

1. FREUD v. BALIBRERA, 23CV1519

OSC Re: Failure to Appear

TENTATIVE RULING # 1: DEFENDANT KEVIN BALIBRERA'S APPEARANCE IS REQUIRED AT 1:30 P.M., FRIDAY, JANUARY 17, 2025, IN DEPARTMENT FOUR TO SHOW CAUSE WHY HE FAILED TO APPEAR AT THE COURT PROCEEDING ON DECEMBER 18, 2024.

2. FERGUSON EXCAVATING, INC. v. PANAH-IZADI, 24CV0470

(A) Defendant's Demurrer to Second C/A in Plaintiff's First Amended Complaint

(B) Plaintiff's Demurrer to Third C/A in Defendant's Cross-Complaint

TENTATIVE RULING # 2: ON THE COURT'S OWN MOTION, THE MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, FEBRUARY 7, 2025, IN DEPARTMENT FOUR. THE COURT APOLOGIZES TO THE PARTIES FOR ANY INCONVENIENCE.

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

Demurrer

TENTATIVE RULING # 3: ON THE COURT'S OWN MOTION, THE MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, FEBRUARY 7, 2025, IN DEPARTMENT FOUR. THE COURT APOLOGIZES TO THE PARTIES FOR ANY INCONVENIENCE.

4. REYES, ET AL. v. STATE OF CALIFORNIA, DEPT. OF TRANSPORTATION, SC20200027

Motion to Continue Trial

**TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY,
JANUARY 17, 2025, IN DEPARTMENT FOUR.**

5. NATSUM INVESTMENTS, LLC v. O'BRIEN, ET AL., 24CV2561**OSC Re: Preliminary Injunction**

Pending before the court is plaintiff's request for a 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.

1. Factual Background

Clinton Keeshan is the sole member of Natsum Investments, LLC ("plaintiff"). In 2019, the Donald O'Brien Trust ("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.^{1, 2}

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].)

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.)

¹ 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.)

² 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.

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."

Even assuming that plaintiff were able to show a likelihood that it would ultimately succeed on the merits (which the court is not certain it has), the court finds that the relative interim harm to the parties from issuance or nonissuance of the injunction weighs in O'Brien's favor. 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].) 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 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 v. State of Cal. (1992) 4 Cal.4th 668, 678.) Here, plaintiff has made a weak showing on both the potential-merit and interim-harm factors. Accordingly, the court denies the request for preliminary injunction.

TENTATIVE RULING # 5: 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.

6. SPRING OAKS CAPITAL SPV, LLC v. COTTLE, 22CV1622

Motion to Set Aside and Transfer Venue

TENTATIVE RULING # 6: ON THE COURT'S OWN MOTION, THE MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, FEBRUARY 7, 2025, IN DEPARTMENT FOUR. THE COURT APOLOGIZES TO THE PARTIES FOR ANY INCONVENIENCE.