

**DEPARTMENT TWELVE  
JUDGE CHRISTINE CARRINGER  
707-207-7312  
TENTATIVE RULINGS SCHEDULED FOR  
THURSDAY, OCTOBER 03, 2024**

---

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1610208382?pwd=UXhSbFlreXRtQ1BkeldQSUVBcHdOQT09>

Meeting ID: 161 020 8382

Passcode: 234174

<http://ffweb01/>

One tap mobile

+16692545252,,1610208382#,,,,\*234174# US (San Jose)

+16692161590,,1610208382#,,,,\*234174# US (San Jose)

Dial by your location

+1 669 254 5252 US (San Jose)

+1 669 216 1590 US (San Jose)

+1 551 285 1373 US

+1 646 828 7666 US (New York)

833 568 8864 US Toll-free

---

**MONTEZUMA LODGE NO. 172, I.O.O.F. OF CALIFORNIA v. LEWIS, et al.  
Case No. CU23-05966**

Motion by Defendant CONNIE LEWIS, Trustee of the Lewis Family Trust, for Summary Judgment

**TENTATIVE RULING**

A motion for summary judgment or summary adjudication must be served at least 75 days before hearing. C.C.P. §437c(a)(2).

There is no proof of service yet filed for the motion papers.

There are other issues with the motion papers.

While most of the motion papers are titled for a motion for summary adjudication, the memorandum of points and authorities is titled in support of a summary judgment motion. While C.C.P. §437c(f)(2) authorizes a motion for summary adjudication to be filed by itself or as an alternative to a motion for summary judgment, the filings for either

a motion for summary judgment, a motion for summary adjudication, or a motion for summary judgment or in the alternative for summary adjudication should be consistently titled for the relief being sought. Furthermore, the separate statement failed to separately identify each cause of action for which summary adjudication was sought, and to cite the specific evidence in support of the summary adjudication of each cause of action, in the format as specified in California Rules of Court 3.1350(d) and (h). And the evidence upon which the motion is based are deemed admissions as ordered by the court. But the court has not been able to locate within its files any proof of service for the order deeming those admissions requests admitted, showing it was served on the party against whom summary judgment or adjudication is being sought.

For many reasons, the court denies this motion. This denial is without prejudice to the motion being refiled, if all of the above issues are resolved.

---

**ALGAR v. ALGAR, et al.**  
**Case No. FCS057930**

Motion by Defendant BANK OF NEW YORK MELLON TRUST COMPANY, N.A., for Summary Adjudication

TENTATIVE RULING

Summary adjudication can be sought of a cause of action, affirmative defense, claim of damages, or issue of duty. C.C.P. §437c(f)(1).

A defendant moving for summary judgment or summary adjudication has the burden of showing that one or more elements of a cause of action cannot be established, or that there is a complete defense to the cause of action. C.C.P. §437c(p)(2).

C.C.P. §437c(b)(1) includes “admissions” among the matters which can support a summary judgment or summary adjudication motion. See also Hejmadi v. AMFAC, Inc. (1988) 202 Cal.App.3d 525, 553 [“A party is bound by admissions made in the course of discovery and, on motion for summary judgment, no further evidence of the matters so deemed admitted is required”].

Plaintiff’s 4<sup>th</sup> cause of action is for cancellation of void instruments, based primarily, but not solely, on allegations of forgery. Plaintiff alleged in part that the loans were void because “Plaintiff did not sign these documents, nor did [she have] any knowledge of their existence” [Complaint, ¶52]; and that JUNIOR “was the person who initiated the loans through fraud, concealment, and deceit, without conveying the transactions to Plaintiff and, likely, forged the documents” [Complaint, ¶51; see also ¶¶12, 16, 17 and 20].

Not only is Plaintiff unable to prove forgery due to her deemed admissions that it is her signature on the loan documents for the HELOC and reverse mortgage loan, her deemed admissions also include admissions that she authorized the loan, and received

the loan proceeds. [Declaration of Douglas Poulin, requests for admission and order deeming admissions requests admitted, Exhibits B and C; particularly requests 1,2, 4, 8, 9, 14 and 15].

The cancellation of loan claim allegations within this cause of action fail because Plaintiff's complaint does not allege retendering of the loan amount.

Equity would have also required that Plaintiff allege and then prove she returned any benefits received from the loan transaction, if the transaction were not void, but merely voidable. Fleming v. Kagan (1961) 189 Cal.App.2d 791.

Plaintiff's complaint alleged as a basis for a voidable transaction the failure to provide her notice required to be provided to a reverse mortgage loan applicant. Civil Code §1923.5(k). However, Plaintiff's deemed admissions include an admission that she in 2007 signed a notice form compliant with the version of this statute existing at that time. [Poulin Declaration, Exhibits B (and Exhibit 5 attached thereto) and C, as to Admissions Request No. 9].

The court therefore grants summary adjudication to Defendant BANK OF NEW YORK MELLON TRUST COMPANY, S.A. on Plaintiff's 4<sup>th</sup> cause of action for cancellation of void instruments.

---