



Superior Court of California County of San Benito

Tentative Decisions for July 7, 2025

Courtroom #1: Judge J. Omar Rodriguez

CL-24-00723 Espinoza, et al. vs. Smolka

Defendant's Motion Reducing Bond or Undertaking is DENIED. The Court's orders regarding the Request to Stay were specifically based on Code of Civil Procedure section 1176, which specifically addresses appeals in unlawful detainer actions whereas Defendant is now making a motion to reduce the bond based on Code of Civil Procedure section 995.240, which is not the applicable statute. Other than the details of the bond, Defendant presented no new facts that were not available to Defendant at the time of the initial motion, which was initially heard April 18, 2025 where Commissioner Galloway granted the stay, tentatively set bond at \$150,000 and continued the hearing to May 9, 2025 to address the bond value. Defendant's evidence, which was available to him at the last motion, includes his Court Fee Waiver that was filed on November 6, 2024 and a May 1, 2025 email regarding the rental value of the subject property.

CU-23-00086 Silva vs. Rite Aid Corporation

The Plaintiff's Counsel's Motion to be Relieved as Counsel is GRANTED. The Order is effective upon the date of filing of the proposed order. Plaintiff's counsel has complied with the requirements of both the Code of Civil Procedure and the Rules of Court in presenting this motion. It appears that the attorney-client communication is not possible under the circumstances described. The motion will not prejudice either party, given that no

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any objections or concerns.**

motions or trials are currently pending before the court and it appears that the matter is stayed for the Defendant's Bankruptcy. The motion is unopposed.

The Case Management Conference is continued to October 6, 2025 at 10:30 a.m. as well as an Order to Show Cause as to why the matter should not be dismissed.

CU-25-00017 Smolka v. Espinoza, et al.

Plaintiff's Motion to Consolidate Actions and Stay Appeal Pending Trial is GRANTED in part and DENIED in part. The Motion to Consolidate Actions is DENIED without prejudice. Instead the two matters are coordinated so the cases can be addressed together in Department 1. The court GRANTS the Motion to Stay Pending Appeal in CL-24-00723 pending the determination of this case.

If actions involving common questions of law or fact are pending in the same court, a judge of that court may order a joint hearing or trial of any or all of the matters at issue in the actions. (Cal. Code of Civ. Proc. §1048 sub (a).) The court may consolidate an unlawful detainer proceeding with a simultaneously pending action in which title to the property is at issue, when a tenant's successful claim of title in the latter action would defeat the landlord's right to possession in the unlawful detainer proceeding. (*Martin Bragg v. Moore* (2013) 219 Cal.App.4th 367, 385.) When an unlawful detainer proceeding and an unlimited action concerning title to the property are simultaneously pending, the judge presiding over the unlimited action may stay the unlawful detainer proceeding until the issue of title is resolved in the unlimited action, or the Court may consolidate the actions and treat the entire case as an ordinary civil action, rather than a summary proceeding. (*Id.* at 387.) The Court may not try the complex issues of title using the summary procedure of an unlawful detainer proceeding for determining the landlord's right to possession in a straightforward unlawful detainer proceeding. (*Id.* at 387, 389, 393.)

The court considers several factors in evaluating a motion for consolidation. First, the court is to consider whether the motion is timely, as a motion for consolidation should be filed as early in the proceedings as possible. Second, the court is to evaluate whether the motion lists all named parties to the case, the names of all those having appeared, and all attorneys of record. (Cal. Rule of Court Rule 3.350(a)(1)(A).) The motion to consolidate must contain the

caption of all cases to be consolidated with the lowest numbered case listed first. (Cal. Rule of Court Rule 3.350(a)(1)(B).) The notice of motion *must be filed in each case to be consolidated* (Cal. Rule of Court Rule 3.350(a)(1)(C).) Finally, a memorandum, declarations, and other supporting papers are required to be filed only in the lowest numbered case. (Cal. Rule of Court Rule 3.350 (a)(2)(A).) Unless the court orders otherwise, the lowest numbered case is the lead case. (Cal. Rule of Court Rule 3.350(b).) An order granting or denying all or part of the motion must be filed in each case to be consolidated. (Cal. Rule of Court Rule 3.350(c).) Consolidation under Code of Civil Procedure section 1048 sub (a) is permissive, and it is for the judge to determine whether consolidation is, for all purposes, or for trial only (*Hamilton v. Asbestos Corp.* (2000) 22 Cal.4th 1127, 1147.) Under the statute, and case law, there are two types of consolidation : 1) consolidation for the purposes of trial only in which the two actions remain otherwise separate; and 2) complete consolidation for all purposes in which the two actions are merged into a single proceeding under one case number resulting in only one verdict or set of findings, and one judgment (*Id.* at 1148). As the statute under which the Plaintiff in this action moves states, “[w]hen actions involving a common question of law or fact are *pending* before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” (Cal. Code of Civ. Proc. §1048 sub (a), emphasis added.)

Here, Superior Court Case Number CL-24-00723 is not pending because it is post judgment with the appeal pending. This is notable, as the question regarding whether the questions of law and fact are pending for determination by the court turns on whether the judgment in the matter under appeal is vacated and the matter returned to court for further proceedings. Second, pursuant to the California Rules of Court, the Plaintiff has not complied with the requirements for the motion. The motion was not filed in each case sought to be consolidated.

Here, there is no dispute that these matters raise common issues of fact and law for the Court’s ultimate determination. While Plaintiff argues that pursuant to *Asuncion* that the determination of the Court in the unlawful detainer proceeding should have been stayed pending the determination of the unlimited civil matter, as was the determination of the Court

of Appeals in *Asuncion*. For the purposes of this analysis the court on its own motion takes judicial notice of its own files pursuant to Evidence Code section 452 sub. (d).

In *Asuncion*, the unlawful detainer action was filed on October 15, 1979, by the real parties in interest W. C Financial. Nine days later, on October 24, 1979, the Asuncions filed their unlimited civil action alleging fraud. (*Asuncion, supra*, p.143.) This is notable in that both actions were pending prior to a trial date for the unlawful detainer action, and the analysis of the Court focuses on the accommodation of the summary nature of unlawful detainer proceedings with the separately filed fraud action, including staying the unlawful detainer action until such time as the fraud action was resolved. (*Id* at 147.)

That is not the case here. Here, the unlawful detainer action reached judgment on December 13, 2024, with Plaintiff Smolka filing his claims in this action on January 17, 2025, prior to the filing of the appeal in CL-24-00723 on March 20, 2025. Moreover, the court notes that the unlawful detainer matter was initially set for trial November 14, 2024. The court continued the unlawful detainer action until December 13, 2024. During that time, Plaintiff Smolka took no action to file his fraud complaint. Therefore, at this time it does not appear appropriate to consolidate the cases. However, it does appear appropriate to stay the appeal on the unlawful detainer action pending the outcome of the fraud action, as this may render the judgment in the unlawful detainer case “an idle act”. The court further notes that Defendant Smolka argues that Defendants Espinoza and Torres will suffer no prejudice in this case because of the \$95,000.00 bond imposed in Case CL-24-00723. Meanwhile, Defendant argues that the bond should either be waived or reduced in that same case.

PR-25-00042 In the Matter of Thomas R. Slatten (Estate of Thomas R. Slatten)

The Petition to Determine Succession to Real Property is APPROVED as requested.

PR-25-00075 In the Matter of Robert Harris (Estate of Robert Harris)

Petitioner failed to submit proof of publication. The matter is continued to August 25, 2025 at 10:30 a.m. to permit Petitioner to comply with the publication requirement.

END OF TENTATIVE DECISIONS