

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

Department 3

Honorable William J. Monahan, Presiding

Allison Croft, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 4/18/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (4/17/2024) 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.)

TO APPEAR AT THE HEARING: The Court prefers in-person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to **Department 3**.

https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website here:

<https://reservations.sccscourt.org/>

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept., and line number.

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
LINE 1	22CV401774	Lance Mills vs City of Santa Clara	Hearing: Demurrer to plaintiff Lance Mill ("Plaintiff")'s First Amended Complaint by defendant City of Santa Clara, to Plaintiff's third and fourth causes of action for failure to state a cause of action. Notice of non-opposition was filed by defendant City of Santa Clara on 4/11/2024. Unopposed and GRANTED. Plaintiff has 15 days leave to amend the First Amended Complaint from service of notice of entry of order. Moving party (defendant City of Santa Clara) to prepare the order.

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LINE 2	23CV425984	Ofelia Mccoy vs Sonja Gutierrez	<p>Hearing: Demurrer to the Complaint of Ofelia Mccoy by Def Sonja Guterrez</p> <p>Ctrl Click (or scroll down) on Lines 2-3 for tentative ruling. The court will prepare the order.</p>
LINE 3	23CV425984	Ofelia Mccoy vs Sonja Gutierrez	<p>Motion: Sanctions against Petitioner Ofelia Mccoy and her Attorney David Chon by Def Sonja Gutierrez</p> <p>Ctrl Click (or scroll down) on Lines 2-3 for tentative ruling. The court will prepare the order.</p>
LINE 4	22CV407623	Shiue-Mei Kuo vs Chih-Ling Chou et al	<p>Motion: Protective Order to stay discovery, pending outcome of <i>forum non-conveniens</i> motion by defendants Chih-Ling Chou and Sophia Chou</p> <p>Good cause appearing, defendants Chih-Ling Chou and Sophia Chou (“Defendants”)’ motion for protective order for a <i>stay</i> of plaintiff Shieu-Mei Kuo (“Plaintiff”)’s discovery to Defendants until 30 days after the outcome of Defendants’ <i>forum non-conveniens</i> motion is GRANTED. Plaintiff did not serve discovery on Defendants until January 8, 2024, after Plaintiff was aware that Defendants intended bring their <i>forum non-conveniens</i> motion. It is unduly burdensome, oppressive, or annoying for Defendants to respond to Plaintiff’s discovery until 30 after the outcome of Defendants’ <i>forum non-conveniens</i> motion which requests that the court stay or dismiss the case. Defendants’ <i>forum non conveniens</i> motion is set to be heard on May 18, 2024.</p> <p>Defendants’ amended request for judicial notice is GRANTED. The court will prepare the order.</p>
LINE 5	22CV407623	Shiue-Mei Kuo vs Chih-Ling Chou et al	<p>Motion: Leave to file first amended complaint by Plaintiff Shiue-Mei Kuo</p> <p>Unopposed and GRANTED. Plaintiff Shiue-Mei Kuo is granted 15 days leave to file her first amended complaint.</p> <p>Moving party (plaintiff Shiue-Mei Kuo) to prepare the order.</p>
LINE 6	22CV407623	Shiue-Mei Kuo vs Chih-Ling Chou et al	<p>Motion: Consolidate with 23CV426568 (Hsu vs. Chou) by defendants Chih-Ling Chou and Sophia Chou</p> <p>Ctrl Click (or scroll down) on Line 6 for tentative ruling. The court will prepare the order.</p>

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Case Name: *Ofelia McCoy v. Sonja Gutierrez*

Case No.: 23-CV-425984

Demurrer to the Complaint and Motion for Sanctions by Defendant Sonja Gutierrez

Factual and Procedural Background

This is an action for breach of contract and common counts by plaintiff Ofelia McCoy (“Plaintiff”) against defendant Sonja Gutierrez, individually and as Executor of the Estate of Salvador Gutierrez (“Defendant”).

According to the complaint, Salvador Gutierrez (“Salvador”) was given a life estate to property located at 1343 San Juan Avenue in San Jose, California (“Property”) upon the death of his mother, Maria Castaneda (“Castaneda”). (Complaint at BC-4.) Upon Salvador’s death or sale of the Property, Plaintiff was to be provided with her share as issue of Castaneda.¹ (Ibid.)

On November 26, 2022, Salvador died and Plaintiff discovered that he transferred the Property into his trust to be given to Defendant, his wife, upon his death. (Complaint at BC-2, BC-4.) Thus, Defendant holds in constructive trust, Plaintiff’s \$500,000 value in the Property that was allegedly transferred by Salvador’s wrongful act. (Id. at CC-4.)

On November 9, 2023, Plaintiff filed a verified judicial council form complaint against Defendant alleging causes of action for breach of contract and common counts.

The following motions by Defendant are presently before the court: (1) a demurrer to the complaint; and (2) a motion for sanctions. Plaintiff filed written oppositions.

A case management conference is set for April 23, 2024.

Demurrer to the Complaint

Defendant generally and specially demurs to each cause of action in the complaint. (Code Civ. Proc., § 430.10, subds. (e), (f), (g).) Plaintiff however filed a first amended complaint (“FAC”) on April 4, 2024, prior to the hearing on demurrer. Having done so, the demurrer to the complaint is MOOT. (See *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1054 [the filing of a FAC renders the demurrer moot since an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading].)

Motion for Sanctions

¹ Plaintiff and Salvador are brother and sister and children of Castaneda. (See Complaint at Attachment BC-2.)

Defendant seeks an order from the court to impose non-monetary sanctions against Plaintiff, including striking the complaint and dismissing this action. Defendant also requests monetary sanctions against Plaintiff and her attorney, David Chon, in the amount of \$8,500 in accordance with Code of Civil Procedure section 128.7.

Plaintiff's Request for Judicial Notice

“Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.” (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.)

In opposition, Plaintiff requests judicial notice of the following: (1) Deed of Trust recorded on 12-13-02 as instrument no. 16682992 in Santa Clara County (Ex. A); (2) Deed of Trust recorded on 07-03-03 as instrument no. 17157701 in Santa Clara County (Ex. B); and (3) Short Form Deed of Trust recorded on 09-29-04 as instrument no. 18023546 in Santa Clara County (Ex. C).

Exhibits A-C are subject to judicial notice as real property documents recorded in Santa Clara County. (See Evid. Code, § 452, subd. (h); see also *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264-265, disapproved on other grounds in *Yvanova v. New Century Morg. Corp.* (2016) 62 Cal.4th 919 [court may take judicial notice of the existence and recordation of real property records]; *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 803 [“A court may take judicial notice of a recorded deed.”].) The exhibits are also relevant to points raised in support of the opposition to the motion for sanctions. (See *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301 [judicial notice is confined to those matters which are relevant to the issue at hand].)

Accordingly, the request for judicial notice is GRANTED.

Legal Standard

“[Code of Civil Procedure] 128.7 requires that all pleadings filed with the court be signed by an attorney of a represented party, or, if the party is not represented by counsel, by the party. [Citation.] The signing of a filed pleading constitutes a certification by the person signing it that after a reasonable inquiry, the pleading (1) is not being presented for an improper purpose; (2) contains positions that are not frivolous; (3) alleges factual matter having evidentiary support; and (4) contains denials of factual allegations, which denials have evidentiary support. [Citation.] Based upon these requirements, the court, after proper statutory notice, may impose sanctions upon the attorneys, law firms, or parties who have improperly certified a pleading in violation of subdivision (b) of section 128.7. [Citation.]” (*Optimal Markets, Inc. v. Salant* (2013) 221 Cal.App.4th 912, 919-920 (*Optimal Markets*).)

“The primary purpose of the statute is deterrence of filing abuses, not to provide compensation for those impacted by those abuses. ‘While section 128.7 does allow for reimbursement of expenses, including attorney fees, its primary purpose is to deter filing abuses, not to compensate those affected by them. It requires the court to limit sanctions “to what is sufficient to deter repetition of [the sanctionable] conduct or comparable conduct by others similarly situated.” [Citation.]’ [Citations.]” (*Optimal Markets, supra*, 221 Cal.App.4th at pp. 920-921.)

“A trial court is to apply an objective standard in making its inquiry concerning the attorney’s or party’s allegedly sanctionable behavior in connection with a motion for sanctions brought under section 128.7. [Citations.] Thus, for example, whether an action is frivolous under section 128.7 is measured by an objective standard. [Citation.]” (*Optimal Markets, supra*, 221 Cal.App.4th at p. 921.)

Analysis

“Code of Civil Procedure section 128.7 should be utilized only in ‘the rare and exceptional case where the action is clearly frivolous, legally unreasonable or without legal foundation, or brought for an improper purpose.’ [Citation.] ‘Because our adversary system requires that attorneys and litigants be provided substantial breathing room to develop and assert factual and legal arguments, [section 128.7] sanctions should not be routinely or easily awarded even for a claim that is arguably frivolous’ [citation], and instead ‘should be “made with restraint.” ’ [Citation.]” (*Kumar v. Ramsey* (2021) 71 Cal.App.5th 1110, 1121 (*Kumar*).)

“A claim is factually frivolous if it is ‘not well grounded in fact’ and is legally frivolous if it is ‘not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.’ [Citation.] In either case, to obtain sanctions, the moving party must show the party’s conduct in asserting the claim was objectively unreasonable. [Citation.] A claim is objectively unreasonable if ‘any reasonable attorney would agree that [it] is totally and completely without merit.’ [Citations.]” (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 189.)

“To avoid sanctions under section 128.7, ‘the issue is not merely whether the party would prevail on the underlying factual or legal argument,’ but rather whether any reasonable attorney would agree that the claim is totally and completely without merit. [Citation.] Hence, the evidentiary burden to escape sanctions under section 128.7 is light.” (*Kumar, supra*, 71 Cal.App.5th at p. 1126.)

Here, as pointed out in opposition, there is no declaration or competent evidence before the court to support an award for monetary sanctions in the amount of \$8,500. (See OPP at p.2:5-7.) Also, the motion for sanctions appears to be a restatement of points raised in support of the demurrer to the complaint. In short, Defendant contends sanctions are warranted as Plaintiff fails to state any valid cause of action for relief in this case. But, it is not clear if any pleading deficiency still exists given the filing of the FAC which is now the operative pleading. If so, the proper procedure would be for Defendant to file a demurrer challenging the FAC as opposed to imposing sanctions. Furthermore, Defendant fails to articulate any specific argument stating Plaintiff’s claims are frivolous *such that any reasonable attorney would agree they are totally and completely without merit*. Nor do any such claims appear to be frivolous as Defendant concedes in her moving papers that a cause of action can be stated under Probate

Code section 21700(a). (See Motion at p. 6:2-11; see also *Ponce v. Wells Fargo Bank* (2018) 21 Cal.App.5th 253, 265 [nonfrivolous claims cannot be presented for an improper purpose under section 128.7].)

Based on the foregoing, the motion for sanctions is DENIED.

Disposition

The demurrer to the complaint is MOOT.

The motion for sanctions is DENIED.

The court will prepare the Order.

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Case name: *Shiue-Mei Kuo vs Chih-Ling Chou et al.*

Case No.: 22CV407623

Good cause appearing, Defendants Chih Ling Chou and Sophia Chou (“Defendants”)’s motion to consolidate related case *Hsu, et al. vs. Chou, et al.* Case No. 23CV426568 with lead case No. 22CV407626 is GRANTED.

The same day that Defendants filed this motion to consolidate, the plaintiff in 22CV407623 Shiue-Mei Kuo, filed a “Notice of Related Case” referencing Case No. 23CV426568. Additionally, the plaintiffs Cheng-Yuan Hsu and Chin-Wei Hsu in Case No. 23CV427626 filed a similar notice in their case referencing this Case No. 22CV407623, the same day.

In both notices, the second box in Section 1(h) is checked indicating that each case “arise from the same or substantially identical transactions, incidents, or events requiring determination of the same or substantially identical questions of law or fact.”

The plaintiffs in both actions are represented by the same attorney.

"When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions". (Code Civ. Proc., § 1048, subd. (a).) The court may also "order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." (*Ibid.*)

The granting or denial of the motion to consolidate rests in the sound discretion of the trial court. (*Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 978-79.) Each case presents its own facts and circumstances, but the court generally considers the following: (1) timeliness of the motion: i.e., whether granting consolidation would delay the trial of any of the cases involved, or whether discovery in one or more of the cases has proceeded without all parties present; (2) complexity: i.e., whether joining the actions involved would make [the trial too confusing or complex for a jury; and (3) prejudice: i.e., whether consolidation would adversely affect the rights of any party. (Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (Rutter Group 2022) ¶ 12:362.)

The motion is timely and will not delay the trial of any of the cases involved. There has been only limited discovery without the other parties present. Joining the actions will not make the trial too confusing or complex for a jury. After consolidation, depositions and discovery of witnesses having information common to all two sets of plaintiffs will only need to be taken once.

Consolidation will not adversely affect the rights of the plaintiffs in the consolidated cases. Consolidation does not prevent any party from filing a motion to bifurcate issues for trial if different issues need to be examined in order or to the exclusion of others. (Civ. Code § 598.) Therefore, should any of these matters reach trial, the concerns of the plaintiffs in the two consolidated cases could be addressed later.

The cases are consolidated for the purposes of discovery, hearings, and trial only. (See *Sanchez for Superior Court* (1988) 203 Cal.App.3d 1391, 1396.) When this occurs, the pleadings, verdicts, findings, and judgments are kept separate, and the actions are simply tried together for the sake of convenience and judicial economy. (*Id.*)

Defendants' request for judicial notice is GRANTED.

The court will prepare the order.

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