1. MATTER OF ANKER 22CV0695

OSC Re: Name Change.

There is no proof of publication in the court's file, which is mandated by Code of Civil Procedure, § 1277(a).

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 1:30 P.M. ON FRIDAY, JULY 22, 2022 BY ZOOM AS SPECIFIED IN THE JUNE 20, 2022 MINUTE ORDER EMAILED TO PETITIONER.

2. INTERWEST CONSULTING GROUP, INC. v. BRP CONSULTING GROUP, LLC 22CV0450

Plaintiff's Motion for Leave to File 1st Amended Complaint.

Plaintiff moves for leave to amend the complaint to add as a plaintiff the plaintiff's parent company, SAFEbuilt, Inc. A proposed 1st amended complaint has been submitted.

Plaintiff contends amendment is appropriate on the following grounds: the individual defendants assert that they were not employees of plaintiff Interwest and did not owe any duty of loyalty to plaintiff Interwest as they were employed by SAFEbuilt, Inc.; and despite a request that defendant stipulate to the amendment, defendant refused on the ground that defendants considered that the amendment related to a fundamental defect in the complaint.

Defendants respond the motion as follows: SAFEbuilt, Inc. is a necessary party to this litigation as it became defendants' employer after it purchased Interwest; the failure to include SAFEbuilt, Inc. as a plaintiff in the original complaint is a fundamental defect; leave to amend could have been granted by ex parte application, thereby making this motion unnecessary; the amendment naming a new plaintiff does not relate back to the date the original complaint was filed; and some of SAFEbuilt, Inc.'s claims may be barred by the statute of limitations.

Plaintiff replied to the response.

"The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code." (Code of Civil Procedure, § 473(a)(1).)

There is a general policy in this state of great liberality in allowing amendment of pleadings at any stage of the litigation to allow cases to be decided on their merits. (Kittredge Sports Co. v. Superior Court (1989) 213 Cal.App.3d 1045, 1047.) "…it is a rare case in which 'a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.' (Citations omitted.) 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 and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (Citations omitted.)" (Morgan v. Superior Court (1959) 172 Cal.App.2d 527, 530.) "…absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail. (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564, 176 Cal.Rptr. 704.)" (Board of Trustees of Leland Stanford Jr. University v. Superior Court (2007) 149 Cal.App.4th 1154, 1163.)

It appears appropriate under the circumstances presented to grant the motion and allow the plaintiff to file and serve the proposed 1st amended complaint naming a new plaintiff.

Relation Back Doctrine

Citing Hawkins v. Pacific Coast Bldg. Products, Inc. (2004) 124 Cal.App.4th 1497, defendants argue that the naming of a new plaintiff does not relate back to the date the original complaint was filed.

The Third District Court of Appeal has held: "As a general rule, "an amended complaint that adds a new defendant does *not* relate back to the date of filing the original complaint and the statute of limitations is applied as of the date the amended complaint is filed, not the date the original complaint is filed." (*Woo v. Superior Court* (1999) 75 Cal.App.4th 169, 176, 89 Cal.Rptr.2d 20, italics added.) But where an amendment does not add a "new" defendant, but

simply corrects a misnomer by which an "old" defendant was sued, case law recognizes an exception to the general rule of no relation back. (E.g., *Diliberti v. Stage Call Corp.* (1992) 4 Cal.App.4th 1468, 1470–1471, 6 Cal.Rptr.2d 563; *Kerr–McGee Chemical Corp. v. Superior Court* (1984) 160 Cal.App.3d 594, 599 & fn. 3, 206 Cal.Rptr. 654; *Ingram v. Superior Court* (1979) 98 Cal.App.3d 483, 491, 159 Cal.Rptr. 557; *Stephens v. Berry* (1967) 249 Cal.App.2d 474, 479, 57 Cal.Rptr. 505.)" (Emphasis added.) (Hawkins v. Pacific Coast Bldg. Products, Inc. (2004) 124 Cal.App.4th 1497, 1503.)

Hawkins, supra, does not hold that there is a general rule that when a new plaintiff is added by amendment of the complaint the statute of limitations is applied as of the date the amended complaint is filed, not the date the original complaint was filed. (Emphasis the court's.)

"The relation-back doctrine deems a later-filed pleading to have been filed at the time of an earlier complaint which met the applicable limitations period, thus avoiding the bar. In order for the relation-back doctrine to apply, "the amended complaint must (1) rest on the *same general set of facts,* (2) involve the *same injury,* and (3) refer to the *same instrumentality,* as the original one. [Citations.]" (*Norgart v. Upjohn Co., supra,* 21 Cal.4th at pp. 408–409, 87 Cal.Rptr.2d 453, 981 P.2d 79.) In addition, "a new plaintiff *cannot* be joined after the statute of limitations has run where he or she seeks to enforce an *independent right* or to impose greater liability upon the defendant." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2005) ¶ 6:787, pp. 6–157–6–158.)" (Quiroz v. Seventh Ave. Center (2006) 140 Cal.App.4th 1256, 1278.)

"Defendants argue plaintiffs should not be permitted to substitute a new plaintiff because their failure to name the new plaintiff in their original complaint was not a mistake. No such rule exists. To the contrary, courts have permitted plaintiffs who have been determined to lack standing, or who have lost standing after the complaint was filed, to substitute as plaintiffs the

true real parties in interest. (*Klopstock v. Superior Court, supra,* 17 Cal.2d 13, 19–21, 108 P.2d 906 [administrator of deceased shareholder's estate substituted as plaintiff in corporate derivative action]; see also *Haley v. Dow Lewis Motors, Inc., supra,* 72 Cal.App.4th 497, 506–509, 85 Cal.Rptr.2d 352 [trustee in bankruptcy substituted for bankrupt debtors]; *California Air Resources Bd. v. Hart* (1993) 21 Cal.App.4th 289, 300–301, 26 Cal.Rptr.2d 153 [Attorney General substituted for state administrative agency]; *Jensen v. Royal Pools* (1975) 48 Cal.App.3d 717, 720–723, 121 Cal.Rptr. 805 [condominium owners substituted for owners' association]; *Powers v. Ashton* (1975) 45 Cal.App.3d 783, 790, 119 Cal.Rptr. 729 [trustees substituted for nontrustee administrator].) Amendments for this purpose are liberally allowed. (*Klopstock v. Superior Court, supra,* at pp. 19–21, 108 P.2d 906; 5 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 1126, p. 581; *id.,* § 1155, p. 614.) ¶ The important limitation on the rule just mentioned is that the plaintiff proposed to be substituted may not "state facts which give rise to a wholly distinct and different legal obligation against the defendant." (*Klopstock v. Superior Court, supra,* 17 Cal.2d 13, 20, 108 P.2d 906.) For this purpose, "[i]n determining whether a wholly different cause of action is introduced by the amendment technical considerations or ancient formulae are not controlling; nothing more is meant than that the defendant not be required to answer a wholly different legal liability or obligation from that originally stated." (*Ibid.*) Similar principles govern the question whether an amendment relates back, for purposes of the statute of limitations, to the date on which the original complaint was filed. "The relation-back doctrine requires that the amended complaint must (1) rest on the *same general set of facts,* (2) involve the *same injury,* and (3) refer to the *same instrumentality,* as the original one. [Citations.]" (*Norgart v. Upjohn Co., supra,* 21 Cal.4th 383, 408–409, 87 Cal.Rptr.2d 453, 981 P.2d 79.)" (Branick v. Downey Savings & Loan Assn. (2006) 39 Cal.4th 235, 243–244.)

The 1st amended complaint involves the same general set of facts asserted against defendants, involves the same alleged injury, and refers to the same instrumentality of the injury as set forth in the original complaint. The 1st amended complaint merely adds the name of plaintiff's parent company as a party plaintiff to address defendants' argument that the original complaint is fundamentally defective as the real party in interest is SAFEbuilt, Inc. and not Interwest Consulting Group, Inc.

The 1st amended complaint naming SAFEbuilt, Inc. as a new plaintiff relates back to the date the original complaint was filed.

The motion for leave to file a 1st amended complaint is granted.

TENTATIVE RULING # 2: PLAINTIFF'S MOTION FOR LEAVE TO FILE 1ST AMENDED COMPLAINT IS GRANTED. ADDING SAFEBUILT, INC. AS A NEW PLAINTIFF IN THE 1ST AMENDED COMPLAINT RELATES BACK TO THE DATE THE ORIGINAL COMPLAINT WAS FILED. THE 1ST AMENDED COMPLAINT IS DEEMED SERVED ON DEFENDANTS. THE PLAINTIFF IS TO FILE AN ORIGINAL, EXECUTED 1ST AMENDED COMPLAINT. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL

ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE LONG CAUSE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY FOR A LONG CAUSE HEARING THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 1:30 P.M. ON FRIDAY, JULY 22, 2022 BY ZOOM APPEARANCE AS SPECIFIED IN THE JUNE 20, 2022 MINUTE ORDER EMAILED TO COUNSELS FOR THE PARTIES, UNLESS OTHERWISE NOTIFIED BY THE COURT.

3. DUDUGJIAN v. WELLS FARGO BANK PC-20210060

Plaintiff's Motion for Summary Judgment.

Plaintiff Trustees of the Dudugjan Family Trust filed a complaint against defendants asserting a cause of action to quiet title to certain real property. The complaint alleges: a judgment lien in favor of Dudugjian and Maxey, A Law Corp. affecting title to the subject property was recorded on February 1, 2002; a judgment lien in favor of Kris B. Frost (Cardwell) affecting title to the subject property was recorded on July 16, 2002; defendant Wells Fargo Bank was the original beneficiary under a junior Deed of Trust affecting title to the property, which was recorded on February 4, 2010; on October 23, 2017, a litigation guarantee was issued by First American Title Company to Dudugjian and Maxey, A Law Corp.; on January 10, 2020 an order of sale of the dwelling was executed by Judge Sullivan; on January 28, 2020 a notice of Sheriff's sale of real property (non-foreclosure) was executed; on March 4, 2020 the property was sold at the duly conducted Sheriff's sale to non-party Kris B. Frost and the Sheriff's deed was recorded on March 4, 2020; there was no redemption of the property; defendant Specialized Loan Servicing, LLC (Specialized) is the assignee of the Wells Fargo Bank deed of trust by virtue of an assignment recorded on May 11, 2020; defendant Quality Loan Service Corp. is acting as trustee under the Wells Fargo Bank deed of trust assigned to defendant Specialized; defendant Quality Loan Service Corp. recorded a notice of trustee's sale on January 24, 2020; the trustee's sale was scheduled for March 4, 2021; and plaintiff owns in fee the property by virtue of a grant deed affecting title recorded on November 17, 2020. (Complaint, paragraphs 8-16.) Plaintiff Trust seeks a declaration that title to the subject property vested in the plaintiff Trust alone and each defendant should be declared to have no

estate, right, title or interest in the subject property and the determination is sought as of the date of the recording of the Sheriff's deed on March 4, 2020.

Plaintiff moves for entry of summary judgment against defendants on the following grounds: the Wells Fargo Deed of Trust recorded in 2010 is not a purchase money mortgage as it was created well after the property was purchased; the two judgment abstract liens recorded in 2002 are entitled to priority over the Wells Fargo 2010 deed of trust as those abstract judgment liens are first in time and first in right; support judgments are exempt from the judgment renewal requirement and there is no limitation period on support judgment enforcement; the laches defense does not apply to collection of family court support judgments if the debt is owed to someone other than the State; the lien on the property from these family law support judgments stay in effect against the property until all support obligations are paid in full or otherwise satisfied, even if the lien is not satisfied before the transfer or encumbrance of the obligor's interest on the real property.

Plaintiff requests the court to take judicial notice of various recorded documents, documents filed with the court, and court orders. (See Plaintiff's RJN in Support of Motion for Summary Judgment, Plaintiff's Exhibits A-E, H, K, L, and N-R.)

Defendant Specialized opposes the motion on the following grounds: plaintiff has not established that the recorded Frost Abstract of Judgment includes only the support payments due and owing up until the date in 2010 that the Wells Fargo Bank deed of trust was recorded; the recorded attorney's fee abstract of judgment was invalid after February 1, 2012 as there is no evidence it was renewed after February 1, 2002; plaintiff has unclean hands as the credit bid amount was improperly inflated as no evidence was presented to the court during the proceedings to order sale of the property concerning how the support installment payments were calculated or whether plaintiff's separate attorney fees judgment had been renewed after

February 2002; since Wells Fargo Bank paid off all prior liens, except the two subject judgment liens in 2010, it is equitable to predate the 2010 deed of trust, thereby making it the senior lien on the property as Wells Fargo Bank did not know about the judgment liens when it paid off the 1999 and 2001 liens; there is no evidence that the Frost and Attorney Fees Judgment abstracts were properly indexed, thereby making Wells Fargo Bank a bona fide encumbrancer; the judgment abstract liens are void, because they do not include debtor Stephen Frost's driver's license number; there is no support for plaintiffs claim for recovery of attorney fees incurred in this action as there is no contractual right to recover such fees and such relief is not requested in the complaint, which justifies denial of the entire motion; and defendant should be granted a 90 day continuance of the hearing or denial of the motion in order to allow defendant to engage in discovery to uncover essential evidence to oppose the motion for summary judgment.

Defendant Specialized also objected to Plaintiff's Requests for Judicial Notice, Plaintiff's Exhibits A, C, D, F, I, and J; and paragraphs 4, 7, and 8 of trustee Robert Dudugjian's declaration submitted in support of the motion for summary judgment.

Plaintiff replied to the opposition: there is no dispute that all sums were due under the judgment for support payments as of the date the Wells Fargo Bank deed of trust was recorded in 2010; court ordered attorney fees is a family law judgment under Family Code, § 17402 which is exempt from the requirement that the judgments be renewed; such judgments are due and payable until paid in full with no limitations period on enforcement; the doctrine of unclean hands does not apply under the facts; the deed of trust beneficiary, Wells Fargo Bank, took no action at the OSC hearing re: sale of the subject property to enforce the support judgment liens and did not ask for any relief from the order before the assignment of the deed of trust to defendant Specialized Loan Servicing, LLC; defendant Wells Fargo did make a claim

to its title insurance company rather than ask for relief; the application for order for sale placed Wells Fargo Bank on notice that the judgment liens were superior to its deed of trust and after a court order was entered determining that priority, defendant Wells Fargo Bank did not take any steps to dispute that priority or ask for relief; defendant Wells Fargo Bank assigned the deed of trust to defendant Specialized two months after the Sheriff's sale and recording of the Sheriff's deed conveying the property to Kris B. Frost, which leaves no basis for Wells Fargo Bank to dispute actual knowledge of the support judgment liens at the time of the assignment; and there is no grounds for equitable subrogation or balancing equities under such facts.

Defendant Specialized requested a 90 day continuance of the hearing on this motion to engage in further discovery to obtain evidence to submit in opposition to the motion. Defense Counsel declared: preliminary discovery suggests that the calculation of the credit bid presented to the El Dorado County Superior Court may have been inflated and led the court to set an inflated credit bid, which prevented any sufficient funds to be paid to Wells Fargo Bank; and in a phone call to the El Dorado County Sheriff's Department regarding the March 4, 2020 Sheriff's sale, counsel was told that a nominal case payment was made by Kris Frost in the amount of approximately $5,000, which indicates no cash payment was made, or the amount remitted was never provided by the creditors to Wells Fargo Bank. (Declaration of Robert Hunter in Opposition, paragraphs 9 and 10.) The court granted a continuance of the hearing on the motion for summary judgment to 8:30 a.m. on Friday, July 22, 2022 in Department Nine. Defendant Specialized's supplemental opposition and supplemental evidence in support thereof only addressing the issues of alleged artificial inflation of the credit bids, unclean hands and equitable subrogation rights was directed to be filed and served not later than July 11, 2022 and the supplemental reply to the supplemental opposition, including any objections to

the supplemental evidence submitted, was directed to be filed and served not later than July 15, 2022.

Defendant Specialized argues in the supplemental opposition: plaintiff can not establish as a matter of law that the credit bids were proper; they do not establish title superior to defendant's rights in equity; the attorney fee judgment lien is void, because the abstract does not state the amount owing on the judgment; the Frost judgment is an equalization payment in the amount of $70,000 owed under the martial settlement agreement, Kris Frost avers in her deposition testimony that she was paid $7,571.67 at a unknown time per the writ, but the writ only claims $53,861.58 was due and owing, which leaves an unexplained $12,000+ discrepancy; plaintiff has not established the proper amounts due and owing on the judgment liens; and under the totality of the facts submitted, there remains a triable issue of material fact regarding whether defendant Specialized is entitled to equitable subrogation.

Plaintiff argues in reply to the supplemental opposition: no new relevant facts have been submitted by defendant Specialized to raise a triable issue of material fact; the martial settlement agreement is irrelevant as the two judgment liens were created by noticed motions and rendered by a court of competent jurisdiction, the Sacramento Court Superior Court, and recorded in El Dorado County creating the liens on the subject real property; defense counsel implies that plaintiff paid too little to purchase Ms. Frost's interest in the property, because plaintiff only paid $200,000, however, her interest in the subject real property was obtained when she used her credit bid in the amount of $189,385.91 to pay for her interest in the real property and ignores the other interests in the property; based upon $500 per month in child support payments, the spousal support from the date of separation until each of the three children graduated high school would amount to $93,000 in child support obligations, and the court premised its order for sale setting the amount due and owing on a support judgment lien

recorded on the Frost judgment on the application's claimed amount of $53,861.58 as the principal amount due and owing on the abstract of support judgment issued by the Sacramento County Superior Court on July 10, 2002 (Plaintiff's Exhibit K – Application for Order to Sell.); the Sacramento County Superior Court's Order and Findings entered on June 7, 1996 expressly states that the attorney fees owed by Stephen Frost were additional spousal support to Kris Frost and Dudugjian and Maxey can enforce that judgment in the sum total of $35,801.99, which as a matter of law is a judgment for spousal support that is exempt from the judgment renewal requirements; and under the circumstances presented there remains no triable issues of material fact as to whether the equities favor granting defendant Specialized equitable subrogation as the Wells Fargo Bank Deed of Trust lien was extinguished by the Sheriff's sale as no surplus funds remained to pay anything to Wells Fargo Bank, Wells Fargo Bank can sue the borrower on the promissory note or pursue a claim against its title insurer, the good faith highest bidder purchased the property and obtained title, the bidder's interest on the property was later obtained by payment of $200,000 in good faith, the purchase was made in good faith and in reliance on the court's order for sale and litigation guarantee title report, plaintiff paid Kris Frost more than the amount of her credit bid and paid John Maxey a credit towards his obligation towards Robert Dudugjian, exceeding his portion of the judgment/credit bid amount, and plaintiffs can not be restored to their positions held prior to the Sheriff's sale.

Plaintiff also submitted a request for judicial notice of plaintiff's Exhibit S, which is the Sacramento County Superior Court Family Law Court findings and order after hearing entered on June 7, 1996 in Frost v. Frost, case number FL858759.

Defendant Specialized's Objections to Requests for Judicial Notice

Defendant Specialized objects on the ground that the court should not take judicial notice of the Complaint in this action (Plaintiff's Exhibit A), because the moving party can not rely on its

own pleadings. The objection is overruled. The pleadings are the starting point to the court's determination of whether a moving plaintiff has met the plaintiff's initial burden of proof and whether defendants have raised a triable issue of material fact that is reasonably reflected in the pleadings.

"Summary judgment cannot be granted on a ground not raised by the pleadings. (*Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 885, 164 Cal.Rptr. 510, 610 P.2d 407, revd. on other grounds (1981) 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800.) Conversely, summary judgment cannot be *denied* on a ground not raised by the pleadings. (Citations omitted.)" (Bostrom v. County of San Bernardino (1995) 35 Cal.App.4th 1654, 1663.)

"The pleadings determine the issues to be addressed by a summary judgment motion. (*Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 885, 164 Cal.Rptr. 510, 610 P.2d 407, revd. on other grounds *Metromedia, Inc. v. San Diego* (1981) 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800.)" (Oakland Raiders v. National Football League (2005) 131 Cal.App.4th 621, 629.)

"The first step in analyzing a motion for summary judgment is to identify the issues framed by the pleadings. It is these allegations to which the motion must respond by showing there is no factual basis for relief or defense on any theory reasonably contemplated by the opponent's pleading. (Citations omitted.)" (6 Witkin, California Procedure (5th ed. 2008) Proceedings Without Trial, § 212, page 650.)

Defendant Specialized objects to plaintiff's Exhibits C, D, and P, which are recorded abstracts of judgment and the notice of trustee's sale recorded on January 24 2020, on the grounds that the documents lack foundation, are hearsay, and are irrelevant and immaterial. The objections are overruled.

Defendant Specialized objects that plaintiff's Exhibits F, I and J consisting of the October 23, 2017 litigation guarantee issued to Dudugjian and Maxey, A Law Corp., the First American Title Trustee's Sale Guarantee, dated October 9, 2019 issued to Quality Loan Service, which was produced in discovery propounded upon Wells Fargo Bank, and correspondence from National Title Insurance, dated October 24, 2019, which was produced in discovery propounded upon Wells Fargo Bank, are irrelevant, they lack foundation and are hearsay. The objections are overruled.

Defendant Specialized's Objections to Portions of Trustee Robert Dudugjian's Declaration

Defendant Specialized objects to paragraphs 4, 7, and 8 of trustee Robert Dudugjian's declaration, which authenticate plaintiff's Exhibits F, I and J on the grounds that the authentications are hearsay and lack foundation. The objections are overruled.

Motion for Summary Judgment Principles

"For purposes of motions for summary judgment and summary adjudication: ¶ (1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto…" (Code of Civil Procedure, § 437c(p)(1).)

"The motion shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken…" (Code of Civil Procedure, § 437c(b)(1).)

"The moving party "bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar, supra,* 25 Cal.4th at p. 850,

107 Cal.Rptr.2d 841, 24 P.3d 493, fn. omitted.) "In moving for summary judgment, a 'plaintiff ... has met' his 'burden of showing that there is no defense to a cause of action if' he 'has proved each element of the cause of action entitling' him 'to judgment on that cause of action. Once the plaintiff ... has met that burden, the burden shifts to the defendant ... to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The defendant ... may not rely upon the mere allegations or denials' of his 'pleadings to show that a triable issue of material fact exists but, instead,' must 'set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.' [Citation.]" (*Id.* at p. 849, 107 Cal.Rptr.2d 841, 24 P.3d 493, quoting Code Civ. Proc., § 437c, subd. (*o*)(1); see also Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2004) ¶ 10:224.1, p. 10–81.)" (Law Offices of Dixon R. Howell v. Valley (2005) 129 Cal.App.4th 1076, 1091-1092.)

"The pleadings determine the issues to be addressed by a summary judgment motion. (*Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 885, 164 Cal.Rptr. 510, 610 P.2d 407, revd. on other grounds *Metromedia, Inc. v. San Diego* (1981) 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800.)" (Oakland Raiders v. National Football League (2005) 131 Cal.App.4th 621, 629.)

"The first step in analyzing a motion for summary judgment is to identify the issues framed by the pleadings. It is these allegations to which the motion must respond by showing there is no factual basis for relief or defense on any theory reasonably contemplated by the opponent's pleading. (Citations omitted.)" (6 Witkin, California Procedure (5th ed. 2008) Proceedings Without Trial, § 212, page 650.)

"The purpose of summary judgment is to penetrate through pleadings to ascertain, by means of affidavits, the presence or absence of triable issues of material fact. (*Molko v. Holy*

Spirit Assn. (1988) 46 Cal.3d 1092, 1107 [252 Cal.Rptr. 122, 762 P.2d 46].) The trial judge determines whether triable issues of fact exist by examining the affidavits and evidence, including any reasonable inferences which may be drawn from the facts. (*People v. Rath Packing Co.* (1974) 44 Cal.App.3d 56, 61-64 [118 Cal.Rptr. 438].) The evidence of the moving party is strictly construed and the evidence of the opposing party liberally construed. Doubts as to the propriety of granting the motion must be resolved in favor of the party resisting the motion. (*Stationers Corp. v. Dun & Bradstreet, Inc*. (1965) 62 Cal.2d 412, 417 [42 Cal.Rptr. 449, 398 P.2d 785].)" (Crouse v. Brobeck, Phleger & Harrison (1998) 67 Cal.App.4th 1509, 1524.)

"In ruling on the motion, the court must "consider all of the evidence" and "all" of the "inferences" reasonably drawn therefrom (id., § 437c, subd. (c)), and must view such evidence (e.g., *Molko v. Holy Spirit Assn.*, supra, 46 Cal.3d at p. 1107, 252 Cal.Rptr. 122, 762 P.2d 46; *Stationers Corp. v. Dun & Bradstreet, Inc.* (1965) 62 Cal.2d 412, 417, 42 Cal.Rptr. 449, 398 P.2d 785) and such inferences (see, e.g., *Crouse v. Brobeck, Phleger & Harrison* (1998) 67 Cal.App.4th 1509, 1520, 80 Cal.Rptr.2d 94 [review on appeal]; *Ales-Peratis Foods Internat., Inc. v. American Can Co.* (1985) 164 Cal.App.3d 277, 280, 209 Cal.Rptr. 917, fn. * [same]), in the light most favorable to the opposing party." (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 843.)

"Even where the complaint does present a cognizable claim, so that the court proceeds to the second or third step, the pleadings remain significant. Summary judgment cannot be granted on a ground not raised by the pleadings. (*Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 885, 164 Cal.Rptr. 510, 610 P.2d 407, revd. on other grounds (1981) 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800.) Conversely, summary judgment cannot be *denied* on a ground not raised by the pleadings. (*Lewinter v. Genmar Industries, Inc.* (1994) 26 Cal.App.4th

1214, 1223, 32 Cal.Rptr.2d 305 [complaint alleged failure to warn of manufacturing defect in boat; plaintiff could not avoid summary judgment by showing failure to warn based on post-manufacture discovery of defect]; *Danieley v. Goldmine Ski Associates, Inc.* (1990) 218 Cal.App.3d 111, 119–120, 266 Cal.Rptr. 749 [complaint alleged owner negligently maintained ski slopes; plaintiff could not avoid summary judgment by showing owner negligently cared for her after accident]; *Cochran v. Linn* (1984) 159 Cal.App.3d 245, 250, 205 Cal.Rptr. 550 [complaint alleged products liability based on manufacture and sale of liquid protein diet; plaintiffs could not avoid summary judgment by showing defendant negligently wrote book promoting diet]; see generally *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381–382, 282 Cal.Rptr. 508.) ¶ If either party wishes the trial court to consider a previously unpleaded issue in connection with a motion for summary judgment, it may request leave to amend. (*Lee v. Bank of America* (1994) 27 Cal.App.4th 197, 216, 32 Cal.Rptr.2d 388; *Dorado v. Knudsen Corp.* (1980) 103 Cal.App.3d 605, 611, 163 Cal.Rptr. 477.) Such requests are routinely and liberally granted. However, " ' "[I]n the absence of some request for amendment there is no occasion to inquire about possible issues not raised by the pleadings." ' " (*Metromedia, Inc. v. City of San Diego, supra,* 26 Cal.3d at p. 885, 164 Cal.Rptr. 510, 610 P.2d 407, quoting *Krupp v. Mullen* (1953) 120 Cal.App.2d 53, 57, 260 P.2d 629.) Declarations in opposition to a motion for summary judgment "are no substitute for amended pleadings." (*AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1065, 225 Cal.Rptr. 203.) If the motion for summary judgment presents evidence sufficient to disprove the plaintiff's claims, as opposed to merely attacking the sufficiency of the complaint, the plaintiff forfeits an opportunity to amend to state new claims by failing to request it. (See *Kirby v. Albert D. Seeno Construction Co., supra,* 11 Cal.App.4th at p. 1068, 14 Cal.Rptr.2d 604.)" (Bostrom v. County of San Bernardino (1995) 35 Cal.App.4th 1654, 1663–1664.)

"To create a triable issue of material fact, the opposition evidence must be directed to issues raised by the pleadings. (*Zavala v. Arce*, supra, 58 Cal.App.4th at p. 926, 68 Cal.Rptr.2d 571.) If the opposing party's evidence would show some factual assertion, legal theory, defense or claim not yet pleaded, that party should seek leave to amend the pleadings before the hearing on the summary judgment motion. (See *580 Folsom Associates v. Prometheus Development Co.* (1990) 223 Cal.App.3d 1, 18, 272 Cal.Rptr. 227*; City of Hope Nat. Medical Center v. Superior Court* (1992) 8 Cal.App.4th 633, 639, 10 Cal.Rptr.2d 465; & Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2000) ¶¶ 10:257 & 10:257.2, pp. 10-96 & 10-97 (rev.# 1, 2000).)" (Distefano v. Forester (2001) 85 Cal.App.4th 1249, 1264-1265.)

"…[I]t is axiomatic that the party opposing summary judgment " 'must produce admissible evidence raising a triable issue of fact. [Citation.]' [Citation.]" (*Dollinger,supra,* 199 Cal.App.4th at pp. 1144–1145, 131 Cal.Rptr.3d 596.) This requirement is black letter law (Code Civ. Proc., § 437c, subd. (p)(2)) that applies whether the alleged cause of action is statutory or under the common law." (All Towing Services LLC v. City of Orange (2013) 220 Cal.App.4th 946, 960.)

With the above-cited legal principles in mind, the court will rule on plaintiffs' motion for summary judgment.

Quiet Title Cause of Action

"An action may be brought under this chapter to establish title against adverse claims to real or personal property or any interest therein." (Code of Civil Procedure, § 760.020(a).) "The complaint shall be verified and shall include all of the following: ¶ (a) A description of the property that is the subject of the action. In the case of tangible personal property, the description shall include its usual location. In the case of real property, the description shall include both its legal description and its street address or common designation, if any. ¶ (b)

The title of the plaintiff as to which a determination under this chapter is sought and the basis of the title. If the title is based upon adverse possession, the complaint shall allege the specific facts constituting the adverse possession. ¶ (c) The adverse claims to the title of the plaintiff against which a determination is sought. ¶ (d) The date as of which the determination is sought. If the determination is sought as of a date other than the date the complaint is filed, the complaint shall include a statement of the reasons why a determination as of that date is sought. ¶ (e) A prayer for the determination of the title of the plaintiff against the adverse claims." (Code of Civil Procedure, § 761.020.)

The Third District Court of Appeal has stated: "A quiet title action seeks to declare the rights of the parties in realty. A trial court should ordinarily resolve such dispute. This accords with the rule that a trial court should not dismiss a regular declaratory relief action when the plaintiff loses, but instead should issue a judgment setting forth the declaration of rights and thus ending the controversy. (See *Maguire v. Hibernia S. & L. Soc.* (1944) 23 Cal.2d 719, 729, 146 P.2d 673; *Haley v. L.A. County Flood Control Dist.* (1959) 172 Cal.App.2d 285, 292-294, 342 P.2d 476.) As stated in a case involving Western's predecessors, " 'The object of the action is to finally settle and determine, as between the parties, all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he may be entitled to.' " (*Yuba Invest. Co. v. Yuba Consol. Gold Fields* (1926) 199 Cal. 203, 209, 248 P. 672; see *Gazos Creek Mill etc. Co. v. Coburn* (1908) 8 Cal.App. 150, 153, 96 P. 359 ["all parties were before the court with their grievances"].)" (Western Aggregates, Inc. v. County of Yuba (2002) 101 Cal.App.4th 278, 305.)

The court takes judicial notice of the following: the two subject abstracts of support judgment recorded on February 1, 2002 and July 16, 2002 (Plaintiff's Exhibits C and D.); the subject Wells Fargo Deed of Trust recorded on February 4, 2010 (Plaintiff's Exhibit E.); on May

30, 2019 Kris Frost filed an application for an order of sale of the subject real property held in Stephen Frost's name in order to enforce her recorded support judgment against Stephen Frost (Frost v. Frost, case number PC-20190275.) (Plaintiff's Exhibit K.); on January 10, 2020 the court in Frost v. Frost, case number PC-20190275, issued an order for sale of judgment debtor Stephen Frost's real property (Plaintiff's Exhibit L.); on March 4, 2020 a Sheriff's Deed was recorded, which granted Kris Frost the subject real property after she paid $315,000.01 as the highest bidder at the Sheriff's sale (Plaintiff's Exhibit N.); and on November 17, 2020 a grant deed was recorded, wherein Kris Frost granted to the trustees of the plaintiff trust the subject real property (Plaintiff's Exhibit Q.).

- Renewal of Family Law Court Judgment

Defendant argues that the recorded attorney's fee abstract of judgment was invalid after February 1, 2012 as there is no evidence it was renewed after February 1, 2002.

Plaintiff argues in reply that court ordered attorney fees is a family law judgment under Family Code, § 17402 which is exempt from the requirement that the judgments be renewed; and such judgments are due and payable until paid in full with no limitations period on enforcement.

"Except as otherwise provided by statute, upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property: ¶ (a) The judgment may not be enforced. ¶ (b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease. ¶ (c) Any lien created by an enforcement procedure pursuant to the judgment is extinguished." (Code of Civil Procedure, § 683.020.)

"The period for enforcement and procedure for renewal of a judgment or order for child, family, or spousal support is governed by Section 291." (Family Code, § 4502.)

"(a) A money judgment or judgment for possession or sale of property that is made or entered under this code, including a judgment for child, family, or spousal support, is enforceable until paid in full or otherwise satisfied." (Emphasis added.) (Family Code, § 291(a).)

"(b) A judgment described in this section is exempt from any requirement that a judgment be renewed. Failure to renew a judgment described in this section has no effect on the enforceability of the judgment." (Family Code, § 291(b).)

A money judgment for payment of attorney fees and costs in a family law proceeding is made under the Family Code and, therefore, is enforceable until paid in full or otherwise satisfied and is not subject to the renewal of judgment requirement.

"(a) Where the court orders one of the parties to pay attorney's fees and costs for the benefit of the other party, the fees and costs may, in the discretion of the court, be made payable in whole or in part to the attorney entitled thereto." (Family Code, § 272(a).)

"(b) Subject to subdivision (c), the order providing for payment of the attorney's fees and costs may be enforced directly by the attorney in the attorney's own name or by the party in whose behalf the order was made." (Family Code, § 272(b).)

Marriage of Green (2006) 143 Cal.App.4th 1312, 1321, cited by defendant does not hold that since plaintiff had an independent statutory right of enforcement regarding the attorney fees judgment entered pursuant to the provisions of the Family Code, plaintiff must adhere to the renewal requirement of the Code of Civil Procedure. It only holds that after entry of judgment pursuant to the provisions of Family Code, § 272 to pay a spouse's attorney fees

directly to the spouse's counsel the attorney is a judgment creditor who has a non-derivative, statutory right to enforce the judgment.

""When a family law court orders one spouse to pay the other spouse's attorney fees, Family Code section 272, subdivision (a), authorizes the court, in its discretion, to order that the fees be paid directly to the attorney." (*In re Marriage of Simpson* (2006) 141 Cal.App.4th 707, 710, 46 Cal.Rptr.3d 253.) While a dissolution action is pending, however, a party's former attorney has no separate equity in attorney fees awarded to that party and the former attorney's right to attorney fees is derived from the client's right. (*Id.* At pp. 710–711, 46 Cal.Rptr.3d 253, quoting *Meadow v. Superior Court* (1963) 59 Cal.2d 610, 615–616, 30 Cal.Rptr. 824, 381 P.2d 648.) Consequently the client must expressly or impliedly authorize a discharged attorney to move for payment of attorney fees, and without such authorization the trial court lacks jurisdiction over and cannot rule on such a motion. The former attorney could seek attorney fees in an independent action against the former client, but could not apply for attorney fees during the dissolution proceeding without the former clients' express or implied authority. (*Simpson,* at p. 713, 46 Cal.Rptr.3d 253.) Trustee's counsel appears to have relied on this analysis during the time he did not satisfy the judgment for Freid and Goldsman because of Jude's objections. The trial court likewise relied on this analysis in denying post-judgment interest. ¶ This rule, however, applies only to attorney fee applications made before judgment. Entry of a judgment pursuant to Family Code section 272, subdivision (a), making attorney fees payable directly to a spouse's attorney alters this situation by making the attorney a judgment creditor. Section 272, subdivision (b), gives that attorney an independent, non-derivative, statutory right to enforce the award in the judgment. After entry of the judgment naming them as judgment creditors, Freid and Goldsman's enforcement right derived not from Jude, but from statute. Under these changed circumstances, the rule quoted from *In re*

Marriage of Simpson does not apply." (In re Marriage of Green (2006) 143 Cal.App.4th 1312, 1320–1321.)

"An opinion is not authority for a point not raised, considered, or resolved therein. (E.g., *People v. Castellanos* (1999) 21 Cal.4th 785, 799, fn. 9, 88 Cal.Rptr.2d 346, 982 P.2d 211; *San Diego Gas & Elec. Co. v. Superior Court* (1996) 13 Cal.4th 893, 943, 55 Cal.Rptr.2d 724, 920 P.2d 669.)" (Styne v. Stevens (2001) 26 Cal.4th 42, 57-58.)

An attorney's ability to enforce the attorney fee and costs order issued in the Family Law proceeding is enforcement of an order entered under the Family Code that remains enforceable until paid in full or otherwise satisfied and is not subject to the renewal of judgment requirement.

Plaintiff's Exhibit S is the Sacramento County Superior Court Family Law Court findings and order after hearing entered on June 7, 1996 in Frost v. Frost, case number FL858759, which expressly found that the 1991 marital settlement agreement required Stephen Frost to pay Kris Frost's attorney fees on the amount of $25,000 as additional spousal support, which was all due and payable together with unpaid interest before March 5, 1996; and having calculated the principal amount remaining due and owing and the accrued interest, plus $629 incurred to enforce the agreement, the Family Law Court ordered that Dudugjian and Maxey can enforce the judgment with respect to the attorney fees in the sum total of $35,801.99. (Emphasis the court's.)

Plaintiff's Exhibit C, the attorney fees abstract of support judgment recorded on February 1, 2002, expressly states that there is an execution lien endorsed on the judgment in the amount of $35,808.99 in favor of Dudugjian and Maxey.

The above-cited and previously cited evidence establishes as a matter of law that the subject judgments made under the Family Code remain valid and enforceable despite not having been renewed. Defendant's assertion that it is not a support judgment entered pursuant to the Family Code is contradicted by the Family Court findings and order entered in 1996, which is long since final and not subject to collateral attack by defendant Specialized. (F.E.V. v. City of Anaheim (2017) 15 Cal.App.5th 462, 471; OC Interior Services, LLC v. Nationstar Mortgage, LLC (2017) 7 Cal.App.5th 1318, 1328; In re Marriage of Thomas (1984) 156 Cal.App.3d 631, 638.) Therefore, plaintiff has met the initial burden to prove that the abstracts were valid and enforceable despite not having been renewed.

Defendant has not submitted any evidence or legal authority that raise a triable issue of material fact regarding the ongoing validity of the family law judgments for support, attorney fees, and costs until paid in full.

- Driver's License Number on Abstract of Judgment

Defendant contends that the abstract of judgment liens are void, because they do not include debtor Stephen Frost's driver's license number.

"(a) Except as otherwise provided in Section 4506 of the Family Code, an abstract of a judgment or decree requiring the payment of money shall be certified by the clerk of the court where the judgment or decree was entered and shall contain all of the following: ¶ (1) The title of the court where the judgment or decree is entered and cause and number of the action. ¶ (2) The date of entry of the judgment or decree and of any renewals of the judgment or decree and where entered in the records of the court. ¶ (3) The name and last known address of the judgment debtor and the address at which the summons was either personally served or mailed to the judgment debtor or the judgment debtor's attorney of record. ¶ (4) The name and address of the judgment creditor. ¶ (5) The amount of the judgment or decree as entered or as

last renewed. ¶ (6) The last four digits of the social security number and driver's license number of the judgment debtor if they are known to the judgment creditor. If either or both of those sets of numbers are not known to the judgment creditor, that fact shall be indicated on the abstract of judgment. ¶ (7) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends. ¶ (8) The date of issuance of the abstract." (Emphasis added.) (Code of Civil Procedure, § 674(a).)

"…purchaser, encumbrancer, or lessee without actual notice may assert as a defense against enforcement of the abstract of judgment the failure to comply with this section…" (Code of Civil Procedure, § 674(b).)

"(a) An abstract of a judgment ordering a party to pay spousal, child, or family support to the other party shall be certified by the clerk of the court where the judgment was entered and shall contain all of the following: ¶ (1) The title of the court where the judgment is entered and the cause and number of the proceeding. ¶ (2) The date of entry of the judgment and of any renewal of the judgment. ¶ (3) Where the judgment and any renewals are entered in the records of the court. ¶ (4) The name and last known address of the party ordered to pay support. (5) The name and address of the party to whom support payments are ordered to be paid. ¶ (6) Only the last four digits of the social security number, birth date, and driver's license number of the party who is ordered to pay support. If any of those numbers are not known to the party to whom support payments are to be paid, that fact shall be indicated on the abstract of the court judgment. This paragraph shall not apply to documents created prior to January 1, 2010. ¶ (7) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends. ¶ (8) The date of issuance of the abstract. (9) Any other information deemed reasonable and appropriate by the Judicial Council." (Emphasis added.) (Family Code, §4056(a).)

"(b) The Judicial Council may develop a form for an abstract of a judgment ordering a party to pay child, family, or spousal support to another party which contains the information required by subdivision (a)." (Family Code, § 4506(b).)

The two recorded abstracts of judgment complied with the driver's license requirement by expressly stating on the abstracts that judgment debtor Frost's driver's license number and state were unknown. (Plaintiffs' RJN Exhibits C and D; and Defendant's RJN Exhibits M and N.) The recorded abstracts clearly identified the debtor by name, last known address, birthdate and social security number.

The evidence meets plaintiff's initial burden to prove that the abstract of judgments met the statutory requirements by stating the driver's license number was unknown and providing the social security number and birth date. This evidence also established that defendant can not assert as a defense against enforcement of the abstract of judgment premised upon the failure to comply with Section 674.

Defendant has not submitted any evidence to the contrary to raise a triable issue of material fact as to the validity of the abstracts that do not include the debtor's driver's license number and state.

- Credit Bid Amount

Defendant contends that plaintiff has unclean hands as the credit bid amount was improperly inflated, because no evidence was presented to the court during the proceedings to order sale of the property concerning how the support installment payments were calculated or whether plaintiff's separate attorney fees judgment had been renewed after February 2002.

Defendant further argues that plaintiff has not supported any facts to support finding that Kris Frost made a credit bid of $315,001 at the Sheriff' Sale of the subject real property.

Plaintiff's Exhibit S is the Sacramento County Superior Court Family Law Court findings and order after hearing entered on June 7, 1996 in Frost v. Frost, case number FL858759, which expressly found that the 1991 marital settlement agreement required Stephen Frost to pay Kris Frost's attorney fees on the amount of $25,000 as additional spousal support, which was all due and payable together with unpaid interest before March 5, 1996; and having calculated the principal amount remaining due and owing and the accrued interest, plus $629 incurred to enforce the agreement, the Family Law Court ordered that Dudugjian and Maxey can enforce the judgment with respect to the attorney fees in the sum total of $35,801.99. (Emphasis the court's.)

Plaintiff's Exhibit C, the attorney fees abstract of support judgment recorded on February 1, 2002, expressly states that there is an execution lien endorsed on the judgment in the amount of $35,808.99 in favor of Dudugjian and Maxey.

Defendant Specialized submitted in supplemental opposition to the motion the transcripts of the depositions of Kris Frost and Robert Dudugjian (Defense Exhibits BB and CC.); a copy of a listing agreement for the subject property produced at Kris Frost's deposition, which listed the property for sale for the amount of $325,000 (Defense Exhibit DD.); Robert Dudugjian's interrogatory response admitting the property was purchased from Kris Frost for $200,000; and the satisfaction of judgment that Ms. Frost testified that Robert Dudugjian directed she sign (Defense Exhibit FF.).

Defendant Specialized contends that the plaintiff has not met its burden to establish the amount due and owing on the support judgment as of 2010 when the Wells Fargo Deed of Trust was recorded based upon the following evidence: Ms. Frost testified that under the marital settlement agreement she was to be paid $70,000; and she avers she was paid

$7,571.67 at a unknown time per the writ, but the writ only claims $53,861.58 was due and owing, which leaves an unexplained $12,000+ discrepancy.

Ms. Frost (Cardwell) testified: as of April 1991 Stephen Frost had an obligation to pay child support in the total amount of $1,500 for all three children; he also owed her for spousal support until she remarried in April 1991; in April 1991 he still owed her $70,000 as an equalization payment which she did not recall and did not know how it was to be paid to her; and the equalization payment was not for past due child support or spousal support. (Defense Exhibit CC – Transcript of Deposition Testimony of Kris Frost (Cardwell), page 24, line 22 to page 25, line 12; page 26, line 13 to page 27, line 14; and page 34, lines 4-6.)

In reply to defendant Specialized's new, supplemental evidence, Kris Frost (Cardwell) declared that she has three children who attained the age of 19 years old on the following dates: April 11, 1994; June 28, 1995, and April 12, 1997. (Declaration of Kris Frost (Cardwell) in Support of Reply, paragraph 2.) Therefore, the evidence establishes that child support and spousal support obligations had expired and all amounts for unpaid support were due and owing prior to the 2002 recording of Abstracts of support judgment and 2010 recording of the Wells Fargo Bank deed of trust.

The court's order entered on January 10, 2020 in Frost v. Frost, case number PC-20190275 granting Kris Frost's application for order of sale of Stephen Frost's dwelling is long final. That order expressly set the credit bid amount of $312,240.66 that creditors Dudugjian and Kris Frost may credit bid at the sale of the real property, with additional daily accrual of interest until the sale. (Plaintiff's Exhibit L – Court Order, page 2, lines 11-21; page 2, line 26-page 3, line 5; and page 3, lines 11-16.)

"A final judgment by a court of competent jurisdiction bears a presumption of validity, and is not subject to collateral attack. (*Kalb v. Feuerstein, supra,* 308 U.S. 433, 438, 60 S.Ct. 343,

345, 84 L.Ed. 370.) Once a court has jurisdiction of both the parties and the subject matter, as the superior court did here, the judgment binds the parties even though the court may have proceeded irregularly or erred in applying the law to the case before it. A judgment based on an erroneous view of the law does not render it void. (See *Federated Department Stores v. Moitie* (1981) 452 U.S. 394, 101 S.Ct. 2424, 69 L.Ed.2d 103.)" (In re Marriage of Thomas (1984) 156 Cal.App.3d 631, 638.)

"…a judgment that is valid on the face of the record is generally *not* subject to collateral attack. (Gorham, supra, 186 Cal.App.4th at p. 1228, 113 Cal.Rptr.3d 147; 8 Witkin, Cal. Procedure, supra, § 208, pp. 813-814.) In other words, a judgment that is valid on the face of the record must be challenged by direct attack, such as a motion in the original action, an appeal in the original action, or an independent equitable action. (8 Witkin, Cal. Procedure, *supra*, § 11(3), pp. 594-595.)" (OC Interior Services, LLC v. Nationstar Mortgage, LLC (2017) 7 Cal.App.5th 1318, 1328.)

""A collateral attack is an attempt to avoid the effect of a judgment or order made in some other proceeding." (*Rico v. Nasser Bros. Realty Co.* (1943) 58 Cal.App.2d 878, 882, 137 P.2d 861.) An attack in a second action on an earlier judgment is collateral. (*Wouldridge v. Burns* (1968) 265 Cal.App.2d 82, 84, 71 Cal.Rptr. 394.) A judgment of a court of general jurisdiction can only be set aside on collateral attack if the judgment is void on the face of the record. (*Id*. at p. 85, 71 Cal.Rptr. 394.) A judgment is void on its face when the invalidity appears on the judgment roll. (*Cruz v. Fagor America* (2007) 146 Cal.App.4th 488, 496, 52 Cal.Rptr.3d 862.)" (F.E.V. v. City of Anaheim (2017) 15 Cal.App.5th 462, 471.)

Wells Fargo Bank was served notice of the hearing on the OSC Re: Sale of the Dwelling and had an opportunity to be heard. The court entered judgment as stated earlier in this ruling, which is long final. Wells Fargo Bank assigned the deed of trust it had recorded against the

subject real property in 2010 to defendant Specialized Loan Servicing on May 11, 2020 and recorded it on that same date (See Plaintiff's Exhibit O.), which was 7 days after the Sheriff's Sale. Defendant Specialized now collaterally attacks how the court calculated the credit bid amounts due and owing on the two support judgment liens. This court which entered the order is a court of competent jurisdiction and the judgment is valid on the face, therefore, the final order is not subject to collateral attack.

As the assignee of the Wells Fargo Deed of Trust after the court's order for sale and sale, defendant Specialized must stand in the shoes of the assignor, defendant Wells Fargo Bank. "In the case of assignment, the assignee's rights are derivative of whatever rights the assignor may have. Thus, the general rule is that the assignee takes subject to all equities and defenses existing in favor of the maker. (Cal. Jur., Bills & Notes, § 336, citing *McGarvey v. Hall* (1863) 23 Cal. 140, 1863 WL 637; Civ.Code, § 1459.) An assignee " ' "stands in the shoes" ' " of the assignor, taking his or her rights and remedies subject to any defenses the obligor has against the assignor prior to notice of the assignment. (*Royal Bank Export Finance Co. v. Bestways Distributing Co.* (1991) 229 Cal.App.3d 764, 768, 280 Cal.Rptr. 355; *Music Acceptance Corp. v. Lofing* (1995) 32 Cal.App.4th 610, 622, 39 Cal.Rptr.2d 159; Rest.2d, Contracts § 336.) ¶ The foregoing concepts are preserved in the Uniform Commercial Code and the California Commercial Code. (See, e.g., Com.Code, §§ 3301, 3305.)" (Creative Ventures, LLC v. Jim Ward & Associates (2011) 195 Cal.App.4th 1430, 1447.)

The plaintiff has met its initial burden to prove that the amount of the abstract of support judgment liens were correct as being adjudicated and set by a long final court order upon application for sale of the real property.

Not only are the calculation of the amounts of the liens to be paid from the sale not subject to collateral attack, the evidence submitted by defendant does not to give rise a triable issue of

material fact that the court was wrong in setting those amounts in the 2019 court order. The deposition testimony of Kris Frost (Cardwell) establishes that there were two debts owed Kris Frost (Cardwell) under the marital settlement agreement, which included child support that accrued at a rate of $1,500 per month for all three children, or $500 per month per child, commencing in at least April of 1991, which is over 11 years before the abstract of support judgment was recorded and nearly 19 years before the Wells Fargo Deed of Trust was recorded. The child support and spousal support obligations had expired and all amounts for unpaid support were due and owing prior to the 2002 recording of abstracts of support judgment and 2010 recording of the Wells Fargo Bank deed of trust. (Declaration of Kris Frost (Cardwell) in Support of Reply, paragraph 2.) The Sacramento County Superior Court issued the abstract of judgment in the subject family law case as an abstract of support judgment and not an abstract of money judgment for an equalization payment. The abstract of support judgment is valid on its face, the underlying judgment characterized as a support judgment by the Court that issued the judgment is long final, and was unchallenged until 2022 by defendant Specialized. The fact that it was entered as a judgment for support and the amount the court found was due and owing are not subject to collateral attack at this late date.

The court further takes judicial notice of the Sheriff's Deed recorded on March 4, 2020. (Plaintiff's Exhibit N.) The Sheriff's Deed states that real property was sold to Kris Frost as the highest bidder who paid $315,000.01 at the sale on March 4, 2020.

Plaintiff submitted sufficient evidence that meets plaintiff's initial burden of proof that Kris Frost made the highest bid and paid $315,000.01.

Defendant has not presented any evidence to raise a triable issue of material fact concerning whether Kris Frost paid $315,000.01 for the property at the Sheriff' public sale.

There remain no triable issues of material fact as to the propriety of the credit bid amount and the assertion of unclean hands.

- Validity of Amount Stated in Abstract of Judgment

Defendant argues it has not been established that the Abstract of Judgment includes only the support payments due and owing up until the date in 2010 that the Wells Fargo Bank deed of trust was recorded.

Ms. Frost (Cardwell) testified at her deposition as follows: as of April 1991 Stephen Frost had an obligation to pay child support in the total amount of $1,500 for all three children; and he also owed her for spousal support until she remarried in April 1991.

There is evidence that the child support and spousal support obligations had expired and all amounts for unpaid support were due and owing prior to the 2002 recording of abstracts of support judgment and 2010 recording of the Wells Fargo Bank deed of trust. (Declaration of Kris Frost (Cardwell) in Support of Reply, paragraph 2.)

Furthermore, as stated above, the court order for sale of Stephen Frost's dwelling is long final and the order expressly set the amounts of the liens to be paid from the sale in order to satisfy the Dudugjian and Maxey Abstract of Support Judgment lien and the Kris Frost Abstract of Support Judgment lien. As stated earlier in this ruling, defendant can not collaterally attack the court's order for sale that expressly found the amounts due and owing on the two support liens and the Wells Fargo deed of trust, as well as the priority of the liens.

Plaintiff has met its initial burden to establish that the amounts stated as due and owing on the liens were due and owing upon sale of the property and had priority of satisfaction over the Wells Fargo Deed of Trust recorded in 2010.

There is no evidence or legal authority cited by defendant Specialized that raises a triable issue of material fact as to whether the defendant is barred from collaterally attacking the

validity of the amounts found in in the court order for sale that is due and owing on the two support judgment liens on the subject property.

- Bona Fide Encumbrancer

Defendant argues that there is no evidence that the Frost and Attorney Fees Judgment abstracts were properly indexed, thereby making Wells Fargo Bank a bona fide encumbrancer.

"This definition of a BFP in the context of section 2924 is consonant with decisions defining the term under California's recording statutes, including sections 1107 [Footnote omitted.] and 1214. [Footnote omitted.] Thus, "a bona fide purchaser for value who acquires his interest in real property without notice of another's asserted rights in the property takes the property free of such unknown rights. [Citations.]" (*Hochstein v. Romero* (1990) 219 Cal.App.3d 447, 451, 268 Cal.Rptr. 202; see also *In re Marriage of Cloney* (2001) 91 Cal.App.4th 429, 437, 110 Cal.Rptr.2d 615; *Reiner v. Danial* (1989) 211 Cal.App.3d 682, 689–690, 259 Cal.Rptr. 570.) " 'The elements of bona fide purchase are payment of value, in good faith, and *without actual or constructive notice of another's rights.* [Citation.]' [Citation.]" (*Gates Rubber Co. v. Ulman* (1989) 214 Cal.App.3d 356, 364, 262 Cal.Rptr. 630.) The same elements exist to determine whether a party who takes or purchases a lien is a bona fide encumbrancer. (*Caito v. United California Bank* (1978) 20 Cal.3d 694, 702, 144 Cal.Rptr. 751, 576 P.2d 466; *First Fidelity Thrift & Loan Assn. v. Alliance Bank* (1998) 60 Cal.App.4th 1433, 1441, 71 Cal.Rptr.2d 295 (*First Fidelity*).)" (Melendrez v. D & I Investment, Inc. (2005) 127 Cal.App.4th 1238, 1251.)

Defendant does not dispute that the subject abstracts of judgment were recorded, but disputes in its responses to fact numbers 3 and 4 of plaintiff's separate statement of undisputed material facts the plaintiff's assertion that the two recorded support judgment abstracts were proper without citation to any evidence in support of that factual dispute. The only references/citations to support the defendant's dispute concerning plaintiff's Fact Numbers

3 and 4 regarding the two recorded abstracts are only objections to plaintiff's evidence of the recoded abstracts, which the court has overruled.

"The Separate Statement in Opposition to Motion must be in the two-column format specified in (h). ¶ (1) Each material fact claimed by the moving party to be undisputed must be set out verbatim on the left side of the page, below which must be set out the evidence said by the moving party to establish that fact, complete with the moving party's references to exhibits. ¶ (2) On the right side of the page, directly opposite the recitation of the moving party's statement of material facts and supporting evidence, the response must unequivocally state whether that fact is "disputed" or "undisputed." An opposing party who contends that a fact is disputed must state, on the right side of the page directly opposite the fact in dispute, the nature of the dispute and describe the evidence that supports the position that the fact is controverted. Citation to the evidence in support of the position that a fact is controverted must include reference to the exhibit, title, page, and line numbers. ¶ (3) If the opposing party contends that additional material facts are pertinent to the disposition of the motion, those facts must be set forth in the separate statement. The separate statement should include only material facts and not any facts that are not pertinent to the disposition of the motion. Each fact must be followed by the evidence that establishes the fact. Citation to the evidence in support of each material fact must include reference to the exhibit, title, page, and line numbers." (Emphasis added.) (Rules of Court, Rule 3.1350(f).)

The citation to evidence concerning these issues is only found in defendant's separate statement of additional undisputed material facts.

The evidence cited in support of defendant's separate statement of additional undisputed material facts, numbers 5 and 6, which assert that the Frost Abstract of Judgment and Attorney's Fees Abstract of Judgment does not appear to have been properly indexed is

paragraphs 3 and 4 in defense counsel's declaration in opposition; borrower Frost's affidavit provided to Wells Fargo Bank at the time of the loan, which does not disclose the two subject judgment liens (Defense Exhibit B.); correspondence from Wells Fargo Bank dated December 20 2017 responding to Dudugjian and Maxey's request for a beneficiary statement for payoff information concerning the Wells Fargo Bank deed of trust (Defense Exhibit H.); and the Attorneys Fees Abstract of Judgment and Frost Abstract of Judgment recorded in 2002 (Defendant's Requests for Judicial Notice, Defense Exhibits M and N.).

The evidence submitted in support of the facts that the Frost Judgment and Attorneys Fees judgment created liens on the subject real property are Requests for Judicial Notice, Plaintiff's Exhibits C and D, the abstracts of such support judgments that were stamped as recorded on February 1, 2002 and July 16, 2002 by the El Dorado County Recorder. As stated earlier, the abstracts complied with the statute for recording abstracts of judgment and the recorded abstracts clearly identified the debtor by name, last known address, birthdate and social security number.

. This evidence met plaintiff's initial burden to prove that the abstracts of judgment were properly indexed and duly recorded in the chain of title of the debtor's real property placing all on constructive notice of the 2002 liens against the real property.

The evidence submitted in opposition is a borrower's title affidavit executed by the judgment debtor in 2010 that failed to disclose the 2002 judgment liens against the property (Defense Exhibit B.) and defense counsel's declaration that during his review of Wells Fargo Bank documents produced in discovery, he saw no document relating to either the Frost or attorney fees judgments prior to January 2010; and the only information in the loan file related to the Frost and attorney fees judgments is noted in a letter from Dudugjian and Maxey from

December 2017 that was a request for a beneficiary statement (Defense Exhibit H.). (Declaration of Robert Hunter in Opposition to Motion, paragraphs 3 and 4.)

"Every duly recorded conveyance of real property, or recorded judgment affecting title to or possession of real property, is constructive notice of the contents thereof to subsequent purchasers and mortgagees from the time of recordation. By the same token, any conveyance of real property is void as against any prior recorded judgment affecting the title. (*Hochstein v. Romero, supra,* 219 Cal.App.3d at pp. 451–452, 268 Cal.Rptr. 202 ["a recorded document imparts constructive notice to subsequent purchasers and precludes them from acquiring the property as bona fide purchasers without notice, because the law conclusively presumes that a party acquiring property has notice of the contents of a properly recorded document affecting such property"]; Civ.Code, §§ 1213–1214; Gov.Code, § 27282, subds. (a)(1), (b).) [FN 5.] Under section 697.320, subdivision (a)(1), the recording of a certified copy of a judgment for child or spousal support creates a judgment lien on all real property owned by the judgment debtor in the county of the recording. [FN 6.] Any purchaser of property subject to a lien created pursuant to section 697.320 takes title subject to that lien in the amount of the lien at the time of transfer plus interest accruing thereafter, enforceable through levy and sheriff's sale. (§§ 697.390, subd. (b), 699.710, 700.015.) [FN 7.] ¶ FN 5. Civil Code section 1213 provides in pertinent part: "Every conveyance of real property or an estate for years therein acknowledged or proved and certified *and recorded as prescribed by law* from the time it is filed with the recorder for record *is constructive notice of the contents thereof to subsequent purchasers and mortgagees* ...." (Italics added.) ¶ Civil Code section 1214 provides: "Every conveyance of real property or an estate for years therein, other than a lease for a term not exceeding one year, is *void* as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose

conveyance is first duly recorded, and *as against any judgment affecting the title, unless the conveyance shall have been duly recorded prior to the record of notice of action.*" (Italics added.) ¶ Government Code section 27282 provides in pertinent part: "(a) The following documents may be recorded without acknowledgment, certificate of acknowledgement, or further proof: [¶] (1) A judgment affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which the judgment was rendered. [¶] ... [¶] (b) *Any document described in this section, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees.*" (Italics added.) ¶ FN. 6 Section 697.320 provides in pertinent part as follows: "(a) A judgment lien on real property is created under this section by recording ... a certified copy of ... the following money judgment[ ] with the county recorder: [¶] (1) A judgment for child, family, or spousal support payable in installments. [¶] ... [¶] (b) Unless the money judgment is satisfied or the judgment lien is released, a judgment lien created under paragraph (1) of subdivision (a) ... continues during the period the judgment remains enforceable...."¶ FN 7. Section 697.390 provides in pertinent part as follows: "If an interest in real property that is subject to a judgment lien is transferred or encumbered without satisfying or extinguishing the judgment lien: [¶] ... [¶] (b) The interest transferred or encumbered remains subject to a judgment lien created pursuant to Section 697.320 in the amount of the lien at the time of transfer or encumbrance plus interest thereafter accruing on such amount."" (In re Marriage of Cloney (2001) 91 Cal.App.4th 429, 437–438.)

The evidence establishes that the abstracts were duly recorded and the abstracts complied with the statutory requirements to provide information to readily identify Stephen Frost as the judgment debtor on both judgments thereby enabling proper indexing. The plaintiff having met its initial burden of proof that Wells Fargo Bank and defendant Specialized had constructive

notice of the judgment liens recorded approximately eight years prior to the recording of the Wells Fargo Deed of Trust, the burden of proof shifted to defendant to raise a triable issue of material facts as to the issue of whether the abstracts recorded were properly indexed and whether the recorded abstracts did not place them on constructive notice with admissible evidence submitted in opposition,

The evidence submitted in opposition is insufficient to raise a triable issue of material fact as to whether the recorded abstracts of judgment were not properly indexed and did not provide defendant with constructive notice of these two senior liens against the property.

In short, defendant has failed to submit sufficient evidence to raise a triable issue of material fact as to whether defendant is a bona fide encumbrancer.

- Equitable Subrogation – Pre-Dating of the Wells Fargo Deed to Trust to Make that Deed of Trust Senior to Abstracts of Judgment

Defendant contends that since Wells Fargo Bank paid off all prior liens, except the two subject judgment liens, in 2010, it is equitable to predate the 2010 deed of trust, thereby making it the senior lien on the property as Wells Fargo Bank did not know about the 2002 support judgment liens when it paid off the 1999 and 2001 liens.

Plaintiff argues that equitable subrogation granting the Wells Fargo Bank Deed of Trust priority over the two support judgment liens is inappropriate after balancing the equities of the circumstances presented; subrogation will work an injustice to plaintiffs and, therefore, the equitable subrogation claim must fail; Wells Fargo Bank neglected to take any action at the OSC Re: Sale of Property hearing and failed to ask for relief under Code of Civil Procedure, § 473 before assignment of the deed of trust to defendant Specialized; Wells Fargo Bank submitted a claim to its title insurance company, rather than asking for relief; Wells Fargo Bank was on notice that the two judgment liens were superior to its deed of trust as it was sent

several documents with information informing it of the superior liens, including correspondence dated November 30, 2017 with an attached litigation guarantee, the guarantee listed the two judgment liens recorded prior to the subject deed of trust, and the application for order for sale expressly stated that the two judgment liens were recorded prior to the Wells Fargo Deed of Trust; lien priority was decided by the court; and Wells Fargo Bank did not challenge that long final order.

"Banc is correct in its assertion that "California follows the 'first in time, first in right' system of lien priorities. ([Civ.Code,] § 2897.)" (*Thaler v. Household Finance Corp.* (2000) 80 Cal.App.4th 1093, 1099, 95 Cal.Rptr.2d 779.) However, that rule is not without exceptions. "*Other things being equal,* different liens upon the same property have priority according to the time of their creation...." (Civ.Code, § 2897, italics added.) It appears the Legislature used the words "other things being equal" to refer to the equities involved in a competing liens situation. The doctrine of equitable subrogation is an exception to the first in time, first in right rule and applies in those situations where equity requires a different result. (*Simon Newman Co. v. Fink* (1928) 206 Cal. 143, 147, 273 P. 565 [equitable subrogation applied though party did not search records].) ¶ The Supreme Court stated the general rule applicable to a lender's entitlement to equitable subrogation almost 84 years ago: " 'One who advances money to pay off an encumbrance on realty at the instance of either the owner of the property or the holder of the incumbrance, either on the express understanding, or under circumstances from which an understanding will be implied, that the advance made is to be secured by a first lien on the property, is not a mere volunteer; and in the event the new security is for any reason not a first lien on the property, the holder of such security, if not chargeable with culpable and inexcusable neglect, will be subrogated to the rights of the prior encumbrancer under the security held by him, unless the superior or equal equities of others would be prejudiced

thereby, and to this end equity will set aside a cancellation of such security, and revive the same for his benefit.' [Citations.]" (*Simon Newman Co. v. Fink, supra,* 206 Cal. at p. 146, 273 P. 565; *Katsivalis v. Serrano Reconveyance Co.* (1977) 70 Cal.App.3d 200, 210, 138 Cal.Rptr. 620.) In doing so, equity gives effect to the intentions of the parties. (*Id.* at p. 211, 138 Cal.Rptr. 620.) ¶ '[C]ourts look with favor upon equitable liens, and frequently such liens are employed to do justice and equity and to prevent unfair results. [Citations.]' [Citations.]" (*Katsivalis v. Serrano Reconveyance Co., supra,* 70 Cal.App.3d at p. 211, 138 Cal.Rptr. 620.) Consequently, equity will generally "give a lender the security for which he bargained in the situation when there is mistake or fraud with respect to an intervening right which cuts off a preexisting encumbrance which has been satisfied by the loan proceeds." (*Id.* at p. 213, 138 Cal.Rptr. 620.) Chase paid off the Siemses' first and second deeds of trust on their property at their request, was to receive a first deed of trust in return, and is entitled to equitable subrogation *unless* Chase is chargeable with culpable and inexcusable neglect, or superior or equal equities on Banc's part would be prejudiced by granting Chase equitable subrogation. (*Simon Newman Co. v. Fink, supra,* 206 Cal. at p. 146, 273 P. 565.)¶ Chase retained a title insurance company to research the title on the Siemses' property. The preliminary report upon which Chase apparently relied in making the loan to the Siemses was prepared before Banc filed its deed of trust on the property. The problem here was the preliminary report was made more than two months before Chase's loan closed. Still, it is undisputed that Chase did not have actual knowledge of Banc's intervening deed of trust. ¶ Banc claims the recording of its deed put Chase on constructive notice, and argues Chase's reliance on the preliminary report was unreasonable and precludes Chase from invoking equitable subrogation. However, constructive notice, as opposed to actual notice, does not forestall application of equitable subrogation. (*Smith v. State Savings & Loan Assn.* (1985) 175 Cal.App.3d 1092, 1098, 223

Cal.Rptr. 298.) And given the failure to search the records does not itself preclude equitable subrogation (*Simon Newman Co. v. Fink, supra,* 206 Cal. at p. 147, 273 P. 565; see *Lawyers Title Ins. Corp. v. Feldsher* (1996) 42 Cal.App.4th 41, 49, 49 Cal.Rptr.2d 542 [failure to find recorded lien did not preclude awarding an equitable lien]), neither should reliance on a preliminary title report. By the same token, if the failure to make a records search does not reduce the lender's equity, neither should the lender's reliance on a preliminary report that failed to reveal an intervening deed of trust. As Chase did not have *actual* knowledge of Banc's deed of trust, did not breach any duty owed to Banc, and has not been shown to have engaged in any misleading conduct, Chase is not chargeable with culpable and inexcusable neglect. (*Smith v. State Savings & Loan Assn., supra,* 175 Cal.App.3d at p. 1098, 223 Cal.Rptr. 298.) ¶ That brings us to the question of whether Banc's equities are equal to or greater than Chase's. If they are, Chase is not entitled to equitable subrogation. (*Simon Newman Co. v. Fink, supra,* 206 Cal. at p. 146, 273 P. 565.) As stated above, Chase paid off the existing first and second deeds of trust in favor of Chevy Chase and Bay Area, respectively, and expected a first deed of trust in return. The loan would not have been otherwise made. The escrow company was instructed to not disburse the loan funds if it were determined Chase's deed of trust would not be in a position of primacy. Chase did not know of the loan from Banc or that Banc had filed its deed of trust prior to Chase filing its deed of trust. Banc, on the other hand, knew of the deeds of trust held by Chevy Chase and Bay Area. It anticipated and received a third deed of trust on the property in exchange for the loan to the professional corporation. In such a situation, the equities favor Chase. ¶ Equitable subrogation looks to the intentions of the parties (*Katsivalis v. Serrano Reconveyance Co., supra,* 70 Cal.App.3d at p. 211, 138 Cal.Rptr. 620) and its application in this matter gives both Chase and Banc exactly what each intended: Chase receives priority in the amounts used to pay off

the preexisting first and second deeds of trust, and Banc's deed of trust is in the same position it bargained for. That the borrowers defaulted on the loans and the market took a downturn prior to the default are not facts affecting the respective equities of the Banc and Chase. Rather, these are risks Banc knowingly assumed in making its loan and taking back a junior deed of trust. ¶ Neither does the fact that Chase may have a cause of action against its title insurance company affect the equities of the respective parties. First, there is no guarantee of success in such a lawsuit. Second, if Chase receives the equitable subrogation to which it is entitled under the facts of this case, there is no loss for the title company to indemnify. Third, there is the question of whether, if sued by Chase, the title insurance company would be entitled to assert Chase's right to equitable subrogation. ¶ Banc characterizes the use of equitable subrogation in this matter as punishment imposed on it, or an action taken to its prejudice. But that is not an accurate assessment. Equitable subrogation provides Banc just what it bargained for and received from the Siemses: a deed of trust third in priority. Banc is in the same position it would have been in had the Siemses not paid off their preexisting first and second deeds of trust by refinancing with Chase. Getting exactly what one bargained for is neither punishment nor prejudicial. Accordingly, we conclude the trial court did not err in granting Chase equitable subrogation in this matter." (Emphasis added.) (JP Morgan Chase Bank, N.A. v. Banc of America Practice Solutions, Inc. (2012) 209 Cal.App.4th 855, 860–862.)

Defendant Specialized's own evidence submitted in opposition controverts its claim that it paid off more than one prior lien. The Placer Sierra Bank Deed of Trust recorded on December 3, 1999 was reconveyed by a deed of reconveyance recorded on March 6, 2002 (Defense Exhibits F and G.), years prior to the Wells Fargo loan secured by the 2010 deed of trust. The only prior lien that appears to be paid off by the Wells Fargo Bank is the Provident Funding

Associates, L.P.'s Deed of Trust recorded on July 25, 2001, which was reconveyed by a Wells Fargo Bank full reconveyance recorded on February 17, 2010. (Defense Exhibits D and E.)

In response to requests for production, defendant Wells Fargo Bank produced plaintiff's Exhibit I – First American Title Insurance Company Trustee's Sale Guarantee dated October 9, 2019, which was issued to Wells Fargo Bank's trustee under the deed of trust. The guarantee expressly excepted from coverage the two subject support judgment liens. (Declaration of Robert Dudugjian in Support of Motion for Summary Judgment, paragraph 7; and Plaintiff's Exhibit I – First American Title Insurance Company Trustee's Sale Guarantee, Schedule A and Schedule B, Exception Numbers 7 and 8.)

In response to requests for production, defendant Wells Fargo Bank produced plaintiff's Exhibit J – Correspondence from National Title Insurance of New York, dated October 24, 2019, which states that the insurer was informed of a recently discovered title defect or encumbrances described as the two subject recorded abstracts of support judgment. (Declaration of Robert Dudugjian in Support of Motion for Summary Judgment, paragraph 8; and Plaintiff's Exhibit J – Correspondence from National Title Insurance of New York, dated October 24, 2019.)

The above-cited evidence and all other evidence previously cited in this ruling is evidence that Wells Fargo Bank advised its Title insurer concerning the loss it incurred due to lack of priority of its deed of trust, rather than pursue any purported equitable lien during the prior enforcement of judgments sale proceedings that concluded on January 10, 2020 with the court order for sale expressly setting the amounts and priority of lien payments out of the proceeds of the Sheriff's sale, and then transferred the deed of trust to defendant Specialized long after the order for sale and recorded Sheriff's Deed after the sale, which shows that Wells Fargo did not consider that there was an express or an implied provision of its agreement with borrower

Stephen Frost that the parties to the loan agreed that the Wells Fargo loan and deed of trust to pay off the prior Provident Funding Associates, L.P. loan secured by a deed of trust recorded in 2001 was to take priority over all liens on the property recorded after the Provident Funding Associates, L.P., thereby providing Wells Fargo Bank with a 1st deed of trust with priority over any other lies on the real property. The evidence of the recording of the abstracts of support judgment also show that such liens were not voluntary liens entered into by any agreement with debtor Stephen Frost and that as an involuntary lien, there is no implied provision of an agreement that these liens would always be considered to be of a lesser priority to any deed of trust that is later recorded as security for a loan that paid off a deed of trust that had priority to the two judgment liens. There is no evidence before the court that defendant Wells Fargo Bank either expressly or impliedly set forth any condition that its loan be secured by a 1st Deed of Trust with seniority over all other liens on the property. Debtor Stephen Frost had no authority to impliedly agree that the Wells Fargo Bank Deed of Trust take priority over judgment liens senior to the loan by Wells Fargo. In fact, debtor Stephen Frost concealed the two senior judgment liens by omitting any mention of them in his response to paragraph 6 of the borrower's title affidavit executed by him in 2010 (See Defense Exhibit B, Paragraph 6.).

Plaintiff has met its initial burden to establish that plaintiff has at least equal or greater equitable rights than defendant Specialized's to maintain the seniority of the two support judgment liens over the junior deed of trust recorded in 2010. The judgment lienholders obtained their liens by entry of court judgments enforceable by liens on real property of the judgment debtor Stephen Frost and it can not be said under such circumstances that exercise of the court's equitable subrogation power would simply give the judgment lienholders what they bargained for and received from the entry of the judgments and recording of the abstracts of judgment such as liens junior to any later recorded deed of trust that repaid the judgment

debtor's prior deeds of trust. The judgment lienholders were entitled to rely on the fact that their liens would remain senior to other deeds of trust and liens recorded after their liens. The evidence establishes that the judgment lienholders would suffer great prejudice if equitable subrogation request was granted.

Evidence that defendant Wells Fargo was not aware of the two recorded abstracts of judgment and debtor Stephen Frost's concealment of those liens does not raise a triable issue of material fact as to whether plaintiff and the judgment lienholders' have superior or equal equities to Wells Fargo Bank that would be prejudiced by exercising equitable subrogation to direct that the Wells Fargo Deed of Trust assigned to defendant Specialized after the Sheriff's sale is the senior 1st Deed of Trust.

In conclusion, the motion for summary judgment is granted.

Claim for Attorney Fees

Defendant contends that there is no support for plaintiffs claim for recovery of attorney fees incurred in this action as there is no contractual right to recover such fees and such relief is not requested in the complaint, which justifies denial of the entire motion.

Plaintiff argues that the complaint's prayer for such other relief as the court may deem proper includes attorney fees as other and further relief; and defendant Specialized asserts as a basis of its claim to have the Wells Fargo Bank 2010 Deed of Trust determined to remain a lien on the real property despite the Sheriff's sale under the court's order to enforce the judgment liens is the written Wells Fargo Bank Deed of Trust assigned to defendant Specialized and the written assignment has an attorney's fees provision in paragraph 22.

First, a request for attorney fees or proof of attorney fees incurred by a prevailing plaintiff is not an element of a cause of action to quiet title, therefore, any failure to establish the right to

recover attorney fees as a matter of law does not provide grounds to deny summary judgment on the quiet title cause of action.

Second, although there is no express prayer for an award of attorney fees in the complaint, there is a catch all prayer for "…such other and further relief as the court may deem proper.." Therefore, the lack of an express prayer is not grounds to deny recovery of other relief in the form of an award of attorney fees, provided such fees are recoverable under the applicable law.

Third, the American Rule applies under the circumstances presented, because plaintiff has not cited any statutory authority for an award of attorney fees to plaintiff, the plaintiff is not an assignee/party/signatory of the Wells Fargo Bank deed of trust which includes the attorney's fee provision, and there does not appear to be any litigation in this case concerning a breach of the Wells Fargo Bank deed of trust wherein a signatory/assignee of the deed of trust is seeking to hold plaintiff liable for such a breach and seeking recovery of attorney fees under the Wells Fargo Bank deed of trust.

"Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided." (Code of Civil Procedure, § 1021.)

"In California, we follow the "American rule," which means everybody pays their own fees unless they agree otherwise or are entitled to claim the benefit of a statutory or judicially created exception. (*Fleischmann Distilling Corp. v. Maier Brewing Co.* (1967) 386 U.S. 714, 717-718, 87 S.Ct. 1404, 1406-1407, 18 L.Ed.2d 475; § 1021.)" (Burnaby v. Standard Fire Ins. Co. (1995) 40 Cal.App.4th 787, 796.)

“"Under the American rule, which is embodied in Code of Civil Procedure section 1021 in California, as a general proposition each party to a litigation must pay his or her own attorneys fees. There are statutory exceptions to this rule, and the courts have created several exceptions pursuant to their inherent equitable powers." [FN2] Exceptions to the American rule created under the courts' equitable powers include the "common fund" and "substantial benefit" doctrines. [FN3] ¶ FN2. *Baker v. Pratt*, supra, 176 Cal.App.3d at page 378, 222 Cal.Rptr. 253. ¶ FN3. For general discussions of the common fund and substantial benefit doctrines, see 20 Am.Jur.2d (1995) Costs, sections 66-68; 19 Am.Jur.2d (1986) Corporations, sections 2487-2488; 16 Cal.Jur.3d (2002) Costs, section 115; 15 Cal.Jur.3d (1983) Corporations, section 526.” (Cziraki v. Thunder Cats, Inc. (2003) 111 Cal.App.4th 552, 557.)

“In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs. ¶ Where a contract provides for attorney's fees, as set forth above, that provision shall be construed as applying to the entire contract, unless each party was represented by counsel in the negotiation and execution of the contract, and the fact of that representation is specified in the contract. ¶ Reasonable attorney's fees shall be fixed by the court, and shall be an element of the costs of suit. ¶ Attorney's fees provided for by this section shall not be subject to waiver by the parties to any contract which is entered into after the effective date of this section. Any provision in any such contract which provides for a waiver of attorney's fees is void.” (Civil Code, § 1717(a).)

“Civil Code section 1717 makes an otherwise unilateral right reciprocal when a *defendant* sued on a contract with a provision awarding attorney fees to the prevailing party defends by

successfully arguing the inapplicability, invalidity, unenforceability, or nonexistence of that contract. "Because these arguments are inconsistent with a contractual claim for attorney fees under the same agreement, a party prevailing on any of these bases usually cannot claim attorney fees as a contractual right. If section 1717 did not apply in this situation, the right to attorney fees would be effectively unilateral-regardless of the reciprocal wording of the attorney fee provision allowing attorney fees to the prevailing attorney-because only the party seeking to affirm and enforce the agreement could invoke its attorney fee provision. To ensure mutuality of remedy in this situation, it has been consistently held that when a party litigant prevails in an action on a contract by establishing that the contract is invalid, inapplicable, unenforceable, or nonexistent, section 1717 permits that party's recovery of attorney fees whenever the opposing parties would have been entitled to attorney's fees under the contract had they prevailed." (*Santisas v. Goodin, supra,* 17 Cal.4th at p. 611, 71 Cal.Rptr.2d 830, 951 P.2d 399.)" (Emphasis added.) (Sessions Payroll Management, Inc. v. Noble Const. Co., Inc. (2000) 84 Cal.App.4th 671, 678.)

The court denies the plaintiff's request for an award of attorney fees.

TENTATIVE RULING # 3: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. PLAINTIFF'S REQUEST FOR AN AWARD OF ATTORNEY FEES IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE

HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE LONG CAUSE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY FOR A LONG CAUSE HEARING THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 1:30 P.M. ON FRIDAY, JULY 22, 2022 BY ZOOM APPEARANCE AS SPECIFIED IN THE JUNE 20, 2022 MINUTE ORDER EMAILED TO COUNSELS FOR THE PARTIES, UNLESS OTHERWISE NOTIFIED BY THE COURT.