DEPARTMENT TWENTY-TWO
JUDGE ALEISA JONES
707-207-7322

TENTATIVE RULINGS AND PROBATE PREGRANTS

CALENDAR DATE: July 21, 2025

ADVISEMENTS

Probate Notes: Probate notes are available in individual cases and are not posted on the public website. For more information on how to access case information through the court's public portal, please visit https://portal.solano.courts.ca.gov.

Civil Tentative Rulings and Probate Pregrants: Current procedures to advise the court of appearances and nonappearances in response to tentative rulings and pregrants remain unchanged. Probate pregrants and tentative rulings are not posted for conservatorships, guardianships, or any ex parte matters.

Appearances by Zoom: Remote appearances by Zoom are permitted except for MSCs, TMCs, trials or evidentiary hearings, or cases in which in-person appearances have been ordered. Persons appearing by Zoom are to be in appropriate attire. They are also to be in a quiet place where they can speak without interruption and clearly hear the proceedings.

https://solano-courts-ca-gov.zoomgov.com/j/1616742647?pwd=OqSSltabllmx2XCCA93MjmmOb3c8XU.1

Meeting ID: 161 674 2647
Passcode: 415205

PREGRANTS AND TENTATIVE RULINGS START ON THE NEXT PAGE

9:00 CALENDAR

LERNER v. I80 PROPERTIES LLC., et al.
Case No. cu24-08828

(1) Motion by Defendants to Compel Arbitration; and
(2) Motion by Plaintiff for Trial Preference

TENTATIVE RULING

The statutes governing limited liability companies specifically provide for the ability of a member to force either a dissolution of the company or a buyout at fair market value of his or her membership shares by the other members, if they wish the company to continue. Corporations Code §17707.03.

While the Operating Agreement contains provisions (Sections 10.9 and 12.14) apparently designed to waive a member's right to force dissolution, such rights are not waivable. Corporations Code §17701.10(c)(7).

The issue raised by Defendants' motion is whether the dissolution process is subject to arbitration.

Section 13.10(A) of the Operating Agreement provides:

> Any and all disputes, controversies or claims whether of law or fact and of any nature whatsoever arising from or respecting this Agreement that are not resolved by the parties hereto, ***except as otherwise provided in this Agreement***, shall be decided by arbitration in accordance with this Section 13.10 or otherwise by the Commercial Arbitration Rules then in effect of the American Arbitration Association (the "Arbitration Rules") . . . . (emphasis added)

Section 10.1 of the Operating Agreement specifies situations which would dissolve the company, with one of those situations being "Upon the entry of a decree of judicial dissolution pursuant to Section 17351 of the Corporations Code."

Corporations Code §17351 was repealed as of 2014, and its subject matter is now addressed in Corporations Code §17707.03. It recognizes as grounds for seeking dissolution of a limited liability company claims by a manager or member that management is deadlocked or subject to "internal dissension". It also sets up the appointment of an independent panel of appraisers method for determining fair market value, should the other members desire to avoid dissolution and to instead buy out the dissenter.

The right to seek judicial decree for involuntary dissolution appears to encompass situations in which minority members can compel dissolution or buyout. Cheng v. Coastal L.B. Associates, LLC (2021) 69 Cal.App.5th 112 [member owning 25% of member shares filed involuntary dissolution petition, unopposed by the other members; dispute was over the trial court's compelling appraisers disagreeing over fair market value to meet and confer to reach a consensus].

Section 13.10(D) of the Operating Agreement recognizes the arbitrator's authority to order equitable relief such as a TRO or preliminary injunction.

> **Binding effect of arbitration**. The arbitrator shall be able to decree any and all relief of an equitable nature, including but not limited to such relief as a temporary restraining order, a temporary and/or permanent injunction and shall also be able to award damages, with or without an accounting and costs. The final decision of the arbitrator shall constitute a conclusive determination of the matter in question, shall be binding upon the parties hereto and shall not be contested by any of them. The decree or judgment of an award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Other types of entity dissolution actions, such as of partnerships, in the absence of applicable statutes and in the distant past have been found to be equitable proceedings. Logoluso v. Logoluso (1965) 233 Cal.App.2d 523, 530 [with no applicable statutes yet enacted to govern partnership dissolutions, dissolution of a general partnership was found to be within the court's equitable authority].

Involuntary dissolution in the case at hand is governed by statute, and not equity.

Furthermore, the process of involuntary dissolution of a limited liability company is potentially elongated and may require numerous motions and interim orders, before issuance of a dissolution decree.

Corporations Code §17707.03 gives the other members in a suit for involuntary dissolution the option of purchasing that member's shares for cash, at fair market value, but does not spell out when that option must be exercised. If after that option is invoked cannot agree upon the fair market value, the court upon application of the purchasing parties shall stay the winding up and dissolution proceeding and appoint the 3 disinterested appraisers, and can set a bond for the purchasers to post to compensate the member for the attorneys fees and expenses he or she will incur if the purchasing parties fail to complete the purchase within the deadline the court sets. The court must then later confirm the fair market value amount found by a majority of the appraisers, and set a deadline for completion of the purchase. The court may still later have to issue a decree of dissolution and order payment of the bond if the purchasing parties fail to complete the purchase by the deadline the court set.

In Cheng, supra, 69 Cal.App.5th 112, the action for involuntary dissolution was filed in October 2017. The other members filed a motion to stay the action and electing to purchase the filing member's shares. The parties later stipulated to an order staying the action, and asking the court to appoint appraisers. The court did appoint appraisers, and when they came back with different valuations, the defendants filed a motion asking the court to instruct the appraisers to meet and confer to see if a consensus valuation could be reached. The appraisers did reach a consensus valuation, and the defendants then moved to confirm that valuation. The court did so (over two years after the action was filed), and set a deadline for payment another two and a half months out (but the plaintiff filed an appeal before that deadline). In short, it took well over two years, and required a series of intervening orders, before the action could have resulted in a completed purchase in lieu of involuntary dissolution decree.

In contrast, a trial court's role after completion of an arbitration is very limited. C.C.P. §1285 authorizes any party to an arbitration in which an award has been made to petition the court to confirm, correct, or vacate the award. C.C.P. §1286 requires the court to confirm, correct, or vacate the award, or dismiss the proceedings, as there are no other options.

> "Under Code of Civil Procedure section 1286, once a petition to confirm, correct, or vacate is filed, the superior court has only four choices: It may (1) confirm the award, (2) correct the award and confirm it as corrected, (3) vacate the award, or (4) dismiss the proceedings." (Sunnyvale Unified School Dist. v. Jacobs (2009) 171 Cal.App.4th 168, 175 [89 Cal. Rptr. 3d 546]. Law Offices of David S. Karton v. Segreto (2009) 176 Cal.App.4th 1, 9.

Even when evaluating whether to vacate or correct an arbitration award, the court is limited in its scope of review, and it cannot vacate or correct an award just because it fails to follow the applicable law.

> **Rationale for limited review:** Limiting grounds for judicial review effectuates the parties' agreement that the award be final. It also reflects that arbitrators ordinarily need not follow the law and may base their decisions on "broad principles of justice and equity" … "paths neither marked nor traceable by judicial review." [Moncharsh v. Heily & Blase (1992) 3 C4th 1, 11, 10 CR2d 183, 187-188; Nogueiro v. Kaiser Found. Hospitals (1988) 203 CA3d 1192, 1195, 250 CR 478, 479]. California Practice Guide, Alternative Dispute Resolution (The Rutter Group) §5:445.

Particularly in light of no clear and unequivocal confirmation from Defendants of their express waiver of the buyout at fair market value option, the limited role of the court in reviewing arbitration awards seems incompatible with compelling arbitration per the

elongated and incompletely identified procedure set forth in Corporations Code §17707.03.

In light of the scope of arbitration provision in the Operating Agreement, when that agreement is read as a whole, and the practical difficulties arbitration would pose in proceeding under Corporations Code §17707.03, the court denies Defendants' motion to compel arbitration.

Had the court instead granted the motion to compel arbitration, Plaintiff's motion for trial preference would be moot.

Because of the court's denial of the arbitration motion, the trial preference motion is not moot.

C.C.P. §36 requires the court to grant trial preference upon motion by a party over the age of 70, whose health is such that preference is necessary to prevent prejudicing that party's interest.

> (a) A party to a civil action who is over 70 years of age may petition the court for a preference, which the court shall grant if the court makes both of the following findings:
>
> (1) The party has a substantial interest in the action as a whole.
>
> (2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation.
>
> . . . .

C.C.P. §36.5 authorizes the attorney of the party seeking preference to file the declaration in support, based upon information and belief.

> An affidavit submitted in support of a motion for preference under subdivision (a) of Section 36 may be signed by the attorney for the party seeking preference based upon information and belief as to the medical diagnosis and prognosis of any party. The affidavit is not admissible for any purpose other than a motion for preference under subdivision (a) of Section 36.

The requirement that the party applying for preference be over the age of 70 cannot be met by his counsel's declaration.

> Admissible evidence is still required as to the party's age (e.g., declarations by party or admissible records showing he or she is over 70). The attorney's

declaration is *not* sufficient for this purpose. 3 Edmon & Karnow [Weil & Brown] (The Rutter Group 2025), Civil Procedure Before Trial, §12:247.3, p. 44.

However, paragraph 16 of the verified complaint confirms Plaintiff's age.

There is a different reason why Plaintiff's trial preference motion cannot be granted.

The key issue in a preference motion based upon health conditions of a person over the age of 70 is whether their health conditions may render them unable to fully participate in trial unless trial preference is granted. Fox v. Superior Court (2018) 21 Cal.App.5th 529.

The declaration of Plaintiff's counsel provides a list of medical conditions (chronic kidney disease, chronic heart disease, and chronic obstructive pulmonary disease), but little to no explanation of how they might affect his ability to testify competently at trial. All he says is that Plaintiff "takes medications and treatments" and "each condition is worsening" and "decline is certain." The risk counsel identifies is not that Plaintiff will be unable to participate fully at trial, but that there is a "significant risk his health will decline too rapidly for him to 'win' this case, have the Vacaville property sold or have his interest valued and purchased, and receive his 49.7% of the value of the LLC assets."

Plaintiff's trial preference motion is therefore denied, without prejudice to refiling with evidence provided for the appropriate timeframe. The key evaluation the court must make is whether by time of trial Plaintiff might reasonably not be able to fully participate, not whether by time of completed post-trial dissolution he might not enjoy the benefits. Thus, the evidence thus far presented to support Plaintiff's trial preference motion is insufficient.

10:00 a.m.

IN RE THE ESTATE OF RICKEY LEE HULL, DECEASED
Case No. PR24-00077

Status Review/Compliance Hearing
Order to Show Cause to Osby Davis

PREGRANT ORDER

This matter was continued from May 30, 2025, and June 23, 2025. The court issued an Order to Show Cause to Attorney Osby Davis for his failure to appear on June 23, 2025.

Attorney Osby Davis to appear and explain his failure to appear and failure to file a written and verified status report as directed by the pregrant order issued for the May 30, 2025, hearing. Remote appearances are approved.
