

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 01/25/2016

EVENT TIME: 08:20:00 AM

DEPT.: 43

JUDICIAL OFFICER: Kevin DeNoce

CASE NUM: 56-2014-00453806-CU-PA-VTA

CASE TITLE: LINDSAY VS. CHRISTIAN

CASE CATEGORY: Civil - Unlimited

CASE TYPE: PI/PD/WD - Auto

EVENT TYPE: Motion for Summary Adjudication

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Adjudication, 11/10/2015

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you may submit a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-662-6712, stating that you submit on the tentative. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

The court's tentative ruling is as follows:

Deny the motion by Christian and Drew Christian Construction, Inc., for summary adjudication of issue.

Discussion:

The motion is directed to C/A for negligence per se Veh Code 20002 (a) and to P's requests for exemplary damages.

Defendants' argument was previously denied on 6-15-15. The separate statement is essentially the same as previously before the court. This motion is in the nature of a motion for reconsideration:

CCP 1008 provides, in pertinent part:

"(b) A party who originally made an application for an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and **what new or different facts**, circumstances, or law are claimed to be shown. . . ."

As the moving party, Defendants must provide a satisfactory explanation for failure to produce its evidence at an earlier time. Shiffer v CBS Corp (2015) 240 CA 4th 246, 255. Here, the explanation given by counsel for this motion is that now D can do submit his declaration because the stay was lifted on 7-7-15. There is also a vague reference to 'new' discovery responses. It is unclear what is meant by 'new' discovery responses as specificity is not stated. There is insufficient compliance with section 1008 to justify reconsideration.

CCP 437c (f)(2) provides:

"A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment. However, **a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court unless that party establishes, *to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion.***"

"Sections 437c and 1008 clearly limit the parties' ability to file repetitive motions." Le Francoise v Goel (2005) 35 C 4th 1094, 1104.

Defendants chose when to make their initial SAI motion. That strategic decision was made during a time when D was still being prosecuted for criminal liability on the underlying accident. Such a strategic choice of when to bring a motion cannot be the "cause" of alleged new facts justifying reconsideration.