

Hearing: Motion to Consolidate Actions

Date: February 6, 2018

On February 2, 2017, Weldon, Amber, Cody, Justin, and Tyler King (the “Kings”) filed a complaint against UPS, Inc. (“UPS”) and PG&E Company (“PG&E”). Plaintiffs reside on property located on Farousse Way in Paso Robles (the “Property”). According to the complaint, electricity to the home on the Property comes through an electric service drop which connects the home to a utility pole on the street. On June 8, 2016, a UPS driver failed to see the service drop when making a delivery and snagged the line causing the service drop to break and fall. As a result, a fire broke out destroying the home, outbuildings, fruit trees, pasture structures, and corrals, and the Kings’ personal property and vehicles.

UPS and PG&E filed cross-complaints against one another in March 2017.

On October 30, 2017, Fire Insurance Exchange (“FIE”) filed a complaint against UPS, PG&E, and the UPS driver, Amanda Castellanos, for payments made under an insurance policy for damages resulting from the June 8, 2016 incident (Case No. 17CVP-0302; the “FIE Action”). The payments were made to Diana Taplin, owner of the Property. The FIE complaint alleges the same ten cause of action as alleged in the Kings’ complaint.

UPS now moves to consolidate the two actions. There is no opposition as all of the parties who have appeared have signed a written stipulation agreeing to consolidation.¹ (Weil & Brown, Cal. Practice Guide: Civ. Proc. Before Trial (Rutter 2017) ¶ 12:360 [stipulation not effective by itself; court order required].)

Code of Civil Procedure section 1048(a) provides for consolidation of separate actions pending before the same court when the actions involve common questions of law or fact. The purpose is to avoid unnecessary costs or delay; enhance trial court efficiency; and avoid the danger of inconsistent adjudications. (Weil & Brown, *supra*, ¶ 12:340.)

Substantively, it appears consolidation is appropriate as the issues of law and fact are common in both actions.

Procedurally, a motion to consolidate requires compliance with California Rules of

¹ The Stipulation was not signed by Amanda Castellanos but the Court file indicates that she has not yet been served.

Additionally, the motion and stipulation refer to a December 1, 2017 Court Order which related the two actions. The Court was unable to locate any such order in either case. UPS, however, filed a Notice of Related Case in each action in November 2017.

Court, Rule 3.350, which requires that the notice of motion:

1. List all named parties in each case, the names of those who have appeared, and the names of their respective attorneys of record;
2. Contain the captions of all the cases sought to be consolidated, with the lowest numbered case listed first; and
3. Be filed in each case sought to be consolidated.²

Here, the notice of motion is noncompliant. In particular, it was not filed in the FIE Action. As a result, there is no motion to consolidate pending in the FIE Action.

The matter will be continued so that a compliant notice may be filed in both actions. Appearances required to discuss a future hearing date.

² The memorandum of points and authorities, declarations, and other supporting paperwork need only be filed in the lowest numbered case.