

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, December 20, 2024 9:30 a.m.
Courtroom 21 –Hon. Kinna Patel Crocker
3055 Cleveland Avenue, Santa Rosa CA 95403**

TO JOIN “ZOOM” ONLINE:

Meeting ID: 160-223-6856

Passcode: 876992

<https://sonomacourt-org.zoomgov.com/j/1602236856>

TO JOIN “ZOOM” BY PHONE:

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

(669) 254-5252

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, it will be necessary for you to contact the department’s Judicial Assistant by telephone at (707) 521 - 6836 by 4:00 p.m. on the day before the hearing. Any party requesting an appearance must notify all other opposing parties/counsel of their intent to appear.

1. 24FL01836 Costa v. Caldwell

Motion to Quash Proceedings CONTINUED to a special set hearing on January 6, 2025 at 9:30am in Department 21 because there is no proof of service showing notice of this hearing. The Court’s previous ruling on December 6, 2024 continued the matter to today’s date for Respondent to file a properly completed proof of service (the one she tried to file did not indicate the date, time and address where Petitioner was served) and to file a memorandum of points and authorities with the legal basis for the request. Respondent did not remedy either issue. The Court is providing Respondent one more opportunity to complete these two tasks.

2., 3. SFL085896 Moulton v. Bowne

Respondent’s Motion to Bifurcate

Respondent moves the court to bifurcate trial into three phases: 1) determine validity of the Premarital Agreement (the “Agreement”) and the Amendment to Premarital Agreement (the “Amendment”); 2) issue of date of separation; and 3) enforcement of the Agreement and Amendment to facilitate division of assets and debts.

Petitioner opposes the motion with the exception of part of the first phase. She agrees that the trial should be bifurcated to determine only the validity of the Amendment, claiming that there is no dispute about the Agreement and the other issues are non-issues and not appropriate for bifurcation.

The court has power to order the separate trial of any cause of action or issues “in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy....” CCP section 1048(b). According to CCP section 598, the court may order some issues tried before others when doing so would promote “the convenience of witnesses, the ends of justice or the economy and efficiency of handling the litigation....” The decision on a motion to bifurcate is within the sound discretion of the trial court and may be reversed only for clear abuse of discretion. *Grappo v. Coventry Financial Corp.* (1991) 235 Cal.App.3d 496, 504.

In this instance, both parties agree that there should be at least a limited bifurcation, with the validity of the Amendment tried first. With respect to the first phase, Respondent wishes to “determine the validity of the Premarital Agreement and Amendment” but does not specifically argue that either is invalid and instead alleges Petitioner is taking inconsistent positions with regard to the validity of both. Petitioner argues that this process is not necessary because the parties agree that the Agreement itself is enforceable, rendering it a non-issue. The positions are not necessarily clear and, if the court is to bifurcate trial for determination of the validity of the Amendment, the provisions could be related to the validity of the Agreement, and there is then no evident basis for denying the motion on any part as to phase one.

As to bifurcating trial on the date of separation, Petitioner is correct that Respondent has not explained why this is necessary and has not set forth his own date of separation. Absent some apparent basis, bifurcating this specific issue for its own trial appears likely only to cause unnecessary expense, delay, and use of resources. Finally, bifurcating the enforcement of the Agreement and Amendment to facilitate division of assets and debts is premature, as the issues in phase one of the request to bifurcate will necessarily need to be determined first.

The court GRANTS the motion as to bifurcating issue one, the validity of the Agreement and Amendment, but DENIES the motion as to bifurcating the issue of the date of separation.

Petitioner's Motion for Protective Order

Petitioner seeks a protective order regarding Respondent's discovery regarding a co-op real property in which the parties have an interest in New York (the "New York Property"). She also seeks to stay litigation in this action over the New York Property, with this court reserving jurisdiction over those issues in the event that the New York Property issues are not resolved in the pending New York action. She argues that there is currently pending litigation over that property in federal court in New York, and that discovery in that action is currently stayed. She argues this court should allow that proceeding to take place and reserve jurisdiction to act regarding the New York Property only if the New York proceeding does not dispose of that property. Therefore, she argues, Respondent is in this action improperly attempting to circumvent that stay by conducting in this litigation. Respondent argues that Petitioner filed the New York action later while this court does have jurisdiction to dispose of the New York Property.

There is no dispute here over the law governing protective orders or discovery. The dispute in this motion is based on whether it is proper to address the issues regarding the New York Property now in this action or to reserve jurisdiction pending the New York action resolution. This will determine whether the discovery at issue is appropriate in this litigation at this time, and accordingly whether a protective order is warranted.

Both parties rely on *Porter v. Sup.Ct.* (1977) 73 Cal.App.3d 793. Respondent correctly notes that this court must determine the nature and extent of community or quasi-community or marital property and divide it equally between the parties absent proper agreement to the contrary. Fam.Code section 2550; *Marriage of Whitman* (2023) 98 CA5th 456, 469 . The court also may characterize and confirm separate property. *Whitman, supra*. The court in *Porter*, at 805, did state, as Petitioner claims, that where a party has also filed a collateral, separate action to determine property rights of separate property, a court has discretion to stay proceedings as to that property, reserving jurisdiction to address it if the property is not disposed of in the collateral action.

Petitioner seems to be persuasive here because, as she explains in her papers, the evidence indicates that they both hold separate interests in the New York Property as tenants-in-common, and that their shares are separate property. There is no indication that those property interests are involved in this matter given that there is evidently no dispute that they are separate property. The

discovery at issue delves into details about the purchases of those interests, issues outside the scope of this litigation.

However, should this court find there to be ambiguities over the New York Property as separate property, or other issues related to the community or quasi-community or other marital property in this action, such as commingling, then the New York Property issues would be relevant to this litigation.

The Court GRANTS the request for a protective order on the basis that, at present, the New York Property interests appear unequivocally to be separate property and the subject of collateral litigation outside of this action, and the discovery therefore is improper in this context. This is without prejudice to alteration should a party demonstrate that there is in fact a legitimate dispute about the nature of the interests in the New York Property or should the New York action not resolve the issues regarding the parties' interests in that property.

Each prevailing party (Respondent as to bifurcation and Petitioner as to the protective order) shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

4. SFL092754 Brendon Alvarado v Alvarado

ATTORNEY CHLEBOWSKI'S MOTION TO BE RELIEVED AS COUNSEL IS GRANTED.