

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, November 6, 2024, 3:00 p.m.
Courtroom 16 –Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa**

**TO JOIN “ZOOM” ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359**

<https://sonomacourt-org.zoomgov.com/j/1614606380?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09>

**TO JOIN “ZOOM” BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)**

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6729**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing. Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. 24CV00586, Clifton v Christopherson

The Court recuses itself in this matter. Matter is reassigned to department 18/Honorable Christopher M. Honigsberg. Notice of reassignment and reset hearings to be served via mail.

2. 24CV03046, Brown v Young

Defendant Sam R. Young (“Defendant”) moves for an order compelling Plaintiff Cody Brown (“Plaintiff”) to arbitrate the claims arising out of a partnership agreement and for a stay of this action pending completion of arbitration.

In Plaintiff’s opposition, he requests a continuance of this matter for 30 days as he is consulting with bankruptcy counsel and may file for bankruptcy.

Based upon Plaintiff’s request, the hearing on this motion is **CONTINUED to the next available court date of February 5, 2025, at 3:00 p.m., in Department 16.**

3. 24CV00868, Citibank v Law

Plaintiff Citibank, N.A. (“Plaintiff”) moves pursuant to CCP section 2023.010, et seq. and 2033.280 for an order deeming admitted the truth of facts stated in Plaintiff’s Request for Admissions, Set One, propounded on Defendant Melanie Law (“Defendant”).

Defendant was served with Plaintiff’s Request for Admissions, Set One, on April 18, 2024. (Carr decl., ¶2.) As of the date of Plaintiff’s counsel’s declaration, no responses have been received. (*Id.*, ¶3.) ***Therefore, unless Defendant Melanie Law serves Plaintiff with verified responses, without objections, prior to the hearing on this motion, the motion WILL BE GRANTED and Plaintiff’s Requests for Admissions, Set One, will be deemed admitted.***

Plaintiff’s counsel is directed to submit a written order to the court consistent with this ruling.

4. 24CV02197, Ravaglioli v Ravaglioli

Defendants Maria Ravaglioli, Raffaella Silva, and Douglas Silva (“Defendants”) move pursuant to CCP section 405.30 et seq. for an order expunging the Notice of Pending Action (Lis Pendens) and Amended Notice of Pending Action (Lis Pendens) recorded by Plaintiff Edmondo Ravaglioli (“Plaintiff”) in conjunction with this action. Defendants request attorney fees pursuant to CCP section 405.38. **The motion is GRANTED.**

1. Allegations

On April 8, 2024, Plaintiff filed a complaint against Defendants for 1) Conversion; 2) Constructive Trust; 3) Equitable Lien; and 4) Foreclosure Upon Equitable Lien. Plaintiff alleges his parents promised that if he built a home on their property, he could live in that home and that he would thereafter inherit the property. Plaintiff alleges that in reliance on this promise, he built and occupied a home on the property. Plaintiff also alleges he performed improvements to the original residence including a kitchen, a two-car garage, an attached shop, a carport, a four-car garage, a pool, a bathroom, fencing, a driveway, a well, a septic system, and landscaping; and that he performed all maintenance for the property. Plaintiff alleges that in 2016 he began occupying both the main and secondary residences while completing construction. He alleges that in 2021 Defendants began denying Plaintiff access to the property. Thereafter, around May 2, 2022, defendants Mr. and Mrs. Silva began acting as the apparent agents of Mrs. Ravaglioli, unduly influencing her to sell the property and use the proceeds to purchase real property out-of-state. Plaintiff requests, in part, a constructive trust and an equitable lien on the property and a judicial decree foreclosing upon said lien.

2. Defendants’ arguments

Defendants argue that Plaintiff’s allegations do not amount to a real property claim because Plaintiff does not seek to have title or possession of real property transferred to him. Defendants also argue that Plaintiff’s allegations are barred by the statute of limitations and the equitable doctrine of laches; and, that the nature and value of the “improvements” is dubious.

a. Real Property Claim

“‘Real property claim’ means the cause or causes of action in a pleading which would, if meritorious, affect (a) title to, or the right to possession of, specific real property or (b) the use of an easement identified in the pleading, other than an easement obtained pursuant to statute by any regulated public utility.” (CCP section 405.4.)

i. Cause of Action for Conversion

The tort of conversion does not apply to real property. (*Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1295.)

ii. Causes of Action for Constructive Trust, Equitable Lien, and Foreclosure

Each of these causes of action alleges that Defendants retain the value of, and would be unjustly enriched by, Plaintiff’s interest in the property, including the value of Plaintiff’s personal property, the improvements and building of the secondary residence, money, and/or other assets collected from the property. Plaintiff alleges he possesses no ready, convenient, or effective remedy at law to obtain payment to which he is due and owed. As such, Plaintiff is suing for the value of the alleged loss of his personal property and the improvements made to the property. Plaintiff has not alleged that he is entitled to title or possession of the property. (See *Shoker v. Superior Ct. of Alameda County* (2022) 81 Cal. App. 5th 271, 278.)

3. Opposition

In opposition, Plaintiff argues that California courts have consistently recognized that equitable liens and constructive trusts constitute real property claims when they are based on contributions that directly affect the property in question. Plaintiff cites Civ. Code § 2224 and *Estate of Yates* (1994) 25 Cal.App.4th 511, 522.

Civil Code section 2224 defines a “wrongful act” as “[o]ne who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he or she has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.” It is not clear how this statute supports Plaintiff’s argument.

Estate of Yates involved the transfer of title in real property. The trial court set aside a nonjudicial foreclosure on real property that had transferred the real property to a new owner. The appellate court upheld the trial court’s order that title to the real property should be transferred to the public administrator. That case does not hold that any case involving an equitable lien or a constructive trust constitutes a real property claim.

Plaintiff further argues that his fourth cause of action for foreclosure on the equitable lien directly impacts title to the Magnolia property and provides Plaintiff with a means of recovering the value of his labor and investment. Plaintiff cites *Stewart v. Am. Mortgage Co.* (1938) 29 Cal.App.2d 69, 74 arguing that the California Supreme Court has held that foreclosure upon an equitable lien constitutes a real property claim, as it results in a forced sale of the property to satisfy the lien. This court could not find a case titled *Stewart v. Am. Mortgage Co.* The citation is for the case *Brush v. Big Bear Lake Tavern*.

In *Brush v. Big Bear Lake Tavern*, the plaintiffs characterized their causes of action as being for an “action to declare a trust, for an accounting and injunction, and for general declaratory relief, under Section 1060, C. C. P.” (*Brush v. Big Bear Lake Tavern* (1938) 29 Cal.App.2d 69, 70.) The appellate court concluded that the plaintiffs were also attempting to allege, in part, an additional cause of action for imposition of a trust on real property stemming from the use of money belonging to an estate to purchase real property. (*Id.*, at pg. 71.) The demurrer to the complaint was sustained. (*Id.*, at 72.) This case does not support Plaintiff’s argument.

The imposition of a constructive trust would require the Defendants to convey to Plaintiff the share of legal title Plaintiff would have acquired if Defendants had not breached their alleged promise to Plaintiff. However, under the circumstances alleged in the complaint, Plaintiff should not be allowed to maintain a lis pendens as, looking to the substance of the dispute, there are no allegations that would allow Plaintiff to obtain title to, or possession of, the Magnolia property. (See *BGJ Associates, LLC v. Superior Court* (1999) 75 Cal.App.4th 952.)

It is not enough that an action merely relates to real property. In making a determination on whether to expunge a lis pendens, the court must engage in a demurrer-like analysis. “‘Rather than analyzing whether the pleading states any claim at all, as on a general demurrer, the court must undertake the more limited analysis of whether the pleading states a real property claim.’ [Citation.] Review ‘involves only a review of the adequacy of the pleading and normally should not involve evidence from either side, other than possibly that which may be judicially noticed as on a demurrer.’ [Citation.] Therefore, review of an expungement order under section 405.31 is limited to whether a real property claim has been properly pled by the claimant. [Citation.]” (*Campbell v. Superior Court* (2005) 132 Cal.App.4th 904, 911, citing *Kirkeby v. Superior Court* (2004) 33 Cal.4th 642, 647–648.)

A request for the imposition of an equitable lien does not support the recording of a lis pendens. (*Campbell, supra*, at pg. 912.) The majority of courts have concluded that a claim that seeks an interest in real property merely for the purpose of securing a money damage judgment does not support the recording of a lis pendens. (*Ibid.*)

Here, there is no allegation in the complaint that Plaintiff has the right to title or possession of the property. Moreover, in SCV-272878, *Ravaglioli v. Ravaglioli*, the court signed a stipulation between Mrs. Ravaglioli and Plaintiff which notes that a temporary restraining order was issued on March 22, 2023, prohibiting Plaintiff from contact with Ms. Ravaglioli and ordering him to stay away from her and the Magnolia property. (Defendants’ request for judicial notice, Exhibit F.) That order only allowed Plaintiff a brief window of time to visit the property to retrieve his personal belongings. (*Ibid.*) After retrieval of Plaintiff’s personal property, Plaintiff agreed, and it was ordered, that he would not return to the property without the written permission of Mrs. Ravaglioli. (*Ibid.*) Finding that Plaintiff had any right of title or possession of the property would contradict this order.

4. Objections

In reply, Defendants filed objections regarding medical records provided by Plaintiff in opposition. These records are irrelevant to the issue at hand. The objection is sustained.

5. Attorney Fees

Defendants request attorney fees pursuant to CCP section 405.38, which states: “The court shall direct that the party prevailing on any motion under this chapter be awarded the reasonable attorney's fees and costs of making or opposing the motion unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust.”

Defendants’ attorney states that he has spent approximately twelve hours on this motion. (Coryell decl., ¶2.) He is a 2008 graduate of the University of San Francisco School of Law. (*Ibid.*) As his billing rate is \$425 per hour, Defendants have incurred \$5,100.00 in attorney fees on the motion. (*Ibid.*) In his reply declaration he states he spent five hours working on the reply, causing Defendants to incur another \$2,125.00 in attorney fees. (Coryell Reply decl., ¶2.) Plaintiff has not argued that these fees are unreasonable.

6. Conclusion and Order

The motion is GRANTED. Plaintiff’s action is not a “real property claim” as it will have no effect on title to, or possession of, the Magnolia property. As the complaint fails to allege a real property claim, the court does not need to address Defendants’ remaining arguments. Attorney fees are granted in the amount of \$7,225.00, plus the filing fee of \$60, for a total of \$7,285.00.

Defendants’ counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

5. 24CV00852, Looney v Bistro 7, LLC

This matter is on calendar for the motion of Plaintiff Gary E. Looney, dba Collectronics of California (“Plaintiff”) for an order compelling Defendants Bistro 7, LLC, dba Bistro 7, and Roger Pawson, individually as personal guarantor of Bistro 7, LLC (“Defendants”), to furnish responses to Plaintiff’s First Set of Post Judgment Interrogatories and Plaintiff’s Post Judgment Demand for Production of Documents and Tangible Things. Plaintiff requests sanctions in the amount of \$60. **The motion is GRANTED. Defendant is ordered to provide responses, without objections, to Plaintiff’s discovery requests and pay sanctions within 30 days of this order.**

On May 5, 2024, Plaintiff obtained a judgment against Defendants in the amount of \$5,638.77. On June 11, 2024, Plaintiff served Defendants with form interrogatories and a request for production of documents. (Looney Decl. ¶1, Ex. A.) As of the date of the motion, no responses have been provided. (*Id.*, at ¶¶2, 3.)

The motion is GRANTED. Plaintiff is directed to submit a written order to the Court consistent with this tentative ruling.

6. SCV-272535, Banuelos v American Honda Motor Co. Inc

Plaintiff Luis Banuelos (“Plaintiff”) moves pursuant to CCP section 2031.320 for an order compelling Defendant American Honda Motor Co., Inc. (“Defendant”) to comply with this court’s July 24, 2024 order. Plaintiff requests sanctions in the amount of \$2,185.00 against Defendant and

its counsel of record, Melson Mullins Riley & Scarborough LLP, for the willful and intentional failure to comply and for abuse of the discovery process. **The motion is GRANTED. Sanctions are granted against Defendant and its counsel of record, Melson Mullins Riley & Scarborough LLP, in the amount of \$910.00.**

On July 24, 2024, this court heard Plaintiff's motion to compel Defendant to produce its person most qualified and custodian of records for deposition in accordance with CCP section 2025.230. This court granted the motion and directed the parties to meet and confer to determine a date for the deposition, ordering the deposition to take place within 20 days of the order.

On August 9, 2024, Defendant produced witness Mario A. Muniz as its PMQ witness for deposition. (Tran decl., ¶6.) At the outset of the deposition, Defendant's counsel confirmed that Mr. Muniz was not being produced as Defendant's PMQ witness for category numbers 1-28, 52, and 53, and that confidential documents were not being produced. (*Id.*, ¶¶6-8, Exhibit B.) Later in the deposition, Mr. Muniz agreed that he was not qualified to testify on behalf of Defendant with respect to topic numbers 38, 46, 48, 49, 50. (*Id.*, Exhibit B.)

Defendant did not produce certain documents prior to, or at, the deposition as it asserted the documents are confidential and Plaintiff's counsel had not entered into a protective order with Defendant. (*Id.*, pg. 13.) Plaintiff's counsel stated his opinion that any documents relied upon by Mr. Muniz in preparation for the deposition needed to be produced at the beginning of the deposition without a protective order. (*Id.*, pg. 14.)

On August 14, 2024, Plaintiff's counsel requested that Defendant provide a date for a deposition of Defendant's PMQ for the remaining categories of issues. (*Id.*, ¶7, Exhibit C.) Counsel discussed the issue on August 21, 2024. (*Ibid.*) Plaintiff's counsel states that Defendant's counsel has not provided any dates certain for the remaining categories at issue. (*Id.*, ¶¶7, 8.)

The motion is GRANTED. Defendant was ordered to provide a date for the deposition of its PMQ for the 53 issues and to produce the requested documents within 20 days of this court's prior order. Defendant has not fully complied with this order. Therefore, this motion is warranted, as are sanctions. Plaintiff's counsel spent 2 hours on this motion. (Tran decl., ¶9.a.) The filing fee was \$60. No opposition has been filed. Therefore, sanctions are granted against Defendant and its counsel of record in the amount of \$910.00.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

7. 24CV02707, Dixon v Sonoma County Sheriff's Department

Specially appearing Defendants Sonoma County Sheriff's Office (erroneously sued as Sonoma County Sheriff's Department) and former sheriff Mark Essick move to quash service of summons and proof of service filed on April 19, 2024 and August 28, 2024 on the grounds of improper service. **The motion is GRANTED.**

Plaintiff Robert Dixon (“Plaintiff”) filed his complaint on April 19, 2024 against defendants Sonoma County Sheriff’s Department, former sheriff Mark Essick, and DOE 1. Summons were issued for Sonoma County Sheriff’s Department and for DOE 1.

On August 28, 2024, Plaintiff Robert Dixon (“Plaintiff”) filed proof of service of the summons and complaint on the Sonoma County Sheriff’s Office, identified in the proof of service as the Sonoma County Sheriff’s Department. The person listed as being served is Sarahi Robledo, Badge #2714. The document states that she is authorized to accept service.

With regards to Mark Essick, no summons was issued for him. Therefore, there could be no service of summons. In addition, Sarahi Robledo states that she has not been authorized to accept service of summons and complaint on anyone’s behalf. (Robledo decl., ¶4.)

With regard to the Sonoma County Sheriff’s Office, Robledo was not authorized to accept service on its behalf. (*Ibid.*) In addition, a summons may be served on a public entity by delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body.” (CCP section 416.50(a).) Sarai Robledo who was served with the summons is a Community Services Officer, not the clerk, secretary, president, presiding officer, or other head of the sheriff’s office. (Robledo decl., ¶¶1, 2.)

The motion is GRANTED. Proof of service of summons filed on August 28, 2024, is hereby quashed.

Defendants’ counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

8. 24CV02593, Looney v DM007, Inc

Plaintiff Gary E. Looney, dba Collectronics of California, moves to strike the answer filed by defendant DM007, Inc., dba Santos Liquors (“Defendant”). The motion was continued to this calendar to allow Plaintiff to file a meet and confer declaration.

On May 7, 2024, Plaintiff filed a collections action against Defendant and Sunny Y. Cho, aka Sunny Yoo, individually as personal guarantor of Defendant. On June 14, 2024, Defendant filed an answer. The answer was filed on behalf of Defendant who is a corporate entity. No attorney is listed on the answer.

A corporation cannot represent itself in court, either in propria persona or through an officer or agent who is not an attorney. (*Merco Constr. Engineers, Inc. v. Municipal Court* (1978) 21 Cal.3d 724, 729.)

Defendant has not filed opposition.

The motion is GRANTED. Plaintiff’s counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.