William Powers, Junior v. Denise Emerson   **16CVP-0115**

Hearing: Motion to Use Settled Statement on Appeal

Date: January 16, 2018

On November 2, 2017, Plaintiffs (William Powers, Jr.; William Powers, III; and Lindsey Keyes) filed a Notice of Appeal regarding the October 18, 2017 denial of the motion for reconsideration of the ruling sustaining the demurrer to the Third Amended Complaint without leave to amend.

On November 13, 2017, Plaintiffs filed their Notice of Designating Record on Appeal ("Notice"). In the Notice, Plaintiffs elected to proceed with a record of the oral proceedings in the form of a settled statement pursuant to California Rules of Court, rule 8.137.[1] Plaintiffs stated on the Notice:

> Plaintiffs have been informed by the appellate clerk that there is no audio recording of the hearings, even though they heard the judge tell another litigant verbatim, that every word he said was being recorded. They therefore will summarize the hearings from their notes and submit the summary to the other side for agreement. If an agreement results, they will submit it to the Court by stipulation. If not, they will make a motion. For now, they cannot request a Reporter's Transcript.

To obtain a settled statement under rule 8.137(a), the appellant was required to serve and file a motion.[2] Plaintiffs filed this separate motion that same day (November 13, 2017) and set the matter for hearing.[3]

The Court (Hon. Roger Picquet) denied the request for a settled statement on December 7, 2017. The Order was served on the parties that same day. As the motion has already been ruled upon, the Court intends to take this matter off calendar.

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[1] All further references to rules are to the California Rules of Court.

[2] Defendants (Denise and Philip Emerson) allege defective service. As the Court finds the motion has already been ruled upon, it does not address the substance of the arguments raised in Defendants' opposition.

[3] The mandatory Judicial Council form (APP-003) used for the Notice required that appellant "*attach* the motion required under rule 8.137(a) to this form." [Emphasis added.]