

# Superior Court of California County of San Benito



Gil Solorio  
Court Executive Officer

## **Tentative Decisions for November 4, 2021**

**Courtroom #1: Judge J. Omar Rodriguez**

### **CU-19-00201 Lee, et al. v. Cho, et al.**

The Motion to Set Aside is GRANTED. Pursuant to California Code of Civil Procedure section 473, a court is authorized to exercise its equitable powers to vacate the default if entry of default was the result of a party's mistake, inadvertence, surprise, or neglect and if that error was excusable. (*Zamora v. Clayborn Contracting Grp.* (2002) 28 Cal.4<sup>th</sup> 249, 258.) An error is excusable if the error might have been made by a reasonably prudent person under the same or similar circumstances. (*Ibid.*) Moreover, the law strongly favors trial and disposition on the merits. (*Huh v. Wang* (2007) 158 Cal.App.4<sup>th</sup> 1406, 1419.)

Here, the court is satisfied with the evidence supporting the moving parties' contention that their actions related to this case were impacted by the difficulty in communicating with attorney Andrew Dai because of the language barrier. Adding to this confusion was the recent Covid-19 shelter-in-place orders, which required many businesses to close temporarily, which the moving parties mistakenly believed also required law firms to close temporarily. A responsive pleading to the complaint must be filed no later than 10 days after service of this order.

### **CU-21-00122 Trinity Financial Services, LLC v. Gutierrez, et al.**

The Defendant's Demurrer is OVERRULED.

A plaintiff's complaint need only meet fact-pleading requirements: it must contain a statement of facts constituting the cause of action, in ordinary and concise language (Cal. Civ. Proc. Section 425.10(a)(1)), and should allege ultimate facts that, as a whole,

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apprise the defendant of the factual basis of the claim. (*Navarrete v. Meyer* (2015) 237 Cal.App.4<sup>th</sup> 1276, 1284.) Less specificity in pleading the facts in the complaint is permitted when the defendant may be assumed to have knowledge of the facts at least equal, if not superior, to that possessed by the plaintiff. (*Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4<sup>th</sup>, 221, 236.)

A demurrer shall be overruled if the allegations of the complaint adequately state a cause of action under any legal theory. (*Cellular Plus, Inc. v. Superior Court* (1993) 14 Cal.App.4<sup>th</sup> 1224, 1231.) A complaint survives a demurrer when it states facts disclosing some right to relief. (*Michaelian v. State Compl. Ins. Fund* (1996) 50 Cal.App.4<sup>th</sup> 1093, 1105.)

Here, Plaintiff has adequately pled the four causes of action.

a. Declaratory Relief

“A complaint for declaratory relief is legally sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the parties under a written instrument or with respect to property and requests that the rights and duties of the parties be adjudged by the court.” (*Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4<sup>th</sup> 592, 606, quoting *Wellenkamp v. Bank of America* (1978) 21 Cal. 3d 943, 947.)

Here, the Complaint alleges that Plaintiff contends, and Defendant denies, that Plaintiff has a valid and enforceable lien securing the repayment of Plaintiff’s Note in the original amount of \$35,000. (Compl. ¶14.)

b. Imposition of Equitable Lien

Equity will create a lien on property where it is necessary to accomplish substantial justice and protect creditors. (*Grappo v. Coventry Financial Corp.* (1991) 235 Cal.App.3d 496, 509.) Courts will construe the existence of an equitable lien where the parties have clearly intended to make real property security for an obligation and where parties have erroneously created a defect. (*Ibid.*)

Here, the Complaint alleges that Gutierrez executed a promissory note and that by the terms of the note, the parties intended for the loan to be a lien against the subject property. (Compl. ¶19-20.) The Complaint also alleges that no deed of trust was ever recorded against title to the subject property, which is why Plaintiff is seeking to an

equitable lien against the subject property to fulfill the intentions of the parties. (Compl. ¶14. 21.)

c. Judicial Foreclosure of Equitable Lien

An equitable lien usually operates like any other lien in that if the defendant does not pay the amount due, the plaintiff as lienholder may foreclose on the property standing as security for the debt. (*Kaiser Indus. Corp. v Taylor* (1971) 17 Cal.App.3d 346, 353.)

Here, Plaintiff has alleged the elements necessary to state a claim for the imposition of an equitable lien. Plaintiff also contends that Defendant defaulted on the payments under the note and that Plaintiff is entitled to foreclosure if the loan balance was not paid. (See Compl. ¶24, Ex. 4.)

d. Breach of Contract

The Complaint states a cause of action for breach of contract. The elements of a breach of contract are: the existence of a contract; plaintiff's performance of the contract or excuse for nonperformance; defendant's breach; and damages. (*Lortz v. Connell* (1969) 273 Cal.App.2d 286, 290.) The Complaint alleges that Defendant executed a promissory note (Compl. ¶10, Ex. 4), that Defendant breached the contract by failing to make payment (Compl. ¶¶ 13, 29, 31.), and that Plaintiff has been damaged by Defendants breach. (Compl. ¶ 30, 31.) While not explicit, the Complaint makes references and allude to the \$35,000 loan actually being provided to Defendant. (Compl. ¶ 10, 13, 24, 31.)

e. Statute of Limitations

The complaint is not time-barred. As Plaintiff points out, the contract at issue is payable in installments and "the cause of action on each installment accrues on the day following the date the installment is due." (*White v. Moriarty* (1993) 15 Cal.App.4<sup>th</sup> 1290, 1299.) Because the facts in the Complaint allege defaults in installment payments that fall within the four-year statute of limitations period, the action is not time-barred.

f. Verification of Complaint

Plaintiff has not brought a cause of action that requires the complaint to be verified. (See Code of Civ. Proc. §§761.020, 770.010 et seq.) Therefore, the complaint does not need to be verified.

The Motion Pursuant to CCP Section 1030 is GRANTED. Trinity is required to post an undertaking or a bond in the amount of \$35,000.00 within 30 days from service of this order.

**PR-21-00015 Estate of James Edward Adam**

No supplement has been filed addressing the deficiencies identified by the Court in its October 13, 2021 tentative ruling. Since that time, an Objection of Executor and Petition for Final Distribution of the Estate and Petition to Compel Account has been filed. The Court now orders Petitioner Joseph Louis Adams to file and serve an accounting pursuant to Probate Code Sections 10950 and 10954(c)(2) by January 3, 2022.

This hearing is continued to January 20, 2022.

**PR-21-00076 Estate of Timothy Francis Ostoja**

The Petition is APPROVED. Dana Rose Serpa-Ostoja is appointed administrator. Bond is waived. Lucia Areias is appointed as referee. Full authority is granted to administer the estate under the Independent Administration of Estates Act.

Petitioner is to file an Inventory and Appraisal within four months of issuance of letters (Prob. Code section 8800(b)) and either a petition for an order for final distribution of the estate or a report of status of administration within the timeframe set out in Probate Code section 12200.

The matter is set on the May 5, 2022 at 1:30 p.m. for status of estate or final account and distribution. No appearances at the hearing will be required if the court determines that administration of the estate is timely proceeding, or good cause is shown why more time is required.

**END OF TENTATIVE RULINGS**