1. CURTIS JOHNSON v. KENT JOHNSON, SC20180141

OSC Re: Sanctions

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, NOVEMBER 3, 2023, IN DEPARTMENT FOUR.

2. SUWAIDAN v. EL DORADO COUNTY, ET AL., 23CV1081

Demurrer

Pending before the court is defendant City of South Lake Tahoe's ("defendant") demurrer to plaintiff's Complaint.

1. Background

This case arises from an incident on October 18, 2022, in which plaintiff alleges she tripped and fell on a pothole while walking across a crosswalk "located at/near 1001 Heavenly Village Way, in the [C]ity of South Lake Tahoe," and sustained injuries. (Pltf.'s Compl., ¶¶ 1–3.)

Plaintiff alleges she filed a government claim with the City on November 11, 2022. (Pltf.'s Comp., ¶ 7.) The government claim form states that the location of the subject incident is "Crosswalk – 1001 Lake Tahoe Blvd[.], South Lake Tahoe." (Request for Judicial Notice ("RJN"), Ex. A.)

Plaintiff's Complaint alleges two causes of action against the City: (1) negligence; and (2) premises liability. Plaintiff's Complaint states that the subject incident actually occurred at or near 1001 Heavenly Village Way, South Lake Tahoe. (Pltf.'s Compl., ¶ 1.) This location is approximately 7.3 miles away from the location listed in plaintiff's government claim form. (See RJN, Exs. A & C.)

2. Requests for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (h), defendant's request for judicial notice of Exhibit C (Google Maps directional result printout showing the distance and directions from 1001 Lake Tahoe Boulevard to 1001 Heavenly Village Way) is granted. Defendant's request for judicial notice of Exhibit A (liability claim form) is also granted for the purpose of showing what notice plaintiff gave the City related to the content of plaintiff's government claim.

Defendant's requests for judicial notice of Exhibits B (rejection letter) and D (incident report) are denied.

3. Standard of Review

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank*, *supra*, 39 Cal.3d at p. 318.)

4. Discussion

Defendant argues that its demurrer should be sustained because (1) plaintiff failed to satisfy the notice requirement under Government Code section 945.4 where she included the wrong incident location (Demurrer at 4:18–27); and (2) there is no governmental tort liability for common law negligence. (Demurrer at 7:26–28.)

The Government Claims Act "requires that 'all claims for money or damages against local public entities' be presented to the responsible public entity before a lawsuit is filed." (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 734 (2007) [quoting Gov. Code, § 905].) If a plaintiff fails to timely present a claim to the public entity, she may not bring a lawsuit against that entity. (See Gov. Code, §§ 945.4, 911.2; *City of Stockton*, *supra*, 42 Cal.4th at p. 734 ["Failure to present a timely claim bars suit against the entity."].)

"Where a claimant has attempted to comply with the claim requirements but the claim is deficient in some way, the doctrine of substantial compliance may validate the claim 'if it substantially complies with all of the statutory requirements … even though it is technically deficient in one or more particulars.' " (*Connelly v. County of Fresno* (2006)

146 Cal.App.4th 29, 38.) "The test for substantial compliance is whether the face of the filed claim discloses sufficient information to enable the public entity to make an adequate investigation of the claim's merits and settle it without the expense of litigation." (*Id*.)

In November 2022, plaintiff submitted a liability claim form to defendant under the Government Claims Act for negligence and premises liability. In the claim form, plaintiff identifies the place of incident as "Crosswalk – 1001 Lake Tahoe Blvd[.], South Lake Tahoe." Plaintiff's Complaint, however, alleges that the incident occurred at 1001 Heavenly Village Way, South Lake Tahoe. (Compl., ¶ 1.) As defendant points out, these locations are approximately 7.3 miles apart. (Demurrer at 4:24–25; see Request for Judicial Notice ("RJN"), Ex. C.)

Defendant argues that plaintiff is suing on a factual basis that is not reflected in her government claim. As a result, defendant was allegedly prevented from investigating the condition of the premises that plaintiff now claims caused her injury. (Demurrer at 6:1– 4.) The court agrees. "[N]o part of the claim can be of more importance to the city officials than that part which gives them information to enable them to locate the point where the alleged accident occurred and to make proper investigation of the condition of the premises." (*Hall v. City of Los Angeles* (1941) 19 Cal.2d 198, 202.)

Plaintiff's argument that she was in substantial compliance with the Act's claim presentation requirements where she used the correct numerical address is unpersuasive. Without the correct street address, defendant had no way of investigating the condition of the premises. Therefore, the court finds that plaintiff did not comply with the Act's claim presentation requirement. The demurrer is sustained without leave to amend.

TENTATIVE RULING # 2: DEFENDANT'S DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT*

(1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

3. KUMAR v. KOHS, ET AL., SC20180225

(A) Motion for Summary Judgment

(B) Case Management Conference

(A) Motion for Summary Judgment

This action involves a dispute over property rights. Pending before the court is plaintiff's motion for summary judgment.

1. FACTUAL BACKGROUND

1.1. The property history and Kumar's purchase

Plaintiff Roy Kumar is the owner of real property on Dundee Circle in the City of South Lake Tahoe, California (the "Property"). Before Kumar's purchase in 2008, the Property and related rights were the subject of numerous transactions relevant to this motion.

The first such transaction occurred on November 8, 2004, when then-owner of the Property, Jana Ney Walker, conveyed the Property to defendant Monica Kohs. (Mtn., Stmt. of Undisputed Material Facts ("UMF"), ¶ 2.) An unconditional grant deed was recorded on December 3, 2004. (Mtn., Ex. 2.)

A few weeks later, on November 29, 2004, Walker and Kohs entered into a Land Coverage Transfer Agreement and Irrevocable Power of Attorney (the "2004 Agreement"). (Mtn., UMF, ¶ 3.) One recital in the 2004 Agreement stated that, pursuant to the residential purchase agreement and joint escrow instructions, Walker had excluded from the sale and conveyance 23,188 square feet of Class 3 land coverage[1] appurtenant to the Property (the "Reserved Coverage"). (Mtn., Ex. 3 at "Recitals," ¶ F.) This reservation of land coverage is not reflected in the grant deed conveying the Property from Walker to Kohs. (Mtn., Ex. 2.)

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[1] Land coverage rights consist of the right to place manmade structures such as homes, driveways, or parking lots on a certain parcel of land. These rights may, under certain circumstances, be transferred in whole or in part to other parcels, granting purchasers the ability to build structures on their properties. Applications to transfer coverage rights are reviewed by the Tahoe Regional Planning Agency ("TRPA").

The 2004 Agreement memorialized the terms and conditions under which the Reserved Coverage could be transferred to other parcels (receiving parcels) and framed the rights transfer as a covenant running with the land with the "benefits and burdens … binding on Kohs, her assignees, successors and assigns, and all persons acquiring or owning any Interest" in the Property. (Mtn., Ex. 3, ¶ 8.) The 2004 Agreement appointed Walker as Kohs's agent with limited power of attorney to sell or transfer any portion of the Reserved Coverage to appropriate receiving parcels designated by the third-party purchasers and approved by the Tahoe Regional Planning Agency ("TRPA"). (Mtn., Ex. 3, ¶ 1, subd. (D).)

Simultaneous with the 2004 Agreement, Walker and Kohs recorded an option agreement that gave Kohs a one-year option to purchase 3,000 of the 23,188 feet of Walker's Reserved Coverage. (Mtn., Ex. 4.)

On December 9, 2004, Kohs deeded the Property to her trust. (Mtn., UMF, ¶ 4.) However, Kohs soon sold the Property and, on May 12, 2006, an unconditional grant deed was recorded conveying it from Kohs's trust to Thomas M. Lewis. (Mtn., UMF, ¶ 5.)

On February 22, 2007, Kohs and Walker recorded an Amended Land Coverage Transfer Agreement and Irrevocable Power of Attorney (the "2007 Agreement"). (Mtn., UMF, ¶ 6.) The 2007 Agreement recites that on November 23, 2005, Kohs had exercised her option to purchase 3,000 square feet of the Reserved Coverage from Walker and received a power of attorney to sell or transfer the land coverage to third parties. (Mtn., Ex. 7, ¶ 2.) However, the November 23, 2005, transaction was not contemporaneously recorded as a restriction on the deed.

On June 30, 2008, Lewis lost the Property to American Home Mortgage Servicing, Inc., through foreclosure. (Mtn., UMF, ¶ 7.)

On December 29, 2008,[2] Kumar purchased the Property from American Home Mortgage Servicing, Inc. (Mtn., UMF, ¶ 8.) A grant deed reflecting the purchase and sale was recorded on February 2, 2009. (Mtn., Ex. 1.) The deed contained no reservations or conditions. (Mtn., Ex. 1.)

On May 20, 2010, Kumar recorded a Revocation of Power of Attorney "so the world would have notice that Defendant Kohs did not have any authority to sell and/or transfer land coverage from the Property." (Kumar Decl., ¶ 9; Mtn., Ex. 11.)

Over the next few years, Kumar and Kohs corresponded with the TRPA regarding their respective positions as to the land coverage dispute.

1.2. ***Ramsey and Pintar's 2016 purchase of coverage rights from Kohs***

In June 2016, Kelly Ramsey and Elizabeth Pintar entered into an agreement with Kohs to purchase 360 square feet of the Reserved Coverage. (Mtn., UMF, ¶ 10.) Kohs disputes knowing "that she did not have a validly recorded grant deed, equitable servitude, or covenant running with the land granting her the same." (Defs.' Response to UMF, ¶ 10.)

On June 9, 2016, Ramsey and Pintar filed a Transfer of Bankable Rights Application with the TRPA. (Mtn., UMF ¶ 12; Ex. 22.) Kohs is listed as the "Sending Parcel Owner" (albeit identified as the coverage owner) and Kumar is listed as the property owner. (Mtn., UMF ¶ 12; Ex. 22.)

In August 2016, Kumar notified Ramsey that Kohs did not own any coverage rights. (Mtn., UMF, ¶ 11.)

Ultimately, the TRPA granted a permit for the land coverage transfer. (Mtn., UMF, ¶ 13; Ex. 23.) On August 29, 2016, Kohs executed a Deed Restriction that identifies the transfer of land coverage to Ramsey's receiving parcel. (Mtn., UMF, ¶ 14; Ex. 24.)

1.3. ***Kumar initiates litigation***

[2] There appears to be a discrepancy as to this date. The UMF lists December 28, 2000. Kumar's declaration states that he purchased the Property on December 28, 2008. (Kumar Decl., ¶ 2.) However, the grant deed reflects December 29, 2008. (Mtn., Ex. 1.)

On October 31, 2017, Kumar filed a complaint against Kohs, Ramsey, and the TRPA in the above-entitled court (Case No. SC20170202). TRPA removed the case to federal court in the Eastern District of California. On January 8, 2018, Kumar voluntarily dismissed the action without prejudice.

On November 15, 2018, Kumar filed the Complaint in the instant case. The First Amended Complaint ("FAC") asserts causes of action ("C/A") for (1) quiet title, (2) cancellation of voidable instrument (the 2007 Agreement), (3) cancellation of voidable instrument (the 2016 Purchase Agreement), (4) declaratory relief, (5) slander of title (against Kohs only), and (6) intentional misrepresentation to third parties (against Kohs only).

2. EVIDENTIARY OBJECTIONS

Defendants' objections to plaintiff's UMF Numbers 10, 13, and 14 are sustained.

3. REQUESTS FOR JUDICIAL NOTICE

Pursuant to Evidence Code section 452, subdivision (d), Kumar's request for judicial notice of Exhibit 1 is denied; Kumar's requests for judicial notice of Exhibits 2 through 10 are granted. Pursuant to Evidence Code section 452, subdivision (h), Kumar's requests for judicial notice of Exhibits 11 through 21 are denied.

4. STANDARD OF REVIEW

A plaintiff moving for summary judgment bears the burden to produce admissible evidence on each element of a "cause of action" entitling him to judgment. (Code Civ. Proc., § 437c, subd. (p)(1); see *Hunter v. Pacific Mechanical Corp.* (1995) 37 Cal.App.4th 1282, 1287 [disapproved on other grounds by *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826].) This means that plaintiffs who bear the burden of proof at trial by a preponderance of evidence must produce evidence that would require a reasonable trier of fact to find any underlying material fact more likely than not. (*Aguilar*, *supra*, 25 Cal.4th at p. 851.) "[O]therwise, he would not be entitled to judgment *as a matter of law*." (*Ibid*. [emphasis in original]; *LLP Mortgage v. Bizar* (2005) 126 Cal.App.4th 773, 776 [burden is

on plaintiff to persuade court there is no triable issue of material fact].) At that point, the burden shifts to defendant "to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto." (Code Civ. Proc., § 437c, subd. (p)(1).)

5. DISCUSSION

Plaintiff contends that he is the sole owner of all land coverage on the Property, including the 360 square feet transferred to Ramsey's receiving parcel by Kohs, because that coverage was not reserved in the grant deeds from Walker to Kohs, from Kohs to Lewis, from Lewis to American Home Mortgage Servicing, Inc., or from American Home Mortgage Servicing, Inc., to plaintiff.

Defendants contend that plaintiff's action is barred by the applicable statute of limitations and preempted by federal law. Alternatively, defendants argue that they made a good-faith reliance on the procedures and rulings of the TRPA, which granted a permit for the transfer of land coverage to Ramsey and Pintar's receiving parcel.

5.1. <u>Statute of Limitations</u>

Defendants argue that plaintiff's action is untimely because (1) under the Tahoe Regional Planning Compact ("TRPC"), plaintiff had only 60 days to challenge the TRPA's decision to transfer the 360 square feet of land coverage from Kohs to Ramsey (Opp. at 16:3–5); and (2) under California law, the longest statute of limitations that could apply to plaintiff's claims would be the four-year statute of limitations for claims to quiet title. (Opp. at 17:7–8.)

The TRPC provides, in relevant part, "A legal action arising out of the adoption or amendment of the regional plan or of any ordinance or regulation of the agency, or out of the granting or denial of any permit, shall be commenced within 60 days after final action by the agency." (TRPC, Art. VI, subd. (j)(4).) Defendants argue that "Kumar's entire case is a challenge to TRPA's procedures, actions and rulings." (Opp. at 15:29.) The court disagrees. While the TRPA did grant a permit in this case, plaintiff's claims do not arise

out of the granting of said permit. Rather, plaintiff claims that he is the rightful owner of certain property. Therefore, the court finds that the 60-day deadline provided in the TRPC does not apply to the instant action.

Next, under California law, the applicable statute of limitations, which also is the longest possible statute of limitations on the claims pleaded, is four years, based on Kumar's cause of action for quiet title. The limitations period for a quiet title cause of action depends on the underlying theory of relief. (*Muktarian v. Barmby* (1965) 63 Cal.2d 558, 560.) Here, the four-year limitations period for cancellation of an instrument set forth in Code of Civil Procedure section 343 governs, as the gravamen of Kumar's complaint seeks to set aside and cancel the 2007 Agreement and Ramsey's 2016 purchase. (See *Costa Serena Owners Coalition v. Costa Serena Architectural Com.* (2009) 175 Cal.App.4th 1175, 1195.)

However, quiet title actions have special rules for when the limitations period begins to run. Specifically, "no statute of limitations runs against a plaintiff seeking to quiet title while he is in possession of the property. [Citations.] In many instances one in possession would not know of dormant adverse claims of persons not in possession. [Citation.] Moreover, even if … the party in possession knows of such a potential claimant, there is no reason to put him to the expense and inconvenience of litigation until such a claim is pressed against him." (*Muktarian*, *supra*, 63 Cal.2d at pp. 560–561.) Thus, "[a]n outstanding adverse claim, which amounts only to a cloud upon the title, is a continuing cause of action, and is not barred by lapse of time, until the hostile claim is asserted in some manner to jeopardize the superior title. So long as the adverse claim lies dormant and inactive the owner of the superior title may not be incommoded by it and has the privilege of allowing it to stand indefinitely. Each day's assertion of such adverse claim gives a renewed cause of action to quiet title until such action is brought." (*Secret Valley Land Co. v. Perry* (1921) 187 Cal. 420, 426–427.)

Still, possession does not provide a plaintiff with an unlimited tolling period without qualification. Rather, the statute of limitations commences on a quiet title claim when the plaintiff is no longer in "undisturbed possession" of the land. (*Mayer v. L&B Real Estate* (2008) 43 Cal.4th 1231, 1238.) To determine whether a disturbance has arisen, courts consider the following questions: "(1) when were plaintiffs no longer owners 'in exclusive and undisputed possession' of the land [citation]; (2) when was defendants' adverse 'claim … pressed against' plaintiffs [citation]; or (3) when was defendants' hostile claim 'asserted in some manner to jeopardize the superior title' held by plaintiffs [citation]." (*Salazar v. Thomas* (2015) 236 Cal.App.4th 467, 478.)

In this case, the court finds that a disturbance to plaintiff's possession did not arise until 2016, when Kohs attempted to sell land coverage rights to Ramsey. Up until that point, Kumar was in undisturbed possession of the Property. Therefore, the instant action filed in 2018 falls within the applicable statute of limitations.

5.2. <u>First C/A for Quiet Title</u>

An action to quiet title establishes the plaintiff's title to real property against adverse claims. (Code Civ. Proc., § 760.020, subd. (a).) As the moving party, plaintiff bears the burden to make out a prima facie case of ownership. (*Miller v. Boswell* (1958) 162 Cal.App.2d 508, 511.)

In this case, plaintiff attached to his motion a recorded grant deed showing that the Property was conveyed to him without exception, reservation, or limitation on December 29, 2008. (Mtn., Ex. 1.) A grant deed conveys a fee simple title to the grantee for all purposes. (*Shuster v. BAC Home Loans Servicing* (2012) 211 Cal.App.4th 505.) Unless limited by the express terms of the deed, a conveyance of a fee simple estate implies the covenants that the grantor has not conveyed the same estate to anyone other than the grantee and that the property is free of encumbrances placed on the property or suffered by the grantor or any person claiming under the grantor. In absence of

evidence to the contrary, it is presumed that a grant deed transfers a fee simple estate. (Civ. Code, § 1105.)

Defendants argue that the recorded documentation (the 2004 Agreement and the 2007 Agreement) shows that Kohs owned the 360 square feet of land coverage that she sold to Ramsey and Pintar. (Opp. at 22:10–11.) The court disagrees. The 2004 Agreement conflicts with the grant deed conveying the Property from Walker to Kohs.

Further, there is no covenant running with the land. In California, only covenants specified by statute and those that are incidental to the specified covenants run with the land. (Civ. Code, § 1461.) Covenants benefiting a property run with the land if they are contained in a grant made for the direct benefit of the property. Here, the purported covenant in the 2004 Agreement–the agreement that Walker reserved Class 3 land coverage from the Property that could then be transferred to receiving parcels–was not made for the direct benefit of the Property.

The court finds that plaintiff has established ownership of the Property and the land coverage rights, and is entitled to summary judgment on the claim for quiet title.

5.3. Second C/A for Cancellation of Instrument (the 2007 Agreement)

A plaintiff may commence an action to cancel a written instrument that, as to plaintiff, is void or voidable, when there is a "reasonable apprehension" that if left outstanding the instrument will cause the plaintiff serious injury. (Civ. Code, § 3412; *Robertson v. Superior Court (Brooks)* (2001) 90 Cal.App.4th 1319, 1324; see also *U.S. Bank Nat'l Ass'n v. Naifeh* (2016) 1 Cal.App.5th 767, 774.)

Plaintiff seeks to cancel the 2007 Agreement, which states that Kohs exercised the option to purchase 3,000 square feet of Reserved Coverage on November 23, 2005, even though an unconditional grant deed was recorded conveying the Property from Kohs's trust to Thomas M. Lewis on May 22, 2006.

California recording statutes (Civ. Code, § 1213 et seq.) are of the "race-notice" variety (i.e., "first in time, first in right"). With respect to real property, a conveyance recorded

first generally has priority over any later-recorded conveyance. Recordation imparts constructive notice "to the world;" and whoever records first in time has priority as against subsequent encumbrancers of record. (Civ. Code, §§ 1213, 1214; see *Thaler v. Household Finance Corp.* (2000) 80 Cal.App.4th 1093, 1099.) An option to purchase is a "conveyance" under Civil Code sections 1213 and 1214. (See Civ. Code, § 1215 ["conveyance" as used in Sections 1213 and 1214 is "every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or incumbered, or by which the title to any real property may be affected, except wills"].)

A cancellation action is premised on the fact that the void or voidable instrument will cause the plaintiff serious injury unless it is canceled. If the invalidity is apparent on the face of the document (or upon the face of another instrument that is necessary to the use of the void document in evidence) it is not deemed capable of causing injury within the meaning of Civil Code section 3412 and therefore is not subject to court-ordered cancellation. (Civ. Code, § 3413.)

Here, the 2007 Agreement was recorded on March 29, 2007, nearly ten months *after* an unconditional grant deed was recorded conveying the entire Property from Kohs's trust to Thomas M. Lewis. The grant deed to Lewis was recorded before the 2007 Agreement and thus has priority over the 2007 Agreement. Because the invalidity of the 2007 Agreement is apparent on the face of these documents, however, the Court finds that the 2007 Agreement is not subject to court-ordered cancellation.

5.4. <u>Third C/A for Cancellation of Instrument (the 2016 Purchase Agreement)</u>

As previously stated, a plaintiff may commence an action to cancel a written instrument that, as to plaintiff, is void or voidable, when there is a "reasonable apprehension" that if left outstanding the instrument will cause the plaintiff serious injury. (Civ. Code, § 3412; *Robertson*, *supra*, 90 Cal.App.4th at p. 1324; see also *U.S. Bank Nat'l Ass'n*, *supra*, 1 Cal.App.5th at p. 774.)

Plaintiff's motion does not specifically address his claim for cancellation of the 2016 Purchase Agreement. Therefore, the court makes no finding.

5.5. <u>Fourth C/A for Declaratory Relief</u>

Plaintiff's FAC seeks a judicial determination of his rights and duties and a declaration as to the ownership of coverage upon the Property. (FAC, ¶ 77.) For the reasons discussed under the First C/A for quiet title, the court finds that Kumar is the owner of the land coverage on the Property.

5.6. <u>Fifth C/A for Slander of Title</u>

Slander or disparagement of title occurs when a person, without a privilege to do so, publishes a false statement that disparages title to property and causes the owner thereof " 'some special pecuniary loss or damage.' " (*Fearon v. Fodera* (1915) 169 Cal. 370, 379–380.) The elements of the tort are (1) a publication, (2) without privilege or justification, (3) falsity, and (4) direct pecuniary loss. (*Truck Ins. Exchange v. Bennett* (1997) 53 Cal.App.4th 75, 84; *Howard v. Schaniel* (1980) 113 Cal.App.3d 256, 263–264 & fn. 2.)

Plaintiff's claim is based on the August 29, 2016, Deed Restriction, which was recorded in the office of the El Dorado County Recorder. (FAC, ¶ 87; Mtn., Ex. 24.) Plaintiff alleges that he has incurred costs and expenses in the investigation and litigation of this action. (FAC, ¶ 93.)

The Deed Restriction states that "Kohs owns all right[s], title, and Interest in and to 3,000 square feet of Class 3 Land Coverage" on the Property. As previously discussed, this statement is false. The court finds that plaintiff has established the required elements of slander of title and is entitled to summary judgment on this claim.

5.7. <u>Sixth C/A for Intentional Misrepresentation to Third Parties</u>

"The elements of intentional misrepresentation, or actual fraud, are: (1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance;

and (5) resulting damage.” (*Anderson v. Deloitte & Touche* (1997) 56 Cal.App.4th 1468, 1474.)

Plaintiff’s FAC alleges that Kohs made the following affirmative representations to Ramsey, Pintar, and the TRPA: (1) that Kohs was the owner of coverage rights upon the Property; and (2) that Kohs had a validly recorded document that “touched and concerned” the land, granted her coverage rights, and was binding upon successors in interest. (FAC, ¶ 97.)

Plaintiff’s motion does not specifically address the intentional misrepresentation claim. The court finds that plaintiff has not established the required elements of this claim and thus, the motion is denied.

(B) Case Management Conference

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, NOVEMBER 3, 2023, IN DEPARTMENT FOUR.