CERRUTI et al v. DEVOTO et al

17CV42758

PLAINTIFF'S MOTION TO CONSOLIDATE RELATED CASES

This is an unlimited jurisdiction quiet title action involving potential clouds over the chain of title associated with APN 052-016-009, commonly referred to as the Garibaldi Quartz Lode Mining Claim, Lot Number 45, Survey No. 3502 embracing a portion of Section 24, Township 3 North of Range 12 East M.D.M. in the Angels Mining District, Calaveras County, California (hereinafter referred to as "subject property").

Before the Court is the continued hearing on plaintiff's unopposed motion to consolidate this civil action with 21CV45366. As previously noted, both lawsuits involve claims of adverse possession to the same property by the same putative owners against many of the same defendants.

At the prior hearing, this Court made the following salient observations:

First, there was a due process concern regarding plaintiff's failure to serve Charles Devoto, Christina Huberty, Annie Austin, and Sarah Singer with the motion. Although plaintiff opined that they were "probably deceased," this Court requested more on the subject.

Second, there was a due process concern regarding the statutory rights of Charles Devoto, Christina Huberty, Annie Austin, and Sarah Singer to a dismissal of the 2017 action for failure to effectuate service. See CCP §§ 583.210, 583.250; *Inversiones Papaluchi S.A.S. v. Superior Court* (2018) 20 Cal.App.5th 1055, 1061. The statutory protection further provides that "no further proceedings shall be held in the action" (CCP §583.250(a)(1)) until the dismissal issue is resolved. This Court requested further briefing.

Plaintiff was invited to submit any supplemental filings at least 10 court days prior to the next hearing. The clerk provided notice that same day, giving plaintiff ample opportunity to address the referenced concerns in support of the motion to consolidate. Since nothing new has been filed, this Court concludes that the motion to consolidate has been abandoned and shall go off-calendar. Should the motion be refiled, for technical purposes only, this motion is deemed DENIED WITHOUT PREJUDICE.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal order is required.

SARKIS et al v. ANGELS GUN CLUB et al

14CV40365

PLAINTIFFS' MOTIONS TO COMPEL INITIAL RESPONSES TO 136 SETS OF DISCOVERY

This is a shareholder's derivative suit involving alleged bookkeeping and management deficiencies in a closely-held nonprofit, tax exempt association (aka social club) with approximately 150 members. Before the Court this day is a single motion, filed jointly by the three plaintiffs, to compel (1) verifications to previously served responses or (2) responses *ab initio* to outstanding discovery. The motion remains unopposed.

As an initial matter, this motion as presented is technically deficient in that it combines 136 separate motions into one. Plaintiffs are seeking 136 distinct orders, which means there are 136 motions here. (See CCP §1003.) Pursuant to Govt Code §70617, defendants must tender $60 for each motion seeking an order even if the motions are heard together. Although one commingled memorandum is permissible (and in this case preferable), counsel still had to tender 136 filing fees. Only one $60 filing fee was tendered, which means only one court order can issue.

In terms of which order shall issue, this Court finds that the failure to provide verifications is insular and narrow enough to be addressed in a single order. As plaintiff correctly notes, an unverified discovery response is tantamount to no response at all. (See *Melendrez v. Superior Court* (2013) 215 Cal.App.4th 1343, 1348.) Since by law all substantive responses must be verified, this Court hereby orders all defendants to review prior discovery responses and, within 10 days, provide verifications to all previously served unverified discovery requests. (It is not clear to this Court which discovery responses lack verifications since counsel proffers in his declaration at Paras 14-18 that some verifications have been "trickling in"). This order effectively resolves 124 of the 136 discovery disputes at issue here.

Plaintiff is entitled to monetary sanctions, but not in the amount sought. Counsel's proposed blended hourly rate of $250 is reasonable, but not the 14.8 hours allegedly invested in preparing this otherwise simple motion. This discovery was pending for over a year, and counsel only decided to seek to enforce discovery matters after the MSC failed. It seems much of the time could have been invested elsewhere. To that end, this Court awards $560.00 for this motion (2 hours + filing fee), payable by the Levangie Law Group within 10 days.

For now, this Court declines to enter an order deeming unverified RFAs as admitted for all purposes given the passage of time since responses were provided, and the ease

with which parties can moot such a motion by simply providing the missing verifications as ordered herein(or having the order set aside for good cause). However, if the parties fail to provide verifications for the RFAs as ordered herein, this Court will entertain a new motion by plaintiffs to have those RFAs deemed admitted.

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

BRUMBAUGH v. APPALOOSA ROAD COMM. SERVICES DIST.

21CV45171

DEFENDANT'S DEMURRER TO THIRD AMENDED PETITION

This is an administrative writ of mandate alleging "Brown Act" violations relating to the imposition of a *de minimus* real property parcel tax increase. Before the Court this day is a defense demurrer to the operative Third Amended Petition. Contrary to moving party's insinuation (see Reply Brief 2:27-3:5), this Court has only addressed the legal sufficiency of petitioner's claim one time (see Minute Order dated 07/02/21), and at that time found "a reasonably possibility that Petitioner can state a good cause of action." However, since that time, a curious wrinkle has come to light necessitating further briefing.

On 05/07/19, 82% of the qualified electorate approved the *Appaloosa Road Community Services District Measure B*, which increased the annual parcel tax in the Appaloosa Zone from $75 to $175. The ballot itself identified the following streets as part of the Appaloosa Zone: Appaloosa Road, Chestnut Court, Chestnut Way, Dunn Road, Filly Road, Hunter Road, Paint Road, Shetland Road and Welsh Road. For reasons not entirely clear, the ballot failed to mention Pinto Road or Morgan Road, both of which are in the Appaloosa Zone.

On 05/04/21, 88% of the qualified electorate approved the *Appaloosa Road Community Services District Measure D*, which applied the same $100 increase to Pinto Road and Morgan Road – thereby specifically encumbering every parcel in the Appaloosa Zone with the same $100 increase.

Petitioner herein contends that the Appaloosa Road Community Services District Board of Directors violated due process provisions regarding notice and access when vetting the decision and resolution to put Measure D on the ballot, but the Board's conduct seems harmless if the issue was properly presented to the public. Petitioner must show prejudice from an alleged Brown Act violation. Does petitioner allege anything amiss or untoward regarding the election process itself? Were the voters actively misled by something the Board did? If not, it seems the matter may now be moot. A case becomes moot when a court ruling can have no practical impact or cannot provide the parties with effective relief. (*In re Stephon L.* (2010) 181 Cal.App.4th 1227, 1231; *Corrales v. Bradstreet* (2007) 153 Cal.App.4th 33, 46-47.) Cases or controversies which have been rendered moot are subject to dismissal because courts generally decide only "actual" or justiciable controversies, i.e, cases in which effective relief can be granted, and do not normally render advisory opinions. (*Ebensteiner Co., Inc. v. Chadmar Group* (2006) 143 Cal.App.4th 1174, 1178–1179; See *Julian Volunteer Fire Co. Assn. v. Julian-Cuyamaca Fire Protection Dist.* (2021) 62 Cal.App.5th 583, 603-604 [Brown Act violation

moot by virtue of public election on same issue]; *TransparentGov Novato v. City of Novato* (2019) 34 Cal.App.5th 140, 149-153 [Brown Act violation moot]; *City of Palo Alto v. Public Employment Relations Bd.* (2016) 65 Cal.App.5th 1271, 1320 [Brown Act violation not moot].)

Hearing continued to January 14, 2022, at 9:00 a.m. in Department 2. At least 10 calendar days prior thereto, both sides are invited to file and serve a supplemental memorandum of points and authorities, not to exceed six pages, addressing only the question of mootness.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal order is required.

DEBT MANAGEMENT PARTNERS v. CALLAHAN

21CF13502

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

This is a limited jurisdiction debt collection action. Before the Court is an unopposed statutory motion by plaintiff for judgment on the pleadings. This motion comes on the heels of this Court's recent order deeming admitted eight (8) facts, and the genuineness of three (3) documents, identified in plaintiff's Requests for Admission. From the tenor of the moving papers, it would appear to this Court that the pleading plaintiff wants judgment on is its complaint filed 05/12/21, though the motion makes repeated reference to defendant's answer filed 06/30/21.

The request for judicial notice is granted pursuant to Evidence Code §§ 452 and 453.

A statutory motion for judgment on the pleadings is similar to a demurrer, except that the motion (1) can be made at any time 30 days prior to the initial trial date, but (2) only after defendant has answered and (3) only on the grounds of subject-matter jurisdiction or failure to state a cause of action. CCP §438(c)-(f). The rules governing pleading scrutiny are the same as those applicable to demurrers. (*Bezirdjian v. O'Reilly* (2010) 183 Cal.App.4th 316, 321; *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216.) Thus, the motion will be granted only if no claim or defense is stated.

Initially, this Court notes that moving party failed to provide the required meet and confer declaration. (See CCP §439.) Although "a determination by the court that the meet and confer process was insufficient shall not be grounds to grant or deny the motion for judgment on the pleadings," it also cannot be ignored

However, there is a more fundamental problem with the motion. This is the wrong motion to follow RFAs deemed admitted *by a defendant*. Although admitted RFAs are treated as stipulations to the truthfulness of the matters admitted, obviating the need for evidence thereon, the process to use defendant's RFAs toward case disposition is generally with a motion for summary judgment. (See *People v. $2,709 United States Currency* (2014) 231 Cal.App.4th 1278, 1285; *Sheffield v. Eli Lilly Co.* (1983) 144 Cal.App.3d 583, 611.) While it no doubt seems unduly burdensome to use the summary judgment process with admitted RFAs in hand, the only other option is to attack defendant's answer – but the RFAs here do not negate most of those defenses. An RFA response is preclusive only to the extent required by a literal reading of the request. (*Burch v. Gombos* (2000) 82 Cal.App.4th 352, 359.) Thus, while the RFAs remove the question of defendant taking out the loan and having a balance due, they do not touch upon any of defendant's affirmative defenses.

Plaintiff cites *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, for the

proposition that a court may take RFAs deemed admitted and rule substantively on a motion for judgment on the pleadings, but in fact *Evans* did not involve RFAs. *Evans* involved a Request for Judicial Notice of a deed, with which neither side took issue.

Based on the foregoing, plaintiff's motion is Denied.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal order is required.

MAAG v. LAUGHLIN et al

20CV44843

DEFENDANTS' DEMURRER TO THIRD CAUSE OF ACTION

This is a personal injury action involving an allegedly dangerous stairway at property previously owned by the defendants (and which was allegedly conveyed away to create insolvency). Before the Court is a demurrer, filed by all three named defendants, to the third cause of action stated within the First Amended Complaint, to wit: fraudulent conveyance.

A demurrer tests the legal sufficiency of a pleading by looking only within the "four corners" of the pleading (which includes exhibits attached and incorporated therein) or at matters outside the pleading which are judicially noticeable under Evidence Code §§ 451 or 452. In general, a pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim.(*Southern California Edison Company v. City of Victorville* (2013) 217 Cal.App.4th 218, 227; *Shields v. Hennessy Industries, Inc.* (2012) 205 Cal.App.4th 782, 785.)

California has adopted the Uniform Fraudulent Transfer Act (Civil Code §§ 3439–3439.12), the purpose of which is "to prevent debtors from placing property which legitimately should be available for the satisfaction of demands of creditors beyond their reach." (*Chichester v. Mason* (1941) 43 Cal.App.2d 577, 584.) A fraudulent conveyance is a transfer by the debtor of property to a third person undertaken with intent to prevent a creditor from reaching that interest to satisfy its claim. (*Nautilus, Inc. v. Yang* (2017) 11 Cal.App.5th 33, 39.) A fraudulent transfer under the Act may be intentional (§ 3439.04(a)(1)) or constructive (§3439.04 (a)(2)). (*Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 122; *Mejia v. Reed* (2003) 31 Cal.4th 657, 669–670; *Yaesu Electronics Corp. v. Tamura* (1994) 28 Cal.App.4th 8, 13.) The First Amended Complaint herein does not specify which version plaintiff seeks to plead, which thus requires this Court to consider both types. For either version, fraudulent conveyance sounds in fraud, and must therefore be plead with particularity (except that insolvency may be pled generally). (See *Wald v. Truspeed Motorcars, LLC* (2010) 184 Cal.App.4th 378, 393-394; *Thompson v. Moore* (1937) 8 Cal.2d 367, 372; *Gray v. Brunold* (1903) 140 Cal. 615, 619.)

The essential elements for an **intentional** transfer are as follows: transfer made (1) by the "debtor" (one who is liable on a claim) (2) with actual intent to hinder, delay or defraud any creditor of the debtor. CC §§ 3439.01(e), 3429.04(a)(1). "Actual intent" may be determined from a number of factors enumerated by statute, commonly referred

to as “badges” of fraud, and must be established by a preponderance of the evidence. (*Whitehouse v. Six Corp* (1995) 40 Cal.App.4th 527, 533-535; in accord, *Grubb Co. Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494, 1503; *Filip v. Bucurenciu* (2005) 129 Cal.App.4th 825, 834.)

The essential elements for a **constructive** transfer are as follows: transfer made (1) by the “debtor” (2) without receiving a reasonably equivalent value in exchange for the transfer, and (3) while the debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction. (CC §3439.04(a)(2).)

In addition, for both versions, the plaintiff must plead **damage** resulting from the fraudulent conveyance. (*Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75, 80; in accord, *Haskins v. Certified Escrow & Mtge. Co.* (1950) 96 Cal.App.2d 688, 691.)

Initially, there are no factual allegations permitting a finding that any of the defendants are “debtors” in the presence sense. Defendants are presumed free from wrongdoing until proven otherwise and are free to do with their property as they see fit. The only exception is for a prejudgment writ of attachment or possession, and for those a testing of the claim’s merits must first be undertaken.

Next, plaintiff has not alleged any damage resulting from the transfer. Even assuming the defendants moved their home into an *inter vivos* trust, damage will only be shown if plaintiff secures a judgment that is uncollectible but for the transfer.

Third, there is no bad motive to be inferred from what amount to garden-variety probate avoidance techniques. Plaintiff contends that the transfer was to avoid a judgment, but without more facts, the only plausible inference to be drawn from the transfer is that defendants received good advice from an estate planning attorney – especially if the trust is revocable during the life of the settlors.

Finally, based on defense counsel’s email address, it is reasonably ascertainable that his firm is in-house defense counsel for Farmers Insurance, which suggests the existence of insurance coverage for this claim, which further belies the bald conclusion that defendants will be unable to meet any adverse judgment herein.

Based on the foregoing, this Court concludes that the cause of action for fraudulent conveyance is inadequately pled. Plaintiff has failed to meet its burden of showing in what manner the claim can be amended and cured. The demurrer is SUSTAINED WITHOUT LEAVE TO AMEND, but without prejudice to a future motion for leave to amend if prejudgment provisional remedies permit (or after collection proves fruitless).

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

CALLISON v. ORTIZ

20CV45077

DEFENDANTS' CONTINUED MOTION FOR JUDGMENT ON THE PLEADINGS

This is a breach of contract action relating to the sale of real property. Before the Court is the continued hearing on the defense motion for judgment on the pleadings, now with opposition and reply briefs.

Party Plaintiffs

Counsel for plaintiff requests clarification of this Court's order regarding the Pollock & James dismissal filed on 10/06/21. At the time this paper was filed with the Court, Pollock & James was representing itself in the action. Attorney Jeffrey was *not* representing Pollock & James and had no obvious authority to file anything on behalf of Pollock & James, especially something as material as a dismissal of their claim. (See CRPC 1.2(a) and *Maddox v. City of Costa Mesa* (2011) 193 Cal.App.4th 1098, 1105.) Even though an attorney in the law firm of Pollock & James signed the Request for Dismissal, there is no indication that Attorney James has the authority to speak for the firm in such matters. Pollock & James must file its own dismissal. The dismissal filed 10/06/21 is stricken.

Stating a Claim

The operative pleading describes a *written* agreement in which defendants would pay to plaintiffs the equity received from a sale involving real property, but no description of the lawful object or consideration therefore. Defendants offer via judicial notice that defendant Riordan agreed in 2017 to pay Callison almost $1M, and perhaps plaintiffs believed that his agreement to pay created an enforceable contract with Ortiz (as home owner). To the extent this lawsuit is an effort to collect on a pre-existing debt from Riordan, defendants are correct that this is a collection matter to be addressed in the Sonoma County proceeding. Either way, it is not clear how P&J or Ortiz are involved at all.

Nevertheless, the new opposition brief presents a basis upon which amendments might cure the defects previously identified. Plaintiff is correct that any lawful benefit conferred upon the promisor, or any prejudice suffered by the promisee as an inducement to the promisor, is good consideration for a promise. (Civil Code §§ 1605, 1607.) The problem is that while the operative pleading is poorly drafted, and done by prior counsel, new counsel provides a cogent explanation of the issue in the opposition papers. If the factual basis in the opposition papers can be appropriately asserted in an amended pleading, the cause of action might survive, but far more detail is required.

Based on the foregoing, the Demurrer is SUSTAINED, WITH 20 days leave to amend.

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

KRPAN et al v. SLIGHT et al

20CV44854

DEFENDANTS' MOTIONS TO COMPEL INITIAL DISCOVERY RESPONSES

This is a civil action based on a residential real property transaction allegedly tainted by construction and undisclosed defects. Before the Court are a number of discovery motions, seeking responses from plaintiffs. Although plaintiffs' counsel has provided a myriad of explanations for his clients' delinquency, counsel has not sought a protective order or this Court's intervention to assist in any way. Instead, counsel has made what appear to be empty promises to comply. All of the motions on calendar this day are unopposed.

Motion #1: This motion is actually several motions in one, but under the circumstances this Court will forgive the failure to tender proper motion fees. (See Govt. Code §70617.) This is a refiling of the motion previously filed with a defective notice. Although plaintiffs filed opposition to *that* motion, they did not oppose the present one. The present motion was filed on 11/01/21 by the "Premier" realtor defendants, seeking verified responses to form interrogatories, special interrogatories and RPDs. The discovery was served on 05/25/21, and despite securing a number of extensions, plaintiffs have yet to respond. (See Germain Decl. Paras 4-13.) The motion to compel substantive, verified, objection-free responses, as well as the actual production of the requested documents, is GRANTED. Plaintiffs shall comply within 10 days, and shall forthwith reimburse moving parties the sum of $510.00 (two hours at $225 per hour + filing fee) as a discovery sanction. (See CRC 3.1348(a).)

Motion #2: This motion was filed on 11/12/21 by the "Wildwood" realtor defendants, seeking verified responses and documents responsive to an Request for Production of Documents. The discovery was served on plaintiffs on 06/08/21, and despite securing a number of extensions, plaintiffs have yet to respond. (See Anthony Decl Paras 2-7.) The motion to compel both a substantive, verified, objection-free response, as well as the actual production of the requested documents, is GRANTED. Plaintiffs shall comply within 10 days, and shall forthwith reimburse moving parties the sum of $510.00 (two hours at $225 per hour + filing fee) as a discovery sanction. (See CRC 3.1348(a).)

Motion #3: This motion was filed on 11/12/21 by the "Wildwood" realtor defendants, seeking an order deeming admitted all matters contained in their Requests for Admission. The RFAs were served on plaintiffs on 06/08/21, and despite securing a number of extensions, plaintiffs have yet to respond. (See Anthony Decl Paras 2-7.) This Court has reviewed the twenty-three (23) matters to admit, and confirms that each is a proper subject of inquiry in this case. As such, the motion to deem those twenty-

three (23) matters admitted for all purposes in this case is GRANTED. In addition, plaintiffs shall forthwith reimburse moving parties the sum of $510.00 (two hours at $225 per hour + filing fee) as a discovery sanction. (CCP §2033.280(c).)

Motion #4: This motion was filed on 11/12/21 by the “Wildwood” realtor defendants, seeking initial responses to form and special interrogatories. The discovery was served on plaintiffs on 06/08/21, and despite securing a number of extensions, plaintiffs have yet to respond. (See Anthony Decl Paras 2-7.) The motion to compel substantive, verified, objection-free responses to form and special interrogatories is GRANTED. Plaintiffs shall comply within 10 days, and shall forthwith reimburse moving parties the sum of $510.00 (two hours at $225 per hour + filing fee) as a discovery sanction. (See CRC 3.1348(a).)

The Clerk shall provide notice of this Ruling to the parties forthwith. Prevailing Defendants to prepare formal Orders for their respective motions pursuant to CRC 3.1312 in conformity with this ruling.