FOSTER v IRBC 2 PROPERTIES, LLC, et al

21CV45573

PLAINTIFF'S MOTION FOR LEAVE TO FILE A THIRD AMENDED COMPLAINT; PLAINTIFF'S MOTION TO CONTINUE DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT; DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

This is a real property and foreclosure dispute brought by Plaintiff Larry Foster ("Plaintiff") against IRBC 2 Properties LLC ("IRBC2"), California TD Specialists ("TDS"), Park Tree Investments, LLC ("Park Tree"), Real Time Reasolutions, Inc. ("Real Time") FCI Lender Services, Inc.,("FCI"), Connie M. Riggsby ("Riggsby"), Orlon Financial Group, LLC ("Orion") and Wilmington Saving Fund Society DBA Christiana Trust as Trustee for 2005 Residential Trust 3-2 ("Residential Trust 3-2.")

Now before the Court are multiple motions for summary judgment filed by Defendants as well as Plaintiff's motion for leave to file a Third Amended Complaint ("3AC") and Plaintiff's Motion to Continue the MSJs dependent on the ruling on the Motion to Amend.

I. Motion to Amend

Leave to amend should be granted liberally to accomplish substantial justice for both parties. (Code Civ. Proc., § 473, subd. (a); *Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486, 488-489 ["that trial courts are to liberally permit such amendments, at *any* stage of the proceedings, has been established policy in this state since 1901"].) "If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend…." (*Morgan v. Sup. Ct*. (1959) 172 Cal.App.2d 527, 530.) Prejudice may include "delay in trial, loss of critical evidence, or added costs of preparation." (*Solit v. Tokai Bank, Ltd. New York Branch* (1999) 68 Cal.App.4th 1435, 1448.)

At the outset, the motion fails to strictly comply with California Rule of Court 3.1324 because it does not state what allegations are proposed to be added and which are to be removed, making it difficult for the Court to ascertain what exactly the 3AC would accomplish. However, Plaintiff's new attorney explains that the SAC, as written by the Plaintiff, was full of irregularities and other issues that it required him to essentially "start over" in terms of the pleading. The motion also lacks a declaration from Plaintiff's counsel explaining when the new facts were learned and why the motion was not made sooner. That being said, the motion and memorandum of points and authorities, as well as the Declaration from William McAffrey (McAffrey Decl.") provide some context for the amendments and why they were not made sooner. Specifically, Plaintiff had been acting *pro se* throughout most of this litigation and only retained his new attorney, Mr. Atebata, in or around January 2026. According to the motion, Plaintiff's attorney engaged in some discovery and then was inundated with multiple motions for summary judgment. When reviewing those motions, Plaintiff's attorney determined that there were missing causes of action and necessary allegations to be made. Plaintiff also hired an expert in securities to review his documents and has provided Mr. McAffrey's declaration in which he proffers that the foreclosure was highly irregular and that information is added to the pleadings. Additionally, the Court notes the (proposed) 3AC is attached as an Exhibit to the Motion to Continue, satisfactorily remedying the technical defect from the Court's perspective.

The 3AC contains nine causes of action, most of which echo Plaintiff's SAC, including causes of action which have already been sustained, without leave to amend, on demurrer. However, the proposed 3AC also brings a new cause of action for quiet title, is significantly more streamlined and cohesive in its factual allegations and narrative, and clarifies Plaintiffs' basis for his claims. Plaintiff asserts that the amendments are necessary to "add and flesh out" additional causes of action to the lawsuit." Plaintiff also argues that the parties remain in the discovery stage, no trial date has been set, and no prejudice will result from the proposed amendment.

Defendants argue they will suffer prejudice if the court allows leave to amend because Defendants already have pending motions for summary judgment/summary adjudication and an amended complaint would moot those motions. Defendants also complain that the TAC purports to bring three causes of action were already sustained, without leave to amend, in an earlier demurrer.

"The power to permit amendments is interpreted very liberally as long as the plaintiff does not attempt to state facts which give rise to a wholly distinct and different legal obligation against the defendant." (*Herrera v. Superior Court* (1984) 158 Cal.App.3d 255, 259.) Indeed, it is "an abuse of discretion to deny leave to amend where the opposing party was not misled or prejudiced by the amendment." (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.) "A trial court has broad discretion to allow the filing of amendments to pleadings to conform to proof," including "after a trial has been concluded" to conform to the proof. (*Nelson v. Gaunt*, 125 Cal. App. 3d 623, 636 (1981)).

The court is hesitant to excuse Plaintiff's delays in seeking leave until after Defendants filed motions for summary judgment. Indeed, Plaintiff's "explanation" for not seeking leave earlier is hard to ascertain given the lack of an attorney declaration and the difficulty parsing out the new allegations from Plaintiff's prior (somewhat rambling) SAC. The Court is also aware of the unfairness to Defendants given the fact that they have moved for summary judgment and that Plaintiff's late-filed motion essentially seeks to moot those motions. Nevertheless, given the liberal policy of allowing amendments and allowing a party to proceed on the merits, and that Plaintiff sought leave to amend *before* the hearing on the motions for summary judgment, the court will grant Plaintiff leave to amend. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1257 ["[I]f a plaintiff wishes to introduce issues not encompassed in the original pleadings, the plaintiff must seek leave to amend the complaint at or prior to the hearing on the motion for summary judgment."].) Additionally, the Court notes the body of case law that holds that although a pro se litigant is held to the standard of an attorney, the Court must simultaneously endeavor to insure that a pro se litigant receives a fair day in Court

Accordingly, the Court ***grants* leave file a Third Amended Complaint**; the proposed 3AC is deemed to be filed and served on the date this motion is granted (Wiener v Superior Court (1976) 58 CalApp 3d 525, 528). However, the Court will allow (and even encourages) the parties to meet and confer to determine if they can stipulate to a Fourth Amended Complaint ("4AC") that removes the causes of action for which demurrers were sustained *without* leave to amend – if there is any such agreement submitted to the Court, it must specify the date by which a 4AC must be filed. The Court notes that absent any such agreement it anticipates renewed demurrers as to these causes of action which are likely to be sustained and may be a basis for the imposition of sanctions in the nature of awarded attorney's fees.

Defendants are correct in their assertion that allowing a TAC moots the MSJs, and therefore all **MSJs are DENIED** as moot, without prejudice to refile as to the TAC. The **Motion to Continue MSJs is also DENIED** as moot in light of the foregoing rulings.

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

LAKES TREATMENT CENTER, INC., et al v RESORT AT LAKE TULLOCH, LLC, et al

21CV45585

DIAMOND DIRT, LLC'S DEMURRER TO PLAINTIFF'S THIRD AMENDED COMPLAINT

This case stems from a property dispute between The Lakes Treatment Center, Inc. ("Lakes Treatment") and Bernadette Cattaneo ("Cattaneo") (collectively "Plaintiffs") and The Resort at Lake Tulloch, ("Resort"), Narullah Safdari ("Safdari"), Odell Tristin ("Tristin"), Michael Van ("Van"), Andreas Ambramson ("Abramson"), and Diamond Dirt LLC ("Diamond") (collectively, "Defendants.")

Now before the Court is Diamond's demurrer to the 11th and 12th causes of action in Plaintiff's Third Amended Complaint: 1) breach of contract and 2) breach of implied covenant of good faith and fair dealing. Van joins in the demurrer, however the causes of action are not alleged against Van, so the joinder is legally meaningless.

I. Relevant Background

On September 9, 2021, Plaintiffs filed their original complaint against Resort, Safdari and Tristin. Plaintiffs filed a First Amended Complaint on July 5, 2023, adding Van and Abramson and new causes of action. On August 16, 2023, by stipulation of the parties, Plaintiffs filed a Second Amended Complaint ("SAC") adding Diamond as a defendant. On May 22, 2026, the Court granted Plaintiff's motion for leave to file a Third Amended Compliant ("TAC.")

Plaintiff The Lakes Treatment Center, Inc. is a licensed and accredited drug and alcohol addiction treatment facility that is owned entirely by Cattaneo. (TAC ¶ 4.) Diamond is a limited liability company organized in Nevada and doing business in California. (*Id*. ¶ 11.) Van is an attorney who was retained by Resort and who is also affiliated with Diamond and is listed as Diamond's agent for service of process. (*Id.* ¶ 9.)

On or about March 13, 2004, Cattaneo and Diamond, along with several others initial investors (other investors collectively referred to herein as "Other Original Members"), formed the Resort. (TAC ¶ 17.) The Resort was established as a member-managed limited liability company, governed by Operating Agreement executed by all of the original members. (*Ibid*., Ex. A.) At the time of creation, Cattaneo and here then husband Abramson, owned 20% of Resort with Diamond also owned 20% of the Resort. (*Id*. ¶ 19.) At that time, Diamond was owned and managed by John Giambi. (*Ibid*.)

In 2004, the Resort acquired two pieces of adjacent real property, referred to hereinafter as the “Leased Property” and the “Chalet” (collectively, “Properties.”) (TAC ¶ 21.) On January 1, 2005, the Members of The Resort executed a Resolution and named Cattaneo “President” of the company with authority to execute deeds. (*Id*. ¶ 22.) Around that time, some Original Members decided to sell, and Cattaneo/Abramson came to own 40% as did Diamond. (*Id*. ¶ 23.) In 2010, there was another round of buyouts, after which, Diamond owned 90% of Resort, and Cattaneo owned 10%. (*Id.*¶ 24.)

In March 2015, Resort entered into a commercial lease agreement with Lakes Treatment to rent the Leased Property. (TAC ¶ 25.) The Lease was set for a 20-year term, to expire in March 2035 with a monthly rent of $20,000.00. (*Ibid.,* Ex. B.) According to the lease, the landlord was responsible for maintenance of significant portions of the property. (*Ibid*.) However, thereafter, Giambi, Cattaneo, Diamond and Lakes agreed that Lakes would be responsible for maintenance. (*Id*. ¶ 27.) In exchange, Plaintiffs received a right of first refusal to purchase Resort’s real estate assets which included the Chalet and a third property on Lake Tulloch at 88 Sanguinetti Court, Copperopolis, California 95228 (“88 Sanguinetti”) (*Id*. ¶ 27.) Plaintiffs allege that in reliance on that, they expended significant monies on the Leased Property.

In July 2019, John Giambi died and around that time Jason Giambi became the majority owner and managing member of Diamond and sometime later Kristian Giambi became a co-owner and co-managing member of Diamond. (TAC ¶ 28.) Later in October 2019, Plaintiffs expended monies providing litigation defense related to a federal lawsuit.

At some point in 2019, Resort (through its attorney Van) and Cattaneo began negotiating Cattaneo’s right to acquire all ownership interests in Resort and its properties, but the deal was never finalized in writing. (TAC ¶ 31.) Thereafter, Plaintiffs allege that there was a concerted effort to push her out of the business and keep them from obtaining the Properties. At some point, however, Plaintiff purchased the 88 Sanguinetti property, which she believed was part of the process of eventually owning all the assets. (*Id.* ¶ 33.)

However, in 2020, Resort sold the Properties to Safdari but Cattaneo was not involved and did not receive her share of the proceeds. (TAC ¶ 35, 36.) Plaintiffs allege that Van was involved in the sales and in excluding them from the process and proceeds. On or around May 1, 2020, Safdari agreed to purchase all of the outstanding membership interest in The Resort from Jason Giambi for $3,000,000, and a Membership Interest Purchase Agreement was executed by the parties. (*Id*. ¶ 39.) Thus, Cattaneo’s 10% interest was sold out from under here without her consent or knowledge. (*Id.* ¶ 40.) Plaintiffs allege that even after the sale to Safdari, the various Defendants continued to deceive them and eventually began working a way to evict Plaintiffs.

Eventually, Cattaneo purchased the Properties from Safdari but at a purchase price far in excess of what would have been paid if the right of first refusal had been honored. (TAC ¶ 65.)

II. Legal Standard and Discussion

"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.)

A statute-of-limitations defense may be raised by demurrer only where the bar clearly and affirmatively appears on the face of the pleading and matters properly subject to judicial notice. It is insufficient that the action merely might be barred. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.). While Defendants argue that the claims in the TAC are barred by the statute of limitations, this is not clearly and affirmatively on the face of the pleadings and is therefore not a basis for demurrer at this point.

A. Breach of Contract

To prevail on a cause of action for breach of contract, plaintiff must prove the contract, plaintiff's performance or excuse for nonperformance, defendant's breach, and resulting damage to the plaintiff. (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.)

Plaintiffs allege that there was a contract (the Operating Agreement.) They allege that Diamond breached the contract by attempting to sell all the outstanding membership interests in Resort to Safdari which violated Cattaneo's rights as a 10% owner. Plaintiffs further allege that Diamond eventually attempted to circumvent the terms of the contract by selling the Properties to Safdari instead of going through with the sale of the membership interests. As a result, Plaintiffs alleged they were damaged.

Defendants demur to this cause of action on the grounds that the sale of the membership interests never took place, thus there could be no breach. They also assert that because no sale took place, Cattaneo retained her 10% interest, and therefore was not damaged by the non-sale.

The TAC does not sufficiently allege details of a breach of contract. Accordingly, the demurrer is sustained, with leave to amend.

B. Implied Covenant

The elements for breach of the implied covenant of good faith and fair dealing are: (1) existence of a contract between plaintiff and defendant; (2) plaintiff performed his contractual obligations or was excused from performing them; (3) the conditions requiring defendant's performance had occurred; (4) the defendant unfairly interfered with the plaintiff's right to receive the benefits of the contract; and (5) the plaintiff was harmed by the defendant's conduct. (*Merced Irr. Dist. v. County of Mariposa* (E.D. Cal. 2013) 941 F.Supp.2d 1237, 1280 [discussing California law].) To allege a breach of the implied covenant, however, the claim must be for something "beyond breach of the contractual duty itself." (*Careau & Co. v. Security Pacific Business Credit, Inc,.* (1990) 222 Cal. App. 3d 1371, 1394.) A prerequisite to any claim for breach of an implied covenant is the existence of a contract. (*Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38, 48-49.)

Defendants assert that this cause of action simply reiterates the cause of action for breach of contract. However, in this cause of action, Plaintiffs allege that the Defendants' behavior in trying to circumvent the Operating Agreement and to sell all the Resort's assets out from under Plaintiffs unfairly interfered with Plaintiffs' right to receive the benefits of the contract.

At this stage of the pleadings, the Court finds Plaintiffs adequately pled a cause of action for breach of the implied covenant of good faith and fair dealing. The demurrer is overruled.

The demurrer is **SUSTAINED with** 20 (twenty) days leave to amend **on the breach of contract** claim and **OVERRULED as** to the cause of action for **breach of the implied covenant** of good faith and fair dealing.

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

TYRE v TYRE

25CV48174

DEFENDANT’S MOTION TO VACATE ORDER DIRECTING SALE BY PARTITION

This is a dispute seeking partition of property (“Mobile Home”) brought by Ethan Tyre (“Plaintiff”) against Brianna Tyre (“Defendant.”) Both parties represent themselves pro se.

Now before the Court is Defendant’s Motion to Vacate the Court’s Order Directing Partition by sale of the Mobile Home.

I. Background

Plaintiff filed his Complaint for Partition on July 24, 2025. Defendant denied the allegations in her Answer. On April 24, 2026, the Court granted Plaintiff’s motion for partition by sale of the mobile home. In that Order, the Court appointed Michael Wright as referee and set a CMC for October 14, 2026.

Defendant moves to vacate the Court’s April 24, 2026, Order on the grounds that she was not provided notice of the hearing on Plaintiff’s motion until the day after the hearing. She asserts that her inability to present her side of the case at that hearing prejudiced her, violated her rights, and the Court must vacate the Order in order to allow matters to proceed on their merits.

II. Legal Standard and Discussion

“The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken…" (Code Civ. Proc. § 473(b).) A moving party need only establish "mistake, inadvertence, surprise, or excusable neglect" by a preponderance of the evidence. (Luz v. Lopes (1960) 55 Cal.2d 54, 62.)

Defendant has failed to adhere to the procedural requirements delineated in Code of Civil Procedure section 473, subdivision (b), which necessitates the denial of this motion. Code of Civil Procedure section 473, subdivision (b) explicitly states, "Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted[.]" Given that Plaintiff has not included a copy of any opposition to the original motion with this motion, the Court is unable to grant the motion based on this provision.

Additionally, the Court has on file a Proof of Service signed under penalty of perjury reflecting service by mail of the original motion was effected on defendant on April 2, 2026, at the post office box reflected as correct on all of defendant's filed pleadings. No evidence has been presented to the Court that the original motion was not delivered to this post office box, therefore the presumption of valid service has not been rebutted.

Accordingly, Defendant's motion to vacate is **DENIED**.

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

NICHOLAS v LEMP, et al

25CV48280

PLAINTIFF'S MOTIONS FOR JUDGMENT ON THE PLEADINGS

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

Now before the Court are three separate motions for judgment on the pleadings brought by Lemp, with each motion seeking judgment on a different cause of action in the Complaint. The motions were filed on July 22, 2026. On July 24, 2026, the Court granted Plaintiff's motion for leave to file a First Amended Complaint ("FAC"). Plaintiff filed his FAC on July 24, 2026.

Accordingly, as the FAC was filed after the motions for judgment on the pleadings were filed, the motions are now moot.

The motions for judgment on the pleadings are therefore **DENIED, without prejudice**.

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

SAN ANDREAS SANITARY DISTRICT, et al v LOCKWOOD, et al

25CV48360

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

This is an action for breach of contract, nuisance, and declaratory judgment related to two permanent public utility easements and one access easement over three separate parcels of real property for the benefit of the San Andreas Sanitary District ("District.") Defendants are Lisa Lockwood ("Lockwood"), Donald Neu ("Neu") and Neuwood Ranch Goats, LLC. ("LLC") (collectively "Defendants.") Lockwood and Neu are the record owners of the Properties. LLC operates a goat grazing business, with Lockwood and Neu as members of the LLC.

Now before the Court is an order to show cause why a preliminary injunction should not issue against Defendants.

I. <u>Background Facts</u>

Lockwood and Neu own the real property commonly known as 1516 Highway 12, San Andreas, California 95249 located in Calaveras County identified by Assessor's Parcel Numbers: 040-008-060-000 ("Property 1"); 040-013-009-000 ("Property 2"; and 040-012-026- 000 ("Property 3" (collectively, the "Properties.") (Complaint ¶ 6.) The District holds three recorded easements (two permanent public utility easements and one access easement) granting it access to operate, maintain, inspect, and repair its wastewater treatment monitoring system over three separate and commonly owned parcels. (*Id.* ¶ 1.) The LLC operates a goat grazing business on the Properties. (*Id.* ¶ 7.)

In February of 2004, Isabel M. Neilsen, individually and as Trustee of the Isabel M. Neilsen Revocable Trust ("Neilsen") conveyed to the District a permanent easement for the purposes of placing, maintaining, and operating a flow meter on the Calaveras River together with a monitoring station and an access easement for ingress and egress. (Complaint ¶ 11.) Subsequently, Nielsen accepted the District's offer to purchase a temporary construction easement and an additional permanent utility easement for the installation and maintenance of an underground sewer main with surface manholes. (*Id.* ¶ 12.) In November of 2017, Nielsen conveyed the Properties by grant deed to Lockwood and Neu. (*Id.* ¶ 13.)

The District holds a 15-foot-wide permanent public utility easement and 15-foot-wide access easement over approximately 0.50 acres of Property 2 benefiting the District ("Check Dam Easements.") (Complaint ¶14, Ex. 3.) The Check Dam Easements allows the District access to Property 2 for the purposes "placing, maintaining and operating a flow meter on the Calaveras River together with a monitoring station…"; and (b) a non-exclusive access easement for ingress and egress. (Complaint ¶ 15.) The Check Dam Easements are essential to the District's ability to record the Calaveras River's flow discharge (as required by the District's NPDES permit) and the District's ability to operate its monitoring station. (*Ibid.*)

The District holds a 20-foot-wide permanent public utility easement over approximately 1.02 acres of the Properties ("Outfall Easement.") (Complaint ¶ 20, Ex. 4.) Nielsen conveyed the Outfall Easement to the District in April of 2024. (*Ibid*.) The Outfall Easement is a non-exclusive permanent public utility easement for the purposes of "placing, maintaining and operating an underground sewer main with surface manholes[]…" (*Id.* ¶ 21.)

According to the Defendants, a portion of the Outfall Easement runs through a fenced pasture on the Ranch (Declaration of Donald Neu ("Neu Decl.") ¶10.) Defendants contend this is their "largest permanently fenced pasture." (*Ibid*.) Defendants assert that there is an existing heavy duty livestock gate at the southeastern edge of the pasture which provides the sole ingress/egress for the pasture. (*Ibid*.) The Outfall Easement runs through this gate. (*Ibid*.) There is no gate at the northwestern edge of the pasture. (*Ibid.*)

District alleges that for approximately two years on and off, Lockwood and Neu (and Does 1-10) have breached the Deed of Easement conveying the Check Dam Easements by allowing obstructions that prevent entry to the Check Dam Easement's roadway. Specifically, defendants allegedly allow livestock to roam their property which prevents the District's ability to enter the roadway to access its easements. (Complaint ¶ 26.) Lockwood and Neu have also allegedly placed either a barbed wire or an electric fence on the Properties which prevents the District from utilizing the Outfall Easement. (*Id*. ¶ 30.)

Defendants contend that the pasture has been fenced since they purchased the Properties and they believe it has been fenced since at least 1970 (ie., before the easements). (Neu Decl. ¶ 10.) Thus, Defendants argue that the fence was a known existing obstacle prior to the easements and Plaintiff never objected to its existence when obtaining the easements.

According to Defendants, prior to their acquisition of the Ranch, and for several years after, District used an unrecorded "alternative access point to reach the Outfall Easement" with permission from the owners. (Neu Decl. ¶ 6; Complaint ¶ 30.) Defendants refer to this as the "Extra Easement Areas of Travel." (Neu Decl. ¶6.) However, according to Defendants, the Plaintiff's use of this alternative access caused damage to the properties and accordingly Defendants insisted that Plaintiffs use the actual access point in the Outfall Easement. (*Id*. ¶¶ 7, 8.)

On October 17, 2025, this Court issued a Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should not Issue Enjoining Defendants from obstructing the San Andreas Sanitary District's public utility easement ("Outfall Easement"). The TRO enjoined Defendants from obstructing the Outfall Easement by the electric fence, and from interfering with the District's operation and maintenance of its underground sewer pipeline located at the North Fork Calaveras River.

Subsequent to the TRO, the District confirmed that the electric fence has been removed from the Outfall Easement (Declaration of Hugh Logan in Support of OSC ("Logan Decl."), ¶ 4.)

District filed a supplemental brief in support of the OSC. Defendants oppose imposition of the injunction.

II. Legal Standard and Discussion

When determining whether to issue a preliminary injunction, the court considers two interrelated questions: (1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief. (*White v. Davis* (2003) 30 Cal.4th 528, 554; *see also Robbins v. Sup. Ct*. (1985) 38 Cal.3d 199, 206; Code Civ. Proc., § 526.)

A. Likelihood of Prevailing on the Merits

District's complaint brings causes of action for breach of contract, private nuisance, and declaratory relief.

In order to prevail on a cause of action for breach of contract, the District must demonstrate: 1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.)

Here, District has alleged and produced evidence of valid easements, giving the District the right to access and maintain the sewer lines and flow meters. Defendants do not dispute that the easements are valid – rather, they argue that the fence is not new and the Outfall Easement only prohibits the construction or placement of a permanent improvement. It does not, according to Defendants, require removal of a pre-existing permanent improvement and they contend the barbed fence was just that.

District has also alleged and produced evidence that it has complied with the various easements, but that Defendants have breached the easements by blocking access to the Properties. The Court agrees with this assessment, even if the fence pre-dated the Outfall Easement (which is not definitively established). All parties agree that the District has a valid easement to access and maintain the sewer lines and flow meters. There is also no dispute that in order to do so, the District has to actually access the areas covered by the easements, including with equipment and machinery. Prior to 2024, the

District was not blocked by the fences on the Outfall Easement because it was using the "alternative access" to perform its work. Once Defendants refused to allow the District to use the alternative route, the *only* method for reaching the sewer lines was through the Outfall Easement. The fence is blocking access which is resulting in the District not being able to effectually use their easements.

Finally, Defendants have alleged that they have been damaged because they cannot access their equipment to perform maintenance or other operations unless its employees use an industrial size ladder to climb over the barbed wire fence. (Logan Decl. ¶ 8.) Requiring the Plaintiff's employees to scale the ladder violates the District's safety and injury prevention policies. (*Id*. ¶¶ 9-11.) Plaintiff asserts that "[i]f the District is required to implement the current unsafe access procedure (i.e., access via ladder over the barbed wire fence) during the pendency of this litigation, there is a significant risk that an employee may be injured and the District may incur liability under workers' compensation laws if an employee is injured." (*Id*. ¶ 12.)

Accordingly, District is likely to prevail on its cause of action for breach of contract.

Likewise, the District is likely to prevail on its cause of action for private nuisance. "When a person interferes with the use of an easement he deprives the easement's owner of a valuable property right and the owner is entitled to compensatory damages. The interference is a private nuisance and the party whose rights have been impeded can recover damages as measured in the case of a private nuisance." (*Moylan v. Dykes* (1986) 181 Cal.App.3d 561, 574.)

Finally, Plaintiff is likely to prevail on its request for declaratory relief because there is an actual controversy over the rights conveyed to the District through the easements.

B. Balance of Harm to the Parties

The Court must next look at the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief. (*White v. Davis* (2003) 30 Cal.4th 528, 554.) "[T]he more likely it is that [applicant] will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue." (*King v. Meese* (1987) 43 Cal. 3rd 1217, 1227.) The general purpose of a preliminary injunction is often to preserve the status quo. (*Harbor Chevrolet Corp. v. Machinists Local Union 1484* (1959) 173 Cal.App.2d 380, 384.)

District's motion states that it is being harmed through Defendants' conduct because, while the electric fence was removed, there remains a barbed wire fence which poses a safety threat to its workers and impedes access to the Outfall Easement. (The District states that it is now forced to either subject its employees to unsafe working conditions (and potentially opening themselves up to liability) or risk noncompliance with requirements of the Regional Water Quality Control Board. (*Id.* ¶ 15.)

In opposition, Defendants raise serious concerns about their ability to run their business if they are required to remove the fence around their largest grazing area. According to Defendants, they typically keep between 100-250 goats on the ranch and their main business is leasing the goats for long-term and short-term grazing on properties in Calaveras, Amador, and Tuolumne Counties. (Neu Decl. ¶ 9.) Defendants aver that goats are “voracious eaters and between off-site stints must be regularly moved around the ranch for grazing to keep fed.” (*Ibid*.) They assert that while “removal of the fence across the easement is a simple task, doing so will render the pasture unusable for keeping goats.” (*Id.* ¶ 14.) Defendants also assert that they are willing to install a gate for access, but that it is cost-prohibitive if they are required to pay for the entire gate (estimated at $5000 with labor) themselves. (*Ibid.*)

The Court is cognizant of the impacts on Defendants’ business if the fence is removed. However, while this is a relatively close call, the public’s interest in safe and working sewers and waterways, and the District’s need to maintain safe working conditions, outweigh the Defendants’ private financial interests.

Accordingly, the District’s has shown cause as to why the preliminary injunction should be **GRANTED**.

III. Conclusion

The preliminary injunction is granted. Defendants are ordered to remove the barbed wire fence or, alternatively, are required to provide a safe means of access through the fence that does not require the use of a ladder. Defendants are further enjoined from taking any steps that would unreasonably interfere with the District’s ability to perform all operations and maintenance as allowed and anticipated via the easements currently in place.

Plaintiff is ordered to pay a bond of $5,000.00. Both parties are required to participate in a **mandatory settlement conference set for October 19, 2026, at 8:30 a.m. in Department 2**, at which time the Court anticipates a discussion of the cost of a gate or other means of safe access over the Outfall Easement. MSC Statements must be filed and served by 3:00 p.m. on October 9, 2026.

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.

ALDANA v RUBIO

26CV48597

PLAINTIFF'S MOTION FOR TEMPORARY ORDERS

This case involves a complaint to partition real property located at 4893 Kiva Court, Copperopolis, California ("Property") brought by Jennifer Moon Aldana ("Aldana") against Paul Rubio ("Rubio").

Now before the Court is Plaintiffs' motion for temporary orders.

I. Background

Aldana is the sole borrower on an existing mortgage on the Property with Chase Bank. (Declaration of Jennifer Aldana ("Aldana Decl.") ¶ 3.) On March 19, 2025, Rubio was added to the deed on the Property but is not a co-borrower on the loan. (*Id.* ¶¶ 3.) Aldana avers that she has invested approximately $200,000 of her own funds into the Property. (Ibid.) According to the Grant Deed for the Property, Aldana and Rubio are tenants in common each with an undivided one-half interest in the Property. (*Id*. ¶ 3, Ex. J.)

The Property has negative equity because the current fair market value is less than the outstanding loan amount. (Aldana Decl. ¶ 4.) Chase has advised Aldana that the ½ transfer to Rubio violated the terms of the Loan and as a result the Loan may be considered in default and due payable in full. (*Id*. ¶ 5.) Chase has stated that the solutions to this issue are: 1) payoff the loan balance in full, 2) transfer the title back to Aldana in full, or 3) sale of the property. (*Ibid*.)

Plaintiff filed her Complaint for Partition on March 6, 2026. Defendant answered on May 29, 2026.

II. Legal Standard and Discussion

A co-owner of real or personal property may bring an action for partition. (Code Civ. Proc. § 872.210.) " 'Partition is a remedy much favored by the law.'" (*LEG Investments v. Boxler* (2010) 183 Cal.App.4th 484, 493 [citation omitted].) Partition not only allows parties to avoid the inconvenience of sharing joint possession of land but also avoids " 'unreasonable restraints on the use and enjoyment of property.' [citation]" (*Ibid*.)

Civil Code §872.210 provides, in pertinent part:

> If the court finds that the plaintiff is entitled to partition, it shall make an interlocutory judgment that determines the interests of the parties in the property and orders the partition of the property and, unless it is to be later determined, the manner of partition.

"A co-owner of property has an absolute right to partition unless barred by a valid waiver." (*LEG Investments,* supra 183 Cal.App.4th at 493, citing Code Civ. Proc. § 872.710(b).)

In the instant case, it is undisputed that the parties took title to the subject property as tenants in common when Aldana granted a one-half interest in the Property to Rubio. As such, either party has an absolute right to partition. Rubio has not filed any opposition to Aldana's motion. However, Rubio has filed an Answer asserting multiple affirmative defenses, including waiver. Rubio also filed a motion for an ex parte hearing asking for his own temporary orders but the ex parte application was denied and Rubio did not file any motion despite the Court's noting that would be the proper procedure for any requested relief.

If the court finds that the plaintiff is entitled to partition, then it must make an interlocutory judgment that determines the interests in the property and orders partition of the property.(*LEG Investments*, supra 183 Cal. App.4th at 498.) However, the statutory scheme for partition requires that the Court determine, either by trial or dispositive motion, that the plaintiff is entitled to partition. The instant motion seeking temporary order for the removal of Rubio from the title does not support the granting of an interlocutory judgment.

The Court is cognizant of its authority in partition actions to “hear and determine all motions, reports, and accounts and may make any decrees and orders necessary or incidental to carrying out the purposes of this title and to effectuating its decrees and orders.” (Code Civ. Proc. § 872.120.) However, the removal of Rubio from title – even if in the interest of preserving the ownership of the Property from default – is *not* a purpose of the partition statute. Thus, the Court cannot conclude that it has the authority to enter the temporary orders requested by Plaintiff. Additionally, because of the procedural context of this Motion, the Court has insufficient basis to reinterpret it as a Motion for Partition by Sale (absent agreement of the parties to treat it as such and order a sale with distribution of sales funds – other than payment of the priority lien held by the mortgage company – left to either agreement between the parties or further motion(s)).

However, the Court is aware of the need for swift action to protect what equity may be salvageable in the Property. Accordingly, the parties are encouraged to confer to determine if they can reach an agreement/stipulation to proceed with an interlocutory judgment on the papers presented, agree to a temporary resolution which would transfer ownership back to Albana for the sole purpose of curing the default on the Loan. Absent any such agreement between the parties on a temporary solution, or agreement to stipulate to an interlocutory judgment on the papers presented, or agreement to a partition by sale with disbursement of the sale proceeds either agreed upon or subject to future motion, the **Motion for Temporary Orders is DENIED**.

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.