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FILED

APR 11 2012

SAN LUIS OBISPO SUPERIOR COURT
BY *D. Silbert*
D. Silbert, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO**

CACH, LLC,
Plaintiff,

v.

Lisa Jones, an individual,
Defendant

) Case No.: LC116247

) **JUDGMENT FOR
DEFENDANT AFTER TRIAL**

) Department: 3

) **TRIAL DATE: 3/12/2012**

) LIMITED JURISDICTION

1 **JUDGMENT AFTER TRIAL**

2 This case came on for court trial between plaintiff CACH, LLC and
3 defendant Lisa Jones on March 12, 2012, at 8:30AM, before the Honorable Dodie
4 Harmon, in Department 3 of the San Luis Obispo branch of the California Superior
5 Court, County of San Luis Obispo. Local counsel specially appeared for Mandrich
6 Law Group on behalf of CACH, LLC. Ian Chowdhury of the Law Office of Ian
7 Chowdhury appeared on behalf of Lisa Jones.

8 CACH, LLC’s offer of proof consisted of the declaration of Peter Huber,
9 ostensibly submitted under the authority of CCP § 98. Jones objected to the
10 admissibility of the declaration, arguing that the prerequisites of § CCP 98 were not
11 satisfied and that declaration was otherwise inadmissible hearsay. The Court
12 sustained these objections. CACH, having provided no other evidence, has failed to
13 meet its burden of proof.

14 Law and procedure in limited jurisdiction cases is the same as in any other
15 case, except when there is a specific exception. CCP § 90. It is the general rule in
16 civil litigation that trial testimony is presented by means of live testimony, and
17 subject to cross-examination. Evid. Code §§ 711 and § 1200. Because Huber’s
18 written declaration fails to comply with CCP § 98’s exception to the normal
19 requirement for live testimony, it must be excluded.
20 E.g., *Elkins v. Superior Ct.*, (2007) 41 Cal. 4th 1337, 1356-59 (disapproving
21 trial court practice of allowing declarations in lieu of testimony without proper
22 justification for deviating from general civil law).

23 In order for written testimony to be admissible under § 98, the affidavit
24 must be served “together with a current address of the affiant that is within 150 miles
25 of the place of trial.” CCP § 98(a). In contrast, the Huber Declaration fails to
26 identify his current address and therefore does not comply with the statute.
27 Moreover, CACH’s counsel acknowledged at trial that Mr. Huber is from Denver,

1 Colorado, which is certainly in excess of 150 miles from the place of trial. Also,
2 being a resident of Colorado, Mr. Huber would not normally be subject to this
3 Court's subpoena power, which is a further defect in the CCP § 98 Declaration,
4 because under that section the declarant must be "available for service of process."
5 This limitation is not overcome by the declaration's reference to the California
6 address of CACH's counsel in this matter (which is, in any event more than 150
7 miles from the place of trial).

8 Therefore, the Court enters judgment as follows:

9 Plaintiff CACH, LLC takes nothing from defendant Lisa Jones. Lisa Jones is
10 the prevailing party. Costs and/or attorneys fees (if available by law or contract),
11 shall be respectively determined pursuant to timely application and motion for same.

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13 DATED: APR 11 2012

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15 **/S/ BARRY T. LABARBERA**

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17 Dodie Harmon
18 SUPERIOR COURT JUDGE
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