

1. GERLACH v. BARRET DAFFIN FRAPPIER TREDER & WEISS, LLP, 24CV2132**Order to Show Cause Re: Preliminary Injunction**

On September 26, 2024, plaintiff applied for a temporary restraining order and preliminary injunction preventing the sale of the real property commonly known as 3774 Paradise Drive in South Lake Tahoe, California, by nonjudicial foreclosure. On October 1, 2024, the court entered a temporary restraining order and issued an order to show cause regarding a preliminary injunction, which is now pending before the court.

1. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (c), the court grants defendant's unopposed request for judicial notice of Exhibit 1 (Grant Deed recorded June 26, 1998, as Instrument No. 98-0035669-00), Exhibit 2 (Grant Deed recorded February 12, 2004, as Instrument No. 2004-0009863-00), Exhibit 3 (Grant Deed recorded January 9, 2008, as Instrument No. 2008-0001227-00), Exhibit 4 (Deed of Trust recorded January 9, 2008, as Instrument No. 2008-0001228-00), Exhibit 5 (Quitclaim Deed recorded December 20, 2010, as Instrument No. 2010-0062378-00), Exhibit 6 (Quitclaim Deed recorded June 24, 2013, as Instrument No. 2013-0032471-00), Exhibit 7 (Corporate Assignment of Deed of Trust recorded August 14, 2017, as Instrument No. 2017-0033755-00), Exhibit 8 (Substitution of Trustee recorded January 27, 2023, as Instrument No. 2023-0002038), Exhibit 9 (Notice of Default and Election to Sell Under Deed of Trust recorded February 7, 2023, as Instrument No. 2023-0003796), and Exhibit 10 (Notice of Trustee's Sale recorded August 9, 2024, as Instrument No. 2024-0022454).

2. Discussion

A judge may grant a preliminary injunction at any time before judgment on a verified complaint, verified cross-complaint, or declarations showing satisfactorily that sufficient grounds exist for the injunction. (Code Civ. Proc., § 527, subd. (a); *Gillies v. JP Morgan Chase Bank, N.A.* (2017) 7 Cal.App.5th 907, 913.) The allegations of the complaint or

declarations must be factual and supported by admissible evidence. (*Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 14–15.)

In this case, plaintiff filed a verified complaint asserting causes of action for (1) violation of Civil Code section 2923.5 (requires mortgage servicer to contact a borrower to assess their financial situation and explore options to avoid foreclosure before recording a notice of default); and (2) violation of Civil Code section 2924 (addresses the notice of default required to initiate the nonjudicial foreclosure process and the notice of sale). (Compl., ¶¶ 8, 9.) However, plaintiff has not submitted any admissible evidence in support of her application for a preliminary injunction.

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, OCTOBER 18, 2024, IN DEPARTMENT FOUR.

2. DURKIN TREE SERVICE, INC. v. H&S ENERGY PRODUCTS, LLC, ET AL., 24CV0520

Motion to Consolidate (See Related Item No. 4)

TENTATIVE RULING # 2: REFER TO THE FULL TEXT OF RELATED ITEM NO. 4. THE MOTION TO CONSOLIDATE IS DENIED WITHOUT PREJUDICE. THE COURT WILL NOT HEAR ORAL ARGUMENT. (*DIAZ-BARBA v. SUPERIOR COURT* (2015) 236 CAL.APP.4TH 1470, 1490.)

3. POWERS v. HAEN CONTRACTORS, ET AL., 24CV1422**Motion to Dismiss**

This is a transfer case from Sacramento County Superior Court. Currently before the court is defendants' motion to dismiss the action pursuant to Code of Civil Procedure section 399, subdivision (a) on the ground that plaintiff failed to pay defendants' reasonable attorney fees within 30 days after notice of the order of transfer from Sacramento County.

1. Background

On February 14, 2024, plaintiff filed a complaint against defendants in the Sacramento County Superior Court.

On March 22, 2024, defendants filed a motion for change of venue. On May 2, 2024, the Sacramento County Superior Court issued a tentative ruling granting defendants' motion. The tentative ruling states, in pertinent part, "Plaintiff shall have 30 days from the service of notice of this order to pay the transfer fees and costs, including the expenses and reasonable attorney's fees awarded to Moving Parties. (Code of Civ. Proc. § 399.)"

On May 3, 2024, the court affirmed its tentative ruling. The corresponding minute order states, "This matter is ordered transferred to [El Dorado County] upon payment of the transfer fee in the sum of \$50.00 payable to the Sacramento County Superior Court." Neither the tentative ruling nor the minute order expressly awarded defendants any specific sum of attorney fees.

Plaintiff claims, and defendants do not dispute, that plaintiff timely paid the \$50.00 transfer fee.

On May 23, 2024, defendants filed a memorandum of costs, claiming \$12,079.35 in fees and costs related to the motion for change of venue.

On May 24, 2024, defendants filed and served a notice of entry of the Sacramento County Superior Court's May 3, 2024, order.

On June 12, 2024, plaintiff filed a motion to strike or tax costs.

On August 29, 2024, defendants filed the instant motion to dismiss.

On September 13, 2024, the court ruled on plaintiff's motion to strike or tax costs.

The court granted the motion in part and denied the motion in part, awarding defendants a total sum of \$11,156.20 in attorney fees and costs.

2. Discussion

Code of Civil Procedure section 399, subdivision (a), provides in relevant part, "If [the costs and fees awarded to defendant pursuant to Section 396b] are not paid within 30 days after service of notice of the transfer order ... then, within 30 days after notice of finality of the order of transfer, the court on a duly noticed motion by any party *may* dismiss the action without prejudice to the cause on the condition that no other action on the cause may be commenced in another court before satisfaction of the court's order for costs and fees." (Code Civ. Proc., § 399, subd. (a) [emphasis added].)

It appears that the court does not have jurisdiction to dismiss the action under Code of Civil Procedure section 399, subdivision (a) where the Sacramento County Superior Court's May 3, 2024, transfer order did not specifically award defendants any set amount of attorney fees. However, the court requires additional information as to whether the attorney fees awarded by this court were timely paid.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, OCTOBER 18, 2024, IN DEPARTMENT FOUR REGARDING THE STATUS OF PAYMENT OF THE ATTORNEY FEES AWARDED BY THIS COURT ON SEPTEMBER 13, 2024.

4. MANGIE CORP. v. H&S ENERGY PRODUCTS, LLC, ET AL., 23CV1748**Motion to Consolidate (See Related Item No. 2)**

Before the court is plaintiff's motion to consolidate the instant action with *Durkin Tree Service, Inc. v. H&S Energy Products, LLC, et al.* (El Dorado Super. Ct. Case No. 24CV0520).

A notice of motion to consolidate must list all named parties in each case, the names of those who have appeared, and the names of their respective attorneys of record. (Cal. Rules of Ct., Rule 3.350, subd. (a)(1)(A).) Plaintiff's notice of motion does not comply with this requirement. The court notes that it has been over a year since the complaint in the instant action was filed and there is no proof of service showing that any of the defendants have been served, which could subject plaintiff to sanctions.

Additionally, the proof of service does not show that all parties were served with the motion to consolidate, namely, defendants Chevron USA, Inc. (erroneously sued as Chevron Corp.) or Tahoe Paradise Chevron. (Cal. Rules of Ct., Rule 3.350, subds. (a)(2)(B), (C).)

The motion to consolidate is denied without prejudice.

TENTATIVE RULING # 4: THE MOTION TO CONSOLIDATE IS DENIED WITHOUT PREJUDICE. THE COURT WILL NOT HEAR ORAL ARGUMENT. (*DIAZ-BARBA v. SUPERIOR COURT* (2015) 236 CAL.APP.4TH 1470, 1490.)