

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO
Civil Department - Non-Limited

Entered by:

TITLE OF CASE:

Pinedale County Water District vs. City of Fresno

LAW AND MOTION MINUTE ORDER

Case Number:

18CECG02957

Hearing Date: **December 5, 2018**

Hearing Type: **Demurrer/Motion Strike/Change Venue**

Department: **502**

Judge/Temp. Judge: **Black, Donald**

Court Clerk: **Capalare, Nancy**

Reporter/Tape: **N/A**

Appearing Parties:

Plaintiff:

Defendant:

Counsel:

Counsel:

☐ Off Calendar

☐ Continued to ☐ Set for ___ at ___ Dept. ___ for ___

☐ Submitted on points and authorities with/without argument. ☐ Matter is argued and submitted.

☐ Upon filing of points and authorities.

☐ Motion is granted ☐ in part and denied in part. ☐ Motion is denied ☐ with/without prejudice.

☐ Taken under advisement

☐ Demurrer ☐ overruled ☐ sustained with ___ days to ☐ answer ☐ amend

☒ Tentative ruling becomes the order of the court. No further order is necessary.

☒ Pursuant to CRC 3.1312(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.

☒ Service by the clerk will constitute notice of the order.

☒ See attached copy of the Tentative Ruling.

☐ Judgment debtor ___ sworn and examined.

☐ Judgment debtor ___ failed to appear.
Bench warrant issued in the amount of \$ ___

JUDGMENT:

☐ Money damages ☐ Default ☐ Other ___ entered in the amount of:

Principal \$___ Interest \$___ Costs \$___ Attorney fees \$___ Total \$___

☐ Claim of exemption ☐ granted ☐ denied. Court orders withholdings modified to \$___ per ___

FURTHER, COURT ORDERS:

☐ Monies held by levying officer to be ☐ released to judgment creditor. ☐ returned to judgment debtor.

☐ \$___ to be released to judgment creditor and balance returned to judgment debtor.

☐ Levying Officer, County of ___, notified. ☐ Writ to issue

☐ Notice to be filed within 15 days. ☐ Restitution of Premises

☐ Other: ___

(5)

Tentative Ruling

Re: ***Pinedale County Water District v. City of Fresno***
Superior Court Case No. 18CECG02957

Hearing Date: December 5, 2018 (**Dept. 502**)

Motions: (1) Demurrer and Motion to strike complaint by
Defendant; and
(2) Transfer to Kings County the Plaintiff

Tentative Ruling:

To grant the Defendant's requests for judicial notice pursuant to Evidence Code § 452(d)(1).

To grant the Plaintiff's motion to transfer this action to the Kings County Superior Court on the grounds that it has already assumed jurisdiction over the controversy between the two parties. See *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 786-787. In light of this ruling, to decline to rule on the demurrer and motion to strike the Complaint.

Explanation:

Background

On June 3, 2008, the City of Fresno filed a lawsuit against the Pinedale County Water District as Case No. 08CECG01899. The City claimed that Pinedale had breached an agreement entered between the two entities for the transportation and treatment of sewage by refusing to permit the City to conduct an audit of the District's fiscal records. On June 30, 2008, Pinedale filed an Answer and a motion seeking a change of venue to Madera County. Later, both parties filed a stipulation and proposed order agreeing to the transfer. On August 1, 2008, the order was signed and filed. That case was transferred to Madera County and renumbered MCV043413.

On October 4, 2011, Judge James Oakley of the Madera County Superior Court entered judgment in favor of the City. Pinedale filed an appeal. On September 17, 2013, the Fifth District Court of Appeal affirmed the judgment and awarded Respondent costs on appeal.

On June 16, 2017, the City of Fresno filed a Petition for Writ of Mandate to compel Pinedale to pay the judgment in the Fresno County Superior Court as Case No. 17CECG02055. The proceeding was subsequently transferred to the Kings County Superior Court pursuant to Code of Civil Procedure §394 and is pending in that court as Case No. 180—0051.

On August 9, 2018, Pinedale filed a Complaint here in Fresno seeking rescission of the Agreement between Pinedale and the City of Fresno. The City filed a demurrer and motion to strike. Opposition was filed to the demurrer.

On October 15, 2018, Pinedale filed a motion seeking to transfer this case to Kings County. Opposition was filed followed by a reply.

Merits

Pinedale seeks to transfer this case to Kings County on the grounds that the mandamus action seeking to compel payment of the judgment is pending in that court. The City argues that Pinedale filed a cross-complaint in the action pending in Kings County but that it was dismissed pursuant to the sustaining of a demurrer without leave to amend. The City argues that the Complaint at bench is identical to the one that was dismissed. But, this argument is counterintuitive. If the court in Kings County has already ruled on a similar complaint and the Plaintiff wants to transfer this action to that court, then to a certain extent the Kings County Superior Court has already asserted jurisdiction over the matter.

There is a line of cases that hold when two courts have concurrent jurisdiction over a class of cases, the one that first assumes jurisdiction over the subject matter of a particular controversy takes it exclusively, and the other court's jurisdiction may no longer be asserted over that subject matter. (*Myers v. Superior Court* (1946) 75 Cal.App.2d 925, 929, 172 P.2d 84; *Cade v. Superior Court* (1961) 191 Cal.App.2d 554, 556; *Morrisette v. Superior Court* (1965) 236 Cal.App.2d 597, 600; *Halpin v. Superior Court* (1971) 14 Cal.App.3d 530, 545 [prohibition granted]; *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 786-787; and *People v. American Autoplan* (1993) 20 Cal.App.4th 760, 769, 770.

In the case at bench, the Kings County Superior Court has already asserted jurisdiction over the controversy between the two parties and the matter is still pending. Therefore, the motion seeking to transfer the complaint to Kings County Superior Court will be granted. As for the demurrer and motion to strike, given the ruling on the motion to transfer, the Court will decline to hear these matters.

Pursuant to California Rules of Court, Rule 3.1312, subd. (a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JB on 12-3-18
(Judge's initials) (Date)

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO
Civil Department, Central Division
1130 "O" Street
Fresno, California 93724-0002
(559) 457-2000

FOR COURT USE ONLY

TITLE OF CASE:

Pinedale County Water District vs. City of Fresno

CLERK'S CERTIFICATE OF MAILING

CASE NUMBER:
18CECG02957

I certify that I am not a party to this cause and that a true copy of the:

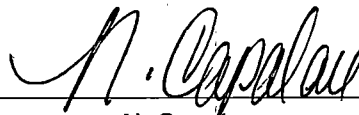
Minutes/Order and Tentative Ruling

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: Fresno, California 93724-0002

On Date: 12/06/2018

Clerk, by _____,



N. Capalare

Deputy

Neal E Costanzo
575 E. Locust Ave, Suite 115
Fresno, CA 93720

James B. Betts
Betts & Rubin
907 Santa Fe Avenue, Suite 201
Fresno, CA 93729

☐ Clerk's Certificate of Mailing Additional Address Page Attached