NICHOLAS v ARELLANES/NICHOLAS v LEMP

23CV46746/25CV48280

[The Court notes these cases do not have a formal "related case" designation and there do not appear to have been any notices of related case filed in either matter and the Court has not consolidated the matters]

PLAINTIFF'S MOTION TO CONSOLIDATE/REQUEST FOR TEMPORARY RESTRAINING ORDER/PETITION TO DETERMINE SUCCESSION TO PROPERTY

These matters involve contract/real property disputes between Danny E. Nicholas ("Plaintiff") and Lani Arellanes ("Arellanes") and Cathy Lemp ("Lemp.")

I. Background Facts[1]

In or around October 24, 2021, Plaintiff entered into an agreement with Lani Arellanes (now deceased) which appears to have been memorialized in a handwritten document prepared and signed by Arellanes ("Agreement") (Petition to Void TOD, Ex. 1.) Pursuant to this Agreement, Plaintiff would build a three bedroom home for Arellanes on her property located at 2608 Arrowhead Street ("Arrowhead Property.") Arellanes would provide all materials and tools. In exchange, Arellanes would give Plaintiff a $53,000 1.1 acre property located at 2044 Yolo Court ("Yolo Property.")

The Agreement also stated:

> Should I become disabled or deceased or unable to complete this project to "occupancy" all properties 2044 Yolo Court and 2608 Arrowhead Street will become the property of Danny E. Nicholas to complete his project at Yolo Court. Neither his children nor mine are entitled to either properties [SIC].

[1] The necessary facts to understand the pending motions have to be drawn from both cases which are at present are neither related or consolidated.

Apparently things went awry in this relationship. On May 19, 2023, Plaintiff filed a lawsuit against Arellanes (Case No. 23CV46746) ("Case One") for breach of contract, common counts and fraud. Plaintiff alleges essentially that Arellanes prevented him from returning to the Arrowhead Property, thereby preventing him from finishing the job, and failed to pay him for any of the materials or loans he provided. He further alleges that Arellanes never transferred the interest in the Yolo Property. In Case One, Plaintiff seeks $116,260 in damages and filed a lis pendens on the Arrowhead Property.

Arellanes passed away around December of 2024. Plaintiff was apparently not aware of this fact until the Settlement Conference on May 5, 2025. At the CMC in July 2025, the Court ordered Plaintiff to apprise the Court as to how he planned to proceed at the CMC on November 12, 2025. Case One remains pending against the decedent Arellanes and Plaintiff has not filed any motion to substitute her estate or personal representative.

On September 10, 2025, Plaintiff filed a lawsuit against Cathy Lemp (Calaveras County Case No. 25CV48280) ("Case Two") to void a Transfer on Death deed ("TOD"). Specifically, Plaintiff sought to void the TOD which purported to transfer the Arrowhead Property from Arellanes to Lemp. The TOD appears to have been prepared by the law firm of JPink Law, was witnessed by Jay Pink, Esq. ("Pink") and was recorded on May 31, 2022. Plaintiff has also filed a Petition to Determine Succession to Primary Residence pursuant to Probate Code sections 13151 and 13152 in Case Two. According to Plaintiff, Lemp has recently quitclaimed the TOD for the Arrowhead Property to non-party Shane Miranda ("Miranda.")

Now before the Court are three motions brought by Plaintiff. First, Plaintiff moves to consolidate Case One and Case Two. The motion is captioned with both case numbers. Second, Plaintiff moves for an ex parte temporary restraining order ("TRO") which would prevent Lemp, as well as non-parties Miranda and Pink, from "any further transfers, encumbrances, or actions affecting title to real property" of the Arrowhead Property.[2] The ex parte application has been filed in both cases. Finally, Plaintiff also has filed a petition to determine succession of real property.

[2] Although some of Plaintiff's filings name Miranda and Pink in the caption, neither of these people are parties to this action.

II. Legal Standards

Consolidation

Code of Civil Procedure section 1048(a) permits consolidation of actions with common questions of law or fact when doing so avoids unnecessary costs or delay, but courts must weigh judicial economy against the risk of confusion and prejudice. (*Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal. App. 4th 976, 978–79) The granting or denial of the motion to consolidate rests in the sound discretion of the trial court and will not be reversed except upon a clear showing of abuse of discretion. (*Fellner v. Steinbaum* (1955) 132 Cal.App.2d 509, 511.)

Temporary Restraining Order

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The standards for TROs and injunctions are well settled. To issue a preliminary injunction, the court looks to two primary factors: (1) the likelihood of success on the merits; and (2) the harm that will inure to plaintiff absent an injunction as against the harm to the defense if an injunction issues. (*White v. Davis* (2003) 30 Cal.4th 528, 554.) The purpose of a TRO is essentially to stop anything detrimental from happening until the Court has an opportunity to conduct a fuller hearing on the merits. A TRO will only be granted on an ex parte basis where "it appears from facts shown by affidavit or by the verified complaint that great or irreparable injury will result to the applicant before the matter can be heard on notice." (Code Civ. Proc. § 527(c)(1).)

Petition to Determine Succession

Pursuant to Probate Code 13152 a person may petition the Court to make an order determining that certain real property should be passed to that person.

III. Discussion

A. Motion to Consolidate

Plaintiff moves to consolidate Case One and Case Two. He argues that both actions center on the title to 2608 Arrowhead St., the alleged agreement regarding the Arrowhead Property construction and payment owed Plaintiff, and the TOD's validity. In Case One, there is a lis pendens on the Arrowhead Property that is the subject of Case Two. The facts, evidence and witnesses will overlap in these cases and the Court concludes that consolidation of these actions is in furtherance of trial convenience and economy.[3] The objections raised by Lemp to the motion go more to the validity of the claims against her and Arellanes and not to the issue of whether the matters should be consolidated.

Accordingly, the **Motion to Consolidate is GRANTED. Case 25CV48280 shall be the lead case for all future filings.** [The Court notes that Case One, while still pending, is currently a lawsuit against a deceased party. Pursuant to Code of Civil Procedure section 377.40 , "a cause of action against a decedent that survives may be asserted against the decedent's personal representative or, to the extent provided by statute, against the decedent's successor in interest." Plaintiff is ordered to file an amended complaint naming Arellanes' personal representative or successor in interest within 30 (thirty) days of this Ruling.]

B. Temporary Restraining Order

The underlying cause of action in Case Two is a petition to void the TOD which transferred the Arrowhead Property to Lemp. Plaintiff now alleges that Lemp has quitclaimed the TOD – which is the subject of both a lis pendens in Case One and the petition to void in Case Two – to non-party Miranda.

"A temporary restraining order is initially available to stabilize a situation."(*Byers v. Cathcart* (1997) 57 Cal.App.4th 805, 811.) Pursuant to both cases, Plaintiff alleges that he was entitled to the reimbursement for his costs related to the Arrowhead Property and that he was also entitled to the Arrowhead Property upon Arellanes death. While the

[3] The Court finds substantial compliance with California Rules of Court 3.350(a), particularly given Plaintiff's pro se status.

matters have been pending, he alleges that Lemp has attempted to transfer the Arrowhead Property, potentially as a means of thwarting Plaintiff's ability to either take ownership or use the property to pay his damages. Given the uncertainty of the situation, and the concern that the Arrowhead Property is being transferred for improper purposes, the Court finds that the balances weigh in favor of granting the temporary restraining order.

Accordingly, the **Request for Temporary Restraining Order is GRANTED. Court enjoins Lemp, Miranda, Pink and their representatives or employees from any further transfers, encumbrances, or actions affecting title the Arrowhead Property for until the hearing on a preliminary injunction set for December 5, 2025, at 9:00 a.m. in Dept. 2. Any Opposition must be filed and served by 3:00 p.m. on November 21, 2025, and any Reply must be filed and served by 3:00 p.m. on November 26, 2025**.

C. Petition to Determine Succession

The probate code allows for the administration of small estates without the necessity of formal estate administration. Pursuant to Probate Code section 13152, a person with an interest in real property may petition the Court for an order determining that the real property rightfully belongs to the petitioning party. Probate Code section 13150 conditions the application of such procedure, however, to the situation where the decedent's personal representative "consents in writing" to the use of this procedure. (Probate Code §13150(b)(1).) These commonly are referred to as Heggstead Petitions.

There is no evidence that the decedent's personal representative has consented in writing to using the petition process to determine the ownership of the Arrowhead Property. Additionally, the Court finds that such a Petition is a Probate Code matter that must be filed as a Probate case and scheduled for hearing on the Court's regular probate calendar. As such, the **Petition to Determine Succession is Denied**, without prejudice to properly file as a probate matter.

The clerk shall provide notice of these rulings to the parties forthwith. Plaintiff to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling.

CHARTER-SMITH v MALLERY

24CV47281

PLAINTIFF'S AMENDED MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT/AMENDED MOTION TO SUBSTITUTE SUCCESSOR-IN-INTEREST/AMENDED MOTION TO SEAL DOCUMENTS

This case involves a dispute over real property known as 1374 Hubbard Road, Sheep Ranch, CA 95246 ("Property.") Now before the Court are three amended motions brought by Plaintiff: 1) Motion for Leave to File First Amended Complaint ("FAC"); 2) Motion to Seal; and 3) Motion to Substitute Successor in Interest for Defendant Terry Mallery.

I. Facts

Alison Charter-Smith and Anthony Jaehnichen (collectively "Plaintiffs") are husband and wife and have owned the Property since 2015. (Complaint ¶ 1.) In January of 2018, Plaintiffs secured a Promissory Notice in the amount of $478,000.00 (the "Loan") from lender PENSCO Trust Company LLC, custodian FBO Terry M. Mallery IRA. (Complaint ¶ 2.) The monthly payment for this loan was $3,883.75, and had a loan maturity date of February 1, 2021.(*Ibid*.) This Loan was arranged by Terry M. Mallery, a licensed real estate broker in the State of California ("Mallery.") (*Id*. ¶ 15.)

On August 27, 2019, Plaintiffs executed a First Modification to Promissory Note (the "First Modification") which extended the maturity date of the Loan to February 1, 2023, advanced additional funds of $65,000.00 to increase the principal loan balance to $543,000.00, and increased the ongoing monthly interest-only payment amount to $4,864.38. The interest rate was increased to 10.75%. (Complaint ¶ 17.) On May 4, 2020, Plaintiffs executed a Second Modification to Promissory Note (the "Second Modification"), extending the maturity date of the Loan to September 1, 2023, increasing the principal loan balance to $560,116.50, and decreasing the ongoing monthly interest-only payment amount to $3,967.49. (The interest rate was decreased to 8.5%. (*Id*. ¶ 18.)

A Notice of Default for the Loan was recorded against the Property on or about July 5, 2023, listing a default of $31,389.46 as of July 5, 2023 (the "Notice of Default"). (Complaint ¶ 20.) Thereafter, a Notice of Trustee's Sale was recorded on October 5, 2023, which set an initial foreclosure sale date for November 14, 2023 (the "Notice of Sale"); the Notice of Sale listed the unpaid obligations under the Deed of Trust as $631,844.48. (*Id.* ¶ 21.)

On November 14, 2023, Plaintiff Charter-Smith filed for Chapter 13 bankruptcy in the United States Bankruptcy Court, Eastern District of California, Case No. 23-90543. This case was dismissed for failure to timely file documents. (Complaint ¶ ¶ 22, 23.) On January 9, 2024, Mallery purchased the Property at public auction and the deed was recorded on January 26, 2024. (*Id.* ¶ ¶24, 25.) On or about February 13, 2024, Plaintiffs were notified that the Property had been purchased by Mallery. (*Id*. ¶ 26.)

On March 20, 2024, Plaintiffs filed the instant lawsuit against multiple defendants including Mallery, Pacific Premier Trust FKA Pensco Trust Company, LLC, Mid Valley Title and Escrow Company, Monterey Peninsula Capitol Partners, Inc. and various John Does. The Complaint alleged causes of action for: 1) Wrongful Foreclosure, 2) Violation of Civil Code § 2924(m), 3) Violation of California Constitution Article XV, Section One and California Civil Code section 1916-3, 4) Breach of Contract, 5) Unfair Business Practices, 6) Slander of Title, 7) Fraud, and 8) Negligent Misrepresentation.

Mallery died in June of 2024. Mallery and his wife, Ronda Copland ("Copland"), had created a trust in 2016 called the Mallery-Copland 2016 Trust ("Trust") (Declaration of Nelson Goodell ("Goodell Decl.") ¶ ¶ 5-6, Ex. A.) Plaintiffs filed a notice of lodgment of a copy of the Trust, conditionally under seal. (*Id*. ¶ 6.)

II. Legal Standards

"The court may, in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading …" (Code Civ. Proc., § 473, subd. (a)(1).) The court's discretion will usually be exercised liberally to permit amendment of the pleadings. (*Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939.)

Unless otherwise required, court records are presumed to be open. (CRC Rule 2.550(c).) Pursuant to CRC Rule 2.550(d), a Court may only order that a record be filed under seal if it "expressly finds" that: 1) There exists an overriding interest that overcomes the right of public access to the record; 2) The overriding interest supports sealing the record; 3) substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; 4) The proposed sealing is narrowly tailored; and

5) No less restrictive means exist to achieve overriding interest.

Code Civil Procedure section 377.41 provides:

> On motion, the court shall allow a pending action or proceeding against the decedent that does not abate to be continued against the decedent's personal representative or, to the extent provided by statute, against the decedent's successor in interest, except that the court may not permit an action or proceeding to be continued against the personal representative unless proof of compliance with Part 4… governing creditor claims is made.

III. Discussion

A. Motion for Leave to Amend

Plaintiffs seek leave to file a FAC in order to provide a "more comprehensive and focused statement of facts, redact certain superfluous information, to modify and add certain causes of action, and join necessary parties as Defendants." (Motion p. 2.) In particular, Plaintiffs seek to add a cause of action for quiet title and to amend the Complaint so as to allege the death of Mallery and to name Ronda Copeland as the successor to Mallery's interests. Plaintiffs also seek to add additional factual allegations about Defendant Mid Valley Title and Escrow's filing of a Deed of Full Reconveyance in favor of Plaintiffs in November 2022 and a subsequent recission of such reconveyance seven days later.

No defendant has filed any opposition to the motion to amend. Accordingly, **the Motion for Leave to file a FAC is GRANTED**.

B. Motion to Seal

Plaintiffs move to permanently seal the Trust out of an abundance of caution to protect any potentially confidential financial information contained in the Trust. The confidentiality interests at issue belong to Mallery and Copland. Given that Mallery cannot, at this time, represent his own interests, and Copland is not currently a party, the Court finds that sealing the Mallery Copland 2016 Trust is necessary to protect their confidentiality interests.

Accordingly, **the Motion to Seal is CONDITIONALLY GRANTED**; at such time as Copland may be a party the Court will unseal the Trust if that is requested by her.

C. Motion to Substitute Copland as Successor in Interest

Plaintiffs move to substitute Copland as the Successor in Interest to Mallery. Copland has specially appeared to oppose the motion. She argues that Plaintiffs cannot meet the requirements of Code Civil Procedure 377.40 because there is no personal representative of the estate and because there is no statute pursuant to which Copland can be made successor in interest.

Pursuant to Code Civil Procedure section 377.11, the decedent's successor in interest is defined as "the beneficiary of the decedent's estate or other successor in interest who succeeds to a cause of action or to a particular item of the property that is the subject of the cause of action."

Plaintiffs have provided evidence that Copland is the surviving trustee and settlor of the Trust. (Goodell Decl., ¶ 6-7; Notice of Lodgment, Exh. A). They have also provided evidence that Copland is the beneficiary to an account which holds the Property. (RJN Ex. 1.) Thus, Copland is the beneficiary who succeeds to "a particular item of the property that is the subject of the cause of action." (CCP § 377.10.) Copland does not address the statutory definition of "decedent's successor in interest."

As the beneficiary of the account which holds the Property, Copland meets the statutory definition of "decedent's successor in interest." Code of Civil Procedure 377.41 allows the Court, on motion, to continue the action against the successor in interest and does not contain any specific time requirement for bringing such a motion.

Accordingly, Plaintiffs' Motion to have Copland Substituted as successor in interest is **GRANTED**.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiffs to submit formal Orders complying with Rule 3.1312 in conformity with this Ruling.

RENFROE v FCA US, LLC

24CV47466

PLAINTIFF'S MOTION FOR ATTORNEY'S FEES COSTS AND EXPENSES

This case stems from the purchase of a motor vehicle by Plaintiff Joshua Renfroe ("Plaintiff"). Defendant is FCA US, LLC ("Defendant.")

I. BACKGROUND

On January 4, 2023, Plaintiff purchased a new 2022 Dodge RAM 2500 diesel truck ("Vehicle.") (Declaration of Shawna M. Melton ("Melton Decl.") ¶ 6.) Between December 13, 2023 (26,072-miles) and March 27, 2024 (30,872-miles), the vehicle was presented at least five times to FCA for the same defect - a Check Engine Light with a loss of power. (*Ibid*.) To address the issues, FCA repeated the same repair, replacing the exhaust pressure differential sensor on December 19, 2023 (26,072-miles), March 15, 2024 (30,452-miles), and again on March 27, 2024 (30,872-miles). (*Ibid.*) FCA failed to repair the defects and to honor necessary needed warranty work, giving rise to additional repairs and concerns after the lawsuit was filed. (*Id.* ¶ 8.) Plaintiff attempted to informally resolve this matter short of litigation by demanding that FCA repurchase his defective vehicle on March 20, 2024 but FCA refused. (*Ibid.*)

On June 28, 2024, Plaintiffs filed the Complaint in this matter. Plaintiff and Defendant settled this matter on June 1, 2025. (Melton Decl. ¶ 5.) On June 2, 2025, judgment was entered in favor of Plaintiff and against FCA in the amount of $195,000.00 plus reasonable attorney's fees and expenses. (Exhibit A.)

Now before the Court is Plaintiffs' motion for attorney's fees.

II. LEGAL STANDARD

A prevailing party in an action under the Song-Beverly Act may be entitled to reasonable attorney's fees. (Civ. Code § 1794(d).) The calculation of attorney's fees under the Song-Beverly Act is based on the lodestar method, which multiplies the number of hours reasonably expended by a reasonable hourly rate. (*Graciano v. Robinson Ford Sales* (2006) 144 Cal.App.4th 140, 154.) This base figure may then be adjusted by taking into

account various factors, "including (1) the novelty and difficulty of the questions involved and the skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; and (3) the contingent nature of the fee award, based on the uncertainty of prevailing on the merits and of establishing eligibility for the award." (*Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 819 [citing *Ketchum v. Moses* (2001) 24 Cal.4th 1122.) The prevailing party bears the burden "of showing that the fees incurred were reasonably necessary to the conduct of the litigation, and were reasonable in amount." (*Id* at 817-818.) A party who qualifies for fees should recover for all hours reasonably spent unless special circumstances render an award unjust. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 632-633.)

III. Discussion

The parties do not dispute that Plaintiff is the prevailing party in this matter. Rather, Defendant objects to the motion arguing that it seeks excessive fees because this matter was routine, similar to the typical cases that Plaintiff's counsel handles, and did not involve substantial discovery or motion practice.

Plaintiff seeks between $60,668.81 - $80,083.06 in attorney's fees and costs which includes a requested lodestar multiplier. Defendant objects to the amount of attorney's fees requested and in particular the request for either a 1.5 or 2.0 multiplier.

According to the documents provided by Plaintiff, the following attorneys provided services in this matter:

O'Connor Law Group ("OLG")

- Shawna M. Melton has practiced law since 2011 and has been an attorney with OLG since 2023 but previously worked at OLG from 2011 to 2018. (Melton Decl. ¶ 14.) She currently practices predominately consumer law, lemon law, and contract law. Her hourly rate at the relevant time period was $650. Pursuant to the billing statement provided, Ms. Melton expended a total of 24.7 hours on this matter for a total of $16,055.00.

- Rebecca Goethals has been a paralegal since 2017. Her hourly rate at the relevant time period was $225. Pursuant to the billing statement provided, Ms. Goethals expended a total of 2.2 hours on this matter for a total of $495.00.

- David Womack has been a paralegal since 2016. His hourly rate during the relevant time period was $200. Pursuant to the billing statement provided, Ms. Goethals expended a total of 8 hours on this matter for a total of $1600.00.

Reza Law Group ("RLG")

- Ashkan Reza has practiced in the area of lemon law for twelve years. (Declaration of Ashkan Reza ("Reza Decl.") ¶ 8.) His rates were $575 during the relevant time period. Pursuant to the billing statement provided, Mr. Reza expended a total of 24.3 hours on this matter for a total of $13,972.50.

- Mr. Reza also avers that paralegals worked on this matter as well. His hourly paralegal fees ranged from $75 to $225. Pursuant to the billing statement provided, RLG paralegals expended a total of 20.1 hours on this matter for a total of $4,066.00.

Based on the billing statements provided, the total number of attorney hours expended was 49. The total number of paralegal hours expended was 30.3. The total number of hours billed is therefore 79.3.

1. Hourly Rate

Defendant oppose the hour rates listed for both RLG and OLG attorneys and paralegals. The Court agrees that the rates are not commensurate with the rates charged locally. Further, the Court finds that lemon law cases, such as this, are not highly sophisticated or complex matters but, rather, essentially breach of contract matters. In addition, much of the billed hours include communications with the client and opposing counsel, which do not warrant recovery at an inflated rate.

Accordingly, the Court reduces all of the attorneys' fees to $300.00 per hour, and the paralegal rates are reduced to $125 per hour, both of which are the usual and customary rates in this local market.

2. Hours Billed

Defendant seeks a reduction of 21.1 hours from the Plaintiff's hours for certain repetitive, simple, or routine activities. For instance, Defendant takes issue with the amount of oversight and review required of routine discovery or the amount of time taken to update clients or the files.

The Court recognizes that given the nature of the work performed by OLG and RLG, there will be often be the use of templates and reliance on prior motions. This is efficiency and common sense. However, the Court is also cognizant that reasonable counsel would not simply be cutting and pasting for each client and that, in the interest of ensuring the accuracy of their representations, must spend some time ensuring that even the templates correspond to the current facts and circumstances.

However, the Court also agrees that this was a relatively straightforward lemon law matter and Plaintiff's counsel has handled numerous cases like this one before. The total number of attorney hours billed is excessive for the type of case, particularly given that this is the primary area in which RLG and OLG practice. Additionally, the Court finds that involving two firms will create a certain amount of overlap and duplication, as well as consultations, none of which should be compensable as "reasonable attorney's fees", which ashould be limited to the amount of work if a single attorney was involved.

Accordingly, the Court reduces that time billed by ten (10) hours, i.e. 20%. Taking into account a reduction of 10 hours, the total hours awarded will be 39 hours of attorney workand 30.3 paralegal hours.

At an attorney hourly rate of $300 ($300 x 39 = $11,700.00) and a paralegal rate of $125 ($125 x 30.3 = $3,787.50), **the total fees allowed are $15,487.50**.

3. Mutliplier

The court may apply a multiplier based on contingent risk, exceptional skill, or numerous other factors. (*Sonoma Land Trust v. Thompson* (2021) 63 Cal.App.5th 978, 986.) "An enhancement is proper, however, when these factors, though partially reflected in the lodestar, are not *fully* reflected in the lodestar, such as when the attorney displays an extraordinary level of skill that justifies a higher fee or when the particular difficulties of the case require not just more time but more talent, expertise, and quality." (*Id.* at 988.)

While it is true that Plaintiff's counsel took this matter on a contingency basis, there is nothing about the case that required an extraordinary level of skill nor did the case require extra expertise. Accordingly, no multiplier is warranted.

IV. Conclusion

Plaintiff's motion for attorney's fees and costs is **GRANTED. Plaintiff's counsel is awarded $15,487.50 in fees and $2,426.06 in costs, for a total of $17,913.56**

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling.

HIX, et al v. FCA US, LLC, et al

23CV48292

DEFENDANT'S DEMURRER/MOTION TO STRIKE

This case involves a breach of warranty/lemon law dispute. Now before the Court are a motion to strike and a demurrer filed by Defendant FCA US, LLC.

The same motions were previously before the Court and dismissed without prejudice due to failure to comply with Local Rule 3.3.7. The instant motions again fail to comply with the local rule. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:

> 3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence Is limited pursuant to Local Rule 3 3. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:
>
> **Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court** [emphasis in original.]
>
> Failure to include this language in the notice may be a basis for the Court to deny the motion.

Accordingly, the motion to strike and demurrer are **DENIED** without prejudice to refile; should the same motions be refiled a third time without the mandatory language the Court will consider ruling with prejudice.

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The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

FRAGOZA v TREVINO

25CV48144

PLAINTIFF/CROSS-COMPLAINANT'S DEMURRER TO CROSS-COMPLAINT

This matter involves a real property dispute between Cruz Fragoza ("Fragoza") and Stevino Real Estate Investment, LLC ("LLC"), Steven C. Trevino ("Trevino"), Angela M. Barry ("Barry") and William Carter ("Carter") (collectively "Cross-Complainants.")

Now before the Court is a demurrer filed by Fragoza as to the third, fourth, fifth, eighth, ninth and tenth causes of action in the Cross-Complaint.

The Court grants Fragoza's request for judicial notice ("RJN"). Cross-Complainants have not filed any oppositions to the RJN or the underlying Demurrer.

I. Facts

These facts are compiled from the Cross-Complaint and the judicially noticed documents.

On or about November 12, 2008, LLC recorded a grant deed showing that it had purchased real property from Deutsche Bank ("LLC Deed") (CC ¶ 15, Ex. E.) The LLC Deed referred to two "parcels": 1) Lot 2070 of Rancho Calaveras, Units No. 8 and 9, Tract No. 179, and 2) a non-exclusive easement for septic system and appurtenance thereto, on, over, across and through Lot 2069 of Rancho Calaveras Units No 8 and 9, Tract 179. (*Ibid*.) The APN associated with the LLC's Deed is APN 072-019-022. ("APN-2.") APN 2 is commonly known as 2920 Heinemann Drive, Valley Springs, CA. (CC ¶ 6.) Stevino is a member of the LLC which is registered in Texas. (*Id*. ¶ 10.) Barry and Carter have been tenants since 2010 and 2017 respectively. (CC ¶ 9.)

Next to APN 2 is an unimproved lot with a septic system, commonly known as 2912 Heinemann Dr., Valley Springs, CA, APN 072-019-021 ("APN 1.") (CC ¶ ¶ 4, 5.) Cross-Complainants allege that that APN 1's septic system is for the benefit of APN 2. (*Ibid.*)

On or about September 30, 1998, Roger L. Jones deeded an easement to June A. Jones for the septic system over Lot 2069 for the use of APN 2. (CC, ¶ 11, Ex. A.) On that same date, Roger L. Jones and June A. Jones deeded APN 1 and APN 2 to themselves as Joint Tenants. (*Ibid*.) On or about April 23, 1999, the Joneses then deeded APN 1 and APN 2 to Charles and Anna Benson as Joint Tenants ("Benson Deed") (CC ¶ 12, Ex. B.) The Benson Deed listed the property being transferred as APN 1 and APN 2, described as Lots 2069 and 2070, as well as the easement for septic system across Lot 2069. (*Ibid.*)

On August 28, 2000, the Fragoza's purchased APN 1 and APN 2 from the Bensons ("Fragoza Deed") (RJN 6.) The Fragoza Deed refers to the transfer of Lots 2069 and 2070 as well as the septic easement across Lot 2069. (*Ibid*.) In or around 2008, the Fragoza's defaulted on a loan and APN2 was sold at a Trustee's Sale to Deutsche Bank ("Bank Deed") (RJN, Ex. 3.) The Bank Deed refers to two parcels: 1) Lot 2070 and 2) the easement across Lot 2069 and states that the Bank Deed conveys APN 2. (*Ibid*.)

On or about October 24, 2008, the LLC purchased APN 2 from Deutsche Bank ("LLC Deed") (CC ¶ 15, Ex. E.) The LLC Deed references APN 2 and refers to two parcels: 1) Lot 2070, and 2) the septic easement over Lot 2069. (*Ibid*.) However, according to Cross-Complainants, the LLD Deed should have listed APN 1 and APN 2 and that the LLC believed it had purchased both lots. (*Id.* ¶ ¶ 7, 8.) According to Cross-Complainants, the 2005 Deed of Trust which led to the foreclosure and Deutsche Bank purchase should have included APN 1 and APN 2 and did not because of error, mistake or fraud. (*Id*. ¶ 17.)

Cross-Complainants allege that since the 2008 purchase, they have maintained both APN 1 and APN 2. In or around February 22, 2011, the LLC received a letter from the Office of Treasurer-Tax Collector of Calaveras County (the "Tax Office"). (CC ¶19, Ex. G.) The Tax Office letter stated that there was a delinquent tax bill APN 1, "which was included as part of a parcel that is now in your name 072-019-022 [APN 2]." (*Ibid*.) According to Cross-Complainants, the Tax Office indicated that the taxes had been resolved and Cross-Complainants had no idea that someone else was paying taxes on APN 1. (*Id*. ¶ 44.) There are no allegations that Cross-Complainants inquired as to how the tax issue was resolved nor whether any other entity was paying the taxes.

On July 28, 2011, Fragoza notified LLC that he was the owner of APN 1 and that he had intentions to sell APN 1. Fragoza indicated that he was providing notice because the sale could impact the septic system attached to APN 2. (CC ¶ 20, Ex. H.) Later in 2017, Fragoza again wrote to LLC stating that the Tenants were improperly cutting trees on Fragoza's property and that he intended to place a cross-fence to deal with Tenants' dogs. (*Id.*, Ex. I.) In 2024, Fragoza's attorney apparently contacted the LLC as well but

the letter is not provided and the Cross-Complaint is devoid of any information about this letter. Further, there are no allegations related to any response LLC or Tenants may have made to either of these letters.

In or around the spring of 2025, Fragoza appeared on the Property and erected a fence on the curtilage of APN 2's home, barring use of the alleged easement to APN 1. (CC ¶ 23.)

Cross-Complainants allege that the Assessor's records for APN 1 are incomplete and only go back to 1994 and are missing the rest of the chain of title and that Cross-Complainants had "reasonable belief that they had full right to APN 1." (CC ¶ 29, Ex. O.)

II. Legal Standard

"A demurrer tests the sufficiency of a complaint and admits all facts properly pleaded." (*Setliff v. E.I.Du Pont de Nemours & Co.* (1995) 32 Cal. App. 4th 1525, 1533.) The court assumes the truth of the allegations asserted but does not assume the truth of "contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal. App. 4th 242, 247.) The court can further look at those facts that "reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken." (*Fremont Indemnity Co.,* 148 Cal. App. 4th 100, 111.) In considering the demurrer, the court must accept the allegations set forth in the complaint as true. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.)

III. Discussion

A. Fraud or Mistake

To plead a cause of action for fraud, the Cross-Complaint must allege: 1) misrepresentation (or concealment), 2) knowledge of falsity, 2) intent to defraud, 4) justifiable reliance, and 5) damage. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, "Fraud must be specifically pleaded; a general pleading of the legal conclusion of fraud is insufficient. Every element of the cause of action must be alleged in full, factually and specifically." (*Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1249.)

Fragoza first argues that the cause of action for fraud is barred by the statute of limitations. A cause of action for relief on the grounds of fraud or mistake must be brought within three years of the date of discovery, by the aggrieved party, of the facts constituting fraud or mistake. (Code Civ. Proc. § 338(d).)

The Cross-Complaint alleges that LLC has a grant deed, recorded on or about November 12, 2008, which pertains to the LLC's purchase of real property from Deutsche Bank. (CC ¶ 15, Ex. E.) The LLC Deed expressly identifies only one APN number – APN 2. There is no reference or incorporation of APN 1. The only reference to APN 1 is as part of the easement for the septic system. Cross-Complainants allege this omission was by either fraud or mistake – but either way, as of November 12, 2008, LLC had discovery of the facts constituting fraud or mistake. Even if the LLC could arguably assert that it did not realize the LLC Deed did not include ownership of APN 1, then LLC was again put on notice that someone else claimed ownership of APN 1 in 2011 when LLC received either the Tax Office letter or the letter from Fragoza claiming ownership. In either instance, the LLC's cause of action based on fraud, brought well over three years after such knowledge was gained, is untimely. As there does not appear to be any way to overcome these facts by amending the pleadings, the demurrer on the fraud claim is sustained, as regards the LLC.

As regards the other Cross-Defendants, the Cross-Complaint is devoid of particular facts relating to the content or date of any misrepresentations made to anyone other than the LLC. There are no allegations regarding statements or misstatements made by Stevino, Barry or Carter, nor are there any allegations of reliance or damages.

Accordingly, the demurrer by the LLC as to the third cause of action for fraud or mistake is SUSTAINED, WITHOUT leave to amend. The demurrer on the fraud cause of action brought by the remaining Cross-Defenants is SUSTAINED, WITH leave to amend.

B. Equitable Estoppel

"The doctrine of equitable estoppel is founded on concepts of equity and fair dealing." (*Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 725.) The required elements of this cause of action are: "(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. (*Ibid*.) The detrimental reliance must be reasonable. (*Schafer v. City of Los Angeles* (2015) 237 Cal.App.4th 1250, 1261.)

Cross-Complainants allege that Fragoza abandoned his interests in the real property after the foreclosure sale. (CC ¶ 52.) Cross-Complainants allege that they detrimentally relied on the belief that the APN 1 and APN 2 were both fully theirs and maintained and used the same for over 15 years. (*Id.* ¶ 53.) Specifically, they assert that they "detrimentally relied on Cross-Defendant's actions of the sale of the Property to Cross-Complainants and Cross-Defendant Cruz Fragoza's abandonment of the Property." (*Id*. ¶ 51.)

The Cross-Complaint does not state a cause of action for equitable estoppel. First, the Cross-Complaint is unclear as to what "facts" Fragoza was allegedly aware and failed to convey to the Cross-Complainants. There is no allegation that Fragoza knew that the LLC intended to purchase APN 1 when it purchased APN 2. Indeed, Fragoza was not involved in the sale of any property to Cross-Complainants. Nor are there any allegations that Fragoza intended for Cross-Complainants to rely on anything nor that his allegations or their reliance were the cause of any injury.

The demurrer as to the fourth cause of action for equitable estoppel is SUSTAINED, WITH leave to amend.

C. Reformation of Deed or Trust

"Reformation is an equitable remedy the essential purpose of which is to ensure the contract, as reformed, reflects the parties' mutual intention." (*Komorsky v. Farmers Ins. Exch.* (2019) 33 Cal. App. 5th 960, 974.) In the classic case, the court is empowered to correct a mistake – such as a scrivener's error – in a contract and insert the appropriate language. (*Pac. Gas & Elec. Co. v. Superior Ct.* (1993) 15 Cal. App. 4th 576, 593, abrogated on other grounds by *Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal. 4th 362, 885 P.2d 994.)

Here, there is no allegation of any contract between Fragoza and Cross-Complainants. Therefore there can be no cause of action seeking reformation of any deed or contract between Fragoza and Cross-Complainants.

Accordingly, the demurrer as to the fifth cause of action for reformation is SUSTAINED, WITH leave to amend.

D. Adverse Possession

To establish adverse possession, the claimant must prove: "(1) possession under claim of right or color of title; (2) actual, open, and notorious occupation of the premises constituting reasonable notice to the true owner; (3) possession which is adverse and hostile to the true owner; (4) continuous possession for at least five years; and (5) payment of all taxes assessed against the property during the five-year period." (*Hansen v. Sandridge Partners, L.P.* (2018) 22 Cal.App.5th 1020, 1032-1033.) The payment of taxes is essential to an adverse possession claim. (*Mehdizadeh v. Mincer* (1996) 46 Cal.App.4th 1296, 1305.)

The Cross-Complaint does not allege that Cross-Complainants paid any taxes on APN 1 – let alone all taxes during a five-year period of continuous possession. While Cross-Complainants allege that they believed they had been making tax payments on APN 1, in 2011 they were notified that no taxes had been paid on APN 1. (CC ¶ 19.) While they assert that their tax non-payment was due to errors by the Tax Office, they have provided no legal authority in opposition to show that such alleged errors can excuse the well-established requirement that taxes be paid in order to claim adverse possession.

Accordingly, the demurrer as to the eighth cause of action for adverse possession is SUSTAINED, WITH leave to amend.

E. Negligent Infliction of Emotional Distress

Negligent infliction of emotional distress " 'is not an independent tort, but the tort of *negligence*,'" to which " 'traditional elements of duty, breach of duty, causation, and damages apply.' " (*Downey v. City of Riverside* (2024) 16 Cal.5th 539, 547 [internal citations omitted].) Whether a duty is owed is a question of law and " 'its existence depends upon the foreseeability of the risk and a weighing of policy considerations for and against imposition of liability.'" (*Mercado v. Leong* (1996) 43 Cal.App.4th 317, 321 [internal citations omitted].) The existence of a duty is an essential element of the tort of negligent infliction of emotional distress. (*Potter v. Firestone Tire & Rubber Co*. (1993) 6 Cal.4th 965, 984.)

> Unless the defendant has assumed a duty to plaintiff in which the emotional condition of the plaintiff is an object, recovery is available only if the emotional distress arises out of the defendant's breach of some other legal duty and the emotional distress is proximately caused by that breach of duty. Even then, with

rare exceptions, a breach of the duty must threaten physical injury, not simply damage to property or financial interests. (*Id.* at 985.)

The Cross-Complaint does not allege any duty owed by Fragoza to any of the Cross-Complainants.

Accordingly, the demurrer as to the ninth cause of action for negligent infliction of emotional distress is SUSTAINED, WITH leave to amend.

F. Financial Elder Abuse

"The elements of a cause of action under the Elder Abuse Act are statutory and reflect the Legislature's intent to provide enhanced remedies to encourage private, civil enforcement of laws against elder abuse and neglect." (*Intrieri v. Superior Court* (2004) 117 Cal.App.4th 72, 82.) However, an elder who controls a limited liability company lacks standing to bring an elder abuse claim for harm to the company's assets. (*Hilliard v. Harbour* (2017) 12 Cal.App.5th 1006, 1015.) For a claim to stand, the elder's injury must be personal and not simply derivative of the entity's interests.

Here, the Cross-Complaint alleges Trevino is an elder. It further alleges, however, that the LLC thought it was purchasing APN 1. There are no allegations that Trevino had any interest in the property other than as a member of LLC. As such, the Cross-Complaint does not state a cause of action for elder abuse.

The LLC Deed upon which Cross-Complainants base their instant action clearly shows that LLC was the entity with ownership of APN 2 and a purported interest in APN 1. The Court cannot conceive of a feasible amendment that would allow Trevino to state a cause of action for elder abuse and Trevino did not file any opposition or sought leave to amend.

Accordingly, the demurrer as to the tenth cause of action for financial elder abuse is SUSTAINED, WITHOUT leave to amend.

IV. Conclusion

The demurrer is **SUSTAINED WITHOUT** leave to amend as to the **tenth** causes of action for elder abuse and the **third** cause of action for fraud (**as to LLC only**).

The demurrer is **SUSTAINED WITH** leave to amend as to fourth, fifth, and ninth causes of action, as well as the third cause of action for fraud brought by Cross-Complainants Trevino, Barry, and Carter. **An Amended Cross-Complaint must be filed and served by 3:00 p.m. on December 3, 2025**.

The clerk shall provide notice of this ruling to the parties forthwith. Cross-Defendant LLC to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling.