

TENTATIVE RULINGS

LAW & MOTION CALENDAR

Friday, June 23, 2023, 3:00 p.m. (argument to be heard at 3:30 p.m.)

Courtroom 16 –Hon. Patrick M. Broderick

3035 Cleveland Avenue, Suite 200, Santa Rosa

PLEASE NOTE: Per order of the Court, any party or representative of a party must appear remotely through Zoom for this calendar, unless you request in person appearance by 4:00 p.m. the day before the hearing.

TO JOIN “ZOOM” ONLINE,

Courtroom 16

Meeting ID: 824-7526-7360

Passcode: 840359

<https://us02web.zoom.us/j/82475267360?pwd=M0o4WVRSaysydlU5VWhBZEk1MEhpdz09>

TO JOIN “ZOOM” BY PHONE,

By Phone (same meeting ID and password as listed above):

(669) 900-6833 US (San Jose)

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at (707) 521-6725, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing. Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

ANY REQUESTS FOR ORAL ARGUMENT WILL BE HEARD AT 3:30 P.M.

1. MCV-259857, Looney v. Shop Rite Liquor, Inc.

This matter is on calendar for the motion of Plaintiff Gary E. Looney, dba Collectronics of California (“Plaintiff”), for an order appointing a receiver to enforce the judgment entered on March 6, 2023, against defendant Shop Rite Liquor, Inc. (“Judgment Debtor”) in the amount of \$20,580.23 by appointing a receiver to seize the Judgment Debtors’ liquor license, license number 420615. **The unopposed motion is GRANTED.** Landon McPherson is appointed receiver to seize and sell Judgment Debtor’s liquor license. Mr. McPherson shall post an undertaking in the amount of \$1,000.00 upon his appointment. Plaintiff is directed to submit a written order to the court consistent with this ruling.

2. SCV-271322, Leuschner v. Nationwide Mutual Insurance Company

Attorney Rodger K. Heidenreich moves pursuant to Cal. Rules of Court, Rule 9.40 to appear as counsel *pro hac vice* on behalf of defendants Nationwide Mutual Insurance Company and Laura Buskirk.

Mr. Heidenreich is a member of the bar associations in Illinois and Missouri. He is also admitted in numerous federal courts and the U.S. Supreme Court. (Heidenreich decl., ¶3.)

In the preceding two years, Mr. Heidenreich has applied to appear as counsel *pro hac vice* in five actions pending in this state. It is not clear if his application was approved in all cases. He applied to appear *pro hac vice* three times in federal district courts and two times in state courts. Rule 9.40 states: “Absent special circumstances, repeated appearances by any person under this rule is a cause for denial of an application.” Mr. Heidenreich has not indicated that any special circumstances exist to ignore his five appearances—assuming the application was granted each time.

In addition, subsection (c)(1) of Rule 9.40 requires the applicant to serve a copy of the application and of the notice of hearing on all parties who have appeared and on the State Bar of California at its San Francisco office. Proof of service of this application does not include the state bar at its San Francisco office.

For the reasons stated above, the motion is DENIED.

3. SCV-273236, Johnston v. Statewide Restoration

Petitioners Sheila Peterson and Gregory Johnston have filed a Petition for Release of Expired Mechanic’s Lien (“Petition”) pursuant to Civil Code section 8484. The Petition names Statewide Restoration (“Statewide”) and DSWR, Inc. as Respondents. According to the Petition, DSWR, Inc. does business as Statewide Restoration. **Appearance required.**

The Petition states that Petitioners are owners of real property located at 6390 San Simeon Drive in Rohnert Park (“the Property”). Petitioners state that on or around February 14, 2022, Statewide recorded a Claim of Mechanic’s Lien against the Property. The Petition states that Statewide was required to commence legal action to enforce the lien by or before May 16, 2022; and, as they have not filed any enforcement action, the lien is null and void. Petitioners request an order fully and finally releasing and removing the lien, and for reasonable attorney fees and costs.

Subsection (a) of 8488 provides: “At the hearing both (1) the petition and (2) the issue of compliance with the service and date for hearing requirements of this article are deemed controverted by the claimant. The petitioner has the initial burden of producing evidence on those matters. The petitioner has the burden of proof as to the issue of compliance with the service and date for hearing requirements of this article. The claimant has the burden of proof as to the validity of the lien.”

Here, Petitioners have filed the Petition, which is verified by petitioner Gregory Johnston. Attached as Exhibit A is the Claim of Mechanics Lien recorded on February 14, 2022, as document 2022010399 in the Official Records of Sonoma County. (Petition, Exhibit A.) The lien states that \$91,107.91 is due to Statewide for labor, services, equipment, and/or materials. (*Ibid.*) The Petition indicates that on December 20, 2022, Petitioners through their attorneys served written notice on Respondents of the existence of the expired lien and requested that Statewide take action to remove the lien. (Petition, ¶11.) The Petition states that Petitioners’ attorneys furnished a pre-filled Release of Mechanic’s Lien for Respondents attached as Exhibit B to the Petition. (*Id.*, ¶12.)

Exhibit B is a letter from Petitioners’ attorney, Edwin Bradley, to Greg Wolf, President of Statewide. (Petition, ¶12, Exhibit B.) The letter is dated December 20, 2022, and requests Mr. Wolf remove the expired lien. (*Ibid.*) A certified mail receipt is attached as Exhibit C. The Petition states Exhibit B was mailed to Greg Wolf on December 20, 2022. (Petition, ¶12, Exhibit C.) The Petition states that Respondents have failed, refused, or otherwise neglected to remove the lien. (Petition, ¶13.)

Petitioners filed the Petition and a Notice of Hearing on Petition on April 28, 2023. Summons issued on April 28, 2023. Petitioners filed three proofs of service of process. Each was filed on May 22, 2023, and indicates that summons, Petition, Notice of Hearing, and other documents were served on May 18, 2023, by leaving them with “Kseniya, (Manager at Iron West Group, 8864 Fruitridge Road, Sacramento, CA 95826.)” These proofs of service are meant to establish service on DSWR, Inc., DSWR, Inc. dba Statewide Restoration, and Statewide Restoration. In addition, the summons, Petition, Notice of Hearing, and additional documents were mailed to DSWR, Inc. at 150 N. Wacker Drive, Ste 2160 in Chicago, Illinois.

The Petition states that the address of Respondent DSWR, INC., dba Statewide Restoration, as listed with the State of California Contractor’s License Board, is 8864 Fruitridge Road, Sacramento, California, 95826. (Petition, ¶4.) The Petition does not mention Iron West Group and it is not clear how it may or may not be affiliated with Statewide.

Petitioners have not filed a memorandum of points and authorities arguing and establishing their case. Therefore, they must do so at the hearing on the Petition. At the hearing both (1) the petition and (2) the issue of compliance with the service and date for hearing requirements of this article are deemed controverted by the claimant. (Civil Code section 8488(a).) Here, it does not appear that Petitioners can establish that Respondents were properly served.

Service must be made in the same manner as service of summons, or by certified or registered mail, postage prepaid, return receipt requested, addressed to the claimant as provided in Section 8108. (Civ. Code, § 8486(b).) When summons is served on a corporation such as DSWR, Inc., proof of service must show that the person served is in fact a person who may be served on behalf of the corporation. The person to be served must be one of the individuals specified in CCP section 416.10. It does not appear from the facts as stated in the Petition that the manager at Iron West Group is an appropriate person to serve under section 416.10. In addition, proof of service by mail shows that the Petition and Notice of Hearing were not addressed to any particular person. Petitioners will be expected to address this at the hearing. However, absent proof of adequate service, the Petition will be denied.