

**NOTICE:**

To request limited oral argument on any matter on this calendar, you must call the Court at (916) 874-5487 (Department 47) by 4:00 p.m. the court day before this hearing and advise opposing counsel. If no call is made, the tentative ruling becomes the order of the court. Local Rule 2.02(D).

**Department 47  
Superior Court of California  
720 Ninth Street  
Roland L. Candee, Judge  
S. Jacobs/P. Banks, Clerk  
None, Bailiff**

**Wednesday, February 28, 2007, 9:30 AM**

Item 1    **04AS02522        TRUST REALTY PARTNERS VS. STEVE WESTLY, ET AL**

Nature of Proceeding: Miscellaneous Motion

Filed By:

On September 13, 2006 this court stayed all proceedings in this case in accordance with Justice Coleman Blease's August 10, 2006 order. In its previous order this court set a hearing for February 28, 2007 to determine the status of the appeal and whether the stay should be vacated or extended.

Defendant has apprised the court that the appeal is still pending. The briefs have been submitted, but no hearing date has been set. Accordingly, the court will extend the stay through July 18, 2007. A hearing shall be held on July 18, 2007 at 9:30 a.m. in Department 47 to determine whether the stay should be further extended. The parties shall file papers with the court at least 5 court days before the hearing to advise the court of the status of the appeal and whether the stay should be extended.

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Item 2    **05AS04363        ALAN LANE VS. SUSAN BUSH**

Nature of Proceeding: Motion To Change Venue

Filed By:

Defendant Bush's motion to change venue of this action to the Placer County Superior Court is DENIED for the reasons set forth below.

The complaint herein sets forth causes of action for negligence, breach of implied warranty of habitability, negligent maintenance of premises and intentional infliction of emotional distress, among other causes. In arguing that venue should be transferred, defendant cites among other things, CCP 395(a), which provides in pertinent part, that an action for injury to person or personal property may be brought in either the county where the injury occurs or the county in which some of the defendants reside. Defendant's own authority supports plaintiff's selection of venue. It provides for venue either where the injury occurred or where defendant resides. As it is not disputed that defendant resides in Sacramento County, Sacramento is a proper court for venue purposes.

The argument for venue in Sacramento is even more compelling, however, given the fact that several of the causes asserted by plaintiff, intentional infliction of emotional

distress and negligence may only be tried in defendant's county of residence. (Cubic Corp v. Superior Court (1986) 186 Cal. App 3d 622, Carruth v. Superior Court (1978) 80 Cal. App 3d 215).

To the extent defendant seeks to argue that the convenience of witnesses and ends of justice support transfer to Placer because the initial trial occurred there and certain witnesses may reside there, such a motion is premature. A transfer motion brought on these grounds must be made after the answer is filed and must be supported by a detailed showing of the specific witnesses who would be inconvenienced by a trial in the current forum, their expected testimony and how the interests of justice would be furthered by transfer. (Weil & Brown, Cal. Civ. Proc. Before Trial 3:567 at 3-133; Juneau v. Juneau (1941) 45 Cal. App. 2d 14). In this case the court records reflect that no answer has been filed. Moreover, defendant has not made the detailed showing that would be required to support a convenience of witnesses and ends of justice motion..

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Item 3    **05AS05491        JOHN BLANEY, ET AL VS. JAY T. DRAEGER, M.D., ET AL**

Nature of Proceeding:    Miscellaneous Motion

Filed By:

Good cause appearing, and the parties having stipulated thereto, defendant Catholic Healthcare West's motion to continue trial and settlement conference currently set for April 23, 2007 and April 5, 2007, respectively, is GRANTED. This matter shall be placed upon the August 6, 2007 trial setting calendar to be heard at 10:00 a.m. in Department 47.

The court finds good cause to continue based upon the parties stipulation and the parties interest in attempting to resolve this complicated medical malpractice action through mediation.

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Item 4    **06AS04287        THOMAS JACKSON, ET AL VS. BRIGIT BARNES, ET AL**

Nature of Proceeding:    Motion To Change Venue

Filed By:

Good cause appearing, defendants' motion to change venue of this action to the Placer County Superior court is GRANTED for the reasons set forth below. Plaintiff shall pay transfer fees.

Plaintiff's complaint, filed October 6, 2006, lists the following four causes of action: (1) professional negligence, (2) breach of fiduciary duty (3) breach of contract and (4) breach of the implied covenant of good faith and fair dealing. Defendant assert that venue as to all claims is improper in Sacramento County and as a consequence the case should be transferred to Placer County. In support of her claim defendant declares that her principal place of business and residence are both in Placer County, that the contract for legal services between the parties was entered in Placer County, that the underlying lawsuit was filed in Placer County and that the property subject to the underlying suit was located in Placer County.

Plaintiff alleges that venue is appropriate in Sacramento under the contract causes of action. Plaintiff avers there were numerous contracts in addition to the retention

agreement. Specifically, a settlement agreement and an agreement to arbitrate before retired Judge Cecily Bond in Sacramento. Plaintiff alleges that these later agreements were entered in Sacramento and that some of the work relating to them was performed in Sacramento.

Defendant asserts that the only contract at issue here is the contract for legal services and that contract was entered into in Placer County at defendant's office. Defendant asserts that venue under a contract action is proper either where the contract was entered or where the defendant resides. Defendant notes that under the statute the county where the contract is to be performed is presumed to be the county where the obligation is incurred absent a special contract provision in writing to the contrary. (CCP 395(a); *Mitchell v. Superior Court* (1986) 186 Cal. App. 3d 1040, 1045). In this case, there is no contract provision to the contrary. Accordingly, contract venue lies only where the defendant resides or the contract was entered.

The court finds that the contract for legal services was entered in Placer County, that the obligation was incurred there and that defendant resides there. The fact that certain work may have been performed outside Placer County and that plaintiff may have been involved with some other legal agreements following the retention agreement does not render venue appropriate in Sacramento County under the contract action. The other agreements including a settlement agreement and an agreement to arbitrate were not agreements between plaintiff and defendant herein.

Even assuming for purposes of argument that the contract action was properly venued in Sacramento, venue would still have to be transferred to Placer County under the mixed action rule. Under the mixed action rule where there are multiple causes of action which are governed by different venue rules, a motion for change of venue must be granted on the entire complaint if defendant is entitled to a transfer on any one cause. ( *Weil & Brown*, Cal. Civ. Proc. before Trial 3:515 at 3-124-5; *Brown v. Superior Court* (1984) 37 Cal. 3d 477, 488; *Capp Care Inc. v. Superior Court* (1987) 195 Cal. App.3d 504).

In this case different venue rules apply to the tort and contract claims. As to the tort claims venue is only proper in defendant's county of residence. In this case it is clear that the tort claims would not come within the narrow definition of personal injury claims and are therefore subject to the general venue rule that actions are tried in the county where the defendant resides. (CCP 395(a)). Under the mixed action rule where some causes of action are not properly venued in the forum, the entire complaint must be transferred usually to defendant's county of residence. (See *Weil & Brown*, supra. at 3:515).

Finally, the court notes that both parties have filed their papers under the wrong case number. The correct case number for this action is 06AS04287.

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