

Tentative Rulings
October 6, 2017
Butte Exchange
1:30 p.m.

NOTE: This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b)(1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court's website (www.shasta.courts.ca.gov) and are available by clicking on the "Tentative Rulings" link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

BERG VS. CHURCHILL
Case Number: 183386

Tentative Ruling on Motion to Set Aside Orders and Proceedings: As a preliminary matter, the Court will exercise its discretion and consider all paperwork filed in conjunction with this motion including the untimely opposition. Respondent, Howard L. Churchill moves to set aside the order entered on March 3, 2017 pursuant to CCP §473(b). Respondent claims that he never received a copy of the February 3, 2017 minute order that continued the February 3, 2017 hearing to March 3, 2017. He contends the incorrect zip code was used to mail a copy of the February 3, 2017 minute order. A review of the Court's file reflects that the certificate of mailing shows the incorrect zip code. Further the informal side of the file contains the mailed envelope which was returned as undeliverable. Therefore Respondent's allegation that he did not obtain notice can be independently verified by the Court's own file.

Respondent is moving for relief pursuant to CCP § 473(b) which allows the court to relieve a party from a judgment taken against him due to surprise. "'Surprise' referred to in the provision of this section is 'some condition or situation in which a party to cause is unexpectedly placed to his injury, without any default or negligence of his own, which ordinary prudence could not have guarded against.'" *Credit Managers Ass'n. v. National Independence Business Alliance* (1984) 162 Cal.App.3d 1166, 1173. Here, the situation would have been Respondent's lack of notice caused by the typo. The typo itself could not have been guarded against by ordinary prudence. Arguably, the Respondent could have somehow checked in that one month period to verify if he obtained a continuance but it is also reasonable for him to have waited for an order and or notice from the Court or the Petitioner. For these reasons, Respondent has established the "surprise" required by CCP § 473(b) to set aside the March orders.

Finally, there is the issue of attorney's fees. Petitioner requests that Respondent be ordered to pay attorney's fees or a penalty pursuant to CCP § 473(c)(1). This provision is discretionary and the imposition of any sanction would be patently unjust given the error that caused this situation was committed by the Court and not the Respondent. Petitioner's request for sanctions is denied.

The motion is GRANTED. A proposed order was not lodged with the Court. Respondent shall prepare the order. Additionally, Respondent has provided a proposed trial brief and proposed trial exhibits as attachments to his motion. The Court requires separate copies of each to be lodged with the Court. At the hearing the Court intends on discussing available dates to re-set the contested hearing on the Petition to Compel Arbitration.

LAW OFFICE OF PATRICK R BEASLEY VS. ROSEN

Case Number: 16CV631

No Tentative Ruling will be issued for this matter.

LITTLE, ET AL VS. BUICK, ET AL

Case Number: 184041

No Tentative Ruling will be issued for this matter.

POHLMAYER VS. POHLMAYER

Case Number: 140367

No Tentative Ruling will be issued for this matter.

TRINDADE VS. TRINDADE

Case Number: 188296

No Tentative Ruling will be issued for this matter.