

Dept. 1

Civil Law and Motion Tentative Rulings for Friday, March 15, 2024, at 8:30 a.m.

If you wish to appear for oral argument, you must so notify the Court at (209) 533-6633 and (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

1. CV64591

Lee v. County of Tuolumne

Hearing on: Motion(s) in Limine, Objection thereto
Moving Party: N/A
Tentative Ruling: N/A

This is a negligence case involving a bite delivered by a County-owned canine in the service of law enforcement. Before the Court this day was to be a hearing on various motions in limine. However, the parties failed to comply with this Court's order issued 01/25/24 to "meet and confer" and submit "a stipulation within one week" describing the motions in limine which require advance determination. No such stipulation having been filed; the hearing is evidently moot.

Nevertheless, this Court notes for the benefit of the parties that different kinds of motions in limine call for different kinds of treatment. There are two types of motions in limine: evidentiary, and dispositive. For the former, the purpose is to preclude the presentation of evidence deemed inadmissible and/or prejudicial without having to "unring the bell" in the heat of battle. Evidentiary motions in limine are presumptively authorized by Evidence Code § 353 (objection waived if not timely raised). See *Schweitzer v. Westminster Investments* (2007) 157 Cal.App.4th 1195, 1214. When a motion in limine is granted at the outset of trial with reference to evidence *already produced in discovery*, it may be viewed as the functional equivalent of an order sustaining a demurrer to the evidence, or nonsuit. In such case, the trial court must interpret the evidence most favorably to plaintiff's case and resolve all presumptions, inferences, and doubts in favor of plaintiff before granting the motion. Unless the issue is clear, most courts deny the motion in limine without prejudice, and focus on evidentiary rulings as the case is being presented. As for the latter, although there is no statutory authority for dispositive motions in limine, most courts find the authority in CCP § 128 and the overarching inherent authority to control proceedings. Dispositive motions in limine are strongly disfavored because they have the effect of circumventing established statutory requirements for similar motions with prescribed notice and briefing safeguards. The better practice in nearly every case in which a motion in limine is brought as a substitute for a dispositive motion is to afford the litigant the protections provided by trial or by the statutory processes. When a motion in limine is used to foreclose a defense or cause of action, it is reviewed de novo, just as a nonsuit or directed verdict (examining the record in the light most favorable to the nonmoving party, construing all inferences and conflicts in the evidence in such party's favor). See *Tung v. Chicago Title Company* (2021) 63 Cal.App.5th 734, 758; *McMillin Companies, LLC v. American Safety Indemnity Co.* (2015) 233 Cal.App.4th 518, 529; *K.C. Multimedia, Inc. v. Bank of America Technology*

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& Operations, Inc. (2009) 171 Cal.App.4th 939, 948; *Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515, 530; *Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582, 1593; *Greer v. Buzgheia* (2006) 141 Cal.App.4th 1150, 1156; *Ladas v. California State Automobile Association* (1993) 19 Cal.App.4th 761, 769.

The parties should carefully consider the motions in limine now on file and assess for themselves whether these are truly necessary for a fair trial.

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| 2. CV66013 | In re Residential Structure Upon APN 096-100-015 |
| Hearing on: | Issuance of Abatement Warrant |
| Moving Party: | Petitioner County |
| Tentative Ruling: | Continued for Additional Support |

This is a special proceeding to secure a warrant to enter the private property of another and abate a nuisance consistent with CCP § 1822.50. An inspection warrant gives an agency access to dilapidated properties in order to ascertain whether those properties pose a public nuisance. Once it is determined that a given property does pose such a nuisance, Civil Code § 3491 gives the agency three choices: criminal indictment/information; a civil action for damages; or abatement. The third option is not defined by statute and turns generally on the local agency's police powers. So long as the enforcing agency has an ordinance permitting summary abatement (see Govt. Code § 38773), a court order permitting summary abatement can be secured once due process to the owner has been provided. In most instances, an application for an inspection warrant is set on the civil L&M calendar so that the judge can "examine the applicant [and] satisfy himself of the existence of grounds for granting such application." § 1822.53.

Notice to the Owners

Due Process requires that the County give adequate notice to those with possessory interests in the subject property before abatement takes place. See *Flahive v. City of Dana Point* (1999) 72 Cal.App.4th 241, 246; in accord, *Flores v. City of Stockton*, WL401411 (2008) [the County must then provide a reasonable opportunity for the owner's exercise of the right to remedy or abate the nuisance before taking action on its own]. By ordinance, the County must "attempt to locate and personally serve the owner and/or other responsible person." § 1.10.110.A.1.(i).

According to the petition, the Estate of Virginia Burrell is the registered owner of the property, and Steve Burrell resided therein. Abatement notices were mailed to the property and recorded with the County. See Notices 06/08/22, 07/13/22, 04/27/23. None of these gave actual or constructive notice to those with possessory interests because (1) the tenant, Steve Burrell, is reported deceased, and (2) the owner is apparently an estate, not a person. Rather than rely on such generalities, it would have been far more fruitful for petitioner to have conducted some

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basic investigation to confirm (1) how it is that the property is legally held in a decedent's estate, (2) who is the personal representative for the estate, and (3) when Steve Burrell passed away. If Steve Burrell was a mere tenant, and is now deceased, then naturally no further notice to him (or his personal representative) is required. However, for there to be an estate, someone had to be named as the personal representative thereof, and that person is entitled to notice before the structure itself is torn down (which appears to be County's abatement plan). There are lots of Burrells in this County. There is also no proof of service on the petition itself.

May the County Now Abate

Even if Due Process is satisfied, the factual basis for abatement is not clear. By ordinance, a summary abatement is only available if "there exists a violation, which is of such a nature as to be an imminent threat to the public health or safety, and if not abated would, during the pendency of the proceedings, subject the public to potential harm of a serious nature." See §1.10.230(A). Petitioner does not identify any specific health issues with the property, except that the residence burned down. Petitioner states that it wishes to sever utilities to the whole of the property, but has no intention of displacing the occupants of the RV. This seems contradictory since shutting off electricity to the property will undoubtedly have an impact on those in the RV.

Hearing continued to 05/24/24 at 8:30 am. Petitioner shall file and serve a supplemental petition addressing the concerns raised herein on or before 05/13/24.

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| 3. CV66021 | In re Residential Structure Upon APN 035-270-024 |
| Hearing on: | Issuance of Abatement Warrant |
| Moving Party: | Petitioner County |
| Tentative Ruling: | Continued for Proof of Service/Notice |

This is a special proceeding to secure a warrant to enter the private property of another and abate a nuisance consistent with CCP §1822.50. An inspection warrant gives an agency access to dilapidated properties in order to ascertain whether those properties pose a public nuisance. Once it is determined that a given property does pose such a nuisance, Civil Code §3491 gives the agency three choices: criminal indictment/information; a civil action for damages; or abatement. The third option is not defined by statute and turns generally on the local agency's police powers. So long as the enforcing agency has an ordinance permitting summary abatement (see Govt. Code 38773), a court order permitting summary abatement can be secured once due process to the owner has been provided. In most instances, an application for an inspection warrant is set on the civil L&M calendar so that the judge can "examine the applicant [and] satisfy himself of the existence of grounds for granting such application." § 1822.53.

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Notice to the Owners

Due Process requires that the County give adequate notice to those with possessory interests in the subject property before abatement takes place. See *Flahive v. City of Dana Point* (1999) 72 Cal.App.4th 241, 246; in accord, *Flores v. City of Stockton*, WL401411 (2008) [the County must then provide a reasonable opportunity for the owner's exercise of the right to remedy or abate the nuisance before taking action on its own]. By ordinance, the County must “attempt to locate and personally serve the owner and/or other responsible person.” §1.10.110.A.1.(i).

According to the petition, Glen Griffiths is the registered owner of the property. Abatement notices were mailed to the property and returned to the sender. Notices were also posted at the property, but since it was uninhabitable, it is no surprise that the owner did not respond. There are lots of Griffiths in this County, and yet petitioner has made no effort to actually find one of them to assist with notice to Glen. There is also no proof of service on the petition itself.

May the County Now Abate

Assuming Due Process is satisfied, the factual basis for abatement is clear.

Hearing continued to 05/24/24 at 8:30am. Petitioner shall file and serve a declaration demonstrating adequate efforts to provide actual notice on or before 05/13/24.