

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 16**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

**Honorable Amber Rosen, Presiding**

Felicia Samoy, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2270

**DATE: 09-12-23    TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear by video.**

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

**TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:**

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

**IN PERSON HEARINGS:** Courtrooms are again open and all litigants may appear in person at the Downtown Superior Courthouse located at 191 N. First Street, San Jose.

**VIRTUAL HEARINGS:** You should **appear by video**, unless it is not possible.

**To Join Teams Meeting** -Click on the below link or copy and paste into your internet browser and scroll down to Department 16.

[https://www.scsccourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml)

**FINAL ORDERS:** The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 16**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

**Honorable Amber Rosen, Presiding**

Felicia Samoy, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2270

**DATE: 09-12-23    TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear by video.**

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in  
accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court  
3.1312.)**

**COURT REPORTERS:** The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

| LINE #                 | CASE #  | CASE TITLE                                 | RULING   |
|------------------------|---|--|--|
| <a href="#">LINE 1</a> | 20CV373069<br>Motion: Compel                      | Paul Battaglia vs Nilufer Koechlin         | Matter continued to December 14, 2023 at 9 a.m.                    |
| <a href="#">LINE 2</a> | 20CV373069<br>Motion: Compel                      | Paul Battaglia vs Nilufer Koechlin         | Matter continued to December 14, 2023 at 9 a.m.                    |
| <a href="#">LINE 3</a> | 20CV373069<br>Motion: Compel                      | Paul Battaglia vs Nilufer Koechlin         | Matter continued to December 14, 2023 at 9 a.m.                    |
| <a href="#">LINE 4</a> | 20CV373069<br>Motion: Compel                      | Paul Battaglia vs Nilufer Koechlin         | Matter continued to December 14, 2023 at 9 a.m.                    |
| <a href="#">LINE 5</a> | 18CV32783<br>Motion: Bifurcate                    | Anupam Sahai vs Aegify, Inc.               | See Tentative Ruling. Defendant shall submit the final order.      |
| <a href="#">LINE 6</a> | 19CV345830<br>Hearing: Claim of Exemption         | Connys Paris et al vs Jennie Alvarez et al | See Tentative Ruling. Judgment Creditor to submit the final order. |
| <a href="#">LINE 7</a> | 21CV383471<br>Hearing: Motion for attorney's fees | Roger Nelson vs MEB Loan Trust II et al    | See Tentative Ruling. Plaintiff to submit the final order.         |

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 16**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

**Honorable Amber Rosen, Presiding**

Felicia Samoy, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2270

**DATE: 09-12-23    TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear by video.**

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in  
accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court  
3.1312.)**

|                         |  |  |  |
|-------------------------|--|--|--|
| <a href="#">LINE 8</a>  |  |  |  |
| <a href="#">LINE 9</a>  |  |  |  |
| <a href="#">LINE 10</a> |  |  |  |
| <a href="#">LINE 11</a> |  |  |  |
| <a href="#">LINE 12</a> |  |  |  |

- oo0oo -

**Calendar Line 5**

**Case Name: Anupam Sahai v. Aegify, Inc.**

**Case No.: 18CV327834**

Defendant brings a motion to bifurcate the equitable claims from the legal ones and asks this court to try the alter ego claims, Business and Profession Code Section 17200 claims, breach of fiduciary duty and aiding and abetting breach of fiduciary duty claims, and the fraudulent transfer claims prior to holding the jury trial on the other claims, including breach of contract, failure to pay wages, and open book account claims. Defendant also asks the court to bifurcate the punitive damages claim.

There is no discretion regarding punitive damages. It is mandatory for the punitive damages claim to be bifurcated under CCP § 3295(d). Plaintiff does not object. Therefore, this aspect of Defendant's motion is GRANTED.

The Court has the authority and discretion to bifurcate the equitable claims and hear those claims separately from and prior to the legal claims tried to a jury. CCP § 598 states that "[t]he court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby . . . make an order . . . that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case." The California Supreme Court holds that where there are "severable legal and equitable causes of action or issues are present in a single proceeding, the trial court generally has authority to determine in what order the matters should be heard." *Nationwide Biweekly Administration, Inc. v. Superior Court* (2020) 9 Cal. 5th 279, 317.

Whatever ruling this court makes regarding the equitable issues other than punitive damages, could be overridden by the trial court. As such it makes little sense for this court to render a decision. The issues relating to the economy and efficiency of the litigation and the convenience of the witnesses are best handled by the trial judge who is responsible for the management of the trial. The trial court will be in a superior position to assess all of the relevant considerations, and therefore this Court defers the question of bifurcation on all issues other than punitive damages to the trial court to determine at the pretrial conference. Defendant shall submit the final order.

**Calendar Line 6****Case Name: Conney Paris et al v. Jennie Alvarez et al****Case No.: 19CV345830**

Judgment Debtor has made a claim for exemption. Debtor has failed to cite any provision or statute which would exempt her income from levy, as she is required to do pursuant to CA Code of Civil Procedure (CCP) § 703.520(b)(5). It is Debtor's burden to show that she is entitled to an exemption. CCP § 703.580(b). Under CCP 706.050, effective September 1, 2023, wage garnishments are capped at 20% of disposable (net) income. In her financial statement, signed under penalty of perjury, Debtor reports that her net monthly income is \$3,230, though this includes \$930 from Social Security. On the same form, she reports that her net monthly income as \$2,100. She lists expenses of \$3,285 and at the same time reports that her total monthly expenses are \$2,625. Even assuming a monthly net income of \$2100, a cap of 20% is \$420 per month. Judgment Creditor, while opposing a total exemption, states that it is willing to accept \$272 per pay period, though it is unknown whether a pay period means biweekly or monthly. Given the contradictory information in Debtor's claim, it is difficult to surmise Debtor's true net income or expenses. Debtor has failed to satisfy her burden that she should be wholly exempt from paying her debt. But given Creditor's willingness to accept some exemption and given the cap under CCP 706.050, this Court orders that Debtor pay \$272 each month. Debtor's claim for a total exemption is denied, and Debtor is ordered to pay Creditor a minimum of \$272 each month.

- oo0oo -

## **Calendar Line 7**

**Case Name: Roger Nelson v MEB Laon Trust II et al.**

**Case No.: 21CV383471**

Plaintiff seeks attorney's fees pursuant to Civil Code § 1717 contending that he is the prevailing party in this litigation. Plaintiff also seeks to be relieved of the debt owed to Defendants based on his prior tender of the amount owed. Defendants oppose the requests, alleging that the loan agreement does not support an award of fees and plaintiff is not the prevailing party, and that Plaintiff did not make a valid tender to extinguish the debt.

### Request for Judicial Notice

Plaintiff's request for judicial notice is denied as the facts are not necessary to the decision of the Court.

### Facts

In 2001, Plaintiff Roger Nelson ("Plaintiff") purchased real property located at 1201 Ayer Dr. in Gilroy, California ("Property"). (See First Amended Complaint ["FAC"] at ¶¶ 1, 13.) Plaintiff purchased the Property for \$425,000 by obtaining loans from First Franklin in the amounts of \$339,950 ("First") and \$85,000 ("Second Home Equity Line"). (Id. at ¶ 13.) Plaintiff refinanced the First loan in 2004 for \$333,000 through Pacific Financial Mortgage Corp. and his Second Home Equity Line for \$118,500 through Green Point Mortgage. (Ibid.) In February 2020, the loan servicing was transferred to defendant MEB Loan Trust II<sup>1</sup> ("MEB"), with their address being defendant Specialized Loan Servicing LLC ("SLS"). (FAC at ¶ 14.) SLS thereafter began as Plaintiff's new servicer and his payments were no longer accepted. (Id. at ¶ 15.) On April 22, 2020, MEB was assigned the rights to the Second Home Equity Line from Bank of America. (FAC at ¶ 16.) In 2020, Plaintiff wanted a loan modification to prevent foreclosure, but ultimately, the property was foreclosed on. Affinia, the Substitute Trustee legally entitled to conduct the Trustee's Sale on behalf of SLS, conducted a non-judicial foreclosure sale of the property on May 28, 2021.

Plaintiff's original complaint was filed in June 2021 and alleged causes of action for: (1) Violation of California Business & Professions Code, § 17200; (2) Request for Injunctive Relief; (3) Wrongful Foreclosure; (4) Promissory Fraud; and (5) Promissory Estoppel. On April 20, 2022, Plaintiff filed the operative FAC against defendants adding an additional cause of action for Breach of Contract. Defendants were enjoined from recording the Trustees' Deed Upon Sale by a temporary and then preliminary injunction beginning in June 2021. On March 23, 2023, the Court denied Defendants' Motion for Judgment on the Pleadings on the third (wrongful foreclosure), fourth (promissory fraud) and fifth causes of action (promissory estoppel). While Defendants' motion for summary judgment was pending, Defendants unwound and rescinded the foreclosure sale of the property in dispute such that Plaintiff became the legal and equitable owner of the property once again. The Court did not rule on the motion for summary judgment and found it was mooted by the unwinding of the foreclosure sale.

---

<sup>1</sup> MEB is specifically identified in this action as "MEB Loan Trust II, U.S. Bank National Association, not in its individual capacity but solely as Trustee."

### Attorney's Fees are Awardable under the Promissory Note and Deed of Trust

Claiming that he is the prevailing party, Plaintiff now seeks attorney's fees. Plaintiff seeks attorney fees pursuant to Civil Code § 1717. That section states that "[i]n any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees." "When not statutory, entitlement to attorney's fees derives from the contract's terms." *Chacker v. JPMorgan Chase Bank, N.A.* (2018) 27 Cal.App.5<sup>th</sup> 351, 357.

For § 1717 to apply, attorney's fees must be awardable on a contract that is the subject of the action. Plaintiff asserts that he is entitled to fees under both Section 22 of the Home Equity Loan and Promissory Note and under Section 21 of the Deed of Trust. See Ex. A and Ex. B to Plaintiff's Motion. Defendants dispute that the Promissory Note or Deed of Trust entitle Plaintiff to attorney's fees. Citing to cases where the courts have declined to find § 1717 applicable, Defendants sidestep the provisions cited by Plaintiff and instead point to Section 8 of the Deed of Trust, where costs undertaken by the Lender to protect his interest in the property become additional debt to the borrower. Defendant is correct that under the language of Section 8 of the Deed of Trust, Plaintiff would not be entitled to fees. But Plaintiff is not relying on Section 8. None of the cases cited by Defendants suggests that if a paragraph like Section 8 exists, it renders the attorney's fees awardable in other provisions nonoperative. On the contrary, even one of the cases cited by Defendants shows that the Court analyzed a different part of the contract claimed to give rise to the entitlement of fees after finding that they were not allowed under the section with similar language to Section 8. See *Hart v. Clear Recon Corp.* (2018) 27 Cal.App.5<sup>th</sup> 322, 329-330.

Here, both Section 22 of the promissory note and section 21 of the Deed of Trust do state that attorney's fees are collectible by the Lender. Defendants argue that Section 22 is not a provision which contemplates independent litigation or does not specify that attorney's fees will be awarded if litigation ensues. Opp. at p3. But this is not accurate. Section 22 states "if you default on this Agreement, and we must take steps to collect the amounts you owe us under this Agreement . . . you agree to pay all of our costs and expenses incurred in connection with such actions, including reasonable attorney's fees..." It is hard to see how this does not contemplate litigation which specifies that fees will be awarded if litigation ensues. Section 21 similarly allows for the awarding of attorney's fees: "Lender shall be entitled to collect all expenses incurred in pursuing the remedies [including for default] provided in this Section 21, including, but not limited to, reasonable attorneys' fees." This language is similar to the language in cases where the courts have found § 1717 applicable. See *Kachlon v. Markowitz* (2008) 168 Cal.App.4<sup>th</sup> 316; *Adam v. Wells Fargo Bank, N.A.* (2018) U.S. Dist. Lexis 110432. Because the action is one regarding the promissory note and Deed of Trust (and Defendant does not contest this) and because those contracts allow the Lender to collect attorney's fees for litigation arising from it, Plaintiff is entitled to attorney's fees under § 1717 if it is the prevailing party.

### Plaintiff is the Prevailing Party

Even though § 1717 is applicable, Plaintiff is only entitled to attorney's fees if he is the prevailing party in the litigation. He claims that the entire goal of his action was to unwind the

foreclosure sale and obtain ownership of the property, which he did. Defendants dispute Plaintiff is the prevailing party arguing that such a determination can only be made “upon final resolution” of the contract claims. Opp. p5. Defendants contend that because the claims for promissory estoppel and promissory fraud remain outstanding, no party has yet prevailed. But because the promissory estoppel and promissory fraud claims sought the same remedy as the wrongful foreclosure claim-unwinding of the foreclosure-those claims are now also rendered moot. Plaintiff has now conceded in his reply that those claims are mooted by the unwinding of the foreclosure. As such, there has been a final resolution on Plaintiff’s FAC. Defendant does not contest that if all claims are mooted, Plaintiff is the prevailing party. Accordingly, because under § 1717 Plaintiff is “the party who recovered a greater relief in the action on the contract,” he is the prevailing and is entitled to reasonable attorney’s fees.

### Reasonableness of Fees

Defendants claim that the fees requested are unreasonable, alleging that there is no support for the fee of \$500/hour, that there is no explanation for why three attorneys were necessary, and claiming that the attorneys duplicated each other’s work. Opp. p6. Pamela Simmons provided a declaration that she, her partner Mr. Purdy, and Mr. Davidson all charge \$500 per hour. For Santa Clara County, \$500 per hour is not an unreasonable rate for a partner and Defendant presents nothing to suggest that it is. Defendants fail to point out any particular items that they claim are duplicative or unreasonable. Ms. Simmons provided invoices which provide explanation of each fee and which were mostly paid in full. Defendants assert that the lawyers’ work was duplicative of each other but point to nothing in the billing to support this claim. More than mere accusation is needed to undermine the invoices provided by Plaintiffs. The Court has reviewed the bills and believes that there are items which are excessive or duplicative, such as having more than one lawyer review an item and “re-reviewing” documents. As such, the Court will reduce Plaintiff’s fees by 15% percent to account for the redundancies seen in the billing records. Moreover, the Court does not award anticipatory or “expected” fees. Accordingly, Plaintiff is awarded \$107,096.13 (\$125,995.45 less 15%) in attorney’s fees.

### Valid Tender

Finally, Plaintiff claims that its debt to defendants should be deemed paid in full based on its valid tender of the loan amount that was not accepted by Defendants. Defendants argue that no valid tender occurred.

Plaintiff claims that there is “the right of borrowers to ‘tender’ payment to reinstate the past due amount due on the loan *prior* to the foreclosure auction of the property.” Motion p8 (emphasis added). Plaintiff claims that on March 23, 2022 he tendered a check for the loan amount to Defendants and because Defendants refused to accept it, the loan should be deemed paid in full. Motion, pp8-9. But as Defendants point out, the tender made on March 23, 2022, was 10 months *after* the property had already been foreclosed upon. Plaintiff fails to address this in its reply except to address arguments other than the actual timing argument. That the tender must occur prior to the foreclosure makes sense less there be no protection for the good faith buyers who purchase the property in foreclosure. Plaintiff cites nothing to suggest that the tender can occur after the foreclosure has taken place and nothing in the various statutes cited by Plaintiff state that the tender can occur after the property has been sold in foreclosure. The debt is, therefore, not discharged.



### Conclusion

Defendants must pay attorney's fees to Plaintiff in the amount of \$107,096.13 within 30 days of the final order, absent another mutually agreed upon payment plan. Plaintiff's debt to Defendants is not discharged. Plaintiff shall submit the final order.