1. BAILEY v. COUNTY OF EL DORADO, 24CV1675

Demurrer

Pursuant to Code of Civil Procedure section 430.10, subdivisions (e) and (f), defendant generally and specially demurs to plaintiff's entire complaint. Defense counsel declares he met and conferred with plaintiff's counsel via telephone on September 4, 2024, and subsequently sent a meet and confer letter, thereby satisfying the meet and confer requirement under Code of Civil Procedure section 430.41, subdivision (a). (Caulfield Decl., ¶ 3.)

1. Preliminary Matter

On January 31, 2025, plaintiff filed a sur-reply to defendant's reply. Defendant objects to this filing on the ground that it is not authorized by the Code of Civil Procedure or California Rules of Court, and plaintiff did not seek leave of court to file such document.

The court agrees with defendant and disregards plaintiff's sur-reply.

2. Background

On October 15, 2020,[1] the El Dorado County Sheriff's Department, a department of defendant, arrested plaintiff on Emerald Bay Road in South Lake Tahoe, California. (Compl., ¶ 3.) During the arrest, the Sheriff's Department seized plaintiff's personal property, including rare and unique seeds, Bitcoin, hemp strain, a repository of diverse seed genetics, and custom-developed nutrients. (Compl., ¶¶ 3, 8.)

Plaintiff alleges he was denied reasonable bail, incarcerated for an unreasonable period of time, and treated differently than other individuals arrested in the same criminal matter. (Compl., ¶ 34.)

[1] The complaint alleges that the arrest occurred on October 22, 2022. However, plaintiff's booking sheet shows that the arrest date was actually October 15, 2020. (RJN, Ex. 2; see *Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 126 Cal.App.4th 497, 536 ["When a court is required to rule on a demurrer, the discretion provided by Evidence Code section 452 allows the court to take judicial notice of a fact or proposition within a recorded document ' "that cannot reasonably be controverted, even if it negates an express allegation of the pleading." [Citation.]' "].)

Following the arrest, a criminal action was brought against plaintiff in El Dorado Superior Court Case No. S20CRF0153-1. (Compl., ¶ 4.) A jury acquitted plaintiff of the criminal charges. (Compl., ¶ 5.)

In December 2023, when plaintiff sought to recover his seized property, he learned that much of the property was either lost or destroyed while in the Sheriff Department's custody or control. (Compl., ¶ 7.)

3. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivisions (c) and (d), the court grants defendant's request for judicial notice of Exhibit 1 (the complaint), Exhibit 2 (booking sheet), Exhibit 4 (conditional bail order), Exhibit 5 (docket for Case No. S20CRF0153-1), and Exhibit 9 (plaintiff's pre-lawsuit government claim).[2] The court denies defendant's request for judicial notice of Exhibit 3 (Sheriff's Department's request for order), Exhibit 6 (ruling regarding release of property), Exhibit 7 (request for release of property), and Exhibit 8 (2020 version of the El Dorado County Sheriff's Office Policy Manual). The court finds that these materials are not "necessary, helpful, or relevant" to the instant demurrer. (See *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6.)

4. Evidentiary Objections

Plaintiff objects to the following portions of defendant's memorandum of points and authorities: (1) Page 2, lines 13 and 14; and (2) Page 3, lines 1 through 9. The court notes that the material objected to is not evidence. A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) The objection is overruled.

[2] Exhibit 9 is granted only for the purpose of showing what notice plaintiff gave defendant related to the content of plaintiff's government claim.

5. Legal Principles

"[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 facts 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.)

6. Discussion

Defendant contends that each cause of action in the complaint fails to state a cause of action, and further, that the entire complaint is uncertain because it combines numerous causes of action into one. (See Cal. Rules Ct., Rule 2.112.) The court addresses each cause of action below and directs plaintiff to set forth his separate theories in separate counts in any amended complaint filed herein.

4.1. First C/A for Negligence

Plaintiff alleges two common law theories of liability and two statutory theories of liability. The alleged common law theories of liability are: (1) that defendant had a duty to exercise reasonable care and protect plaintiff's confiscated property during the course of the criminal proceeding (Compl., ¶ 15); and (2) that defendant had a duty to plaintiff under "Rules Protecting Personal Property"[3] to protect and account for the property (Compl., ¶ 16).

[3] Plaintiff specially defines the term "Rules Protecting Personal Property" to include defendant's "own procedures and rules maintaining accounting, and protecting the personal property of persons arrested during the course of a criminal proceeding and

Defendant argues that, as a public entity, it is immune from common law negligence liability under Government Code section 815, subdivision (a), which provides in relevant part: "Except as otherwise provided by statute … A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." The court agrees with defendant that the common law theories of negligence fail as a matter of law. The demurrer to the first cause of action is sustained to the extent that it asserts a common law cause of action. Because there is no reasonably possibility that amendment can cure the defect of these common law theories of liability, the demurrer is sustained on this ground without leave to amend. (*Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 322.)

The alleged statutory theories of liability are that defendant violated: (1) Government Code section 26640; and (2) Civil Code section 2080.10. (Compl., ¶ 14.)

Government Code section 26640 provides in part: "The sheriff shall take charge of, safely keep, and keep a correct account of, all money and valuables found on each prisoner when delivered at the county jail." (*Ibid.*) Defendant argues that plaintiff fails to state a cause of action under this statute because there is no allegation that the property was found on plaintiff when he was delivered at the county jail. Rather, plaintiff alleges that the property was seized during his arrest on Emerald Bay Road. (Compl., ¶ 3.) The court agrees with defendant. The demurrer is sustained on this ground with leave to amend.

Civil Code section 2080.10 deals with public agencies receiving property from a person for temporary safekeeping. It provides, "[w]hen a public agency," including a county, "obtains possession of personal property from a person for temporary safekeeping," that agency must, among other obligations, "[t]ake responsibility for the storage, documentation, and disposition of the property," and "[p]rovide the person from whom

---

other statutes that address the safekeeping of property taken during an arrest." (Compl., ¶ 14.)

the property was taken with a receipt and instructions for the retrieval of the property." (Civ. Code, § 2080.10, subds. (a), (d).) Defendant challenges whether this statute provides a private right of action for damages, citing *Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592. In *Lu*, the Supreme Court explained: "A violation of a state statute does not necessarily give rise to a private cause of action. [Citation.] Instead, whether a party has a right to sue depends on whether the Legislature has 'manifested an intent to create such a private cause of action' under the statute. [Citations.] Such legislative intent, if any, is revealed through the language of the statute and its legislative history. [Citation.]" (*Id.* at p. 596.)

In response, citing *Greenfield v. Mather* (1948) 32 Cal.2d 23, 27, plaintiff argues that "statutory duties create a direct cause of action where a breach occurs." (Opp. at 7:11–13.) The court does not read *Greenfield* (a probate action) to support plaintiff's contention. And further, plaintiff's argument conflicts with *Lu*.

Although it is not binding on this court, defendant cites a federal district court opinion which states, "There is no reason to believe [Civil Code section 2080.10] might apply to property of incarcerated individuals or that it creates a private right of action." (*McElroy v. Institutional Head Ground* (E.D. Cal. Oct. 31, 2013) 2013 WL 5934035, at *7.)

This court is of the same view. The language of Civil Code section 2080.10 reveals no legislative intent to create a private right of action. In fact, the language under Civil Code section 2080.10, subdivision (c) suggests an intent *not* to create a private right of action: "The public agency shall not be liable for damages caused by any official action performed with due care regarding the disposition of personal property pursuant to this section and the disposal provisions of this article."

Based on the above, the demurrer is sustained on this ground without leave to amend. (*Roman*, *supra*, 85 Cal.App.4th at p. 322.)

4.2. Second C/A for Inverse Condemnation

Article I, section 19, of the California Constitution provides: "Private property may be taken or damaged for public use only when just compensation … has first been paid...." An inverse condemnation action may be brought by an individual whose property was either taken or damaged by the government for a public purpose. (*Customer Co. v. City of Sacramento* (1995) 10 Cal.4th 368, 377 ("*Customer*").) An essential element of the claim is that the property was taken for public use or damaged in connection with a public work of improvement. (*Ibid.*)

Here, the cannabis seeds and cryptocurrency were seized in connection with law enforcement's police power. (See Compl., ¶ 20 ["Defendants … confiscated the Property in connection with the criminal arrest of Plaintiff…."].) But inverse condemnation has never been applied "to require a public entity to compensate a property owner for property damage resulting from the efforts of law enforcement officers to enforce the criminal laws." (*Customer*, *supra*, at pp. 377–378.) The complaint contains no allegation indicating that the cannabis seeds or cryptocurrency were taken for public use or damaged in connection with a public work of improvement, so it does not state a cause of action for inverse condemnation. The demurrer to the second cause of action is sustained. Because there does not appear to be a reasonable possibility that the complaint can be amended to cure the defect, the court denies leave to amend. (*Roman*, *supra*, 85 Cal.App.4th at p. 322.)

4.3. Third C/A for Negligent Infliction of Emotional Distress

" ' "[N]egligent causing of emotional distress is not an independent tort but the tort of negligence." [Citation.]' " (*Holliday v. Jones* (1989) 215 Cal.App.3d 102, 107.) It simply allows certain persons to recover damages for emotional distress only on a negligence cause of action even though they were not otherwise injured or harmed. (See *Molien v. Kaiser Foundation Hospitals* (1980) 27 Cal.3d 916, 928.)

As previously discussed under the first cause of action for negligence, defendant is immune from common law liability under Government Code section 815, subdivision (a). Therefore, the third cause of action for negligent infliction of emotional distress fails as a matter of law. The demurrer is sustained without leave to amend. (*Roman*, *supra*, 85 Cal.App.4th at p. 322.)

4.4. Fourth C/A for Deprivation of Property Rights

Plaintiff alleges that, by depriving plaintiff of his property, defendant violated the Equal Protection and Takings Clauses of the California and federal Constitutions. (Compl., ¶ 31.)

4.4.1. Equal Protection Claim

Article I, section 7 of the California Constitution provides: "A person may not be … denied equal protection of the laws." (*Ibid.*) "The equal protection guarantees of the Fourteenth Amendment and the California Constitution are substantially equivalent and analyzed in a similar fashion." (*People v. Barner* (2024) 100 Cal.App.5th 642, 663, internal quotation marks omitted.)

However, "[t]he equal protection clause of the California Constitution does not afford litigants a right to recover individual monetary damages. [Citation.]" (*Srouy v. San Diego Unified School Dist.* (2022) 75 Cal.App.5th 548, 573.) Because plaintiff's complaint seeks monetary relief only, he cannot rely on the equal protection clause of the California Constitution to obtain such relief. (*Id.* at pp. 573–574.)

Plaintiff's federal equal protection claim also fails. As an initial matter, "Plaintiff has no cause of action directly under the United States Constitution… [A] litigant complaining of a violation of a constitutional right must utilize 42 U.S.C. § 1983 [Section 1983]." (*Azul-Pacifico, Inc. v. City of Los Angeles* (9th Cir. 1992) 973 F.2d 704, 705.) In this case, plaintiff fails to identify Section 1983 in his complaint.

Moreover, plaintiff's allegations do not state sufficient facts to constitute an equal protection cause of action under Section 1983. A Section 1983 claim typically provides a

cause of action against individual persons: state and local officials who violate constitutional and statutory rights while acting "under color of" state law. In *Monell v. Dep't of Soc. Servs.* (1978) 436 U.S. 658, 691, the United States Supreme Court allowed a Section 1983 claim against a local government entity (rather than a person), but only in a limited way. The Supreme Court held that government entities are not liable for the acts of their employees under Section 1983 under the theory of respondeat superior that makes private employers liable for employee actions. Rather, a government entity can be liable only "when execution of a government policy or custom … inflicts the injury." (*Id.* at p. 694; *Pitts v. County of Kern* (1998) 17 Cal.4th 340, 349.)

Thus, a *Monell* claim arises from either "an express government policy" or "a custom or practice so widespread in usage as to constitute the functional equivalent of an express policy." (*Choate v. County of Orange* (2000) 86 Cal.App.4th 312, 328; *City of Canton, Ohio v. Harris* (1989) 489 U.S. 378, 389 ["a municipality can be liable under § 1983 only where its policies are the 'moving force [behind] the constitutional violation.' "].) To state a *Monell* claim, "[t]he plaintiff must establish that[:] (1) the plaintiff was deprived of a constitutional right; (2) the government entity had a policy; (3) this policy amounted to deliberate indifference to the plaintiff's constitutional right; and (4) the policy was the moving force behind the constitutional violation." (*Perry v. County of Fresno* (2013) 215 Cal.App.4th 94, 105–106.) To establish *Monell* liability, a plaintiff must identify a policy (or practice), attribute it to the municipality, and show a link between the policy and a constitutional violation that injured the plaintiff. (*Arista v. County of Riverside* (2018) 29 Cal.App.5th 1051, 1064.)

Plaintiff's complaint alleges defendant violated his equal protection rights through defendant's "own procedures and rules maintaining, accounting, and protecting the personal property of persons arrested during the course of a criminal proceeding and other statutes that address the safekeeping of property taken during an arrest." (Compl., ¶ 14.) However, plaintiff fails to more specifically identify the specific policy, practice or

custom. The court sustains the demurrer to the federal equal protection claim with leave to amend.

4.4.2. Takings Claim

The Takings Clause of the Fifth Amendment to the United States Constitution states: "nor shall private property be taken for public use, without just compensation." (*Ibid.*) As previously discussed, plaintiff's inverse condemnation claim under the California Constitution fails because compensation is not required for property damage resulting from a valid exercise of the "police power." (See *Customer*, *supra*, 10 Cal.4th at pp. 383–384.) Plaintiff's claim under the federal Constitution fails for the same reason. The demurrer is sustained without leave to amend. (*Roman*, *supra*, 85 Cal.App.4th at p. 322.)

4.5. Fifth C/A for Due Process and Equal Protection Violations

Plaintiff's fifth cause of action is brought under the state and federal Constitutions and alleges, "Plaintiff was arrested and prosecuted by the departments operated by Defendant, he was denied reasonable bail, incarcerated for an unreasonable period of time as an [sic] non-violent defendant, and without being found guilty of any crime, and generally treated differently that [sic] defendants arrested in connection the [sic] alleged matters." (Compl., ¶ 34.)

Plaintiff's allegations that he was denied reasonable bail and incarcerated for an unreasonable period of time do not invoke liability on defendant because both occurrences were ordered by the court, which is a separate branch of government. (See *Hart v. Alameda County* (1999) 76 Cal.App.4th 766, 782 ["[A] superior court is not a subagency of a county. Rather, it is a separate branch of government."].)

Plaintiff's allegation that he was generally treated differently from other defendants in the underlying case is vague and fails to state a cause of action. The demurrer is sustained with leave to amend.

4.6. Sixth C/A for Unfair Treatment and Denial of Bail

Plaintiff's sixth cause of action is brought under the Equal Protection Clause of the state and federal Constitutions. Plaintiff alleges he "was initially denied bail, while other individuals arrested in connection with the same incident and facing the same charges were granted bail." (Compl., ¶ 37.)

Defendant generally demurs to this cause of action on several grounds, including: (1) defendant is not liable for the court's independent bail order; (2) plaintiff's federal claim is barred by the applicable statute of limitations; (3) plaintiff's federal bail-related allegations do not satisfy *Monell*, *supra*, 436 U.S. 658; (4) plaintiff's state bail-related allegations are not fairly reflected in plaintiff's pre-lawsuit government claim; and (5) as it relates to the state bail-related allegations, defendant is entitled to prosecutorial immunity.

The court agrees that the state law bail-related claim fails because it is not fairly reflected in plaintiff's pre-lawsuit government claim. Government Code section 905 requires the presentation of "all claims for money or damages against local public entities," subject to exceptions not relevant here. "[N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented … until a written claim therefor has been presented to the public entity and has been acted upon … or has been deemed to have been rejected…." (Gov. Code, § 945.4.) "[T]he complaint is vulnerable to a demurrer if it alleges a factual basis for recovery which is not fairly reflected in the written claim." (*Nelson v. State of Cal.* (1982) 139 Cal.App.3d 72, 79.) In this case, plaintiff's pre-lawsuit government claim does not allege any bail violation. (RJN, Ex. 9.) Instead, plaintiff's submission exclusively complains of his property's disposition. (RJN, Ex. 9.) Consequently, the court sustains the demurrer to plaintiff's state bail-related allegations without leave to amend.

Turning to the federal bail-related claim, defendant argues that plaintiff's federal civil rights claim is barred by the applicable statute of limitations, which is two years. (*Shalabi*

v. City of Fontana (2021) 11 Cal.5th 842, 847 ["A section 1983 cause of action is subject to the forum state's statute of limitations for personal injury torts…. California's statute of limitations governing a personal injury claim is two years."].) Defendant reasons that all bail-related causes of action accrued by February 2021 at the latest, when plaintiff posted bail, and plaintiff did not commence this lawsuit until July 31, 2024. The court agrees. Plaintiff posted bail on February 25, 2021. (RJN, Ex. 5.) Therefore, the two-year statute of limitations ran in 2023 and plaintiff's federal bail-related claim is time barred. The demurrer is sustained on this ground without leave to amend.

TENTATIVE RULING # 1: THE DEMURRER IS SUSTAINED, WITH AND WITHOUT LEAVE TO AMEND. REFER TO THE FULL TEXT. PLAINTIFF SHALL FILE AN AMENDED COMPLAINT WITHIN 10 DAYS AFTER THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. 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.

2. NATSUM INVESTMENTS, LLC v. O'BRIEN, ET AL., 24CV2561

OSC Re: Preliminary Injunction

Pending before the court is plaintiff's request for preliminary injunction enjoining defendant Wendy O'Brien, as trustee of the Donald O'Brien Trust (Ms. O'Brien is hereinafter referred to as "O'Brien"), from prosecuting the unlawful detainer action in Case No. 24UD0273 during the pendency of the instant action.

The court issued a temporary restraining order on November 19, 2024, that is currently in effect.

A hearing was held on January 17, 2025, wherein the court received oral argument from the parties. The court continued the matter to allow O'Brien to obtain a declaration from the auctioneer confirming that the alleged foreclosure sale actually took place. The court has read and considered the declaration from the auctioneer, Kathleen Stoop, as well as plaintiff's supplemental reply.

1. Factual Background

Clinton Keeshan is the sole member of Natsum Investments, LLC ("plaintiff"). In 2019, the Donald O'Brien Trust (the "Trust") made a loan to plaintiff in the amount of $787,000 to allow plaintiff to purchase the property located at 1468 June Way in South Lake Tahoe, California (the "Property"). Plaintiff defaulted on the loan. The Trust began foreclosure proceedings in 2023 and again in 2024.

On July 3, 2024, plaintiff filed its first lawsuit to stop the foreclosure. (El Dorado Super. Ct. Case No. 24CV1420.) After filing the lawsuit, plaintiff requested a forbearance agreement to allow it time to refinance the Property. Plaintiff proposed that it would begin making $50,000 monthly payments during the forbearance period (through March 2025), giving it time to refinance or sell the Property to pay off the loan. The Trust agreed to the forbearance, conditioned upon plaintiff dismissing the lawsuit, paying the broker's fee for arranging the forbearance, and paying all past due/defaulted property taxes on the Property. Plaintiff failed to pay the first $50,000 installment due on

September 1, 2024. The Trust made a final offer to allow plaintiff to make the first $50,000 payment before the scheduled foreclosure on September 17, 2024.[4, 5]

On September 14, 2024, Mr. Keeshan emailed O'Brien and her attorney stating that the loan servicer should have received two payments from Mr. Keeshan totaling $30,000. (O'Brien Decl., Ex. 14.) Mr. Keeshan asked O'Brien and her attorney to accept another $10,000 payment by September 17, 2024, and a final $10,000 payment by September 24, 2024. (O'Brien Decl., Ex. 14.) O'Brien and her attorney did not respond to the email.

On the morning of September 17, 2024, Mr. Keeshan emailed O'Brien and her attorneys stating that he made the remaining payment of $20,000 to the loan servicer the night before. (O'Brien Decl., Ex. 15.) However, the loan servicer declares it did not receive the required $50,000 prior to the foreclosure sale on September 17, 2024, at 10:00 a.m. (Taberdo Decl., ¶ 8.) The Trust authorized the foreclosure sale to proceed.

O'Brien claims the foreclosure sale was conducted and the Property reverted to the Trust. (See O'Brien Decl., Exs. 19 [Certificate of Sale at Public Auction] & 20 [Trustee's Deed Upon Sale].) Kathleen Stoop declares she personally conducted the sale and took a picture of herself outside the courthouse before beginning the sale at approximately 10:00 a.m. on September 17, 2024. (Stoop Decl., ¶¶ 4–5 & Ex. 2.)

---

[4] In an email dated September 9, 2024, Asset Default Management told Mr. Keeshan, "Per my conversation with you and the Lender, the Lender has agreed to postpone the sale for 1-week, from 9/10/2024 to 9/17/2024 so that you can wire the remainder of the funds to SLS to complete the 50K that was part of the agreement." (O'Brien Decl., Ex. 13.)

[5] Plaintiff points to Exhibit 12 attached to O'Brien's declaration, which is an email to Mr. Keeshan dated September 4, 2024, to support plaintiff's argument that a reasonable person could believe that plaintiff had until September 20, 2024, to comply with the terms of the forbearance agreement. Exhibit 12 shows that Mr. Keeshan asked O'Brien, "I went to pay some taxes but they do not accept part payment. Can you talk to your lawyer and allow me to the 9/20/2024 to pay the taxes up to date please." O'Brien responded, "OK." On its face, Exhibit 12 does not include any extension for the first $50,000 monthly payment.

Mr. Keeshan declares, however, that he was present at the courthouse in Placerville, California on September 17, 2024, from approximately 8:00 a.m. to approximately 11:00 a.m. and did not observe the foreclosure sale take place. (Keeshan Decl., ¶ 3.) Mr. Keeshan acknowledges that he went inside the courthouse at approximately 9:45 a.m. but states he returned outside the courthouse before 10:00 a.m. (Keeshan Decl., ¶¶ 5–6.)

2. Legal Principles

"As its name suggests, a preliminary injunction is an order that is sought by a plaintiff prior to a full adjudication of the merits of its claim. [Citation.]" (*White v. Davis* (2003) 30 Cal.4th 528, 554.) The purpose of such an order is to preserve the status quo pending a determination on the merits of the action. (*Id.*, at p. 553; *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.)

"When ruling on a motion for preliminary injunction, 'trial courts should evaluate two interrelated factors when deciding whether or not to issue a preliminary injunction. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued. [Citations.]' [Citations.]" (*Best Friends Animal Society v. Macerich Westside Pavilion Property LLC* (2011) 193 Cal.App.4th 168, 174.) "The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. [Citation.]" (*Butt v. State of Cal.* (1992) 4 Cal.4th 668, 678.)

3. Discussion

Plaintiff's complaint asserts the following causes of action: (1) to set aside sale; (2) to cancel instrument (the trustee's deed); (3) quiet title; (4) accounting; (5) breach of contract (O'Brien's alleged promise to extend the deadline to comply with the

forbearance agreement to September 20, 2024); (6) breach of implied covenant of good faith and fair dealing; and (7) declaratory relief.

Plaintiff generally argues that: (1) the foreclosure sale did not actually take place (as Mr. Keeshan declares he was present outside the courthouse and did not observe said sale (Keeshan Decl., ¶¶ 3–8)); (2) a reasonable person could believe that plaintiff had an extension until September 20, 2024, to comply with the terms of the forbearance agreement; (3) defendants failed to accept plaintiff's payments before the foreclosure sale; and (4) plaintiff's breach of the forbearance agreement was "not grossly negligent, willful, or fraudulent."

Plaintiff's strongest argument is that the foreclosure sale did not actually take place. However, even that argument does not appear reasonably likely to succeed on the merits. "The purchaser at a foreclosure sale takes title by a trustee's deed. If the trustee's deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption arises that the sale has been conducted regularly and properly; this presumption is conclusive as to a bona fide purchaser. [Citations.] [¶] …[A]s a general rule, a trustor has no right to set aside a trustee's deed as against a bona fide purchaser for value by attacking the validity of the sale. [Citation.]" (*Moeller v. Lien* (1994) 25 Cal.App.4th 822, 831.)

In this case, the trustee's deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure were satisfied (see O'Brien Decl., Ex. 20 [Trustee's Deed Upon Sale]). And, O'Brien appears to be a bona fide purchaser. In that case, there would be a conclusive presumption that the sale was conducted regularly and properly.

But, even if O'Brien was not a bona fide purchaser, there would still be a rebuttable presumption that the sale was conducted regularly and properly. At this stage in the proceedings, the court finds that Mr. Keeshan's declaration that he did not observe the sale take place is not reasonably likely to rebut this presumption, especially where:

(1) there is a declaration from Ms. Stoop confirming that she personally conducted the sale, corroborated by a picture of her outside the courthouse at approximately 10:00 a.m.; and (2) Mr. Keeshan acknowledges that he left the site of the sale to go inside the courthouse shortly before 10:00 a.m., and thus, there is a plausible reason why he did not observe the sale take place.

Even assuming that plaintiff were able to show a reasonable likelihood of success on the merits, the court finds that the relative interim harm to the parties from issuance or nonissuance of the injunction weighs in O'Brien's favor. Importantly, the Property is not Mr. Keeshan's primary residence. Plaintiff's original reply brief states that Mr. Keeshan, the sole member of Natsum Investments, LLC, "recently met a local Lake Tahoe lady and he therefore desires to use the subject property…for personal use or live in when he can be in South Lake Tahoe." (Reply at 1:25–27; see Keeshan Decl., ¶ 2.) O'Brien, on the other hand, claims that the Trust invested $1,339,398.13 into the Property (the outstanding balance of the loan at the time of foreclosure). (Resp. to OSC at 12:15–17; O'Brien Decl., Ex. 20 [Trustee's Deed Upon Sale].) And, due to the lis pendens and the stay of the unlawful detainer action, the Trust is unable to liquidate to gain access to its money, which O'Brien alleges could be earning interest and working for the Trust in other ways. (Resp. to OSC at 12:17–19.) O'Brien claims that this money could be earning the Trust between $11,000 and $35,000 per month. (Resp. to OSC at 12:19–20.) The Trust is not able to rent the Property, which could bring in roughly $8,000 per month. (Resp. to OSC at 12:20–21.) Additionally, the Trust is incurring all of the carrying costs for the Property (e.g., property taxes, insurance, water).

"The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. [Citation.]" (*Butt*, *supra*, 4 Cal.4th at p. 678.) Here, the interim-harm factor clearly weighs in O'Brien's favor; and plaintiff has not established

a reasonable likelihood of success on the merits. Accordingly, the court denies the request for preliminary injunction.

TENTATIVE RULING # 2: PLAINTIFF'S REQUEST FOR A PRELIMINARY INJUNCTION IS DENIED. 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. SPRING OAKS CAPITAL SPV, LLC v. COTTLE, 22CV1622

Motion to Set Aside and Transfer Venue

Plaintiff filed this delinquent loan action in the South Lake Tahoe Branch of the El Dorado Superior Court on November 15, 2022. Defendant was personally served with the summons and complaint on December 3, 2022. Default was entered against defendant on September 16, 2024, and default judgment was entered against defendant on September 17, 2024.

On November 22, 2024, plaintiff filed a motion to set aside default and default judgment under Code of Civil Procedure section 473, and transfer the case from the South Lake Tahoe Branch to the Cameron Park Branch under Code of Civil Procedure sections 395 and 396. Plaintiff claims that, at all times relevant to this action, defendant resided in Pollock Pines, California, and therefore, the Cameron Park Branch is the proper El Dorado Superior Court location for this action.

For the reasons discussed below, the court denies both requests.

Jurisdiction is the court's power to render a binding judgment; venue (with a few statutory exceptions not applicable here) has no impact on that power. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 119.) Venue rules designate a particular county (or counties) within California as the "proper" place for trial of the action (see *Smith v. Smith* (1891) 88 Cal. 572, 575–576 ["The general spirit and policy of the [venue] statute is to give to the defendant the right of having all personal actions against him tried in the county of his residence."].) But "venue is not a matter that goes to the fundamental jurisdiction of the superior court to hear and rule on a case." (*Williams v. Superior Court* (2021) 71 Cal.App.5th 101, 114–116.)

Certain counties' superior courts, including El Dorado County, are divided into geographic districts or simply have courtrooms in more than one place. A superior court may specify by local rule the locations where certain types of actions or proceedings are to be filed, or heard and tried. (Code Civ. Proc., § 402, subs. (a)(1)–(2).)

Transfers between divisions of the same superior court are discretionary. (See Code Civ. Proc., § 402, subd. (b) ["A superior court *may* transfer an action or proceeding filed in one location to another location of the superior court," italics added]; see also *Fontaine v. Superior Court* (2009) 175 Cal.App.4th 830, 836 ["The standard of review for an order granting or denying a motion for a change of venue is abuse of discretion."].)

Because El Dorado County is a proper venue in this case, and the court had jurisdiction to enter default and default judgment, the court declines to exercise its discretion to either vacate the default and default judgment, or transfer the case to the Cameron Park Branch.

TENTATIVE RULING # 3: THE MOTION TO VACATE DEFAULT AND DEFAULT JUDGMENT, AND TRANSFER VENUE IS DENIED. 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.