

1. CISNEROS v. THE PERMANENTE MEDICAL GROUP, INC.

23CV0262

Petition to Compromise of Claim of a Minor

This matter involves an adult, Arturo Cisneros, who has a dispute with The Permanente Medical Group, Kaiser Foundation Hospitals and Kaiser Foundation Health Plan over his health care. Mr. Cisneros's children are included in the settlement offer in consideration for waiving any potential wrongful death claims. Mr. Cisneros and his minor children reside in Sacramento County.

Lindsay Bowman, a professional fiduciary whose offices are located in Sacramento County, is seeking appointment as guardian ad litem for the minor children for the purpose of the settlement.

None of the medical providers that are listed in the Petition are located in El Dorado County.

A parent may compromise the claims of his or her children and such compromise is only valid upon approval of the superior court of either of the following counties: the county where the minor resides at the time the petition is filed; or any county where the suit on the claim or matter could properly be brought. Probate Code § 3500(b).

A guardian ad litem may be appointed by the court in which the action or proceeding is prosecuted. Code of Civil Procedure, § 372(a). The court questions why the petitions were filed in El Dorado County where the underlying action apparently could not have been brought in El Dorado County and there is no connection between the minors or the potential cause of action and El Dorado County.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, MAY 12, 2023, IN DEPARTMENT NINE, TO DEMONSTRATE WHY VENUE IN THE EL DORADO SUPERIOR COURT IS PROPER.

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. B.D. v SCONTRINO 23CV0177

Compromise of Claim for Minor

This is a petition to compromise a minor's claim. The petition states the minor sustained neck and back injuries in an auto accident in 2019. Petitioner requests the court authorize a compromise of the minor's claim against Defendant/respondent in the gross amount of \$10,000.

The petition states the minor incurred \$2,750 in medical expenses. Copies of invoices substantiating payment of the claimed medical expenses for Dr. R. Erwin for \$1,425 and for the services of Dr. Matthew Shepard for \$1,325 are attached to the petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The petition states that the minor has fully recovered from the injuries allegedly suffered and there are no permanent injuries. A doctor's report concerning the minor's condition and prognosis of recovery is attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3).

The minor's attorney requests attorney's fees in the amount of \$2,500, which represents 25% of the gross settlement amount. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. (Local Rules of the El Dorado County Superior Court, Rule 7.955(a)(1).)

The minor's attorney also requests reimbursement for costs in the amount of \$795. Copies of invoices substantiating the claimed costs are attached to the petitions as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6). In accordance with Local Rule 7.10.12A(4) an accident investigation report has been filed with the petition.

The petitioner also requests an order to deposit money into a blocked account in the minor's behalf, in the amount of \$3,955. Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(7).

TENTATIVE RULING # 2: PURSUANT TO LOCAL RULES OF THE EL DORADO COUNTY SUPERIOR COURT, RULE 7.952(a), APPEARANCES BY THE PETITIONER AND THE MINOR ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MAY 12, 2023, IN DEPARTMENT NINE.

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3. BAXLEY FAMILY LIVING TRUST 22PR0242

Change of Venue

TENTATIVE RULING # 3: A NOTICE OF SETTLEMENT OF ENTIRE CASE HAVING BEEN FILED WITH THE COURT ON MAY 2, 2023, THIS MATTER IS DROPPED FROM THE CALENDAR.

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4. CISNEROS v. THE PERMANENTE MEDICAL GROUP, INC.

23CV0260

Petition to Compromise Claim of a Minor

This matter involves an adult, Arturo Cisneros, who has a dispute with The Permanente Medical Group, Kaiser Foundation Hospitals and Kaiser Foundation Health Plan over his health care. Mr. Cisneros's children are included in the settlement offer in consideration for waiving any potential wrongful death claims. Mr. Cisneros and his minor children reside in Sacramento County.

Lindsay Bowman, a professional fiduciary whose offices are located in Sacramento County, is seeking appointment as guardian ad litem for the minor children for the purpose of the settlement.

None of the medical providers that are listed in the Petition are located in El Dorado County.

A parent may compromise the claims of his or her children and such compromise is only valid upon approval of the superior court of either of the following counties: the county where the minor resides at the time the petition is filed; or any county where the suit on the claim or matter could properly be brought. Probate Code § 3500(b).

A guardian ad litem may be appointed by the court in which the action or proceeding is prosecuted. Code of Civil Procedure, § 372(a). The court questions why the petitions were filed in El Dorado County where the underlying action apparently could not have been brought in El Dorado County and there is no connection between the minors or the potential cause of action and El Dorado County.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, MAY 12, 2023 IN DEPARTMENT NINE, TO DEMONSTRATE WHY VENUE IN THE EL DORADO SUPERIOR COURT IS PROPER.

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5. CISNEROS v. THE PERMANENTE MEDICAL GROUP, INC.

23CV0261

Petition to Compromise Claim of a Minor

This matter involves an adult, Arturo Cisneros, who has a dispute with The Permanente Medical Group, Kaiser Foundation Hospitals and Kaiser Foundation Health Plan over his health care. Mr. Cisnero's children are included in the settlement offer in consideration for waiving any potential wrongful death claims. Mr. Cisneros and his minor children reside in Sacramento County.

Lindsay Bowman, a professional fiduciary whose offices are located in Sacramento County, is seeking appointment as guardian ad litem for the minor children for the purpose of the settlement.

None of the medical providers that are listed in the Petition are located in El Dorado County.

A parent may compromise the claims of his or her children and such compromise is only valid upon approval of the superior court of either of the following counties: the county where the minor resides at the time the petition is filed; or any county where the suit on the claim or matter could properly be brought. Probate Code § 3500(b).

A guardian ad litem may be appointed by the court in which the action or proceeding is prosecuted. Code of Civil Procedure, § 372(a). The court questions why the petitions were filed in El Dorado County where the underlying action apparently could not have been brought in El Dorado County and there is no connection between the minors or the potential cause of action and El Dorado County.

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, MAY 12, 2023, IN DEPARTMENT NINE, TO DEMONSTRATE WHY VENUE IN THE EL DORADO SUPERIOR COURT IS PROPER.

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6. CSPN LLC v. KOCH 23CV0145

Writ of Attachment

A Summons and Complaint were filed with this court on January 30, 2023. The matter was continued to allow Plaintiff to file a proof of service, which was filed with the court on April 3, 2023, along with notice of the continued hearing date.

On May 3, 2023, Defendant filed a Motion for Change of Venue to Nevada County, which is scheduled to be heard on July 7, 2023.

TENTATIVE RULING #6: THIS MATTER IS CONTINUED TO JULY 7, 2023, TO BE HEARD IN CONJUNCTION WITH THE MOTION FOR CHANGE OF VENUE FILED BY THE DEFENDANT.

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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7. FRANKLIN v. NORCAL GOLD, INC. PC20200246

Motion for Summary Judgment - Motion for Summary Adjudication

Plaintiff has filed a Complaint for fraud, intentional interference with prospective economic advantage, negligent interference with prospective economic advantage, breach of fiduciary duty, civil conspiracy and constructive trust in connection with his offer to purchase real property. Defendants have filed a Motion for Summary Judgment or in the Alternative Summary Adjudication as to all named Defendants and all causes of action in the Complaint.

Defendants Garcia, Crusha and Stephen were Norcal Gold real estate agents in Norcal Gold's Cameron Park office, El Dorado Hills office and Folsom office, respectively. Stephen was the agent representing the Plaintiff, and Garcia represented the sellers.

Plaintiff communicated an offer to purchase the property to Stephen on September 24, 2019. Garcia represents that she communicated the offer to the sellers on September 25, 2019, and that she discussed Plaintiff's offer with the sellers again on September 26, 2019. Plaintiff's Complaint alleges that in fact Garcia did not communicate his offer to the sellers, and that as a result, he lost the opportunity to purchase the property.

While Plaintiff awaited a response to his purchase offer, on September 26, 2019, another offer was received via text message to Garcia from Defendant Crusha, and on September 28, 2019, Garcia forwarded Crusha's written offer to the sellers. On September 30, 2019, a third offer to purchase the property was received. On October 2, 2019, the sellers communicated to Garcia that they accepted Crusha's offer.

Request for Judicial Notice

In connection with this Motion, Defendants have filed a Request for Judicial Notice of the Complaint on file in this case. As a record of this court, the Complaint is an appropriate subject for judicial notice. Cal. Evidence Code §§ 452, 453.

Standard of Review – Summary Judgment

A "motion for summary judgment shall be granted if all of the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers, ... and all inferences reasonably deducible from the evidence" (Code Civ. Proc., § 437c, subd. (c).) A defendant "has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant ... has met that burden, the burden shifts to the plaintiff ... to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto...." (*Id.*, subd. (o)(2).)

Parsons v. Crown Disposal Co. 15 Cal.4th 456, 464 (1997).

A trial court properly grants summary judgment when there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) “The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties’ pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute. [Citation.]” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

Eriksson v. Nunnink, 191 Cal. App. 4th 826, 847 (2011).

A defendant has met its burden of showing a cause of action has no merit if it “has shown that one or more elements of the cause of action ... cannot be established, or that there is a complete defense to that cause of action. Once the defendant ... has met that burden, the burden shifts to the plaintiff ... to show ... a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The plaintiff ... may not rely upon the mere allegations or denials of its pleading to show ... a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists” (*Id.*, subd. (o)(2); *Parsons v. Crown Disposal Co.* (1997) 15 Cal.4th 456, 464 & fn. 4 [63 Cal.Rptr.2d 291, 936 P.2d 70].)

Scheiding v. Dinwiddie Const. Co., 69 Cal. App. 4th 64, 69 (1999).

“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.)

Standard of Review – Summary Adjudication

The statute governing summary adjudication allows a party to challenge a pleading “as to one or more causes of action within an action, . . . if the party contends that the cause of action has no merit, . . . A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. Code of Civil Procedure § 437c(f)(1).

“A cause of action has no merit if [o]ne or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded.” Code of Civil Procedure § 437c(o).

Similar to summary judgment, the moving party's burden on summary adjudication is to establish evidentiary facts sufficient to prove or disprove the elements of a claim or defense. (California Code of Civil Procedure § 437c, subs.(c), (f).)

Oakland Raiders v. Nat'l Football League, 131 Cal. App. 4th 621, 629 (2005).

Cause of Action for Fraud

The elements of the tort of fraudulent misrepresentation are: (1) representation; (2) falsity; (3) knowledge of falsity; (4) intent to deceive; and (5) reliance and resulting damages (causation). (*Younan v. Equifax Inc.* (1980) 111 Cal.App.3d 498; Civ.Code, § 1709.)

Moreover, in California, every element of a cause of action for fraud must be alleged both factually and specifically, and the policy of liberal construction of pleadings will not be invoked to sustain a defective complaint. (*Hall v. Department of Adoptions* (1975) 47 Cal.App.3d 898, 904, 121 Cal.Rptr. 223.)” (Cooper v. Equity Gen. Insurance (1990) 219 Cal.App.3d 1252, 1262.) “In California, fraud must be pled specifically; general and conclusory allegations do not suffice. (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 74, 269 Cal.Rptr. 337; *Nagy v. Nagy* (1989) 210 Cal.App.3d 1262, 1268, 258 Cal.Rptr. 787; 5 Witkin, Cal.Procedure (3d ed. 1985) Pleading, § 662, pp. 111-112.) “Thus “the policy of liberal construction of the pleadings ... will not ordinarily be invoked to sustain a pleading defective in any material respect.” [Citation.] ¶] This particularity requirement necessitates pleading *facts* which show how, when, where, to whom, and by what means the representations were tendered.” (*Stansfield, supra*, 220 Cal.App.3d at p. 73, 269 Cal.Rptr. 337, italics in original.)” (Lazar v. Superior Court (1996) 12 Cal.4th 631, 645.)

Central to the fraud cause of action is whether Stephens or Garcia represented to Plaintiff that his offer had been communicated to the sellers and whether or not his offer had been in fact presented to the sellers. Complaint ¶¶ 37-39. Defendants’ Motion relies upon UF #4, 14, 15 and 39 to establish that the offer was presented. (Defendants’ Memorandum of Points and Authorities at 8:11-12; 15:18-20.) UF #4 (“On September 25, 2019, Garcia informed Stephen she spoke with one of the sellers. Stephen then told Plaintiff, Garcia spoke with one of the sellers . . .”) is disputed as to the truth of the underlying assertion. UF #14 (“On September 25, 2019 at 10:07 a.m. Garcia called Mrs. DeLuca to discuss Plaintiff’s offer.”) is disputed. UF #15 (“On September 25, 2019, at 10:21 a.m. Garcia emailed Stephen and advised she discussed the offer with one of the sellers.”) states facts that remain disputed. *See also*, UF #16 (“On September 27, 2019 at 8:03 a.m. Garcia advised Stephen she forwarded Plaintiff’s offer to the seller and intends to have a call with the sellers over the weekend to discuss the offer.”) UF #39

relates to the conveyance of Crusha's offer, not Plaintiff's offer and does not speak to whether Plaintiff's offer was conveyed to the sellers.

It appears to be established that Garcia made a call to DeLuca on September 25, 2019, at 10:07 a.m. that lasted for ten minutes. (Defendants' COE, Exh. 15.)

It appears to be established that Stephens communicated Plaintiff's offer to Garcia (UF #3), and that Stephens told Plaintiff that his offer had been presented. (UF #4.) However, there remains a material dispute of fact as to whether Plaintiff's offer was ever actually communicated to the sellers.

As to the remaining elements of fraud, the issues of knowledge and intent cannot be said to be undisputed where the falsity of the representation itself has yet to be established. Plaintiff has alleged that he relied upon Defendants to communicate his offer (Complaint ¶144), and that their failure to communicate his offer caused him damages in losing the opportunity to purchase the property. (Complaint ¶145.)

Cause Of Action for Intentional Interference with Prospective Economic Advantage

The five elements for intentional interference with prospective economic advantage are: (1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant.

Youst v. Longo 43 Cal.3d 64, 71, fn. 6 (1987).

Defendants argue that this cause of action fails on the first element, for lack of an existing economic relationship between Plaintiff and the property sellers. Defendants argue that Plaintiff's relationship with the sellers "did not precede Defendant's alleged wrongful conduct as the law requires" and was "pure speculation." Defendants' Memorandum of Points and Authorities at page 20.

This cause of action does not require that the Plaintiff be party to an existing or enforceable contract. Buckaloo v. Johnson, 14 Cal.3d 815 (1975); Zimmerman v. Bank of America, 191 Cal.App.2d 55, 57, (1961). For example, in Korea Supply Co. v. Lockheed Martin Corp., 29 Cal. 4th 1134, 63 P.3d 937 (2003) in which a disappointed bidder on a public contract was not selected because a competitor had won the contract by bribing government officials, the court found that the plaintiff, a broker for the disappointed bidder, appropriately framed its

cause of action as tortious interference with a prospective economic relationship instead of interference with contract because there was no contract at the time of the conduct at issue. Id. at 1157. However, as was highlighted in a subsequent public contracting case, Roy Allan Slurry Seal, Inc. v. Am. Asphalt S., Inc., 2 Cal. 5th 505 (2017), the Plaintiff in the Korea Supply Co. case was a broker who did have an existing relationship with the unsuccessful bidder, which was a necessary underpinning to sustain a cause of action for tortious interference with a prospective economic advantage.

The plaintiff in Roy Allen, by contrast, was merely a disappointed bidder whose competition had unfairly undercut their pricing to secure the contract award. In Roy Allen, the California Supreme Court noted that plaintiffs in that case “can plead no protectible ‘expectancy’”, citing Blank v. Kirwan, 39 Cal. 3d 311, 331 (1985), where the public entity encouraged multiple parties to compete for the contract and had broad discretion to reject all bids, and the Plaintiff had “at most a hope for an economic relationship and a desire for a future benefit.” Id. at 517, citing Blank at 331.

The case law recognizes that “the interference tort applies to interference with *existing* noncontractual relations which hold the promise of future economic advantage.” (Westside Center, supra, 42 Cal.App.4th at p. 524, 49 Cal.Rptr.2d 793, citing Blank, supra, 39 Cal.3d 311, 216 Cal.Rptr. 718, 703 P.2d 58 and Youst, supra, 43 Cal.3d 64, 233 Cal.Rptr. 294, 729 P.2d 728.) The tort's requirements “presuppose the relationship existed *at the time* of the defendant's allegedly tortious acts lest liability be imposed for actually and intentionally disrupting a relationship which has yet to arise.” (Westside Center, at p. 526, 49 Cal.Rptr.2d 793, italics added.) . . . “[T]he plaintiff's ‘expectancy’ must necessarily precede the interfering conduct.” (See, e.g., Sole Energy Co. v. Petromineral Corp. (2005) 128 Cal.App.4th 212, 243, 26 Cal.Rptr.3d 798.)

Roy Allan Slurry Seal, Inc. v. Am. Asphalt S., Inc., 2 Cal. 5th 505, 517–18 (2017).

The Plaintiff has not and cannot plead or establish facts that would satisfy the elements of this cause of action because he had no protectible economic relationship with the sellers at the time he made an offer to purchase the property.

Cause Of Action for Negligent Interference with Prospective Economic Advantage

The same analysis that applies to a cause of action for intentional interference with a prospective economic advantage defeats Plaintiff's cause of action for negligent interference with a prospective economic advantage: the alleged economic relationship is speculative and cannot satisfy the elements of the cause of action.

Cause Of Action for Breach of Fiduciary Duty

“The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach. (*Pierce v. Lyman* (1991) 1 Cal.App.4th 1093, 1101, 3 Cal.Rptr.2d 236.)” (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086.)

As with the fraud claim, the foundational issue underlying this cause of action is whether Plaintiff’s offer was in fact communicated to the sellers, which is a material fact that remains in dispute.

Cause Of Action for Civil Conspiracy

Liability for civil conspiracy generally requires three elements: (1) formation of the conspiracy (an agreement to commit wrongful acts); (2) operation of the conspiracy (commission of the wrongful acts); and (3) damage resulting from operation of the conspiracy. (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.*, supra, 7 Cal.4th at p. 511, 28 Cal.Rptr.2d 475, 869 P.2d 454; *Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1581, 47 Cal.Rptr.2d 752.)

The law requires an express or tacit agreement only to commit a civil wrong or tort, which then renders all participants “responsible ... for all damages ensuing from the wrong...” (*Citations.*) *Navarrete v. Meyer*, 237 Cal. App. 4th 1276, 1293 (2015).

In order to state a cause of action for civil conspiracy, plaintiff must allege “facts ... which show the formation and operation of a conspiracy, the wrongful act of any of the conspirators thereto and damage resulting therefrom.” (*117 Sales Corp. v. Olsen* (1978) 80 Cal.App.3d 645, 649.) The facts alleged must either show the formation of the conspiracy or support an inference of conspiracy based on “ ‘ ‘ ‘ ‘ ‘the nature of the acts done, the relations of the parties, the interests of the alleged conspirators, and other circumstances.’ “ ‘ “ (*Ibid.*)

Kapilow v. Hertz, No. B210947, 2009 WL 3193991, at *4 (Cal. Ct. App. Oct. 7, 2009)

The operative paragraphs of the Complaint are as follows:

18. The following day, on September 24, 2019, PLAINTIFF requested his agent, [STEPHEN], draft an offer to purchase the property [STEPHEN] drafted the offer and PLAINTIFF and his wife executed it the same day.
19. [STEPHEN] told PLAINTIFF that the offer would be immediately presented to Sellers that day.

20. Pursuant to the terms of the offer, Sellers had three (3) days to accept, present a counteroffer, or reject the offer with no counter.

21. Over the next several days, [STEPHEN] made multiple representations to PLAINTIFF that his offer had been presented to Sellers.

22. On or about September 25, 2019, [STEPHEN] represented that he had discussed PLAINTIFF'S offer with [GARCIA] and requested PLAINTIFF submit financial documents showing proof of funds.

* * *

32. PLAINTIFF is informed and believes, and on that basis alleges that [STEPHEN] never submitted his offer to Sellers, nor communicated PLAINTIFF's offer to Sellers in any way, to mislead Sellers into believing that there was little interest in the Property and to give [CRUSHA] an opportunity to purchase the Property for less than PLAINTIFF's offer.

35. PLAINTIFF is informed and believes, and on that basis, alleges that [GARCIA], [STEPHEN], [CRUSHA] and [REMAX] engaged in a conspiracy to ignore PLAINTIFF'S offer and purchase the Property at a distressed price to enrich themselves with secret profits.

* * *

70. Defendants willfully, intentionally, and knowingly agrees and conspired with each other to engage in the alleged wrongful conduct, including defendants' interference with PLAINTIFF's business relationship and Defendants' breaches of fiduciary duties.

Garcia first discussed the property with Crusha on September 23, 2019 at 2:47 p.m. "inquiring about access" to the property that lasted for seven minutes. Defendants' COE, Exh. 13 at 2:22-26; Defendants' COE, Exh. 15 (Garcia phone records). Garcia and Crusha engaged in two additional telephone calls at 5:53 and 5:55 p.m. on the same day, which lasted 3 and 2 minutes, respectively. Id.

Plaintiff's offer was transmitted from Stephens to Garcia on September 24, 2019, at 5:38 p.m.. Defendants' COE, Exh. 17. On September 25, 2019 at 10:07 a.m., Garcia called one of the two sellers. UF #14; Defendants' COE Exh. 15, but it is disputed whether Garcia communicated Plaintiff's offer at that time.

On September 25, 2019 at 7:03 p.m., Crusha sent a text message to Garcia that read: "Good evening Shelly have you gotten any offers or *more action on the house that I want to pay all cash for on Crystal Boulevard?*" (emphasis added). Although Garcia did not recall Crusha expressing interest as a buyer two days earlier when he called for help to access the property, Defendants' COE, Exh. 13 at 2:26-27, it could be inferred from the language of this text message ("*the house that I want to pay all cash for on Crystal Boulevard?*") that there had been previous communication between them on the subject of Crusha's interest in this property prior to 7:00 p.m. on September 25.

As stated above, the statute governing summary adjudication allows a party to challenge a pleading “as to one or more causes of action within an action, . . . if the party contends that the cause of action has no merit, . . . A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. Code of Civil Procedure § 437c(f)(1).

“A cause of action has no merit if [o]ne or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded.” Code of Civil Procedure § 437c(o).

The substance of Crusha and Garcia’s communications between September 23 and September 25, 2019, and whether Plaintiff’s offer was in fact communicated to the Sellers are both triable issues of fact that are foundational to Plaintiff’s cause of action. Therefore, it cannot be said that the Plaintiff’s cause of action for civil conspiracy has no merit as a matter of law.

Cause Of Action for Constructive Trust

Imposition of “[a] constructive trust is an equitable remedy to compel the transfer of property by one who is not justly entitled to it to one who is. [Citation.]” (*Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga* (2009) 175 Cal.App.4th 1306, 1332 [96 Cal.Rptr.3d 813]; accord, *Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 457 [61 Cal.Rptr.2d 707].) It is not “a substantive claim for relief.” (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 398, [58 Cal.Rptr.3d 516]; see *Embarcadero Mun. Improvement Dist. v. County of Santa Barbara* (2001) 88 Cal.App.4th 781, 793, 107 Cal.Rptr.2d 6 [“[a] constructive trust is not a substantive device but merely a remedy...”].)

Am. Master Lease LLC v. Idanta Partners, Ltd., 225 Cal. App. 4th 1451, 1485, (2014). See also, Davies v. Krasna, 14 Cal. 3d 502, 515 (1975).

Plaintiff’s claim for a “constructive trust” is mis-identified as a cause of action, when it should be pled as an equitable remedy.

Norcal Gold as Defendant

Defendant’s Motion argues that Norcal Gold’s potential liability is premised upon the liability of the individual Defendants. Because there remain disputed issues of material fact as to the individual Defendants, there remain disputed issues of material fact as to Norcal Gold’s potential liability as well.

TENTATIVE RULING # 7: DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IS GRANTED. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED. DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION AS TO THE SECOND CAUSE OF ACTION (INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE), THE THIRD CAUSE OF ACTION (NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE) AND THE SIXTH CAUSE OF ACTION (CONSTRUCTIVE TRUST) IS GRANTED, AS TO ALL DEFENDANTS, WITH LEAVE TO AMEND. DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION AS TO THE FIRST (FRAUD), FOURTH (BREACH OF FIDUCIARY DUTY) AND FIFTH CAUSES OF ACTION (CIVIL CONSPIRACY) IS DENIED.

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. SCHIRO v. DOWNER 21CV0265

Default Hearing – Entry of Judgment

On February 10, 2022, Plaintiff filed a Request for Entry of Default Judgment in a Quiet Title and Declaratory Relief action regarding the record title to a mobile home. Proof of service of the Summons and Complaint made on December 12, 2021, by substituted service and by mail, is on file with the court.

The mobile home had been sold pursuant to a trustee's deed of sale on July 19, 2012, and title transferred to Guild Mortgage Company. Guild Mortgage Company transferred title to the Secretary of Housing and Urban Development on May 3, 2013. Plaintiff purchased the mobile home on August 20, 2013, but later learned that title to the home had never been transferred to his name with the California Department of Housing and Community Development. Defendant Downer is the sole surviving joint tenant to the original title to the mobile home prior to the trustee's sale.

Plaintiff seeks a judicial determination that he is the present owner of the mobile home and that Defendant has no right, title or interest therein. Plaintiff also seeks attorneys' fees and costs for the suit.

The Defendant having filed no responsive pleading, default was entered on January 27, 2022. Notice of the request for entry of default was served on Defendant by mail on February 8, 2022.

In cases that are not based on contract or for the recovery of money damages,

if the defendant has been served, other than by publication, and no [responsive pleading] has been filed with the clerk of the court within the time specified in the summons, . . . the clerk, upon written application of the plaintiff, shall enter the default of the defendant. The plaintiff thereafter may apply to the court for the relief demanded in the complaint. The court shall hear the evidence offered by the plaintiff, and shall render judgment in the plaintiff's favor for that relief, not exceeding the amount stated in the complaint, . . . as appears by the evidence to be just. If the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose.

Cal. Civ. Proc. Code § 585(b).

At a hearing on January 6, 2023, this hearing date was set, and notice of the hearing date was to be given by Plaintiff's counsel. No proof of service of notice of the hearing date is on file with the court.

TENTATIVE RULING # 8: THE MATTER IS CONTINUED TO 8:30 A.M. ON JULY 7, 2023, TO ALLOW PLAINTIFF AN OPPORTUNITY TO PROVIDE NOTICE OF THE HEARING DATE TO DEFENDANT.

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 ALYSSA HARARA 23CV0183

Petition for Name Change

Petitioner filed a Petition for Change of Name and Order to Show Cause (OSC) on February 6, 2023. A background check was filed on April 18, 2023. However, it does not appear the OSC has been published in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure Section 1277(a).

TENTATIVE RULING # 9: THE PETITION IS GRANTED PENDING 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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10. NAME CHANGE OF BRET MERRITT MEEK 22CV1603

Petition for Name Change

Petitioner filed a Petition for Change of Name and Order to Show Cause on November 10, 2022. The Proof of Publication was filed on March 20, 2023. A background check was filed on May 2, 2023.

TENTATIVE RULING # 10: 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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11. NAME CHANGE OF DOMINICK BARRESE 23CV0310

Petition For Name Change

Petitioner filed a Petition for Change of Name and Order to Show Cause on February 17, 2023. The Proof of Publication was filed on April 24, 2023. A background check was filed on March 28, 2023.

TENTATIVE RULING # 11: 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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12. GENASCI v. MACRAE ET AL SC20180229

Substitution of Party by Successor in Interest

Plaintiff Patricia Genasci obtained a default judgment against Defendant Macrae on January 7, 2021. On May 28, 2021 Genasci filed a new Complaint (SC20210094) against Macrae and Denzler for fraudulent transfer. Plaintiff died on March 5, 2022.

Petitioner is the successor trustee of the Richard Genasci and Patricia Genasci Revocable Trust and requests that she be substituted as Plaintiff and judgment creditor for this case pursuant to Code of Civil Procedure § 377.31. Petitioner has filed a supporting affidavit in compliance with the requirements of Code of Civil Procedure § 377.32.

TENTATIVE RULING # 12: 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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13. LIGHT v. CAMERON PARK SENIOR LIVING LLC

22CV0135

Motion to Compel

Plaintiffs filed two Motions to Compel responses to discovery on March 27, 2023, one of which is set for hearing on May 12, 2023, and the other which is set for hearing on May 19, 2023.

TENTATIVE RULING #13: THIS MATTER IS CONTINUED TO MAY 19, 2023.

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. TD BANK USA v. BEATTY PCL20200109

Motion for Judgment on the Pleadings

This action was filed on February 7, 2020, to collect a debt in the amount of \$2,194.73. Plaintiff moves for judgment on the pleadings pursuant to Code of Civil Procedure § 438 on the grounds that the Complaint states facts sufficient to constitute a cause of action against the Defendant and the Answer does not state facts sufficient to constitute a defense to the Complaint.

In response to Plaintiff's Complaint for account stated, Defendant's Answer, filed on Judicial Council form PLD-C-010 admits all statements in the Complaint, except:

1. Defendant denies due to lack of information or belief the allegations in paragraphs 4, 5, and 7, which allege that (¶4) Defendants were the agent, servant, employee, or employer and acted in the capacity and as agent of each other, and that Defendants are jointly and severally liable in that the actions were taken for the benefit of Defendant's separate and/or community property; (¶5) \$2,194.73 is due and owing as a past due balance on a credit card opened and used by Defendants for value received from Plaintiff with certain original account number, that the amount due is the result of transactions that occurred on the account, and (¶7) the last payment was made on January 9, 2019.
2. The Answer also denies as false paragraphs 6 and 8 of the Complaint, which allege that (¶6) Plaintiff is the sole owner of the debt at issue and before commencement of the action, and that (¶8) Plaintiff informed Defendant in writing that Plaintiff intended to file this action and it could result in judgment against Defendant. In response to paragraphs 6 and 8 the Answer states:
 6. Adrienne was still married when this debt accrued and this debt is shared with another person.
 8. Adrienne didn't receive anything in writing about this action or a judgment.

The Answer further lists "divorce/separation hardship" as an affirmative defense.

On August 2, 2021, Plaintiff filed a Motion for Judgment on the Pleadings, to which Defendant filed no opposition. The matter was called for hearing on September 24, 2021, and was taken off calendar for lack of prosecution when no party appeared. The tentative ruling for the hearing noted that Plaintiff had sent notice of the hearing to an incorrect address. The tentative ruling further concluded that "defendant's answer sufficiently denies the material allegations of the complaint."

Plaintiff has now filed a second Motion for Judgment on the Pleadings on January 30, 2023, along with a proof of service of this hearing by mail to Defendant.

A motion by plaintiff for judgment on the pleadings is in the nature of a general demurrer, and the motion must be denied if the defendant's pleadings raise a material issue or set up affirmative matter constituting a defense. (*Cohn v. Klein*, 209 Cal. 421, 424 [287 P. 459]; *Cass v. Rochester*, 174 Cal. 358, 360 [163 P. 212]; *Neale v. Morrow*, 174 Cal. 49, 54 [161 P. 1165].) (2) For the purpose of ruling on the motion, the trial court must treat all of defendant's allegations as being true, . . .”

Maclsaac v. Pozzo, 26 Cal. 2d 809, 812–13, (1945)

Defendant’s Answer has denied the central allegation of the Complaint, namely the allegation in paragraph 5 of the Complaint that \$2,194.73 is past due and owing from a credit card account. Accordingly, a judgment on the pleadings is not warranted in this case.

TENTATIVE RULING #14: PLAINTIFF’S MOTION FOR JUDGMENT ON THE PLEADINGS IS DENIED.

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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15. WESTERN EQUIPMENT FINANCE v. CURTIS 23CV0018

Writ of Possession

On January 6, 2023, Plaintiff filed a Complaint to recover possession of a 2011 Freightliner Cascadia 4,000 Gallon Vacuum Tank Truck (VIN #1FUJGEDVXBSAX7139) (“the Property”) from Defendant. On January 27, 2023, Plaintiff also filed an Application for Writ of Possession after Hearing (Judicial Council Form CD-100) pursuant to Code of Civil Procedure §§ 512.010 *et seq.* Defendant filed no responsive pleadings, and default was entered on March 24, 2023.

The Defendant was served with the Summons and Complaint, a Notice of Application and Hearing, and a copy of the application via personal service on February 9, 2023, and proof of service was filed with the court on February 16, 2023. The Proof of Service complies with all requirements of Code of Civil Procedure § 512.030.

The Notice of Hearing, (Judicial Council Form CD-110) complies with all requirements of Code of Civil Procedure § 512.040.

At the hearing, based upon the evidence presented to the court and in accordance with Code of Civil Procedure § 512.060, the court will issue a writ if it finds that (1) the Plaintiff has established the probable validity of the Plaintiff’s claim to the Property and (2) that the Plaintiff has satisfied the undertaking requirements of Code of Civil Procedure § 512.010.

Plaintiff has requested that the undertaking requirement be waived in accordance with Code of Civil procedure § 512.010(b) because Defendant has no equity in the Property. Plaintiff also requests the court to issue an order directing Defendant to transfer possession of the Property pursuant to § 512.070.

With its application, Plaintiff has filed documents including:

1. Declaration of Jackie Kirk (“Declaration”) that authenticates the exhibits attached to the Declaration, describes the loan terms and Defendant’s default on the loan, describes Plaintiff’s attempts to repossess the Property, and establishes the probable current location of the property.
2. A copy of the Master Equipment Financing Agreement, dated May 29, 2019 (Declaration, Exhibit 1)
3. A copy of the certificate of title for the Property (Declaration, Exhibit 2)
4. Documentation of the estimated value of the Property (Declaration, Exhibit 3)

TENTATIVE RULING #15: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, MAY 12, 2023, IN DEPARTMENT NINE, FOR A HEARING ON THE WRIT OF POSSESSION PURSUANT TO CODE OF CIVIL PROCEDURE § 512.050.

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.