

1. HAYDEN v. BINNS, ET AL 22CV1052

Motion for Order Granting Service by Publication

The Complaint in this action was filed against and Manjit Kaur Binns and Bradley Chung, both individuals, on July 28, 2022. Plaintiff had filed a prior action in probate matter in Sacramento County based on the same facts but has reframed the matter as a civil case in El Dorado County. According to Plaintiff's Motion for Ordering Service by Publication, Bradley Chung was served after a private investigator hired by Plaintiff located him in Corvallis, Oregon. About that time Plaintiff's counsel received an anonymous phone call indicating that Defendant Binns, who is Defendant Chung's mother, had relocated to Jamaica. Chung has informed Plaintiff's counsel that Binns is no longer in the country. Plaintiff alleges that reasonably diligent efforts have been made to serve Defendant Binns and Plaintiff now requests authorization from the court to serve Binns by publication.

Plaintiff's counsel's declaration states that attempted service initially began with a related probate case in Sacramento County in 2021, and after filing this case in El Dorado County service was attempted in Oregon by certified mail, return receipt requested, but that the documents were delivered without requiring a signature. The declaration further states that around the time he retained Derish and Associates to attempt to locate Binn he received an anonymous phone call indicating that Binn had moved to Kingston, Jamaica. The declaration attaches:

1. An affidavit of due diligence dated September 23, 2021, reflecting ten incidents of attempted service of the preceding action in Sacramento County during September 15-23, 2021, at a Folsom address. Declaration of Benjamin Fox, dated March 30, 2023, Exhibit A.
2. A 2021 report of investigation conducted by Shield for Service of Process attempting to locate Binn that tracked her from Folsom, California to Florida. Declaration of Benjamin Fox, dated March 30, 2023, Exhibit B.
3. Email correspondence between Plaintiff's counsel and investigators in January 2022 indicating Binn was in Florida. Declaration of Benjamin Fox, dated March 30, 2023, Exhibit C.
4. United States Postal Service receipts for attempted service in Corvallis, Oregon in October 2022. Declaration of Benjamin Fox, dated March 30, 2023, Exhibit D.
5. A January 2023 report by Derish Associates, Inc. which reported successful service of process on Chung and Chung's information that Binn was out of the country. Declaration of Benjamin Fox, dated March 30, 2023, Exhibit E.

There is no opposition to the Motion in the court's file.

Code of Civil Procedure, § 415.50(a) provides that a summons may be served by publication if “upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified in this article and that either:

- (1) A cause of action exists against the party upon whom service is to be made or he or she is a necessary or proper party to the action.
- (2) The party to be served has or claims an interest in real or personal property in this state that is subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part in excluding the party from any interest in the property.

These requirements are met because the Complaint in this action alleges causes of action involving conduct by Binns related to an individual who resided in and left real property in trust in El Dorado County, title to which is at issue. Plaintiff’s counsel’s declaration establishes that service on Binn has not been accomplished through personal service or by mail notwithstanding Plaintiff’s reasonable diligence.

Code of Civil Procedure, § 415.50 requires that the court shall order that the summons be published in a newspaper that is most likely to give actual notice to the party to be served. Code of Civil Procedure, § 415.50(b). In this case, the Defendant Binns has most recently been located in Sacramento County, California; Benton County, Oregon; Collier County, Florida and Kingston, Jamaica.

The motion is granted.

TENTATIVE RULING #1: THE MOTION IS GRANTED AS REQUESTED. SERVICE BY PUBLICATION SHALL BE EFFECTUATED IN SACRAMENTO COUNTY, CALIFORNIA; BENTON COUNTY, OREGON; COLLIER COUNTY, FLORIDA AND KINGSTON, JAMAICA.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. 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 HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2. DISCOVER BANK v. HASKETT

PCL20210236

Motion for Entry of Judgment

A Stipulation was filed on April 15, 2022, whereby the parties agreed to settle an outstanding debt for a payment of \$6,779.16 pursuant to a payment schedule that was included in the Settlement Agreement. The Settlement Agreement provides that if Defendant defaults, Plaintiff may enforce the Settlement Agreement by filing an ex parte application for entry of judgment for the total amount due plus court costs less any amount of payments received from Defendant. Stipulation at ¶ 10. Plaintiff's Declaration states that Defendant has defaulted on the payment agreement by not making payments for the month of April, 2022, August, 2022 and every month thereafter.

Code of Civil Procedure § 664.6(a) provides that: "[i]f parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement."

Plaintiff acknowledges a credit in the amount of \$1,693.88, with a total balance due of \$5,085.28. Declaration of Plaintiff's Counsel in Support of Motion to Enter Judgment Pursuant to CCP §664.6, dated March 08, 2023. Plaintiff requests that the court award judgment to Plaintiff in the amount of \$5,085.28, plus costs in the amount of \$822, for a total judgment of \$5,907.28.

TENTATIVE RULING #2: THE MOTION IS GRANTED AS REQUESTED, AND JUDGMENT FOR PLAINTIFF SHALL BE ORDERED IN THE AMOUNT OF \$5,085.28, PLUS COSTS IN THE AMOUNT OF \$822, FOR A TOTAL JUDGMENT OF \$5,907.28.

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3. ESTATE OF MASON CHARLES VISMAN 22PR0301

Pre-Trial Conference – Issues + Motions in Limine

TENTATIVE RULING #3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MAY 5, 2023, IN DEPARTMENT NINE.

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4. IN RE PETITION OF JG WENTWORTH 23CV0348

Transfer of Payment Rights

Prior to approving a petition for the transfer of payment rights, this court is required to make a number of express written findings pursuant to Cal. Insurance Code § 10139.5, including the following:

1. That the transfer is in the best interests of the Payee, taking into account the welfare and support of Payee's dependents.
2. That the Payee has been advised in writing by the Petitioner to seek independent professional advice) and has either received that advice or knowingly waived in writing the opportunity to receive that advice. This finding is supported by Exhibits B and E to the Petition. *See also*, Petition at p. 10, ¶ 11.
3. That the transferee has complied with the notification requirements and does not contravene any applicable statute or the order of any court or government authority. In this case, it is not clear that the required disclosure statement was provided at least ten days prior to the execution of the transfer agreement, as required by Cal. Ins. Code § 10136, because both documents were executed on February 14, 2023. *See* Exhibits A and B.
4. That the transfer does not contravene any applicable statute or the order of any court or government authority. In this case, the Petition (which is verified by a Vice President of J.G. Wentworth) at page 8 represents that Payee has no court-ordered child support obligations. However, the payee's Affidavit, attached as Exhibit D, is silent as to any court-ordered child or spousal support obligations, although the Affidavit does say that "there are no other interested parties that are entitled to notice of this transfer . . ." Exhibit D, para. 7. Further, the declaration of the Payee was executed on October 7th, 2015, more than seven years prior to this proposed transfer, limiting its evidentiary value in evaluating the statutory factors that this court is required to consider.

In addition to the express written findings required by the applicable statutes, Cal. Ins. Code § 10139.5(b) requires the court to determine whether, based on the totality of the circumstances and considering the Payee's age, mental capacity, legal knowledge, and apparent maturity level, the proposed transfer is fair and reasonable, and in the Payee's best interests. The court may deny or defer ruling on the petition if the court believes that the Payee does not fully understand the proposed transaction, and/or that the Payee should obtain independent legal or financial advice regarding the transaction.

The Petition submitted generally recites the information required by the Insurance Code for court approval of this transaction, however, its representations are verified by the Petitioner, not by the Payee. The Petition asserts that certain information, such as employment information for the Payee that would establish that the Payee and any dependent children are

not reliant on the payments proposed to be transferred for their support, will be submitted in an accompanying declaration, but no such declaration was filed. See Petition at 4:14-21; 5: 13-14.

Some information required by the statutes was included in the Petition through a verified statement of the Petitioner, but without any representation by the Payee, such as:

1. Whether there are any court orders for child or spousal support;
2. The purpose of the proposed transfer;
3. The payee's financial/economic situation;
4. Whether the payments to be transferred are required for future medical care or necessary living expenses;
5. Whether the payee was satisfied with the terms of prior payment transfer agreements that she had entered into;
6. Whether, within the past five years, the payee has attempted to enter into any such agreement with this Petitioner or any other entity that were denied by a court, or that were withdrawn or dismissed prior to a determination on the merits;
7. Whether the payee or her family are facing a hardship situation.

This court cannot grant this Petition in compliance with the applicable statutes, without more information.

TENTATIVE RULING #4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MAY 5, 2023, IN DEPARTMENT NINE.

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05-05-23
Dept. 9
Tentative Rulings

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5. RODRIGUEZ v. KUMAR 22CV1202

Demurrer

Defendants Vijay Kumar and Stop & Shop Food Mart, LLC (“Defendants”), seek an order sustaining their demurrer to the first, second, fifth, sixth, and seventh causes of action as listed in the Second Amended Complaint (“SAC”). The demurrer was filed and served on April 17, 2023.

As a preliminary matter, Plaintiffs object to the demurrer on the basis of timeliness and it’s lack of a Memorandum of Points and Authorities. However, sparse as it may be, there is a section entitled Points and Authorities commencing on page 2 of the Notice of Hearing Demurrer to the Second Amended Complaint.

Further, Defendants object to the SAC on the basis that it fails to state facts sufficient to constitute a cause of action. In other words, Defendants have filed a general demurrer. In such case, Defendants are entitled to a ruling on the merits. Matteson v. Board of Ed. Of City of Los Angeles, 104 Cal. App. 647, 651-652 (1930) (“The purpose of a general demurrer is to raise the issue as to the legal sufficiency of the facts pleaded, and for the purpose of the demurrer deemed true, to warrant the granting of relief to the pleader. . . . Nor is there merit in the theory advanced by appellant that it was incumbent upon the respondent to specify the particulars in which the petition was insufficient. It is the general rule ‘that no particular specification is required in a demurrer for want of facts.’ [Citations]”); *See also Dikkers v. Sup. Ct. in and for L.A. County*, 88 Cal. App. 2d 816 (1948) (stating that the court may not deny a general demurrer for failure to file a Memorandum of Points and Authorities).

Plaintiffs cite California Rules of Court Rule 313(b); however, this appears to be an old rule. The current rule on the matter, Rule 3.1113 states, in pertinent part “The court may construe the absence of a memorandum as an admission that the motion or special demurrer is not meritorious and cause for its denial and, in the case of a demurrer, as a waiver of all grounds not supported.” In this case Defendants have filed a Memorandum of Points and Authorities with arguments and authorities, and to the extent Defendants have raised the sufficiency of the Plaintiffs pleadings through their demurrer the court will consider those issues on the merits.

First Cause of Action: Specific Performance

Defendants’ demurrer argues that enforcement of an oral option agreement for the conveyance of real property is barred by the statute of frauds as a matter of law. Cal. Civil Code § 1624(a)(3). Plaintiffs argue that their partial performance of the oral agreement, allowing

them to exercise an option to purchase the property that they occupied as lessees, compels specific performance of that agreement, notwithstanding the statute of frauds. CCP § 1972.

In support of the demurrer, Defendants cite Pacific Southwest Development Corp. v. Western Pacific Railroad Co., 47 Cal.2d 62 (1956) for the holding in that case that an option contract to purchase real property comes within the statute of frauds. Although this is true, it does not contradict Plaintiffs' argument, which depends on whether, notwithstanding this general rule, this case has been removed from the application of the general rule by partial performance.

Defendants also cite Wilson v. Bailey, 8 Cal. 2d 416 (1937). However, the California Supreme Court in that case upheld a judgment finding that the defendant in that case was estopped from asserting the statute of frauds to defeat an oral agreement to extend a written option agreement for 30 days because the plaintiff had changed position in reliance on the oral promise. In that case, the facts were undisputed, but in the context of the demurrer in this case, the court is required to "construe the complaint liberally to determine whether a cause of action has been stated, given the assumed truth of the facts pleaded. (*Rogoff v. Grabowski* (1988) 200 Cal.App.3d 624, 628 [246 Cal.Rptr. 185].)" (Picton v. Anderson Union High School Dist. (1996) 50 Cal.App.4th 726, 732-733.)

Defendants argue that Smyth v. Berman, 31 Cal. App. 5th 183 (2019) supports their position, a case in which the court found that plaintiffs' claims of part performance did not estop a landlord from asserting the statute of frauds as a defense. That case is distinguishable because the court found that a tenant's allegations of a serious change in position could not be the basis for equitable estoppel because the payment of rent, physical changes they made to the property and their purchase of property next door all took place before the oral agreement was made, and so could not be relied upon as partial performance in reliance on the oral promise.

Defendants also rely on Sterling v. Taylor, 40 Cal. 4th 757, 152 P.3d 420 (2007) for the proposition that the Plaintiffs may not rely on extrinsic evidence to prove the terms of an agreement. That case is distinguishable, however, because in that case the issue was whether extrinsic evidence could be used to supplement the terms of a writing that contained the parties' agreement. In this case extrinsic evidence is not being offered to supplement written documentation of the parties' alleged agreement.

Plaintiffs allege that their pleading is sufficient to maintain an action for specific performance of an agreement for the purchase real estate notwithstanding the statute of frauds based upon their occupancy of the property and their conduct in making improvements

to the property in reliance on the oral agreement. As this court found in ruling on the First Amended Complaint, the case of Francis v. Colendich 193 Cal.App.2d 128 (1961) is not helpful to the Plaintiff's case because in that case the occupancy of the property at issue was by an individual who had no other right to occupy the property. In the present case, the Plaintiffs occupy the property pursuant to a lease, and so the occupancy alone does not amount to partial performance.

Similarly, Sutton v. Warner, 12 Cal.App.4th 415 (1993) is not on point because in that case the existence of an oral option agreement for the purchase of the property was not in dispute, and all actions evidencing part performance in that case were "unequivocally related to the purchase agreement." In the present case, there is a dispute as to the existence of an agreement, and Plaintiffs actions could be attributable to an undisputed lease and/or to the employment agreement that is alleged elsewhere in their Complaint.

As the court noted in its ruling on the First Amended Complaint, in order to take an oral agreement for the purchase of property out of the statute of frauds, "it must appear that a sufficient change of position has occurred so that the application of the statutory bar would result in an unjust and unconscionable loss, amounting in effect to a fraud." Anderson v. Stansbury, 38 Cal. 2d 707, 715, 242 P.2d 305 (1952).

The payment of money is not "sufficient part performance to take an oral agreement out of the statute of frauds" (*Shive v. Barrow*, 88 Cal.App.2d 838, 848 [199 P.2d 693]), for the party paying money "under an invalid contract ... has an adequate remedy at law." (*Woerner v. Woerner*, 171 Cal. 298, 301 [152 P. 919]; also *Paul v. Layne & Bowler Corp.*, 9 Cal. 2d 561, 565 [71 P.2d 817]; *Trout v. Ogilvie*, 41 Cal.App. 167, 171 [182 P. 333].) Anderson v. Stansbury, 38 Cal. 2d 707, 716 (1952).

Hall v. Hall, 222 Cal. App. 3d 578 (Ct. App. 1990) is distinguishable because in that case, the partial performance that the court found sufficient to invoke an equitable remedy was the fact that the wife agreed to marry the husband in reliance on an oral promise to grant her a life estate in property. Similarly, in Monarco v. Lo Greco, 35 Cal. 2d 621 (1950) the Plaintiff "gave up any opportunity to accumulate property of his own and devoted his life to making the family venture a success." No such life-altering conduct is alleged in this case.

Harrison v. Hanson, 165 Cal. App. 2d 370 (1958) is also unhelpful to the Plaintiffs. The Plaintiffs' occupancy in that case was not found sufficient to avoid the statute of frauds because it was not "so actual, visible, notorious and exclusive that it furnishes evidence of the agreement between the parties as good as a writing." *Id.* at 376. "Nor does it appear that the taking of possession . . . was "unequivocally" pursuant to the alleged contract between the parties." *Id.* at 377.

Plaintiffs have amended their Complaint to include more specifics of the payments they have made to contractors and for materials to improve the property, and they have specified the amounts they claim to have earned through their own services provided to Defendant. Second Amended Complaint, ¶ 31. Plaintiffs allege that they have no legal remedy and that damages cannot be ascertained. Second Amended Complaint, ¶ 35. However, if the Plaintiffs moved to the property that decision could be attributed to the lease agreement that is not in dispute. If the Plaintiffs spent money fixing up the property and providing services to the Defendants, these actions may be attributable to the employment agreement that is alleged elsewhere. It appears from the plain language of the First Cause of Action that Plaintiffs could be reimbursed for their expenditures and for the value of their services by the award of money damages. Even if the Plaintiffs establish through other causes of action that they are entitled to be awarded the difference in appraisal values for the property, this remedy can also be achieved through financial compensation.

Accordingly, Defendants' demurrer to the First Cause of Action is sustained with leave to amend.

Second Cause of Action: Breach of Contract

Having found with respect to the First Cause of Action that the oral option agreement described in the pleadings is barred by the statute of frauds, there can be no cause of action for the breach of such agreement.

Defendant's demurrer to the Second Cause of Action is sustained, with leave to amend.

Fifth Cause of Action: Breach of Good Faith and Fair Dealing

Having found with respect to the First Cause of Action that the oral option agreement described in the pleadings is barred by the statute of frauds, there can be no cause of action for the breach of the covenant of good faith and fair dealing related to such agreement.

Defendant's demurrer to the Fifth Cause of Action is sustained, with leave to amend.

Sixth Cause of Action: Fraud

[T]he elements of fraud are a misrepresentation, knowledge of its falsity, intent to defraud, justifiable reliance and resulting damage. (*Universal By-Products, Inc. v. City of Modesto* (1974) 43 Cal.App.3d 145, 151, 117 Cal.Rptr. 525.) Fraud causes of actions

must be pled with specificity in order to give notice to the defendant and to furnish him or her with definite charges. (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216, 197 Cal.Rptr. 783, 673 P.2d 660.) In drafting the complaint, ““(a) [g]eneral pleading of the legal conclusion of “fraud” is insufficient; the facts constituting the fraud must be alleged. (b) Every element of the cause of action for fraud must be alleged in the proper manner (i.e. factually and specifically), and the policy of liberal construction of the pleadings ... will not ordinarily be invoked to sustain a pleading defective in any material respect.’ [Citations.]” (*Ibid.*)

Gil v. Bank of Am., N.A., 138 Cal. App. 4th 1371, 1381 (2006).

The court finds that the elements of fraud are alleged with specificity within the pleadings. Defendant’s demurrer to the Sixth Cause of Action is overruled.

Seventh Cause of Action: Good Faith Improver of Real Property

This cause of action is based on Cal. Code of Civil Procedure § 871.1, which defines a “good faith improver” as “a person who makes an improvement to land in good faith and under the erroneous belief, because of a mistake of law or fact, that he is the owner of the land.” Cal. Code Civ. Proc. § 871.1.

Plaintiff’s Seventh Cause of Action in the SAC alleges that “[p]ursuant to the Option Agreement, and under the belief that plaintiffs were *going to be* the owners of the Property, plaintiffs made substantial and permanent improvements to the Property in good faith.” Sac, ¶ 73 (emphasis added).

By definition and by the Plaintiffs’ own pleadings, Plaintiffs could not qualify as “good faith improvers” under the statute because they did not believe themselves to be the owners of the Property at the time they made the improvements.

Defendant’s demurrer to the Seventh Cause of Action is sustained with leave to amend.

TENTATIVE RULING #5:

- 1. DEFENDANTS’ DEMURRER IS SUSTAINED AS TO THE FIRST, SECOND, FIFTH AND SEVENTH CAUSES OF ACTION WITH LEAVE TO AMEND WITHIN 10 DAYS.**
- 2. DEFENDANTS’ DEMURRER IS OVERRULED AS TO THE SIXTH CAUSE OF ACTION.**

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6. **NAPOLEON v. UNITED STATES AUTOMOBILE ASSOC.**

PC20210289

Motion Pro Hac Vice

TENTATIVE RULING #6: THE ORDER GRANTING UNOPPOSED *EX PARTE* APPLICATION REGARDING THE *PRO HAC VICE* APPLICATION OF DAVID T. MCDOWELL HAVING BEEN APPROVED BY THE COURT, THE MATTER IS DROPPED FROM CALENDAR.

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7. NAME CHANGE OF JONAH MELTON 22CV1851

Petition for Name Change

Petitioner filed a Petition for Change of Name on December 27, 2022. The Proof of Publication was filed on March 6, 2023. A background check was filed on February 22, 2023.

TENTATIVE RULING #7: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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8. NAME CHANGE OF KATHRYN LINDA KEYT 23CV0120

Petition for Name Change

Petitioner filed a Petition for Change of Name and Order to Show Cause on January 18, 2023. No proof of publication has been filed. Petitioner is required to publish the OSC in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure § 1277(a), with proof of publication to be filed with the court. Petitioner is further required to file proof of a background check with the court, as required by Cal. Code of Civil Procedure § 1279.5(f).

TENTATIVE RULING #8: THE HEARING ON THIS MATTER IS CONTINUED TO 8:30 A.M. ON JUNE 23, 2023, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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9. NAME CHANGE OF S. PLATT 23CV0268

Petition for Name Change

Petitioner filed a Petition for Change of Name for four individuals, including three minors, on February 21, 2023. Proof of publication was filed on April 3, 2023. At the hearing on April 7, 2023, the court found that all requirements were met and the Petition was granted as to the three minors. The Petition for Name Change for Sara Platt was continued to this date pending filing a background check with the court, which was filed on April 27, 2023.

TENTATIVE RULING #9: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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10. PETITION OF KATRINA HOLEMAN AND ROBERT STABLER

23CV0353

Petition for Name Change

Petitioners filed a Petition for Change of Name and Order to Show Cause on January 18, 2023 on behalf of their four minor children. No proof of publication has been filed. A background check has been completed, as required by Cal. Code of Civil Procedure § 1279.5(f).

This Petition is granted pending the filing of proof of publication. Petitioner is required to publish the OSC in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure § 1277(a), with proof of publication to be filed with the court.

TENTATIVE RULING #10: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED, PENDING THE FILING OF PROOF OF PUBLICATION WITH THE COURT.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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11. PORTFOLIO RECOVERY ASSOCIATES, LLC v. STEPHEN HOWARD

22CV1344

Motion for Judgment on the Pleadings

On March 3, 2023, the court entered an Order pursuant to which certain facts were deemed admitted as a result of Defendant's failure to respond to Plaintiff's November 17, 2022 Request for Admissions. To summarize those facts: Defendant had a credit account originally issued by Synchrony Bank, which was assigned to Plaintiff and upon which the sum of \$6,263.91 was outstanding. Defendant had made payments on the account within the four years preceding September 2, 2022, but has no payments since September 2, 2022. Plaintiff has been assigned and is the current owner of all right, title and interest in the subject account, and Defendant has received a pre-legal notification from Plaintiff through the U.S. Mail.

Request for Judicial Notice

Plaintiff has requested judicial notice of the March 3, 2023, Order entered by the court pursuant to Evidence Code §453. The Order is judicially noticeable pursuant to Evidence Code § 452(d), and as such is *required* to be judicially noticed pursuant to Evidence Code § 453 so long as the opposing party is adequately noticed. Plaintiff has filed a proof of service upon the Defendant that meets this notice requirement. Accordingly, the court takes judicial notice of the March 3, 2023, Order, and of the facts therein that are deemed admitted.

Meet and Confer Requirement

Before filing a Motion for Judgment on the Pleadings, the moving party must meet and confer in person or by telephone with the party who filed the pleading that is subject to the a Motion for Judgment on the Pleadings for the purpose of determining if an agreement can be reached that resolves the claims to be raised in the Motion. Code Civ. Pro. § 439(a). A failure to meet and confer may be excused if it is caused by the opposing party's failure to respond to the meet and confer request. Code Civ. Pro. § 439(a)(3)(B).

With its Motion, the Plaintiff has filed a Declaration that documents an attempt to meet and confer prior to filing the Motion. The Declaration states that the Plaintiff could not reach the Defendant by phone because Defendant did not list a phone number on the Answer. Plaintiff also stated that it had mailed a meet and confer letter, dated March 6, 2023, to Defendant at his last known address. This Declaration meets the requirements of Code of Civil Procedure § 439(a)(3)(B).

Motion for Judgment on the Pleadings

A plaintiff may move for judgment on the pleadings if the complaint states facts sufficient to constitute a cause of action against that defendant and the answer fails to state facts sufficient to constitute a defense to the complaint. Code Civ. Pro. § 438 (c)(1)(A). The standard for granting a motion for judgment on the pleadings is essentially the same as that

applicable to a general demurrer, Burnett v. Chimney Sweep (2004) 123 Cal.App.4th 1057, 1064.

“A plaintiff’s motion for judgment on the pleadings is analogous to a plaintiff’s demurrer to an answer and is evaluated by the same standards. (See *Hardy v. Admiral Oil Co.* (1961) 56 Cal.2d 836, 840-842, 16 Cal.Rptr. 894, 366 P.2d 310; 4 Witkin, Cal. Procedure (1971) Proceedings Without Trial, § 165, pp. 2819- 2820.) The motion should be denied if the defendant’s pleadings raise a material issue or set up an affirmative matter constituting a defense; for purposes of ruling on the motion, the trial court must treat all of the defendant’s allegations as being true. (*MacIsaac v. Pozzo* (1945) 26 Cal.2d 809, 813, 161 P.2d 449.)” Allstate Ins. Co. v. Kim W. (1984) 160 Cal.App.3d 326, 330-331. However, where the defendant’s pleadings show no defense to the action, then judgment on the pleadings in favor of the plaintiff is proper. See Knoff v. City etc. of San Francisco (1969) 1 Cal.App.3d 184, 200.

Courts may consider judicially noticeable matters in the motion as well. Kapsimallis v. Allstate Ins. Co. (2002) 104 Cal.App.4th 667, 672; People ex rel. Harris v. Pac Anchor Transp., Inc. (2014) 59 Cal.4th 772, 777. “The court will take judicial notice of records such as admissions, answers to interrogatories, affidavits, and the like, when considering a demurrer, only where they contain statements of the plaintiff or his agent which are inconsistent with the allegations of the pleading before the court. The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of affidavits, declarations, depositions, and other such material which was filed on behalf of the adverse party and which purports to contradict the allegations and contentions of the plaintiff. (*Tyree v. Epstein*, 99 Cal.App.2d 361, 221 P.2d 1002.) [Footnote omitted.]” (Emphasis added.) Del E. Webb Corp. v. Structural Materials Co. (1981) 123 Cal.App.3d 593, 604-605. Therefore, only the opposing defendants’ discovery responses may be considered in ruling on a motion for judgment on the pleadings on those defendants’ answer and affirmative defenses.

In this case, it appears that the Complaint together with Defendant’s judicially noticed admissions state facts sufficient to constitute a cause of action, and the Defendant’s Answer has not stated facts sufficient to constitute a defense.

**TENTATIVE RULING #11: PLAINTIFF’S REQUEST FOR JUDICIAL NOTICE IS GRANTED.
PLAINTIFF’S MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED WITHOUT LEAVE TO
AMEND. COSTS ARE AWARDED TO PLAINTIFF PURSUANT TO CODE OF CIVIL PROCEDURE
§ 1032.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL.**

RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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12. BETTENCOURT v. WINNRESIDENTIAL CALIFORNIA

PC20210089

Petition to Confirm Contractual Arbitration Award

A Petition to Confirm an Arbitration Award, and the proof of service thereof on Multi-Housing Tax Credit Partners III, were filed with the court on February 24, 2023. The Petition states that the arbitration was conducted by the American Arbitration Association (“AAA”) pursuant to the arbitration provision contained in Section 14.1 of the First Amended and Restated Agreement of Limited Partnership (“LPA”) which governs the administration of the Placer Village Apartments, a California limited partnership (“the Partnership”).

The parties to the arbitration were Petitioner and Multi-Housing Tax Credit Partners III (“MHTCP”), a California limited partnership.

A dispute among the parties arose with respect to water damage at the Placer Village Apartments apartment complex, which resulted in litigation originally filed in this court on February 26, 2021. On March 31, 2021, MHTCP filed a demand for arbitration with the AAA to resolve the dispute, and the matter was assigned AAA Case number 01-21-002-2473. On April 30, 2021, Petitioner filed a motion with this court to stay the arbitration pending the outcome of the litigation. On May 27, 2021, the MHTCP filed a Motion to Compel Arbitration, which was granted because of the arbitration clause (Section 14.1) contained in the LPA. The arbitration was conducted September 12-16, 2022, and the arbitrator’s written decision was issued on January 26, 2023.

“Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award. Code of Civil Procedure § 1285. Pursuant to Code of Civil Procedure § 1285, Petitioner now requests that the arbitration award be confirmed and entered as a judgment against respondents.

Respondent was served by email on February 23, 2023 with the Petition, supporting documents and notice of the hearing date. Service by email is authorized pursuant to AAA’s Commercial Arbitration Rules and Mediation Procedures, Section R-4(b)(iii). There is no response to the petition in the court’s file. Therefore, the allegations of the Petition are deemed to be admitted. Code Civil Procedure § 1290.

The Petition complies with Code of Civil Procedure § 1285 in that it names as respondents all parties to the arbitration. The arbitration award was served on all parties to the arbitration on January 27, 2023, and this Petition was filed with the court on February 24, 2023, in compliance with filing deadlines set forth in Code of Civil Procedure § 1288.

“If a petition or response under this chapter is duly served and filed, the court shall confirm the award as made, whether rendered in this state or another state, unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding.” Code of Civil Procedure, § 1286.

“If an award is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action of the same jurisdictional classification; and it may be enforced like any other judgment of the court in which it is entered, in an action of the same jurisdictional classification.” (Code of Civil Procedure, § 1287.4)

Under the circumstances, it appears appropriate to grant the Petition.

TENTATIVE RULING #12: PETITIONER’S REQUEST TO CONFIRM THE ARBITRATION AWARD IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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13. RURAL COMMUNITIES UNITED v. COUNTY OF EL DORADO

PC20170536

(1) Return to Peremptory Writ of Mandamus

(2) Motion for Order Discharging Writ

Rural Communities United (“RCU”) filed an action against the El Dorado County Board of Supervisors (“County”) challenging an Environmental Impact Report (“EIR”), and this court issued a Peremptory Writ of Mandamus (“Writ”) on July 27, 2020, which the court later modified on January 25, 2021. The Writ directed the Board 1) to de-certify two conclusions contained in the EIR, 2) to add certain reports to the administrative record that were relied upon in the EIR but that had not been included in the administrative record, and 3) to prohibit the County from granting land use approvals in a certain defined geographic area. Both parties appealed the court’s decision.

The County has now filed a motion requesting the court to accept return of the Writ for two reasons: 1) the parties have entered into a Settlement Agreement, and 2) that the terms of the Writ have been fully satisfied by subsequent actions of the County. RCU does not oppose discharge of the Writ pursuant to the terms of the Settlement Agreement, but absolutely opposes discharge of the Writ based on a finding of the County’s subsequent compliance with terms of the Writ.

Requests for Judicial Notice

Respondent County requests this court to take judicial notice of nine separate items. Evidence Code § 453 requires the court to take judicial notice of any item that comes within the categories listed in Evidence Code § 452 if a party requests it. However, the items that are subject to the Request all serve to support the County’s position that the Writ should be discharged based on the County’s compliance with its terms, a position which RCU argues is outside the scope of the Settlement Agreement. The court need not take judicial notice of documents that are not necessary to its decision. Larner v. Los Angeles Doctors Hospital Associates, 168 Cal.App.4th 1291, 1297, note 2 (2008); Doe v. City of Los Angeles, 42 Cal. 4th 531 (2007). Accordingly, the Request for Judicial Notice is denied.

Stipulation to Discharge the Writ

As part of the global settlement of this case, and a related case (Rural Communities United v. County of El Dorado, Superior Court Case No. PC20210189), pursuant to a Settlement Agreement that was entered into by the parties on December 5, 2022, RCU filed an Abandonment of Appeal on March 1, 2023, the County filed an Abandonment of Appeal on February 23, 2023, and RCU has stipulated to discharge of the Writ. RCU’s statement of non-opposition to the discharge of the Writ was filed with this court on April 21, 2023. Plaintiff’s (RCU’s) non-opposition to discharge of the Writ is based on implementation of the Settlement

Agreement. RCU specifically opposes discharge of the Writ on the alternate ground offered by the County.

The County, in addition to citing to the terms of the Settlement Agreement between the parties, argues that the County's compliance with the terms of the Writ is an alternate basis for discharging the Writ.

Whether or not the County complied with applicable laws and regulations in its development of the EIR was the subject of the instant litigation. The parties have reached an agreement to terminate this litigation through a contractual resolution in the form of the Settlement Agreement. The parties' intentions are reflected in the Stipulated Judgment that has already been entered in the related case, PC20200189, which states: "The Settlement shall serve in lieu of any determination by this Court as to merits of Plaintiff's allegations in the litigation." The court declines to re-open the merits of this case when they have already been resolved by the terms of the parties' agreement.

TENTATIVE RULING #13: RESPONDENT'S REQUEST FOR JUDICIAL NOTICE IS DENIED. THE COURT DISCHARGES THE WRIT PURSUANT TO THE SETTLEMENT AGREEMENT ENTERED INTO BY THE PARTIES.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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14. CANADA TRUST CO. v. DOCKTER PC20120596

Order of Examination Hearing

A proof of service showing that Defendant was personally served on March 29, 2023 was filed with the court on April 4, 2023, in compliance with Code of Civil Procedure §708.110(d).

TENTATIVE RULING #14: THE APPEARANCE OF THE DEBTOR IS REQUIRED AT 8:30 A.M., FRIDAY, MAY 5, 2023, IN DEPARTMENT NINE.

15. WELLS FARGO BANK v. LOPEZ ET AL

PC20080672

Motion to Expunge Abstract of Judgment

Defendant requests this court to expunge an Abstract of Judgment based on Plaintiff's failure to renew the judgment within the ten-year statute of limitations. The judgment was entered in this case on September 3, 2009, and an Abstract of the Judgment was recorded as a lien against Defendant's property in Contra Costa County on October 21, 2015.

Request for Judicial Notice

Defendant requests the court to take judicial notice of the following items:

1. Plaintiff's judgment in the instant case dated September 3, 2009 and filed with this court on September 10, 2009;
2. the Abstract of Judgment issued on April 23, 2015;
3. the recordation of the Abstract of Judgment in Contra Costa County on October 21, 2015.

Pursuant to Evidence Code §§ 452(c), 452(d) and 453, the court is required to take judicial notice upon a party's request where the item in question is a record of the court or an official act such as recordation. As such, these items are all appropriately the subject of judicial notice.

Motion to Expunge Abstract of Judgment

"Upon the expiration of 10 years after the date of entry of a money judgment . . . the judgment may not be enforced." Code Civ. Pro. § 683.020(a). "Any lien created by an enforcement procedure pursuant to the judgment is extinguished." Code Civ. Pro. § 683.020(c). While a judgment creditor may renew a judgment before the ten-year period expires, Code Civ. Pro. § 683.120(a), Plaintiff in this case did not do so, and the judgment expired on September 10, 2019.

"There is no statutory procedure 'for expunging' an abstract of judgment." (*Federal Deposit Ins. Corp. v. Charlton* (1993) 17 Cal.App.4th 1066, 1070.) Nevertheless, it has been done. *Tran v. Hai Lecong*, No. B213347, 2011 WL 1288926, at *13 (Cal. Ct. App. Apr. 6, 2011)

In the case of *In re Michael S.* (2007) 147 Cal.App.4th 1443, an abstract of judgment was expunged where the amount of the judgment exceeded the party's maximum statutory liability.

In *Ellrott v. Bliss* (1983) 147 Cal.App.3d 901, the court declared the abstract of judgment a nullity where an ex-spouse attempted to create a lien against property by recording an abstract of judgment for child support under the wrong statute, and where the abstract of judgment did not contain information required to create a lien.

In Commonwealth Land Title Co. v. Kornbluth (1985) 175 Cal.App.3d 518, the appellate court found that the trial court could exercise its inherent power to correct a clerical error through an order of correction to insert a date that had been inadvertently omitted from an abstract of judgment.

This is also supported by Code of Civil Procedure § 473(d) (“Amendment of Pleadings”) which allows a court, upon motion of the injured party, or its own motion, to “correct clerical mistakes in its judgment or orders as entered,” or “on motion of either party after notice to the other party, set aside any void judgment or order.”

**TENTATIVE RULING #15: DEFENDANT’S REQUEST FOR JUDICIAL NOTICE IS GRANTED.
DEFENDANT’S MOTION TO EXPUNGE ABSTRACT OF JUDGMENT IS GRANTED.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. 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 HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.