# In The Matter of $4,940.00 (In re Rastrojo)

# 21CF13559

# PETITIONER'S APPLICATION TO SERVE BY PUBLICATION

This is a special proceeding to declare a forfeit of property seized on 06/17/21 by law enforcement officers during the execution of a search warrant at adjoining properties on Avenue A in Mountain Ranch. Deputies seized cash located in a trailer on the property. There is a companion criminal case (see 21C19892). Before the Court is a motion by The People to serve claimant by publication. The application indicates that his previously-disclosed mailing address (P.O. Box 1592, San Andreas) is no longer valid.

Nonjudicial forfeiture proceedings must comport with various due process protections, including proper notice to persons who claim a lawful possessory interest in the property seized. (*Ramirez v. Tulare County District Attorney's Office* (2017) 9 Cal.App.5th 911, 925-930; *Cuevas v. Superior Court* (2013) 221 Cal.App.4th 1312, 1320-1327.) If a verified claim is filed – as was the case here – the prosecuting authority must give "notice of the hearing in the same manner as provided in Section 11488.4." (H&S Code §11488.5(c)(1).) For persons actually designated in the seizure receipt, notice to them requires formal service of a summons; for persons *not* designated in the receipt, but who otherwise claim an interest in the seized property, service on them must be by "by personal delivery or by registered mail." (H&S Code §11488.4(c).) Neither the original, nor the amended, petition include a copy of the Notice of Nonjudicial Forfeiture Proceeding (aka, "the receipt") or any reference to a receipt having been provided during the seizure. However, since the petition only describes an interaction with claimant at the property, since claimant admitted to being a tenant in possession, and since a claim opposing was filed, one would expect the receipt to have been handed to, and to designate, claimant in an effort to proceed via nonjudicial forfeiture.

The District Attorney's inability to properly serve claimant should come as little surprise given that the only effort has been to attempt to serve claimant at a U.S. post office box, which would not satisfy statutory due process requirements. (See CCP §415.20; *First American Title Ins. Co. v. Banerjee* (2022) 87 Cal.App.5th 37, 43; *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1201-1202.) The US Postal Service returned the service efforts as "vacant" and "no mail receptacle." Claimant apparently closed his P.O. Box. No effort was made by the District Attorney to effectuate personal service at the property that claimant was renting and where the seizure occurred or any skip tracing effort. Claimant's personal identification cards were at the property, potentially those offered more addresses to consider. Since there is presently a bench warrant out for claimant in the related criminal case, this Court believes that additional efforts to serve claimant can be made short of resort to service by publication.

Motion is denied without prejudice to be refiled in the event the District Attorney's Office exhausts further efforts to effectuate personal service on claimant, and shall include a declaration of due diligence.

The Clerk shall provide notice of this Ruling to the parties forthwith. Petitioner to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

# LAGUNA v. CLOUGH, et al

# 22CV46348

# DEMURRER TO COMPLAINT

This is a quiet title and specific performance action involving an alleged oral promise to make a testamentary gift of real property. There are related actions (see 22UD13972 and 22PR8530). Before the Court is a demurrer to the operative Complaint, filed 10/07/22. Although the CCP §430.41 declaration filed with the demurrer suggests that plaintiff and his counsel intend to defend the pleading, no opposition appears in the court file. The time to file an amended pleading as a matter of right has lapsed (CCP §472), leaving this Court with the requisite task of deciding whether defendant's objection to the Complaint is well-taken, and if any method of cure is feasible.

*Pertinent Background*

In or about December of 2019, the brother of Charles Laguna (hereinafter "Charles" for ease of reference) purchased property on Black Oak Drive next door to Elizabeth Mary Edwards (hereinafter "decedent"). As a "neighborly gesture," Charles began providing assistance to decedent completing various household chores.

According to Charles, decedent asked him to move into her home and provide "regular" assistance, and orally promised him that in exchange for that effort she would – upon her passing – gift him her residence (290 Black Oak Drive, Mokelumne Hills, APN 020-029-123).

According to decedent's family, Charles provided care to decedent in exchange for free room and board, not an ownership stake in the residence.

Decedent died 05/20/22, leaving no testamentary instruments of any kind.

On 07/20/22, decedent's great-nephew Corbin Clough (hereinafter "Corbin" for ease of reference) commenced a petition for probate in this County (see 22PR8530). Decedent's heirs-at-law include two siblings and a niece. Although Corbin indicated in the petition that decedent's estate included real property valued at $726,500, based on the Inventory & Appraisal it would appear that her real property has a gross value closer to $450,000 (without regard to encumbrances). Decedent's residence was appraised by the probate referee at $250,000.

On 08/21/22, Corbin caused to be delivered to Charles a 60-Day Notice to Terminate in accordance with Civil Code §1946.2(b), advising Charles that the residence was going to be "pulled from the rental market" at that time.

On 10/07/22, Charles filed this civil action to quiet title in his favor based upon decedent's alleged oral promise to gift the property to him, along with his alleged material and detrimental reliance thereon. (See, *e.g.,* Evidence Code §662 and *Monarco v. Greco* (1950) 35 Cal.2d 621, 624.) Charles named Corbin as a defendant in his representative capacity, but did not present Corbin with a creditor's claim in the probate action until several months later.

On 10/28/22, Corbin filed an unlawful detainer action against Charles (22UD13972). Charles appeared by way of a demurrer and motion to stay/abate in favor of the civil action. Corbin opposed both motions, raising first a number of technical defects relating to service and notice, and then more general objections regarding the propriety of proceeding expeditiously with the UD case.

On 12/27/22, all three cases were deemed related and consolidated for all purposes – with the civil action serving as the lead case.

*The Demurrer*

A demurrer presents an issue of law regarding the sufficiency of the allegations set forth in the complaint. The challenge is limited to the "four corners" of the pleading (which includes exhibits attached and incorporated therein), or from matters outside the pleading which are judicially noticeable. The complaint is read as a whole. Material facts properly pleaded are assumed true, but contentions, deductions or conclusions of fact/law are not. In general, a pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. (CCP §§ 425.10(a), 459; in accord, *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gray v. Dignity Health* (2021) 70 Cal.App.5th 225, 236.)

The operative pleading herein contains four causes of action: specific performance via constructive trust; quiet title; declaratory relief; and injunctive relief. All four causes of action involve the exact set same of facts, to wit: an alleged oral contract to posthumously gift real property in exchange for inter vivos assistance. As previously hinted, and in light of the obvious statute of frauds concern this kind of claim is typically framed by two causes of action: breach of oral contract; and promissory estoppel (or fraudulent inducement if no intent to perform ever existed). (See Civil Code §1624; *Monarco v. Greco* (1950) 35 Cal.2d 621, 623-624; *Jones v. Wachovia Bank* (2014) 230 Cal.App.4th 935, 946-952; *Secrest v. Security National Mortgage Loan Trust* (2008) 167 Cal.App.4th 544, 553.) Viewed in this light, the averments contained in the Complaint are insufficient to trigger the enforcement of an oral promise to convey real property because plaintiff must show more just the oral promise; he must plead facts demonstrating "unconscionable injury" to the promisee or "unjust enrichment" to the promisor. (*Id*.) The degree of "assistance," offset by the free room and board, does not necessarily show either. Plaintiff needs to provide far more detail regarding the household assistance he provided, which may naturally trigger an adverse donative transfer presumption under Probate Code §21380(a). Finally, there remains the

question of whether a creditor claim was required to preserve the assertion and if plaintiff's creditor claim was procedurally and substantively adequate for that purpose. Some of this might turn on matters taking place in the Probate case.

Demurrer SUSTAINED, WITH 30 days leave to amend.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

# JANE DOE v. COUNTY OF CALAVERAS

# 22CV46492

# MOTION TO WITHDRAW AS COUNSEL

This case involves allegations of childhood sexual abuse, and the averred negligence of the County for permitting unsupervised visits between the plaintiff and her biological father. Before the Court is a motion by plaintiff's attorney to withdraw from the case.

An attorney may withdraw as counsel of record if the client breaches the agreement to pay fees, insists on pursuing invalid claims or an illegal course of conduct, or when other conduct by the client renders it unreasonably difficult for the attorney to do his job, including when there is a breakdown in the attorney-client relationship. If the attorney does not have the client's consent, he or she must proceed by way of noticed motion consistent with CCP §§ 284 and 1005, CRPC 1.16 and CRC 3.1362. The motion must be verified, must utilize the designated Judicial Council forms MC-051 – MC-053, and must set forth sufficient detail to permit a trial court to discharge its duty of inquiry regarding the grounds for the motion. (See *Flake v. Neumiller & Beardslee* (2017) 9 Cal.App.5th 223, 230; *Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1134-1136; *Aceves v. Superior Court* (1996) 51 Cal.App.4th 584, 592-593.)

Counsel has failed to provide even a scintilla of facts supporting the desire to abandon the case. Although counsel offers to provide more details in camera, any such proffer would have to be in the presence of the client – whom counsel did not assure would attend. As such, the supporting declaration requires more information.

In addition, all papers in support of the motion must be personally delivered or mailed to the client's "current" address (as confirmed within last 30 days). CRC 3.1362(d)(2) requires the attorney to serve the papers on the client at an address which was actually confirmed to be accurate within the preceding 30 days. If an address cannot be confirmed, and counsel can show due diligence, service can be made to the client's last known address and on the clerk of the court. (CCP §1011(b) and CRC 3.252.) Here, counsel has reportedly utilized the "general delivery" version of mail but without identifying the City center to which general delivery is made, the name upon which the mail is to be held, or that plaintiff actually uses "general delivery" as her primary address. The fact that she *may* qualify for appearances via pseudonym does not obviate the fact that this Court (and for that matter the defendant) will be required to have a good mailing address for plaintiff. She can open a PO Box and have mail sent there using a unique pseudonym.

Motion denied without prejudice. The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal CRC 3.1312 order is required.

# LEHR v. ESQUIVEZ

# 23CV46620

# MOTION TO STRIKE PRAYER FOR PUNITIVE DAMAGES

This is a personal injury dog bite case. Before the Court is a defense motion to strike plaintiff's prayer for punitive damages.

Pursuant to CCP §§ 435 and 436, a party may move for an order striking from a pleading "any irrelevant, false or improper matter" or "any part of any pleading not drawn in conformity" with laws, rules or orders. (See *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683.) According to defendant, the prayer for punitive damages is not drawn in conformity with the laws due to a lack of sufficient averments.

Contrary to popular folklore, there is no heightened pleading requirement for a punitive damage prayer based on malice or oppression. However, in light of the future evidentiary burden facing plaintiff, it is reasonable to consider that the averments should at least permit a factfinder to have "no substantial doubt" that defendants' were guilty of malice. (*Amerigraphics, Inc. v. Mercury Cas. Co.* (2010) 182 Cal.App.4th 1538, 1559.) To adequately plead a claim for punitive damages under the malice rubric, one must plead with specificity facts demonstrating (1) defendant's conduct was "despicable" and that (2) defendant acted with a willful and conscious disregard for the safety of another in the commission of said conduct. Despicable conduct is conduct that is "so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people [and] having the character of outrage frequently associated with crime." (*Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 716.) Stated another way, "punitive damages are appropriate if the defendant's acts are reprehensible … [and which] could be described as evil, criminal, recklessly indifferent to the rights of the [plaintiff], or with a vexatious intention to injure." (*Food Pro International, Inc. v. Farmers Ins. Exchange* (2008) 169 Cal.App.4th 976, 994-995.)

There are not many cases finding conduct despicable in the context of non-intentional wrongdoing. (See, *e.g., Sumpter v. Matteson* (2008) 158 Cal.App.4th 928, 936 [driving recklessly, while impaired, was despicable]; *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210 [skiing recklessly, but not impaired, not despicable]; *Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1300-1301 [failure to warn of product's carcinogenic properties was despicable]; *Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1221-1222 [sexually abusing a minor was despicable].) The parties have not cited, and this Court has not uncovered, any California precedent on point; However, the Court of Appeals of North Carolina has addressed this precise issue, and formulated the following rule, which this Court finds persuasive:

> "Permitting a dog that is known to have twice attempted without provocation to bite a human being to run loose in an area habitated or occupied by other people is evidence of a reckless or wanton indifference to or disregard for the safety of others, sufficient to support an award of punitive damages." *Hunt v Hunt*, 357 S.E.2d 444, 447 (N.C. 1987).

In the case at bar, plaintiff alleges that defendant had a dog roaming off-leash when he arrived to perform an inspection. Plaintiff's reasoning for being at the property is not in dispute; however, the operative pleading provides no basis for concluding that allowing said dog to remain off-leash when he arrived was despicable. There are no averments that the dog had dangerous propensities (i.e., tried to bite others) or that defendant was consciously disregarding a known risk that his dog would bite someone. Defendant is presumably liable for plaintiff's injuries based on strict liability, but going further into "fault" determinations – especially those required for punitive damages – requires more averments regarding defendant's wrongdoing (actus reas), defendant's mindset (mens rea), and the dog's disposition. (See, *e.g., Thomas v. Stenberg* (2012) 206 Cal.App.4th 654, 666-667; *Salinas v. Martin* (2008) 166 Cal.App.4th 404, 413-414; *Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360, 1369-1370; *Donchin v. Guerrero* (1995) 34 Cal.App.4th 1832, 1838; *Drake v. Dean* (1993) 15 Cal.App.4th 915, 922.)

Motion to strike is GRANTED, but without prejudice to a future motion for leave to amend to add a prayer for punitive damages if, in the course of discovery, a factual basis for such a prayer is revealed.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

# CONNOLLY v. DE LA CRUZ

# 23CV46549

# CROSS-DEFENDANT'S DEMURRER AND MOTION TO STRIKE

This civil action stems from a dispute over easement rights. Before the Court is a demurrer directed to the operative Cross-Complaint filed 03/09/23, as well as a demurrer and motion to strike directed at the First Amended Answer filed 05/01/23.

The salient facts are as follows:

Plaintiff owns APN parcels 048-025-034 and 050-002-120, commonly and collectively referred to as Cain Ranch (and hereinafter referred to as "the Ranch"). The property was previously burdened by a 16.5 foot prescriptive easement belonging to Linkletter Properties for ingress and egress to adjacent property (with the right to erect a fence with a gate), but plaintiff maintained a co-equal easement over a similar strip for cattle grazing and herding. According to plaintiff, the dueling co-equal easements were unburdened by judgment, merger and eventual extinguishment. Despite the loss of said easement, defendant accessed the strip and removed a portion of the perimeter fence restraining cattle from roaming free.

Defendant owns APN 048-051-034, and is the elected road manager at Valley Hills Estates. According to defendant, the aforementioned easement overlaps a 60-foot right of way in the referenced subdivision parcel map. Recently, some trees fell in the disputed easement, and plaintiff erected a fence post therein – both of which to defendant qualify as impediments.

Although the matter of easements is ordinarily fairly routine and easy to navigate with the right recordings and expertise, plaintiff and defendant have engaged in what can best be described as over-convoluted explanations. While the parcel maps assist, "a petition for an injunction to restrain real property encroachments or protect easements must depict by drawings, plot plans, photographs, or other appropriate means, or must describe in detail the premises involved, including, if applicable, the length and width of the frontage on a street or alley, the width of sidewalks, and the number, size, and location of entrances." Barren references to recordings and judgments does not provide this Court the required precision to even start touching the merits. Of course, with this being a demurrer, the merits of the claim are in fact not material so long as the factual averments are not clearly refuted by the recordings proffered – and they are not.

Nevertheless, plaintiff (cross-defendant) is correct that uncertainty exists regarding who ought to be the real party in interest for purposes of the cross-complaint. Even though

defendant alleges that he owns a parcel which – when viewed on the parcel map – appears to be in the Valley Hills Estate development, he does not allege to have a personal interest in the easement (or right of way) allegedly infringed by plaintiff. (See XC Para 5-6.) The real party in interest is the person who has the right to sue under the substantive law. It is the person who owns or holds title to the claim or property involved, as opposed to others who may be interested or benefited by the litigation. (See *Glen Oaks Estates Homeowners Ass'n v. Re/Max Premier Properties, Inc.* (2012) 203 Cal.App.4th 913, 920; *Jasmine Networks, Inc. v. Superior Court* (2009) 180 Cal.App.4th 980, 991; *Property Owners of Whispering Palms, Inc. v. Newport Pac., Inc.* (2005) 132 Cal.App.4th 666, 673; *Gantman v. United Pac. Ins. Co.* (1991) 232 Cal.App.3d 1560, 1568.)

Demurrer to the cross-complaint for failure to state a basis to proceed as real party in interest is SUSTAINED with 30 days leave to amend.

Plaintiff also demurs to the First Amended Answer. Pursuant to CCP §430.20, a party may demur to an answer on only one of three grounds:

(1) Failure to state facts sufficient to constitute a defense;
(2) Uncertainty;
(3) Failure to state whether contract is oral or written.

An answer may include a general denial, specific denial or a new matter constituting an affirmative defense. (CCP §431.30.) A general denial in an answer puts in issue the material allegations of the complaint, including all essential elements of the claims. (*Advantac Group, Inc. v. Edwin's Plumbing Co., Inc.* (2007) 153 Cal.App.4th 621, 627.) Although the defendant should aver "carefully and with as much detail" as possible, allegations should be liberally construed. (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384.) Since a general denial puts in issue the material allegations of the complaint, affirmative defenses which only redress the essential elements of plaintiff's claims can be adequately stated with mere generic references. (See *Advantac Group, Inc. v. Edwin's Plumbing Co., Inc.* (2007) 153 Cal.App.4th 621, 627.) However, for affirmative defenses raising "new matter" (that is, matter upon which defendant would have a burden of proof), the pleader must include ultimate facts sufficient to put the plaintiff on notice of the nature of the defense. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 549-550; *Hata v. Los Angeles County Harbor/UCLA Medical Center* (1995) 31 Cal.App.4th 1791, 1805.) Equitable defenses are "new matter" requiring ultimate facts pled. (See *Camp v. Jeffer, Mangels, Butler & Marmaro* (1995) 35 Cal.App.4th 620, 638–639.) If, as often occurs, defendants do not have evidence of defenses but fear a waiver argument, they include the defense in conclusory, barren fashion. (See *Ekstrom v. Marquesa at Monarch Beach HOA* (2008) 168 Cal.App.4th 1111, 1122-1123.) Defendants should only plead the defense when the evidence supports it and seek leave to amend if need be – which is to be routinely granted. (See *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761; *Green v. Rancho Santa Margarita Mortgage Co.* (1994) 28 Cal.App.4th 686, 692-693.)

With regard to defendant's First Amended Answer, the First (failure to state) and Seventh (mitigation) affirmative defenses are general and can be pled without facts. The balance of the affirmative defenses require some facts. Although plaintiff failed to properly demurrer to each affirmative defense within the First Amended Answer, such a technical defect can be easily circumvented with a MJOP. As such, it is best to improve the answer at this time. Demurrer to the Second – Sixth affirmative defenses for failure to state facts is SUSTAINED with 30 days leave to amend. The "back-up motion to strike" is defective and moot.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.