

Tentative Rulings
May 26, 2017
Department 9

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.

Special Set – Law and Motion – 1:30 p.m.

CITY OF REDDING VS. SHREE SHIVA, LLC
Case Number: 183558

Tentative Ruling on Application for Leave to File a Real Party in Interest Intervention: This is an action for receivership (among other things) concerning the property commonly known as the “Americana Lodge.” The complaint was filed October 17, 2015. A First Amended Complaint was filed November 12, 2015. The causes of action are for: (1) receivership, (2) drug abatement act, (3) public nuisance, (4) public nuisances per se, and (5) imposition of civil penalties. Shree Shiva answered the First Amended Complaint on May 3, 2016.

The City filed a Motion for Appointment of a Receiver on December 22, 2015. On January 20, 2016, the City and Shree Shiva jointly filed a Stipulation for Order Appointing Receiver, stipulating that “[t]he City is the prevailing party in this Action against Shree Shiva.” The Court executed an order appointing a receiver on January 22, 2015. Generally, the Stipulation and Order indicate that Shree Shiva would be given an opportunity to bring the Property into compliance, and that the Receiver would take over possession of the Property immediately if the steps toward compliance were not met. Shree Shiva filed an ex parte application to prevent the engagement of the receiver on March 16, 2016, but the Court denied that application the following day. On March 22, 2016, the City filed a Notice of Receiver Taking Possession and Control of the Subject Property.

Shree Shiva filed a bankruptcy action, *In re Shree Shiva*, in the U.S. Bankruptcy Court for the Eastern District of California (Case No. 16-27180-B-11), but this Court previously took judicial notice of certain records in that action pursuant to Evidence Code § 452(d), which indicate that any bankruptcy stay has been lifted.

On April 10, 2017, the Court granted the Receiver’s Motion for Final Sale Approval of the property to an entity known as Hignell, Inc. At the hearing on that matter, a non-party, one Narendra Sharma, also appeared and placed four motions on calendar. Those four motions were as follows:

1. a Motion to Set Aside Court’s Order Appointing Receiver as Void;
2. a Motion to Replace Narendra Sharma for Shree Shiva, LLC;
3. a Motion for Permission to Sue Receiver for Breach of Fiduciary Duties; and
4. a Motion for Permission to Sue Receiver for Unpaid Wages.

The basic facts giving rise to those motions were that the owners of Shree Shiva purported to assign their right

to sue to Sharma in January 2017; that Sharma had filed litigation in federal court (E.D. Cal., Case No. 2:17-cv-00487-MCE-AC-PS) alleging causes of action for violation of the takings clause, denial of substantive and procedural due process, conspiracy, and inverse condemnation; and that Sharma was seeking permission from this Court to bring those same causes of action against the Receiver in the federal court litigation. The Court issued a tentative ruling denying those four motions because Sharma was not a party to the instant case, so Sharma appeared at the hearing and sought leave to file a document entitled an “Application for Leave to File a Real Party in Interest Intervention,” among other things. The Court indicated to Sharma that the papers he was intending to file were not properly on calendar for hearing at that time, but provided Sharma with a choice: the Court would either accept the “Application for Leave to File a Real Party in Interest Intervention” for filing at the time of the hearing and set the matter for a briefing schedule and new hearing date, in which case Sharma would not be permitted to file new documents other than a reply, or the Court would decline to accept the “Application for Leave to File a Real Party in Interest Intervention” and leave Sharma free to file a proper motion for leave to intervene on his own time schedule. Sharma chose the former, and the Court accepted the “Application for Leave to File a Real Party in Interest Intervention” for filing in the courtroom. Copies of the document were distributed to counsel for the Receiver and the City, who attended the hearing. On April 14, 2017, the Court issued an Order accepting that filing, setting the matter for hearing, and specifically ordering “Sharma not to submit any other filings concerning the Application other than a reply brief, if so desired.” Court Order (f: 04/14/17).

On April 20, 2017, Sharma filed a new “Application for Leave to File a Real Party in Interest.” On its own motion, the Court strikes that document in its entirety as “not drawn or filed in conformity with...an order of the court.” CCP § 436(b). The City filed Objections to Evidence objecting to certain documents included with the April 20, 2017 “Application for Leave to File a Real Party in Interest Intervention.” Because the “Application for Leave to File a Real Party in Interest” filed April 20, 2017 is stricken in its entirety, the City’s objections moot.

On May 12, 2017, the City filed opposition to Sharma’s moving papers. On May 15, 2017, the Receiver filed opposition to Sharma’s moving papers. On May 22, 2017, Sharma filed a reply, which included a proposed Complaint in Intervention that is stapled to the reply brief (i.e. it is not separately lodged to be filed upon an order granting leave to file it).

When this matter was last on calendar for Resolution Review re Status of Receivership, the Court approved the Monthly Accounting for February 2017 and set this matter for today’s Resolution Review re Status of Receivership. On April 17, 2017, the Receiver filed a Monthly Accounting for March 2017.

Notice. As a preliminary matter, the Court notes that there is some opposition by the City and the Receiver as to whether Sharma’s present motion was properly noticed. “A nonparty may seek leave to intervene by ex parte application to the court [internal citation]; or by a regular noticed motion served on the existing parties. In either event, copies of the proposed complaint in intervention... should be attached to the application.” Weil & Brown, *Cal. Prac. Guide: Civ. Proc. Before Trial* (The Rutter Group 2016) ¶ 2:441, citing *Adoption of Lenn E.* (1986) 182 Cal.App.3d 210, 217. As today’s hearing was set when all parties were present (except Shree Shiva, which is a limited liability company that is presently unrepresented by counsel), the Court finds that the City and Receiver have sufficient notice of today’s hearing to satisfy the requirements for an ex parte application. Indeed, it is often the case that, “[u]nless a noticed motion for leave to intervene was utilized [internal citation], the existing parties’ first opportunity to challenge the intervention is normally by *demurrer* or *motion to strike* the complaint in intervention. Weil & Brown, *Cal. Prac. Guide: Civ. Proc. Before Trial* (The Rutter Group 2016) ¶ 2:445, citing *Timbridge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873.

Receiver’s Quasi-Judicial Immunity and the Permissive Joinder Requirements. The Court considers Sharma’s present motion against the backdrop of Sharma’s four previous motions, which sought leave to file suit against

the Receiver in a *separate* action. In fact, California law *requires* that a potential claimant obtain such permission before filing a separate suit against a receiver because, under California law, receivers have quasi-judicial immunity for lawsuits brought against them for actions taken in the scope of their official capacity.

A receiver is an officer of the court possessing the property for the court. (*Pacific Indem. Co. v. Workers' Comp. App. Bd.* (1968) 258 Cal.App.2d 35, 40 [65 Cal.Rptr. 429].) Consequently, a receiver is liable in tort solely in an official capacity, not a personal one. (*Sealite, Inc. v. Finster* (1957) 149 Cal.App.2d 617-618 [309 P.2d 51]; *Chiesur v. Superior Court* (1946) 76 Cal.App.2d 198, 200-201 [172 P.2d 763]). ‘He is not personally liable for torts committed in the performance of his receivership duties; liability is in his *official capacity* only, to be satisfied from receivership funds.’ (6 Witkin, *Cal. Procedure* (3d ed. 1985) Provisional Remedies, § 364, pp. 304-305, italics in original.) Furthermore, a receiver may not be sued without leave of court. (*Ostrowski v. Miller* (1964) 226 Cal.App.2d 79, 84-85 [37 Cal.Rptr. 790]; *Code Civ. Proc.* § 568.)

McCarthy v. Poulson (1985) 173 Cal.App.3d 1212, 1219 (brackets in original); see also *Ostrowski v. Miller* (1964) 26 Cal.App.2d 79, 83; see also *Vitug v. Griffin* (1989) 214 Cal.App.3d 488, 493; see also *Howard v. Drapkin* (1990) 222 Cal.App.3d 843, 858-859. One aspect of that immunity is that the court that appoints the receiver has control over whether an action filed against the receiver must be filed *in the court that appointed the receiver*, or whether such claims may be brought *in a separate action*. See *Jun v. Myers* (2001) 88 Cal.App.4th 117, 124-125, quoting *De Forrest v. Coffey* (1908) 154 Cal. 444, 449 (“The [California] Supreme Court concluded that the petitioner had no absolute right to file a separate action against the receiver. It stated: ‘The only proposition with which we are concerned is, did the court have the discretion to require the petitioner to litigate his claim, whether legal or equitable, by intervening in the proceeding in which the receiver was appointed...’”). Indeed, the court that appoints the receiver “is not *required* to assume jurisdiction of all controversies to which the receiver may become a party, but may upon application permit them to be determined in some other competent tribunal...” *Id.* at 124-125, quoting *De Forrest v. Coffey* (1908) 154 Cal. 444, 449-450 (emphasis added). Therefore, this Court has the discretion to determine whether Sharma is required to file suit in *this* action or whether Sharma is permitted to file suit in a *separate* action. **To be clear, this Court will not permit Sharma to file a separate action and will require him to assert any claims against the Receiver in this case.**

The Complaint in Intervention. The Court is mindful that depriving a non-party, like Sharma, the right to file suit in *either* this action *or* a separate action may implicate due process. *Jun v. Myers* (2001) 88 Cal.App.4th 117, 124-125, citing *Payne v. Superior Court* (1976) 17 Cal.3d 908, 914, also citing *Boddie v. Connecticut* (1971) U.S. 371, 377. Indeed, “[t]he court may not deny *leave to sue* the receiver based on a summary determination that the claim is without merit.” Weil & Brown, *Cal. Prac. Guide: Civ. Proc. Before Trial* (The Rutter Group 2016) ¶ 9:773.2, citing *Jun v. Myers* (2001) 88 Cal.App.4th 117, 125 (emphasis added). The Court also notes, however, that “[c]ourts are specifically authorized to strike a pleading... at any time in the court’s discretion. [CCP § 436] {¶} It is therefore proper for a court to strike a complaint and dismiss the action entirely on its own motion.” Weil & Brown, *Cal. Prac. Guide: Civ. Proc. Before Trial* (The Rutter Group 2016) ¶ 7:158.1, citing *Lodi v. Lodi* (1985) 173 Cal.App.3d 628, 631 (brackets in original) (braces added). The facts of the present case give rise to a tension between these two principles because here, if Sharma is granted leave to intervene in this action based upon the allegations made in his proposed Complaint in Intervention, the Court would, on its own motion, strike the Complaint in Intervention as not drawn or filed in conformity with an order of this Court for the reasons set forth below. CCP § 436.

The interest asserted by Sharma in his Complaint in Intervention is based upon the “Sale of LLC Interest Agreement” in which the Thakors purportedly assigned the following to Sharma:

1.2 Assignment of Things in Action. Pursuant to California Civil Code Section 954, Seller hereby transfers all rights to any thing (“chose”) in action which Seller individually, jointly, or as a member of the Company may currently hold, or which may be subsequently acquired, if reasonably related to the Company, its real property holdings or business operations, as of the Effective Date of this Agreement; including without limitation the right to bring action against: (a) the government for inverse condemnation of the Company’s real property, as described in Paragraph, 4.1 (below); (b) Receiver, Richardson C. Griswold, appointed by the court in the civil action described in Paragraph 2.7 (below), for breach of fiduciary duty; and (c) any and all of the Company’s former legal counsel for legal malpractice.[ftnt omitted]

Application for Leave to File a Real Party in Interest Intervention (f: 04/10/17), Ex. 1, ¶ 1.2 (emphasis added). This purported transfer directly contravenes a previous order of this Court. Specifically, this Court’s Order of January 22, 2016 ordered that “Shree Shiva and its agents are hereby enjoined during the duration of the receivership from: ... (3) Transferring or encumbering any interests in the Subject Property.” Order on Receivership Stipulation (f: 01/22/16) (emphasis added). Thus, because the claims asserted by Sharma in the operative Complaint in Intervention are based solely on a transaction that is in violation of this Court’s order, and because the sale transaction document clearly indicates that Sharma had notice of the current litigation, the “pleading is not drawn or filed in conformity with...an order of this court.” Further, the pleading appears to be based upon a false transaction, whereby Sharma purported to acquire some hybrid of both the Thakor’s interests and Shree Shiva’s interests for the purchase price of \$1. CCP § 436(a) (“The court may...at any time in its discretion...[s]trike out any ...false...matter inserted into a pleading.”). And, the pleading appears to be improperly designed to circumvent the requirement that a limited liability company must be represented by licensed counsel. CCP § 436(a) (“The court may...at any time in its discretion...[s]trike out any ...improper...matter inserted into a pleading.”); see also Weil & Brown, *Cal. Prac. Guide: Civ. Proc. Before Trial* (The Rutter Group 2016) ¶¶ 2:123-2:125; see also *Paradise v. Nowlin* (1948) 86 Cal.App.2d 897.

Here, as set forth above, if Sharma’s motion to intervene were granted, his proposed Complaint/Part of Intervention would be stricken on the Court’s own motion as not drawn or filed in conformity with an order of this Court. CCP § 436. “The law neither does nor requires idle acts.” Civil Code § 3532; see also *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286. Therefore, rather than permitting the proposed Complaint in Intervention to be filed only to be immediately stricken pursuant to CCP § 436, which would be a useless and idle act, the Court will instead deny the motion to intervene.

Disposition. The Application for Leave to File a Real Party in Interest Intervention filed April 10, 2017 is **DENIED**.

The “Application for Leave to File a Real Party in Interest Intervention” that was filed April 20, 2017 is ordered **STRICKEN**, and the clerk is **directed** to strike that document and place it on the unofficial side of the file. The City’s Objections to Evidence are **DENIED as moot**.

The Monthly Accounting of Receivership Income, Expenses, and Interim Fees is accepted. A proposed order has been lodged and will be executed. This matter is set for Resolution Review re Status of Receivership on **Monday, June 12, 2017 at 9:00 a.m. in Department 8**. The Court notes that, other than the date set forth above, there are no future hearing dates on calendar in this matter.