners and/or Rutan. Counsel for Petitioners is ordered to give notice.
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