

SANCHEZ et al v. SIMPSON et al

21CV46351

PLAINTIFFS' APPLICATION FOR PRELIMINARY INJUNCTION

This is a civil action stemming from an poorly conceived real estate transaction between friends, neighbors, and distant cousins. The plaintiffs – elderly and/or infirm – sold their residence to defendants for \$356,000, but obtained no cash in the deal. Instead, plaintiffs agreed to pay all escrow fees and carry back the entire purchase price (minus \$1,000) as a promissory note bearing 3% interest. Based on the amortization schedule provided by escrow, plaintiffs were not due to be paid in full until after two of three plaintiffs have reached the age of 107. Plaintiffs allege in their Complaint that many of the terms “understood” by the parties did not make it into the Residential Purchase Agreement actually signed by the parties, such as defendants’ obligation to secure financing to pay off the promissory note in due course. There are also issues surrounding plaintiffs’ access to the property to retrieve personal effects left behind after the close of escrow.

Before the Court is plaintiffs’ application for a preliminary injunction. Based on the initial papers, this Court issued in plaintiffs’ favor a TRO, barring defendants from (1) selling the property, (2) selling or otherwise disposing of plaintiffs’ personal effects left at the property, and/or (3) altering the property without plaintiffs’ consent. The hearing on the preliminary injunction was set for today, with a schedule for both sides to submit additional briefing, pleadings, or documents; nothing further was filed by any party.

A preliminary injunction is an equitable remedy designed to preserve the existing status quo until the dispute between the parties can be finally resolved on the merits. Preliminary injunctions are generally available to avoid waste (CCP §526(a)(2)), to keep a party from violating the rights of another (CCP §526(a)(3)), and whenever sufficient grounds exist pursuant to caselaw (CCP §527(a)), such as when the applicant has demonstrated a likelihood of prevailing on the merits and yet is likely to suffer in the interim irreparable harm which cannot be adequately addressed with money. Courts refer to this as a sliding scale of considerations – how likely the party is to win versus how much harm it will suffer awaiting its day in court. (See *White v. Davis* (2003) 30 Cal.4th 528, 554; *Butt v. State of California* (1992) 4 Cal.4th 668, 677-678; *Stevenson v. City of Sacramento* (2020) 55 Cal.App.5th 545, 551; *Amgen Inc. v. Health Care Services* (2020) 47 Cal.App.5th 716, 731.)

Looking first to the Fifth Cause of Action for Conversion, conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the

defendant's conversion by a wrongful act or disposition of property rights; and (3) damages. Conversion is a strict liability tort, meaning that the foundation of the action rests neither in the knowledge nor the intent of the defendant. Questions of the defendant's good faith, lack of knowledge, and motive are ordinarily immaterial. (*Mendoza v. Rast Produce Co., Inc.* (2006) 140 Cal.App.4th 1395, 1404-1405; *Ananda Church of Self-Realization v. Massachusetts Bay Ins. Co.* (2002) 95 Cal.App.4th 1273, 1281.) It is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converter has applied the property to his own use. (*Spates v. Dameron Hospital Assn.* (2003) 114 Cal.App.4th 208, 221.) Plaintiffs claim a conversion based upon defendants' refusal to permit them access to retrieve personal items left behind during the elongated move out process. Plaintiffs presented as Exhibit 4 a "partial list" of those items.

Since a preliminary injunction can only issue to preserve the status quo, it is necessary to first clarify what the "status quo" in this case really is. The status quo is defined as to the last actual peaceable, uncontested status which preceded the pending controversy. (*Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th 1030, 1052; *People v. iMERGENT, Inc.* (2009) 170 Cal.App.4th 333, 343.) As set forth in the partially verified complaint (plaintiff Antone does not verify the exhibits, only the 15-page complaint) and unauthenticated exhibits in the court record, on 05/03/22 the parties entered into a contract to sell the residence. In Paragraph III, the parties made plain that "there shall be no personal property included in this Agreement or included in the purchase of the real property." The parties further made explicit that "all removeable items from the real property, i.e. non-fixtures, shall be retained by the seller at closing." [Emphasis added.] Thus, the status quo was that plaintiffs were to retain the ownership interest in all personal items existing at the property on the date escrow closed, which cuts against any claim that items left behind were purposefully abandoned in favor of defendants. To the extent defendants are refusing to recognize plaintiffs' ownership interest, that amounts to conversion.

As for the balance of the claims set forth in the operative pleading, plaintiffs have not presented sufficient evidence from which to establish a likelihood of prevailing on the merits. That is a not to say that plaintiffs will not win at day's end, but just that the evidence presented to date leaves too many questions unanswered. For example, the written agreement provides that if defendants cannot secure a VA loan on the property to pay off the note, the plaintiffs would agree to carry the note until such time as the "property is rehabilitated for VA funding." (See Page 6.) Although this particular aspect of the agreement is unusual, if defendants have been making their monthly payments on the note, and made an effort to secure funding, plaintiffs have not shown fraud or breach of contract – at least not on the evidence presented here. Unconscionability is not a standalone cause of action. (See *De La Torre v. CashCall, Inc.* (2018) 5 Cal.5th 966, 980.) Constructive trust is not a standalone cause of action. (See *Reid v. City of San Diego* (2018) 24 Cal.App.5th 343, 362.)

The application for preliminary injunction is GRANTED as to the provision in the TRO regarding personal property (Paragraph A). Defendants are hereby ordered not to sell, donate, move, secret, convert, or dispose of in any way plaintiffs' personal items left at the real property following the close of escrow, some of which (but not all) are identified in Exhibit 4 to the complaint (incorporated herein by reference). Since defendants have no potential ownership therein, no bond shall be required of plaintiffs. In light of estimates set forth in Exhibit 4, and there being no challenge to that evidence, this Court sets defendants' counterbond at \$50,000. The balance of the application for preliminary injunction, relating to the real property, is denied without prejudice.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiffs shall forthwith prepare the CCP §1019.5 and CRC 3.1312 order, but should delays occur, the ruling is immediately effective without further order of this Court.