

Dept. 1

Civil Law and Motion Tentative Rulings for Friday, January 31, 2025, 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. CV66621 O'Reilly v. O'Reilly
Hearing on: Preliminary Injunction
Moving Party: Plaintiff
Tentative Ruling: TRO Granted

This is a father-son dispute involving equitable ownership of construction equipment/tools used in their respective trades. There is no dispute that the equipment was purchased and legally owned by plaintiff. There is also no dispute that plaintiff granted defendant a right to use said equipment. Plaintiff wants the equipment back; defendant contends that plaintiff gifted him the equipment.

On 11/27/24, plaintiff (father) secured an *ex parte* TRO barring defendant from selling, using, giving, loaning, or otherwise disposing of the equipment at issue, and to prepare an inventory of the equipment in his possession. Plaintiff was ordered to serve the TRO papers and order on defendant by 12/06/24. This is consistent with CCP §527(d)(2), which provides in pertinent part as follows:

“The party who obtained the temporary restraining order shall, within five days from the date the temporary restraining order is issued or two days prior to the hearing, whichever is earlier, serve on the opposing party a copy of the complaint if not previously served, the order to show cause stating the date, time, and place of the hearing, any affidavits to be used in the application, and a copy of the points and authorities in support of the application.”

A previous review of the court file failed to reveal any proof of the aforementioned service having taken place prior to the past hearing. Although there is an indication that the *complaint* was previously served on defendant on 11/11/24, there was no POS covering the application for provisional relief, much less the order thereon. “If the party who obtained the temporary restraining order has failed to effect service as required by paragraph (2), the court shall dissolve the temporary restraining order.” CCP §527(d)(3). Counsel for plaintiff conceded that no such service had taken place, causing this Court to confirm that the TRO was vacated.

Since that hearing, plaintiff appears to have completed service via regular US mail of the application for a preliminary injunction. Thus, this Court is amenable to re-issuing the TRO on the same terms and conditions provided that plaintiff submit an updated order for this Court’s signature, and that plaintiff effectuate personal service of the signed order upon defendant within 5 days thereafter. Defendant is ordered to file a responsive brief to the petition within 15 calendar days of service. A further hearing for issuance of a full preliminary injunction shall be set for March 7, 2025, at 8:30 a.m. in this department. Plaintiff to give notice.

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2. CV65454	Villasenor v. Tonti Enterprises, LLC
Hearing on:	Ex Parte Application for Stay
Moving Party:	Plaintiff
Tentative Ruling:	N/A

This case involves a failed joint venture. On or about 04/11/24, the parties apparently entered into a global settlement agreement, calling for the payment of a sum certain by a date certain. According to plaintiff, the agreement including the right to file a stipulated judgment upon default. Dismissals were entered a few days later. Plaintiff apparently owed money, and was unable to make that payment as agreed. Defense counsel sent a letter advising that an extension was not available. This Court does not have a copy of the settlement agreement, or a proposed stipulated judgment for entry, let alone any efforts to enforce that judgment through execution efforts. As such, there is nothing to “stay” at present. Court is prepared to hear from the parties and ascertain what the real issue is.