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HON. HALIM DHANIDINA CASE LIST

BUSINESS/COMMERCIAL

Rosas v. Kensington Caterers Inc.

3/25/2019

2019 WL 1349476

Assignee of default judgments entered against defendants appealed an order denying his motion to vacate an order that directed him to return funds that he seized from defendants' bank accounts. Court affirmed order, holding that trial court had personal jurisdiction over assignee because assignee had made a general appearance when he opposed the motion to return funds and the motions to set aside the default judgments.

MacDonald v. Singer

1/23/2018

2018 WL 507819

Plaintiff sued defendants for violation of civil rights, intentional infliction of emotional distress, and negligent infliction of emotional distress, alleging that he was the target of a wrongful demand letter where defendants threatened to name him and disclose his sexual proclivities in a complaint. Defendants filed a special motion to strike under Code of Civil Procedure 425.16 (anti-SLAPP), which the trial court granted. The court affirmed the order, holding the demand letter did not constitute criminal extortion and was a legitimate pre-litigation action.

Hollywood Sky Entertainment, Inc. v. Boger

1/25/2018

2018 WL 549852

Defendant appealed order denying his motion to set aside default judgment obtained by plaintiffs who claimed they were fraudulently induced to invest in a motion picture and then were not paid any share of the picture's revenues. Court affirmed order, holding that defendant failed to raise the issue of proper service in the lower court of that the proofs of service were not fraudulent.

Lipscomb v. Girardi

3/1/2018

2018 WL 1127686

Defendants appealed an interlocutory judgment of partition of real property in favor of plaintiff. Court reversed interlocutory judgment, finding that trial court applied incorrect criteria to conclude that plaintiff did not waive the right to partition because trial court waiver of partition is only available where property is purchased to guarantee a stream of monthly income through a written lease for a term of years. Rather, California law is clear that the right

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to partition can be waived in a variety of ways, including by acquiring property for a purpose that would be defeated by partition as defendants did here.

De Havilland v. FX Networks, LLC

3/26/2018

21 Cal.App.5th 845

Actress sued studio after studio created a television miniseries that portrayed actress' life, alleging actress did not give the studio permission to use her name or identity in any manner. The studio filed a special motion to strike under Civil Code of Civil Procedure section 425.16 (anti-SLAPP), which the trial court granted on the grounds that because the miniseries sought to portray the actress' as realistic as possible, the work was not transformative. Court reversed the order, holding trial court's flawed reasoning would render actionable all books, films, plays, and television programs that accurately portray real people.

Petersons v. Cooper

4/19/2018

2018 WL 1870723

Defendant retained neurosurgeon to serve as a medical expert in a wrongful death lawsuit. Neurosurgeon sued defendant, alleging that defendant breached the retainer agreement by failing to pay the neurosurgeon his fees. Trial court found in favor of neurosurgeon after a bench trial and defendant appealed. Court affirmed the judgment, holding substantial evidence supported finding that neurosurgeon was not negligent in performing his professional services, trial court did not abuse its discretion in limiting defendant's examination regarding neurosurgeon's research, the trial court properly rejected defendant's claim for an offset under the parol evidence rule, and the trial court reasonably rejected defendant's unconscionability defense.

Caswell v. Jamgotchian

4/24/2018

2018 WL 1939780

Defendant appealed trial court's grant of a motion to compel arbitration plaintiff's lawsuit against him and the award of attorney fees. Court affirmed order, holding substantial evidence supported trial court's determination that arbitration agreement was valid because subsequent oral modification of overall agreement did not modify the arbitration agreement; substantial evidence supported trial court's conclusion that the entire fee dispute was arbitrable; and the contract language authorized the fee award.

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Khodagulyan v. Aminpour

9/6/2018

2018 WL 4275351

Cross-plaintiff sued cross-defendants for fraud and breach of contract to recover \$480,000 he had loaned to them, which was secured by a deed of trust on a car wash. The jury found in favor of cross-plaintiff and cross-defendants appealed. Court affirmed the judgment, holding that cross-plaintiff's testimony constituted substantial evidence of cross-defendant's agreement to guarantee the note if it was not paid; and substantial evidence supported the fraud claim because the jury could have reasonably concluded that cross-defendants falsely promised to guarantee the note, misrepresented their solvency, and concealed material facts concerning the value of the car wash with the intent to induce cross-plaintiff into signing the agreement.

DeMartini v. Blotzer

11/8/2018

2018 WL 5835345

Defendant appealed an order denying his motion to disqualify counsel on the grounds that plaintiff's counsel must have worked on a prior intellectual property matter involving his rock band. Court affirmed order, holding attorney had left prior law firm and law firm had not acquired any confidential information regarding the instant lawsuit.

Baq Fund, LLC v. Sand Canyon Corporation

11/28/2018

2018 WL 6191020

Defendant appealed from an order denying its motion to set aside a default judgment under the mandatory relief provision of Code of Civil Procedure section 473(b). Trial court denied the motion, finding that defense counsel's deliberate action led to the default. Court reversed judgment, holding, although substantial evidence supported placing the blame on defense counsel, that was not a valid reason to deny the mandatory relief because there was no evidence in the record that defendant was aware of or agreed to defense counsel's decision not to respond to the complaint, and the evidence showed that the failure to answer was based on defense counsel's mistaken belief that he could resolve the matter outside of litigation by meeting with plaintiff's counsel.

Canico Capital Group, LLC v. Hassid

12/12/2018

2018 WL 6521850

Creditor brought action against debtor to enforce a judgment. Debtor refused to produce documents for his debtor proceedings under Code of Civil Procedure section 708.110 and the trial court ordered debtor to produce his corporate and personal tax returns. After trial court denied debtor's request to review his tax returns in camera, debtor appealed. Court affirmed in part and reversed in part the order, holding that creditor's interest in discovering debtor's

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assets and public policy outweighed the tax return privilege and debtor's privacy rights. However, creditor failed to establish a compelling need for the tax returns of an individual who held an interest in an LLC of which debtor also had an interest.

MetLife Securities, Inc. v. Brandt

12/18/2018

2018 WL 6616097

After cross-defendants prevailed at trial, the trial court denied their motion for attorney fees. Court affirmed order, holding cross-defendants failed to demonstrate either a statutory or contractual basis for attorney fees given parties' agreement covered indemnity for costs but not attorney fees, and their remaining arguments were untimely.

St. John's Emergency Physicians, Inc. v. RevCycle+, Inc.

12/26/2018

2018 WL 6787332

Medical group sued defendant for breach of contract, negligence, breach of warranty, and fraud, alleging defendant used new billing software and assigned new personnel to medical group's account, resulting in underbilling that cost medical group more than \$1 million in uncollected fees. Defendant moved to compel arbitration, which was granted. The arbitrator dismissed the matter on the grounds that medical group did not timely file an arbitration demand under the terms of the contract. Trial court confirmed the arbitration award and medical group appealed. Court affirmed judgment, holding defendant was a successor in interest to the original billing group that signed the arbitration agreement as confirmed by two contract addenda. Further, the arbitration agreement was not procedurally unconscionable as there was no imbalance of power between the parties.

Icon Digital Corporation v. Icon International Digital Limited

4/10/2019

2019 WL 1552367

Creditors obtained a money judgment against debtor. The creditors attempted to enforce the judgment by serving a writ of execution and notice of levy on one of the debtor's distributors. Several months after the distributor declared it held no property or obligations in favor of the debtor, the creditors moved to impose liability upon the distributor for failing to comply with the levy under Code of Civil Procedure section 701.020. The trial court granted the creditors' motion and ordered distributor to pay them \$ 78,161.14. The distributor appealed. Court reversed order, holding liability under Code of Civil Procedure Section 701.020 is limited to property belonging to the debtor, or amounts due and payable to the debtor, that a third person refuses to deliver to the levying officer. Here, since there was no evidence that the distributor retained the debtor's property or was obligated to make payments to the debtor at the time it was served with the levy given that the distributor had prepaid for debtor's goods.

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The November First Partnership v. Islam

4/26/2019

2019 WL 1873279

Cross-plaintiff filed a cross-complaint alleging tort and contract claims against other members of a limited partnership. After a bench trial, the trial court found a dissolution action filed by one of the defendants breached the partnership agreement but caused no damage, and none of cross-plaintiff's other claims had merit. After finding the cross-defendants were the prevailing parties, the court ordered cross-plaintiff to pay more than \$ 880,000 in costs and attorney fees. Cross-plaintiff appealed. Court affirmed the judgment, holding that cross-plaintiff forfeited the issue of obtaining nominal damages by failing to raise it in the trial court.

Mostafavi v. Serratos

5/28/2019

2019 WL 2265347

An attorney appealed from a judgment entered after the trial court confirmed a binding arbitration award against him in a dispute over the amount of attorney fees and costs he charged his former clients. Attorney had represented former clients in a wage and hour action against their former employer. On appeal, Attorney challenged the court's order compelling arbitration, arguing he did not agree to arbitrate any dispute over fees and costs attributable to his defense of cross-claims filed against defendants. Court affirmed order, holding that attorney agreed to arbitrate fee disputes involving work performed by him related to former client's cross-claims because he executed a guarantee amendment and was a third-party beneficiary to the retainer agreement.

JFK Investment Group, LLC v. Kobi

5/31/2019

2019 WL 2315203

After a bench trial, the trial court entered judgment in favor of plaintiff and one of its members, and against plaintiff's other member and her son. After finding that son did not have a membership interest in plaintiff, the trial court ordered son to transfer title to one of plaintiff's assets—an apartment building—back to plaintiff. Although the trial court ordered the sale of the property, with the proceeds to be evenly split between members, it did not dissolve plaintiff. The trial court also awarded plaintiff attorney's fees under an indemnity provision in plaintiff's operating agreement. The member and son appealed, contending the judgment should be reversed because the court failed to adjudicate son's claim for quantum meruit and member's statutory claim for dissolution of plaintiff. Court reversed the attorney fee award, finding the indemnification provision in plaintiff's operating agreement was not an attorney fees provision. However, the Court affirmed the judgment because member and son did not include a quantum meruit claim in their cross-complaint and the trial court clearly rejected member's request for dissolution of plaintiff.

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Awani v. Nationstar Mortgage LLC

6/25/2019

2019 WL 2591022

Plaintiff sued bank, the beneficiary under the deed of trust on his residence, and his loan servicer, for multiple claims stemming from foreclosure proceedings that defendants ultimately aborted. The trial court granted defendants' motion for summary judgment, concluding defendants met their burden of demonstrating plaintiff could not establish one or more elements of his claims and plaintiff failed to submit admissible evidence raising a triable issue of material fact in opposition. Court affirmed judgment, holding plaintiff could not establish his estoppel claim because there was no evidence of a clear and unambiguous promise; plaintiff could not establish his claim for a violation of the Homeowner's Bill of Rights because there had been no trustee's sale and plaintiff accepted a loan modification offer from defendants; plaintiff could not establish a negligence claim (HBOR) because defendants did not owe him a common law duty of care concerning the loan; the statute of frauds barred plaintiff's claim for a breach of an oral contract; plaintiff could not establish an Unruh Act violation because there was no evidence that defendants' actions were based on race; and plaintiff could not establish a UCL violation because defendants were not liable for the underlying HBOR claim.

Sealutions, LLC v. Schwab

6/25/2019

2019 WL 2591024

Plaintiffs sued 12 defendants for a variety of tort and contract claims arising out of the parties' former business dealings. Plaintiffs filed a fictitious name amendment substituting a Cayman Islands limited partnership as a Doe defendant. Plaintiffs then purported to effect service on the fund by sending a summons and complaint by certified mail to the Securities Administrator for the State of California, Department of Business Oversight. The trial court granted the fund's motion to quash service of the summons, and plaintiffs appealed. The Court affirmed the order, holding that, because the fund agreed that a designated officer of the state could accept service on its behalf only with regard to an action "arising out of any activity in connection with the offering of securities," and plaintiffs could not establish that their claims arose out of the offerings of securities, the trial court properly granted the motion to quash.

Sun v. Chang

7/22/2019

2019 WL 3282956

Plaintiff created a small business to support her request for permanent residence in the United States under the EB-5 program. Plaintiff invested \$500,000 in the business and hired defendant to manage it. The business became insolvent and the United States Citizenship and Immigration Service (USCIS) denied plaintiff's residency request, concluding that her representations about the business activities were untrue. Plaintiff sued defendant and a jury awarded her damages for a variety of torts, including fraud, and common counts. Court

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affirmed judgment, finding substantial evidence supported plaintiff's claims that defendant never intended to operate the business as a general manager, but instead drained the business of its cash and created false reports of purchases and sales.

Sun v. Chang II

7/22/2019

2019 WL 3282985

Plaintiff obtained a judgment against defendant, and subsequently secured an order assigning rents from real property owned by defendant to satisfy the judgment. Defendant moved to vacate the assignment order, arguing he had not been properly served with the assignment motion and was no longer the record owner of the real property. The trial court denied the motion to vacate, and defendant appealed. Court affirmed the order, holding that an order denying a Code of Civil Procedure section 1008 motion is not appealable and that was the only authority cited by defendant in support of his motion to vacate the assignment. However, even if the Court were to construe defendant's appeal to be from a motion to vacate under Code of Civil Procedure section 473, which is appealable, the appeal would fail on the merits because substantial evidence supported the trial court's finding that defendant was properly served with the assignment order and defendant lacked standing to assert error on behalf of the record owner of the real property.

Mitsuwa Corporation v. Wehba

8/6/2019

2019 WL 3561928

Plaintiff sued a group of defendants after they defaulted on a pair of promissory notes issued as partial payment for two parcels of property purchased from plaintiff. Plaintiff and defendant later signed a settlement agreement, which provided defendants would make the first two payments in full and on time, they would not need to make the last payment. Plaintiff obtained a judgment against defendants, which was later vacated by the trial court on the grounds that the settlement agreement contained an unlawful penalty provision. Court reversed order, reinstating former judgment because it merely obligated defendants to pay plaintiff the same amount had they agreed to settle the parties' lawsuit and was therefore not a penalty provision.

Anabi Oil Corporation v. Highland Park Oil, Inc.

8/15/2019

2019 WL 3822002

Defendant signed a retail sales agreement with oil company, in which oil company promised to supply, and defendant promised to buy, a minimum number of gallons of gasoline. The agreement provided that if either party terminated the contract early, defendant would be liable for liquidated damages of 3 cents per gallon on all unpurchased gasoline. The oil company assigned the agreement to plaintiff. Plaintiff sold gas to defendant for two years, when

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defendant went out of business. Plaintiff sued defendant and its owners for breach of contract and breach of personal guaranty—but never formally terminated the agreement. After a bench trial, the trial court entered judgment in favor of defendants and plaintiff appealed. Court affirmed the judgment, holding plaintiff failed to prove his breach of contract claim because he could not prove actual damages as plaintiff never terminated the agreement and thus never triggered the liquidated damages clause.

Linkage Financial Group, Inc. v. Sylvia Hu

8/20/2019

2019 WL 3928745

Plaintiff obtained a default judgment against plaintiff in a lawsuit related to four different loan agreements. The trial court set aside and vacated the default judgments against defendant and plaintiff appealed. Court affirmed the post judgment order, holding that the trial court was not limited to granting defendant relief based on whether the judgments were void, but could grant defendant relief on equitable grounds. Further, substantial evidence supported the trial court's finding that the default was the result of extrinsic fraud or mistake as there was evidence that plaintiff intentionally kept defendant from defending the lawsuit through a false compromise by telling defendant that she had satisfied her debt when she paid back a loan.

Goldstein v. D'Arca

9/10/2019

2019 WL 4267762

Plaintiff sued his former client, defendant for unpaid attorney's fees he claimed she owed him under a written retainer agreement in which attorney agreed to represent plaintiff in a civil matter that ultimately settled. The trial court entered judgment in favor of attorney, and plaintiff appealed. Court affirmed the judgment, finding that plaintiff presented an inadequate appellate record, therefore, Court was unable to assess his claims of error.

Genesis Media, LLC v. Ownzones Media Network, Inc.

9/10/2019

2019 WL 4267837

Plaintiff and his attorney appealed from a sanctions order entered against them for unilaterally terminating a deposition in an action for breach of contract against defendant, who allegedly was hired by plaintiff to produce and operate a cannabis-focused media and lifestyle business. Court affirmed the order, finding that plaintiff and attorney presented an incomplete appellate record having failed to provide a transcript or settled record of the subject hearing, therefore, plaintiff could not demonstrate an abuse of discretion.

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Rusnak/South Bay, LLC v. Glukel Group, LLC

9/27/2019

2019 WL 4727589

Defendant appealed from an order awarding it only 20 percent of its requested attorney fees under a contractual fee provision, after plaintiff automobile dealer voluntarily dismissed its complaint regarding designing and preparing a new car dealership on two adjacent properties. The trial court ruled defendant's request for \$177,712 in attorney fees was "clearly excessive," because Civil Code section 1717(b)(2) barred recovery of the fees incurred to defend plaintiff's contract claims. Court affirmed the order, holding the statute bars the recovery of fees incurred to defend voluntarily dismissed contract claims, even when the relevant contractual fee provision provides otherwise, but it permits the recovery of fees reasonably incurred to defend noncontract claims, so long as the contract provides for their recovery. Further, plaintiff appealed the trial court's order determining defendant was the prevailing party. Court affirmed that order, holding when noncontract claims are resolved by voluntary dismissal, the clear and unambiguous contract language governs whether a party is a "prevailing party" for purposes of awarding attorney fees under a contractual fee provision. Thus, because plaintiff abandoned its contract claims, defendant was the prevailing party.

Leung v. Leung

10/30/2019

2019 WL 5587257

Defendant appealed a judgment entered in favor of individual plaintiff and a preschool over the sale and operation of the school. The court affirmed the judgment because defendant failed to provide a sufficient record for meaningful appellate review.

Ulkarim v. Westfield, LLC

11/22/2019

2019 WL 6242472

Plaintiff appealed two separate judgments: one dismissing her complaint against defendant after trial court granted motion for terminating sanctions and a second judgment in favor of defendant following a court trial on its cross-complaint. The litigation arose out of a short-term license agreement between the parties where plaintiff would be authorized to sell accessories for electronics in defendant's shopping center. The agreement was for one year subject to defendant's right to terminate at its sole discretion on seven days' written notice to plaintiff. Defendant served plaintiff with the termination notice and plaintiff sued. Court affirmed the judgments, holding terminating sanctions were appropriate given plaintiff deliberately relied on false invoices to inflate plaintiff's damages and a lesser sanction would not have ensured a fair trial. Further, the judgment on the cross-complaint was supported by substantial evidence because the evidence showed that plaintiff only partially satisfied his rent obligation to defendant even though he knew he owed additional holdover rent and, in any event, defendant

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did not owe a duty to plaintiff to notify him of the additional holdover rent because that term was clearly in the license agreement.

Tesoro Refining & Marketing Co. LLC v. Los Angeles Regional Water Quality Control Board

11/22/2019

42 Cal.App.5th 453

Gasoline company filed petition for writ of mandate, seeking to set aside cleanup and abatement order issued by regional water quality control board based on alleged discharge of contaminants from pipelines. The trial court denied the petition and company appealed. Court affirmed judgment, holding sufficient evidence supported finding that gasoline discharge from company's pipeline was source of contamination; issue of whether event causing contamination occurred at point in time purportedly necessary for it to be a "discharge" was not exempt from administrative exhaustion requirement; raising argument that contamination was not a "discharge" before agency would have been futile; and plume of gasoline contamination was a "discharge" under water quality statute regardless of date of initial contaminating event.

Richie v. Kassan

11/25/2019

2019 WL 6270416

Employer sued former employer for misappropriation of trade secrets and breach of his employment severance agreement. Employee cross-claimed for defamation, alleging other employees made disparaging remarks about him to mutual professional contacts and the police. Defendant filed a special motion to strike under Code of Civil Procedure section 425.16 (anti-SLAPP), which the trial court granted in part and denied in part, finding that the statements to law enforcement were protected, but granted it as to those statements made to the mutual professional contacts. Court affirmed the order, holding the statements to colleagues were not protected under the anti-SLAPP statute as there was no evidence that the alleged statements were made in a public forum and related to a matter of public concern.

Adams v. Topolewski

12/30/2019

2019 WL 7290543

Defendants appealed from an amended judgment that awarded plaintiff more than \$62 million for wrongfully depriving plaintiff of his share of various companies. Court affirmed the judgment as modified, holding that the award is not supported by substantial evidence because plaintiff was not qualified to opine on the value of the companies, his valuation opinion was not based on competent evidence, and he did not employ an accepted valuation methodology.

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MacDonald v. Kempinsky

1/24/2020

2020 WL 401603

Plaintiff sued defendant and defense counsel after plaintiff received a demand letter that threatened to name him and disclose his sexual proclivities. The trial court granted defendants' special motion to strike under Code of Civil Procedure section 425.16 (anti-SLAPP). Plaintiff filed a second lawsuit against defendants alleging certain misconduct during the first lawsuit, and defendant filed another special motion to strike, which was granted. Court affirmed orders, holding that plaintiff failed to present a coherent argument demonstrating error, and even though plaintiff was not an attorney, he should have been familiar with the legal principles governing appeals given the extensive litigation and the two prior appeals.

Maggiore v. Vandenhende

2/5/2020

2020 WL 563335

Plaintiff appealed an order striking his claims for trade libel and tortious interference with contract under Code of Civil Procedure section 425.16 (anti-SLAPP). Plaintiff sued defendants based on false accusations to representatives of a record company with the intent to interfere with a pre-existing contract between plaintiff and the record company. Court reversed order, holding defendants improperly recast plaintiff's allegations as limited to a public scandal regarding a song rather, however, plaintiff's allegations clearly encompassed statements made to the record company's representatives.

California Lawyers Group LLP v. McNulty

2/27/2020

2020 WL 948342

Defendant retained plaintiffs to represent him in a lawsuit related to an automobile accident. Defendant later terminated plaintiffs and retained a new law firm, who subsequently negotiated \$575,000 settlement with the insurer. Plaintiffs asserted a lien on the funds and sued defendant, the new law firm, and the insurer on a variety of torts, asserting that the disbursement of the settlement funds interfered with his lien. The trial court dismissed the lawsuit on statute of limitations grounds. Court affirmed the dismissal, holding that plaintiff's claims were barred under Code of Civil Procedure section 340.6, which provides that a wrongful act or omission arising in the performance of professional services is subject to a one-year statute of limitations, because all of plaintiff's claims arose out the payment and distribution of the settlement funds, which are governed by the California Rules of Professional Conduct.

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Albert v. Boger

4/3/2020

2020 WL 1671411

Plaintiff sued defendants for fraudulently inducing him to invest money in a motion picture and then was not paid any share of the picture's revenues. One of the defendants appealed the trial court's denial of his motion to set aside the default judgment pursuant to Code of Civil Procedure section 473(d) on the ground it was void because the summons and complaint were not properly served on him. After that order was affirmed, defendant appealed again, arguing that the complaint failed to state a cause of action and the evidence was insufficient to support a default judgment. Court affirmed judgment, holding the alleged errors would amount merely to non-jurisdictional errors and therefore would not render the default judgment void.

American/BCEGZ v. Shores, LLC

4/30/2020

2020 WL 2110265

Plaintiffs and defendant entered into a contract to construct a 544-unit apartment complex. While the apartment was under construction, numerous disputes arose over delays, the amount charged for extra and changed work, and defects in the construction. The parties executed an addendum to the contract, amending the terms governing the parties' resolution of disputes, including a term that required the parties to submit their present and future claims to arbitration. Plaintiffs sued the defendant and cross-claimed. Plaintiffs did not raise arbitration as a defense in their answer. Two years into the litigation, plaintiffs filed a motion to compel arbitration, which was denied. Court affirmed the denial, holding substantial evidence supported trial court's finding that plaintiffs waived their right to arbitrate because ample evidence supported a finding that plaintiffs acted inconsistent with the right to arbitrate during a two-and-a-half-year period of litigation where they failed to raise arbitration as a defense in numerous filings. Further, defendant was prejudiced by plaintiffs' delay as considerable time and money had already been spent on the litigation, the parties had engaged in extensive discovery, and litigated substantive claims in a bifurcated proceeding.

Madadian v. Maserati North America, Inc.

5/26/2020

2020 WL 2709620

Plaintiff leased a vehicle that leaked exhaust fumes into the passenger compartment. After defendant car company repeatedly tried and failed to repair the issue, plaintiff demanded defendant repurchase the car under the Song-Beverly Act, California's lemon law. Defendant refused to do so, and plaintiff sued. While the lawsuit was pending, the lease expired. Rather than return the car to its owner, a third-party lessor, plaintiff exercised her lease-end option to buy the car. Court affirmed judgment, holding the purchase price was not part of plaintiff's actual damages for purposes of calculating the civil penalty defendant had to pay for its willful violation of the law because the car's purchase price was not an expense reasonably incurred

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by the buyer in connection with the commencement and prosecution of her lawsuit against defendant. Further, plaintiff was not required to buy the car to protect the public by forcing defendant to label the car as a "Lemon Law Buyback" under Civil Code sections 1793.23 and 1793.24.

Lane v. Mura-Smith

6/23/2020

2020 WL 3424816

Trustee appealed judgment in favor of defendants, arguing the trial court erred in denying her requests for default judgment on her breach of contract, fraud, and breach of fiduciary duty causes of action. Court affirmed judgment, finding that trustee failed to provide an adequate record for meaningful appellate review.

Bechard v. Broidy

6/24/2020

2020 WL 3459390

Cross-defendant appealed order denying his motions to compel arbitration of his breach of contract and declaratory relief causes of action arising from a breach of a settlement agreement. The breach included acknowledging the breach's existence in a national newspaper and legal malpractice. Court affirmed the order, holding that compelling some claims to arbitration while not others would create the risk of conflicting rulings on the primary issue of who was responsible for publicly disclosing the existence of, and details about, the settlement agreement.

Setareh v. Elyaszadeh

6/25/2020

2020 WL 3467840

Defendant borrowed \$500,000 from plaintiff's parents. Defendant made periodic interest payments on the loan, but never repaid the principal. After plaintiff's parents' deaths, plaintiff, as the executor of his parents' estate and the trustee of his parents' trust, brought the present action against defendant for breach of contract and account stated to recover the unpaid loan principal and interest. The trial court found that plaintiff's breach of contract claim was barred by the statute of frauds, but plaintiff had proved an account stated. It therefore entered a judgment for plaintiff in the amount of \$757,933—the unpaid loan balance of \$500,000, plus pretrial interest of 10 percent per year. Both parties appealed the judgment. Court affirmed the judgment, holding that the breach of contract claim was barred by the statute of frauds, and the trial court did not err by precluding the testimony of plaintiff's handwriting expert. Further, the trial court did not err in permitting plaintiff to try claims for both breach of contract and account stated, and there was not a material variance between the claim pled and proved.

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The Little Cottage Caregivers v. Meiri

8/21/2020

2020 WL 4915447

Defendant purchased 50 percent of interest plaintiff limited liability company with an option to buy an additional 35 percent. While the option period remained open, the seller sold another 50 percent interest in plaintiff medical marijuana collective. Defendant thereafter exercised his option and this litigation ensued. After a bench trial, the trial court found that defendant owned 85 percent interest in the collective because defendant entered into the purchase agreement and exercised the option before the seller sold his competing 50 percent interest in the collective. Court reversed the judgment with directions, holding defendant's subsequent purchase of the additional 35 percent was invalid because seller did not have actual or constructive knowledge of the option agreement, and the facts known to seller at the time would not have prompted a reasonable person to inquire as to whether any other person owned, or had the right to acquire an interest in the collective.

Flannery v. Murray

8/24/2020

2020 WL 4931702

The parties purchased a ranch together and various lawsuits followed. In the instant litigation, plaintiff sued defendant for partition of the horse boarding business; conversion of plaintiff's share of rents and fees generated by the horse boarding business, imposition of constructive trust on the horse boarding business, money had and received, unjust enrichment, and breach of fiduciary duty. Defendant filed a cross-complaint alleging partition of the ranch, breach of fiduciary duty, and an accounting. Plaintiff appealed the judgment, arguing instructional error, the trial court erred in dismissing his unjust enrichment cause of action, the accounting was contrary to law, and the trial court erred in the amount of attorney fees awarded to defendant. Court affirmed judgment, holding the trial court did not err by instructing the jury that it may (but was not required to) consider whether certain income should be considered income to the horse boarding business; trial court properly dismissed plaintiff's unjust enrichment cause of action because it asserted a generalized claim for money that allegedly was misappropriated over a period of years, rather than a definite sum capable of identification; the accounting was proper because defendant alleged the amount of money that due from plaintiff was unknown and therefore required an accounting, not that plaintiff owed a sum certain or a sum that was ascertainable without an accounting; and the attorney fee award was proper as all claims and defenses were related to the successful partition claim and the trial court adequately disallowed charges that were unrelated to the lawsuit.