1. CAVALRY SPV I, LLC v. LUDDY, 24CV1095

OSC Re: Dismissal

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, NOVEMBER 8, 2024, IN DEPARTMENT FOUR.

2. PIMOR, ET AL. v. VANHEE WOODWORKS, 23CV0578

Motion to Compel Further Responses

Before the court is plaintiffs' motion to compel further responses to its Requests for Production, Set One ("RFP"), Numbers 9, 10, 11, and 15, and request for sanctions in an unspecified amount. Defendant did not file an opposition.

Plaintiffs' counsel declares that she met and conferred with the defense prior to filing the instant motion pursuant to Code of Civil Procedure section 2016.040. (Holmes Decl., ¶¶ 9, 12, 15.)

1. Background

This case arises from a residential remodeling contract. Plaintiffs allege that the project quickly went off schedule and the cost increased over 80 percent of the projected costs over six months without explanation. Plaintiffs brought suit against defendant for breach of contract, intentional fraud, negligent misrepresentation, and negligence.

2. Discussion

After receiving a response to a demand for production, the party making the demand may move to compel further response to the demand if a statement of compliance with the demand is incomplete, a representation of the party's inability to comply is inadequate, incomplete, or evasive, or an objection in the response is without merit or too general. (Code Civ. Proc., § 2031.310, subd. (a).) Except in cases of certain electronically stored information, "the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it 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., § 2031.310, subd. (h).)

Here, the relevant demands request defendant to produce (1) all change orders executed between defendant and plaintiffs (RFP No. 9); (2) all change orders defendant

approved for the project (RFP No. 10); (3) all change orders executed between defendant and any subcontractor for the project (RFP No. 11); and (4) all documents evidencing defendant's efforts to schedule work for the project (RFP No. 15).

Defendant objected to each of the requests on the grounds that the term, "change orders," is vague and ambiguous.

RFP No. 15, however, does not include the term, "change orders." Therefore, defendant's objection to RFP No. 15 is without merit and the motion to compel is granted with respect to this demand.

As to the other demands at issue, plaintiffs did not specially define the term, "change orders," in their request for production. However, plaintiffs claim that (1) the term is "a well established term of art in the construction context" (Mtn. at 8:1–2); (2) defendant is aware of the meaning of the term as a general contractor who used the term in its written contract with plaintiffs (Mtn. at 8:3–4); and (3) the term is used in the standardized Construction Form Interrogatories without a special definition (Mtn. at 8:5–7). Additionally, plaintiffs point out that defendant did not object to the term when responding to plaintiffs' Construction Form Interrogatories, despite the fact that it was not specially defined. (Mtn. at 8:8–11.)

The court finds that defendant's objection lacks merit. "Change orders" is a well established term in the construction industry. Therefore, the motion to compel is granted. The court orders defendant to pay plaintiffs $500.00 as a reasonable sanction under the Civil Discovery Act.

TENTATIVE RULING # 2: THE MOTION TO COMPEL FURTHER RESPONSES IS GRANTED. DEFENDANT IS ORDERED TO SERVE VERIFIED, FURTHER RESPONSES TO PLAINTIFFS' REQUESTS FOR PRODUCTION (SET ONE) NUMBERS 9, 10, 11, AND 15 AND PAY PLAINTIFFS $500.00 IN SANCTIONS NO LATER THAN 30 DAYS FROM THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. NO HEARING ON THIS MATTER WILL BE

HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

3. DNF ASSOCIATES, LLC v. TINO, 23CV0148

OSC Re: Dismissal

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, NOVEMBER 8, 2024, IN DEPARTMENT FOUR.

4. JOHN DOE 1 M.B. v. ROE 1, 22CV1863

OSC Re: Dismissal

On November 6, 2024, plaintiff's counsel submitted a declaration stating that the instant action is stayed during the pendency of the Boy Scouts of America's bankruptcy proceeding. However, the Boy Scouts of America is not a named defendant. Additionally, there is no notice of stay of proceedings (Judicial Council Form CM-180), or copy of the bankruptcy petition, in the court's file.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, NOVEMBER 8, 2024, IN DEPARTMENT FOUR.

5. COOK v. CERES ENVIRONMENTAL SERVICES, INC., 24CV1368

Motion to Compel Arbitration, Strike Class Allegations, and Stay Litigation

Before the court is defendant's motion to compel arbitration, strike the class action allegations, and stay litigation pending arbitration.

1. Background

Defendant hired plaintiff on December 5, 2022, as a receptionist/administrative assistant. (Henderson Decl., ¶ 9.) Defendant's onboarding paperwork includes its Employee Handbook. The Employee Handbook includes several agreements, including: (1) receipt and acknowledgment of the Employee Handbook (Henderson Decl., Ex. B at p. 45); (2) receipt and acknowledgement of the harassment policy (Henderson Decl., Ex. B at pp. 46–47); (3) a confidentiality agreement (Henderson Decl., Ex. B at pp. 48–49); (4) a return-to-work agreement (Henderson Decl., Ex. B at p. 50); and (5) an arbitration agreement (Henderson Decl., Ex. B at pp. 51–54).

Paragraph I ("Consideration") of the arbitration agreement states in relevant part: "I understand that I would not be employed or continue to be employed by the Company unless I signed this Agreement." (Henderson Decl., Ex. B at p. 54.)

The Employee Handbook instructs employees to sign and return Pages 56 through 59 to Human Resources. (Henderson Decl., Ex. B at p. 55.) Page 56 is the receipt and acknowledgement of the Employee Handbook; Page 57 is the signature page from the receipt and acknowledgement of the harassment policy; Page 58 is the signature page from the confidentiality agreement; and Page 59 is the signature page from the arbitration agreement.

Defendant claims that plaintiff "electronically signed the acknowledgement of receipt Handbook and Sexual Harassment policy, the arbitration agreement and the confidentiality agreement on December 5, 2022." (Mtn. at 2:27–3:2 [citing Henderson Decl., ¶ 11].) In support thereof, defendant submitted a copy of plaintiff's December 5, 2022, electronic signature acknowledging receipt of the Employee

Handbook. (See Henderson Decl., Ex. B at p. 1.) The document reads in pertinent part: "I have agreed to submit this acknowledgement by electronic means. I also certify that I understand that an electronic signature has the same legal effect and can be enforced in the same way as a written signature." It does not mention any of the agreements contained within the Employee Handbook.

On February 22, 2023, defendant moved plaintiff into a new role and asked her to complete the same onboarding paperwork again. (Henderson Decl., ¶¶ 12–13.) In support of the instant motion, defendant submitted a copy of plaintiff's February 22, 2023, electronic signature acknowledging receipt of the Employee Handbook. (See Henderson Decl., Ex. C at p. 1.) It is identical to the document that plaintiff signed on December 5, 2022.

Defendant did not submit, and does not allege that plaintiff signed, the signature page of the arbitration agreement.

2. Request for Judicial Notice

Defendant submitted a request for judicial notice with its reply papers requesting the court to take judicial notice of Exhibit A, a declaration from an unrelated case (including a copy of the arbitration agreement in that case attached as an exhibit). Defendant does not articulate how the material is relevant to the instant matter. Therefore, the request for judicial notice is denied. (See *Jordache Enterprises, Inc. v. Brobeck Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [declining to take judicial notice of materials not "necessary, helpful, or relevant"].)

3. Discussion

"Code of Civil Procedure section 1281.2 provides in material part: 'On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy ..., the court shall order the petitioner and the respondent to arbitrate the controversy *if it determines that an agreement to arbitrate the controversy exists* ....' … Thus, '[t]he right to arbitration depends upon contract; a petition to compel

arbitration is simply a suit in equity seeking specific performance of that contract. [Citations.]' … There is no public policy in favor of forcing arbitration of issues the parties have not agreed to arbitrate. [Citation.] It follows that when presented with a petition to compel arbitration, the trial court's first task is to determine whether the parties have in fact agreed to arbitrate the dispute. [¶] We apply general California contract law to determine whether the parties formed a valid agreement to arbitrate. [Citations.]" (*Marcus & Millichap Real Estate Investment Brokerage Co. v. Hock Investment Co.* (1998) 68 Cal.App.4th 83, 88-89, italics added by *Marcus & Millichap*.)

Defendant claims that plaintiff's electronic signature acknowledging receipt of the Employee Handbook binds her to the terms of arbitration agreement contained on Pages 51 through 54 of the Employee Handbook. According to defendant, "the company's onboarding process makes abundantly clear that [plaintiff's] e-signature [on the acknowledgement form] executes all of the agreements in the Handbook." (Reply at 1:23–24.)

In interpreting contracts, "[t]he whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." (Civ. Code, § 1641.) Additionally: "In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." (Code Civ. Proc., § 1858.)

With these principles in mind, the court concludes that defendant has not established that plaintiff agreed to arbitrate. The only signed documents that defendant submitted are the December 5, 2022, and February 22, 2023, documents acknowledging receipt of the Employee Handbook. These documents do not demonstrate that plaintiff agreed to be bound by the terms of the arbitration agreement.

Plaintiff cites three cases where the court similarly found the parties did not agree to arbitrate.

In *Romo v. Y-3 Holdings* (2001) 87 Cal.App.4th 1153, the employee signed an acknowledgement that she had read and understood the contents of an employee handbook containing a provision entitled " 'Mutual Agreement to Arbitrate Claims,' " setting forth the parties' " 'consent to the resolution by arbitration of all claims or controversies ….' " (*Id.* at p. 1155.) The provision itself contained lines for the dates and signatures of the employer and employee, neither of which was signed. (*Id.* at p. 1156.) The appellate court concluded that " 'read as a whole, the [arbitration agreement within the employee handbook] in this case contemplated that the arbitration of disputes provision would be effective only if both [parties] assented to that [particular] provision. Since the [parties] did not assent to this [particular] provision[,] the parties did not agree to binding arbitration.' " (*Id.* at p. 1160, quoting *Marcus & Millichap Real Estate Investment Brokerage Co. v. Hock Investment Co.*, *supra*, 68 Cal.App.4th at p. 91 [agreement to arbitrate provision contained in sales agreement did not become effective, where provision called for initials of buyers and sellers, and sellers had not initialed (*id.* at p. 89)].)

In *Mitri v. Arnel Mgmt. Co.* (2007) 157 Cal.App.4th 1164, the court held employees' signatures on an employee handbook "Acknowledgment and Receipt" did not establish that the employees agreed to the employer's arbitration agreement in the handbook. (*Id.* at p. 1168.) The Acknowledgement Receipt explained the purposes of the employee handbook, encouraged employees to read it, and told employees that it was subject to revisions. (*Ibid.*) It also explained to the employee that his or her "signature acknowledges that I have read and understood the statements above as well as the contents of the Handbook, and will direct any questions to my supervisor or the Director of Human Resources." (*Ibid.*) The *Mitri* court held the employees' signatures on the Acknowledgement Receipt did not mean the employees agreed to the arbitration

agreement in the handbook because "[c]onspicuously absent from the acknowledgment receipt form is any reference to an agreement by the employee to abide by the employee handbook's arbitration agreement provision." (*Ibid.*)

Lastly, in *Ajamian v. CantorCO2e, L.P.* (2012) 203 Cal.App.4th 771, when the employer first hired the employee for an at-will position, it gave her the company's policies and procedures manual, which included an employee handbook, which had an arbitration clause. Although the arbitration clause had a signature line for the employee to sign, she did not sign it. The employer also gave her an acknowledgement form that confirmed receipt of the handbook and stated that employment claims were subject to arbitration. The employee did not sign the acknowledgment form, either. However, she did sign a form acknowledging receipt of the policies and procedures manual. (*Id.* at pp. 775–776.) Months later, the employer promoted the employee to a position for which she had an employment contract that had an arbitration clause. Six weeks before she left the job, the employer terminated the employment contract, and the employee was once again an at-will employee. (*Id.* at pp. 776–779.) After the employee sued employment-related claims, the employer moved to compel arbitration based on the arbitration clauses in both the handbook and the employment contract. (*Id.* at pp. 779–780.) The *Ajamian* court rejected the employer's contention that the parties had entered into an agreement to arbitrate based on the arbitration clause in the handbook and a clause in the employment contract, which provided that upon termination of the employment contract, the "employment would be 'governed' by [the employer's] 'policies then in effect.' " (*Id.* at p. 805.) The court reasoned that the latter provision did "not specifically state she would be bound by any arbitration agreement or even mention arbitration," there was no evidence that the employer provided the employee with the policies that were in effect when it terminated her employment contract, and the employee never signed or agreed to the arbitration agreement in the handbook. (*Ibid.*)

In this case, the arbitration agreement in the Employee Handbook was a standalone agreement. Like the court found in *Mitri*, plaintiff's signature acknowledging receipt of the Employee Handbook does not mean she agreed to the arbitration agreement in the handbook because "[c]onspicuously absent from the acknowledgment receipt form is any reference to an agreement by the employee to abide by the employee handbook's arbitration agreement provision." (*Mitri*, *supra*, 157 Cal.App.4th at p. 1168.)

Defendant alternatively argues that even if plaintiff did not sign the arbitration agreement, her continued employment is evidence of her assent to arbitration. (Reply at 3:8–9.) Defendant cites to *Harris v. TAP Worldwide, LLC* (2016) 248 Cal.App.4th 373. In that case, the court found that the employee's commencement of performance under the employee handbook constituted his assent to the arbitration agreement in the handbook. (*Id.* at p. 384.) But importantly, the arbitration agreement provided: "If Employee voluntarily continues his/her employment with TAP after the effective date of this Policy, Employee will be deemed to have knowingly and voluntarily consented to and accepted all of the terms and conditions set forth herein without exception." Additionally, the employee handbook provided: "If for any reason, an applicant fails to execute the Agreement to Arbitrate yet begins employment, that employee will be deemed to have consented to the Agreement to Arbitrate by virtue of receipt of this Handbook." Based on the uncontroverted language in the employee handbook and the arbitration agreement, the court found that the plaintiff consented to arbitrate his claims when he began and continued working for the employer. (Id. at p. 381.)

In this case, the language in the arbitration agreement is distinguishable. It merely states: "I understand I would not be employed or continue to be employed by the Company unless I signed this Agreement." Additionally, there is no language in the Employee Handbook stating that if plaintiff failed to execute the arbitration agreement yet began employment, she would be deemed to have consented to the arbitration agreement by virtue of receipt of the Employee Handbook.

In sum, the court finds that defendant has not met its burden of showing a valid agreement to arbitrate. Therefore, the motion to compel arbitration is denied.

TENTATIVE RULING # 5: THE MOTION TO COMPEL ARBITRATION IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

6. MIDLAND CREDIT MANAGEMENT, INC. v. WIESE, 23CV0702

OSC Re: Dismissal

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, NOVEMBER 8, 2024, IN DEPARTMENT FOUR.

7. STEPHENS v. FORD MOTOR CO., ET AL., 22CV1675

OSC Re: Dismissal

TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, NOVEMBER 8, 2024, IN DEPARTMENT FOUR.

8. GUPTA v. HOWARD, 24CV1966

Respondent's Motion for Reconsideration

TENTATIVE RULING # 8: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, NOVEMBER 8, 2024, IN DEPARTMENT FOUR.

9. GUPTA v. HOWARD, 24CV1967

Respondent's Motion for Reconsideration

TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, NOVEMBER 8, 2024, IN DEPARTMENT FOUR.

10. UNITED NAT. INS. CO. v. HAWKEYE HOME EXPERTS, INC., 23CV1528

OSC Re: Dismissal

TENTATIVE RULING # 10: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, NOVEMBER 8, 2024, IN DEPARTMENT FOUR.