

# **Cardinal Health 414 LLC, et al. v. Nancy Gay Kreis, et al.**

**21CV45221**

## **MOTION FOR AN ORDER**

### **COMPELLING RESPONSES TO DISCOVERY**

Defendant Nancy Gay Kreis moves, pursuant to Code of Civil Procedure sections 2030.290, and 2031.320, for an order compelling Plaintiffs Cardinal Health 404, LLC (Cardinal Health) and XL Insurance America, Inc. (XL) responses to form interrogatories, special interrogatories, and requests for production of documents on the grounds that Cardinal Health and XL “have failed to voluntarily comply with the aforementioned discovery requests.” (Notice of Motion at 1:24-2:7.)

Plaintiffs concede that they have failed to timely produce responses to the subject discovery requests. (See Opposition at 2:8-14.) Plaintiffs therefore do not oppose the present motion. (See *Id.* at 2:8-9.)

The Court finds good cause for issuing an order compelling Plaintiffs to produce responses to Defendant’s Form Interrogatories Sets One, Special Interrogatories, Sets One, and Requests for Production of Documents, Sets One.

Based on the foregoing, Defendant’s motion to compel is GRANTED. Plaintiffs to provide complete verified answers, without objection, to the general and special interrogatories, and a verified response, without objection, including all responsive documents in plaintiffs’ care, custody, or control, by the close of business on September 17, 2021.

Defendant’s memorandum contains a section in which Defendant argues that she is entitled to sanctions for Plaintiffs’ failure to timely serve responses to the subject discover. However, Defendant’s Notice of Motion contains no reference to a request for sanctions. As such, any such request is not properly before the Court. (See Rules of Court, Rule 3.1110 “[a] notice of motion must state in the opening paragraph the nature of the order being sought and the grounds for issuance of the order”]; see also Code Civ. Proc., § 2023.040 “[a] request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought”].) Additionally, the Court reads the discovery statutes as mandating sanctions only where there is a meritless opposition. Based on the foregoing, Defendant is not entitled to an award of sanctions in connection with the present motion.

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.

**Marc Chesson, et al. v. Knight & Day Investments, Inc., et al.**

**18CV43298**

**MOTION TO CONTINUE TRIAL DATE**

Defendant Paul M. Zagaris Inc. dba PMZ Real Estate and Cross-Defendant Martina Owens (collectively PMZ) move, pursuant to California Rules of Court, rule 3.1332, for an order vacating and continuing the dates set for trial and pre-trial readiness conference in the matter, along with all related dates and deadlines.

One basis for the motion relates to the potential addition of new parties through an amended cross-complaint. However, the motion for leave to file that amended cross-complaint is not on calendar until September 17, 2021. The Court is unavailable to hear the motion for leave to file the amended cross-complaint on that date.

For the foregoing reasons, the present motion to continue trial and the motion for leave to file an amended cross-complaint are CONTINUED to October 15, 2021, 9:00 a.m. in Dept. 2.

The Court notes the serious health matters alleged in the Declaration of Robert R. Eckert, Sr., filed in support of the opposition to the present motion. The parties are directed to take all reasonable steps necessary to preserve Mr. Eckert's trial testimony through an evidentiary deposition and report on such efforts at the continued hearing.

The clerk shall provide notice of this ruling to the parties forthwith. No formal order pursuant to Rule of Court 3.1312 is required.

**Discover Bank v. Ron Beck**

**19CF12822**

**MOTION TO ENTER JUDGMENT PURSUANT TO CODE OF  
CIVIL PROCEDURE SECTION 664.6**

Plaintiff Discover Bank moves, pursuant to Code of Civil Procedure section 664.6, for an order entering judgment pursuant to a stipulated settlement agreement on the grounds that Defendant Ron C. Beck has defaulted on the agreement.

“If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.” (Code Civ. Proc., § 664.6 (a).)

The parties on 11/4/19 filed a Stipulation for Entry of Judgment Pending Performance which settled all matters raised in the Complaint. Based on the evidence presented, the Court finds defendant is in default under the terms of the Settlement Agreement. (See Declaration of Jessica Garcia at ¶ 7.) Additionally, plaintiff has satisfied all of its obligation under the Settlement Agreement. (See *id.* at ¶ 8.)

Defendant failed to file any opposition to the motion.

Based on the foregoing, Plaintiff’s motion is GRANTED.

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

# Christopher Maag v. Daniel R. Laughlin, et al.

## 20CV44843 DEMURRER

Defendant Laughlin Trust demurs, pursuant to Code of Civil Procedure section 430.10, to the first, second, and third causes of action of Plaintiff's Complaint on the grounds that, as a trust, it cannot be sued. (See Notice of Motion at 1:27-2:8.) Defendants Laughlin Trust, Daniel R. Laughlin, Claire S. Laughlin, and Gregory Patterson demur, pursuant to Code of Civil Procedure section 430.10, to the third cause of action of Plaintiff's Complaint on the ground that it fails to state facts sufficient to constitute a cause of action against any of them for Fraudulent Conveyance. (See *id.* at 2:6-7.)

Defendants first argue that all three causes of action fail as to Defendant Laughlin Trust because a trust cannot be sued. This is true for "an express trust [that is] merely a relationship by which one person or entity holds property for the benefit of some other person or entity." (*Presta v. Tepper* (2009) 179 Cal.App.4th 909, 913. This type of 'trust', "can neither sue nor be sued in its own name. Instead, the real party in interest in litigation involving a trust is always the trustee." (*Id.* at 914.)

The Complaint names "Laughlin Trust" as a defendant. (See Complaint at ¶¶ 1, 5, subd. (a).) Plaintiff argues that the person sued under the name Laughlin Trust "may be a legal entity or an unincorporated association" and is therefore subject to being sued. (See Opposition at 4:14-15.) The Court understands Plaintiff to infer, from this argument, that the Complaint does not contain allegations from which it can be concluded that the party sued as "Laughlin Trust" is the type of express trust that cannot be sued under the holding in *Presta v. Tepper, supra*, 179 Cal.App.4th 909. The Court disagrees

A demurrer is treated as "admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Paragraph 5 of the Complaint states that "Each defendant named above is a natural person except defendant Laughlin Trust" which is then explicitly identified as "a trust." (Complaint at ¶ 5.) Plaintiff does not identify the Laughlin Trust in the Complaint as a Real Estate Investment Trust or a "commercial trust" or any other form of "legal entity" discussed in Plaintiff's Opposition. (See Opposition at 4:14-25.)

To the extent that Plaintiff wishes to allege that the Laughlin Trust is such a legal entity, the Court grants leave to amend the Complaint to so allege. To the extent that Plaintiff remains "unsure of the exact nature of the Laughlin Trust, and unaware of the identity of the trustee" the present ruling is made without prejudice to Plaintiff's right, upon learning the nature of the former and/or the identity of the latter, to subsequently substitute the Laughlin Trust and/or its

trustee for one or more of the 100 Doe Defendants named in the Complaint. (See Opposition at 5:1-2; see also Complaint at p. 1.)

Defendants next contend that the Complaint fails to allege facts sufficient to state a cause of action for fraudulent conveyance. Defendants argue that the cause of action is subject to the heightened specificity of pleading required for fraud claims. Defendant presents no authority supporting that position, however. Plaintiff counters that “Defendant mixes the rules for a fraudulent conveyance with fraud. A ‘fraudulent conveyance action is not a ‘fraud’ action, thus ordinary pleading rules apply.” (Opposition at 7:12-13.) Plaintiff similarly fails to provide authority for *this* suggestion.

The Court suspects that the reason neither party provided such authority is that it is unclear from the allegations of the Complaint whether Plaintiff is alleging fraud.

To the extent that the basis of the claim is that the defendants made the alleged transfer of the property with an actual intent to defraud the plaintiff, the heightened pleading standard would apply. (See, *e.g.* *Albertoli v. Branham* (1883) 80 Cal. 631, 633-34.) Plaintiff does allege such fraudulent intent in the simple language of the complaint. (See Complaint at 6:9-11 [“[a]s a result of the negligence alleged herein, Defendants have taken to make an (off record) transfer of the Property to Defendant Doe 100, with an actual intent to hinder, delay, and defraud the Plaintiff”].) However, a claim under the Uniform Voidable Transactions Act (UVTA) may be successfully made in the absence of fraud. (See, *e.g.*, Civil Code, § 3439.04, subd. (a)(1) [“[a] transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation...[w]ith actual intent to hinder, delay, or defraud any creditor of the debtor”].) Use of the disjunctive in the phrase, “hinder, delay, or defraud” suggests that a plaintiff may state a cause of action under the UVTA without alleging fraud.

Ultimately, the Court concludes that the allegations of the third cause of action fail even the minimal pleading standards that Plaintiff urges apply. A demurrer is treated as “admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) “The Supreme Court has consistently stated the guideline that ‘a plaintiff is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of his cause of action.’ [Citations.]” (*Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 719.)

The third cause of action is pled almost exclusively in conclusions that track the language of the UVTA. The only “essential fact” pled therein is the identification of the subject property. Missing are any allegations identifying the asserted “(off record) transfer of the property,” and/or the identity of the transferee. Moreover, Plaintiff alleges that the asserted off record transfer was made “[a]s a result of the negligence alleged herein.” However, the negligence alleged through the Complaint is in the nature of failure to maintain the physical premises of the property. (See,

*e.g.*, Complaint at ¶ Prem.L-1.) It is unclear how the negligent maintenance of the physical condition of the property could result in transfer of title thereto.

For the foregoing reasons the Court concurs that the allegations of the Complaint are insufficient to state a cause of action under the UVTA (whether under a theory of fraudulent or otherwise actionable transfer) against any of the Defendants and is significantly lacking the necessary detail if in fact intended to assert a claim for fraud. .

Generally, it is an abuse of discretion for a court to deny leave to amend where there is any reasonable possibility that a Plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) Here the Court finds that there is a reasonable possibility that Plaintiff can state a good cause of action and allege facts sufficient to state each cause of action. Based on the foregoing, the demurrer is SUSTAINED WITH 10 DAYS' LEAVE TO AMEND. (See Rules of Court, rule 3.1320, subd. (g).)

The clerk shall provide notice of this ruling to the parties forthwith. Defendants to prepare a formal Judgment pursuant to Rule of Court 3.1312 in conformity with this ruling.

**MARTIN v. MARTIN, et al**

**19CV44348**

**MOTION FOR HEARING FOR FINAL JUDGMENT FOR  
PARTITION OF REAL PROPERTY BY SALE; APPROVAL OF  
SALE; APPROVAL OF FINAL ACCOUNTING, INCLUDING  
EXPENSES OF SALE, OTHER COSTS OF PARTITION,  
APPROVAL OF THE FINAL AMOUNTS OF PLAINTIFF'S  
EQUITABLE LIENS ON DEFENDANTS' INTERESTS; AND  
APPROVAL OF DISTRIBUTION OF NET PROCEEDS OF SALE**

Plaintiff Gregory Martin moves for an order granting final judgment for partition of real property, and approval of the sale of the subject property, the final accounting (including expenses of sale and other costs of partition), the final amounts of Plaintiff's equitable liens on Defendants' respective interests, and distribution of the net proceeds of the sale.

Plaintiff's motion and each request for relief therein are supported by evidence in the form of the Declaration of Gregory Martin in support thereof.

Based on the foregoing, the motion is GRANTED.

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