

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

Department 6

Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: May 9, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

FOR ORAL ARGUMENT: Before 4:00 PM 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 at the hearing to contest the ruling
- (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in-person appearances. If you must appear virtually, you must use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:

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

FOR COURT REPORTERS: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:

https://www.scsccourt.org/general_info/court_reporters.shtml

FOR YOUR NEXT HEARING DATE: Use Court Schedule to reserve a hearing date for your next motion. Court Schedule is an online scheduling tool that can be found on the court's website here:

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

FREE MCLE CIVIL BENCH PRESENTATION:

Civil Trials and Civil Motion Practice: Best Practices in Santa Clara County Superior Court

Date: June 20, 2024

Time: 12-1:30

Place: Department 6 TEAMS (virtual only)

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1, 11	23CH011838	Ravdeep Bhasin vs. Bhadur Sandhu	This civil matter is now stayed pending the outcome of a related criminal proceeding. Accordingly, these motions are continued to October 24, 2024 at 2 pm in Department 6 to be heard with the status regarding the criminal proceeding. This order will be reflected in the minutes.
2	23CV415279	BIJAN HAGHIGHI et al vs The Perfect Finish, Inc. et al	Defendant's Demurrer is SUSTAINED with 20 days LEAVE TO AMEND. Scroll to line 2 for complete ruling. Court to prepare formal order.
3	19CV351016	John Fernandez et al vs General Motors, LLC et al	Off calendar.
4	23CV421107	Matthew Kastner et al vs Kummi Kim et al	Plaintiff's motion to compel further responses to special interrogatories and document requests from Kummi Kim is GRANTED. A notice of motion with this hearing date was served on Defendant by electronic mail on March 28, 2024. Defendant failed to file an opposition. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) The Court also finds the discovery sought is relevant and Defendant's current responses lacking. Accordingly, Defendant is ordered to serve complete, verified, Code compliant responses to special interrogatory no. 1 and request for production of document nos. 1, 3, 7, and 8 within 20 days of service of this formal order. Specifically, Defendant is ordered to state whether a reasonable investigation has been conducted and that after such investigation all information has now been produced, to produce any additional documents (including recordings) located after such reasonable search, and to include a privilege log listing any documents withheld on work product or privilege grounds with Defendant's supplemental written responses. Defendant is further ordered to pay \$2580 in attorney fees and costs Plaintiff incurred to prepare this motion within 20 days of service of the formal order, which the Court will prepare.
5	19CV356293	Edwina La Barbera et al vs Good Samaritan Health System et al	The Compromise of Minor's Claim is APPROVED. Court to use form of order on file.
6	20CV374663	Erumena Otovo, Sr. vs John Moyoli et al	Plaintiff's motion to set aside dismissal is DENIED. No notice of this motion was served on Defendants. The Code of Civil Procedure, Rules of Court and Civil Local Rules require that the moving party serve a written notice of motion with the hearing date and time. (Code Civ. Proc. §§1005(a), 1010.) A court lacks jurisdiction to hear a motion that has not been properly served, even if the non-moving party had some type of advanced notice. (See <i>Diaz v. Professional Community Mgmt.</i> (2017) 16 Cal.App.5th 1190, 1204-1205; <i>Five-O-Drill Co. v. Superior Court of Los Angeles County</i> (1930) 105 Cal. App. 232.) The Court also does not see grounds to set aside the dismissal. If the parties entered a settlement agreement, Plaintiff may have an action for breach of that agreement. However, absent an express agreement between the parties for the Court to retain jurisdiction to enforce the settlement agreement pursuant to Code of Civil Procedure § 664.6, the Court has no jurisdiction to enforce the agreement absent a new lawsuit. Court to prepare formal order.

7	22CV394761	**TWO JINN, INC. vs NOE PEREZ et al	Defendant's Claim of Exemption is GRANTED IN PART. The Court will order \$165 per pay period be garnished. Court will prepare formal order.
8	23CV412789	Kwame Fields vs Bryan Shisler	Defendant's motion to set aside is DENIED. Default was entered on May 12, 2023. Defendant appeared at a Case Management Conference on August 15, 2023 and was told he was in default and what that meant. Nevertheless, the first attempt at setting default aside was not until March 2024. This is neither timely nor excusable neglect. (Code Civ. Pro. §473(b); <i>Manson, Iver & York v. Black</i> (2009) 176. Cal.App.4 th 36, 42.) Given this delay, the Court has no jurisdiction to consider this motion. Court to prepare formal order.
9, 12	23CV416195	STATE FARM GENERAL INSURANCE COMPANY as subrogee of its insureds Patricia Andrew vs ROBERTSHAW CONTROLS COMPANY et al	Defendants' motion to stay this action is GRANTED, IN PART. Although Plaintiff dismissed Robertshaw, it is clear from the complaint that Robertshaw is central to this lawsuit whether named as a party or not. However, if the bankruptcy court denies Defendants' motion to extend the stay, Plaintiff may provide that information to this Court with an ex parte application to lift the stay. Court to prepare formal order.
10	23CV420525	Mendel Saturnino vs Arleen Ruiz	Plaintiff's Petition for Interlocutory Judgment is GRANTED. Scroll to line 10 for complete ruling. Court to prepare formal order; Plaintiff to submit form of interlocutory judgment within 10 days of service of the formal order.

Calendar Line:

Case Name: *Bijan Haghighi, et.al. v. The perfect finish, Inc., et.al.*

Case No.: 23CV415279

Before the Court is Defendant, Martha Espinosa's, demurrer, to Plaintiffs, Bijan Haghighi's and Laleh Haghighi's, operative first amended complaint (FAC). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This dispute arises from Plaintiffs' collection on a default judgement. According to the FAC, on July 18, 2018, Plaintiffs contracted The Perfect Finish to design, build, and install kitchen and bathroom cabinets. Emil Eshagh was/is involved in the operation of The Perfect Finish. Subsequently, Plaintiffs filed suit against Eshagh and The Perfect Finish, DBA All Perfect Finish, for breach of contract, among other claims. On January 14, 2022, Plaintiffs obtained a default judgement against Eshagh and The Perfect Finish Inc. in the amount of \$50,733.28. (FAC ¶¶ 8-10.)

On May 1, 2023, during a debtor's exam, Mr. Eshagh claimed (1) Earthlime Inc. was the proper defendant, (2) he intended to appeal the default judgement, (3) he had signing authority on Earthlime's bank accounts, and (4) he used his brother's car. (FAC ¶¶ 13, 14.) According to the records of the California Secretary State, Earthlime Inc. has been inactive and suspended since March 2, 2009. During this time, Martha Espinosa was its CEO. (FAC ¶¶ 15, 16.)

Plaintiffs filed their complaint on May 3, 2023, and later amended it on February 21, 2024, alleging causes of action for fraud, fraudulent conveyance, conspiracy to commit fraud, and piercing the corporate veil.

II. Late Opposition

Code of Civil Procedure section 1005(b) provides: "All papers opposing a motion...shall be filed with the court and a copy served on each party at least nine court days... before the hearing." Here, without explanation, Plaintiffs filed their opposition four court days late on April 30, 2024. The Court has discretion to consider late filed papers. (*Gonzalez v. Santa Clara County Dep't of Social Servs.* (2017) 9 Cal.App.5th 162, 168.) And, where a party provides a substantive response to a late filing, the party waives all defects in service. (*Moofly Productions, LLC v. Favila* (2020) 46 Cal. App. 5th 1, 10.)

Defendant articulates no prejudice and submits a reply. The Court will accordingly consider the late opposition and address the merits. However, Plaintiffs are strongly cautioned to follow proper procedures or risk sanctions in the future.

III. Legal Standard

“The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain.” (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by “[t]he party against whom a complaint [] has been filed” to object to the legal sufficiency of the pleading as a whole, or to any “cause of action” stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats a demurrer “as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) “A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

“Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given.” (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.) It is an abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) The burden is on the plaintiff to show in what manner plaintiff can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Id.*)

Defendant demurs to Plaintiff's causes of actions for fraudulent conveyance, conspiracy to commit fraud, and piercing the corporate veil on the ground that they fail to allege sufficient facts to state a claim. (Code Civ. Proc., § 430.10, subd. (e).)

IV. Analysis

A. Fraudulent Conveyance

Generally, a "fraudulent conveyance is a transfer by the debtor of property to a third person undertaken with the intent to prevent a creditor from reaching that interest to satisfy its claim." (*Kirkeby v. Superior Court of Orange County* (2004) 33 Cal.4th 642, 648; quoting *Yaesu Electronics Corp. v. Tamura* (1994) 28 Cal.App.4th 8, 13.) The elements are: (1) transfer made or obligation incurred by a debtor; (2) with actual intent to hinder, delay, or defraud any creditor of debtor; (3) without receiving a reasonably equivalent value in exchange for the transfer or obligation: (a) debtor was engaged or was about to engage in a business or a transaction for which remaining assets were unreasonably small in relation to the business or transaction; or (b) intended to incur, or believed or reasonably should have believed that debtor would incur, debts beyond ability to pay as they became due; and (4) injury to the creditor. (Civ. Code §§ 3439.04(a), 3439.05.)

A transfer can be invalid either because of actual fraud, (Civ. Code § 3439.04(a)), or constructive fraud, (Civ. Code § 3439.04(b), 3439.05). "[I]n California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations.] Thus, the policy of liberal construction of the pleadings ... will not ordinarily be invoked to sustain a pleading defective in any material respect. [Citation.] This particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered.'" (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal. 4th 979, 993.)

Plaintiffs contend fraudulent conveyance includes diversion of business income through continuous operation under different corporate entities. Therefore, the ongoing business activities of Eshagh and Espinosa in operating Earthlime Inc. and The Perfect Finish, constitute continuous fraudulent transfers. The Court is not persuaded.

First, Plaintiffs provide no legal authority to support their argument, which constitutes waiver of their asserted point. (*People v. Dougherty* (1982) 138 Cal.App.3d 278, 282 [points asserted without

supporting authority are waived]; see also *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 [“When [a party] fails to raise a point or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived]; *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 619, fn. 2 [“[A] point which is merely suggested by a party’s counsel, with no supporting argument or authority, is deemed to be without foundation and requires no discussion”].

Second, Plaintiffs fail to allege any facts showing fraudulent diversion of business income from one company to another or any facts with any particularity regarding any alleged fraudulent conveyance by the Defendants. The FAC does not allege what was conveyed, to whom, when, or the inadequate consideration that was received in exchange. Plaintiffs’ general and conclusory allegations do not suffice.

Accordingly, Ms. Espinosa’s demurrer to the second cause of action for fraudulent conveyance, is SUSTAINED with LEAVE TO AMEND 20 days from the service of the final order.

B. Conspiracy to Commit Fraud

Civil conspiracy is a legal doctrine that imposes liability on persons who did not actually commit a tort but acted in concert with another tortfeasor. To support this claim, Plaintiffs must allege “(1) the formation and operation of the conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful conduct.” (*AREI II Cases* (2013) 216 Cal.App.4th 1004, 1022.) A conspiracy “must be activated by the commission of an actual tort.” (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 511.) Where fraud is alleged to be the object of the conspiracy, the claim must be pleaded with particularity.” (*Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189, 211.)

Here, the FAC lacks allegations showing how the conspiracy was formed, operated, and the wrongful conducts in furtherance of the conspiracy. Merely alleging conclusory statements that Defendants utilized suspended corporations without valid licenses, concealed personal and business assets, and evaded their financial obligation to Plaintiff, are insufficient to show a conspiracy was formed between Espinosa and the remaining Defendants to defraud Plaintiff.

Accordingly, Ms. Espinosa's demurrer to the third cause of action for conspiracy to commit fraud, is SUSTAINED with LEAVE TO AMEND 20 days from the service date of the final order.

C. Pierce the Corporate Veil

"The alter ego doctrine traditionally is applied to pierce the corporate veil so that a shareholder may be held liable for the debts or conduct of the corporation. When a judgment debtor is a corporation, the judgment creditor cannot reach the assets of the individual shareholders due to limitations on liability imposed by corporate law. Traditional piercing of the corporate veil is justified as an equitable remedy when the shareholders have abused the corporate form to evade individual liability, circumvent a statute, or accomplish a wrongful purpose. [citations] There are, however, two general requirements: "First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone." (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.) Factors for the trial court to consider include the commingling of funds and assets of the two entities, identical equitable ownership in the two entities, use of the same offices and employees, disregard of corporate formalities, identical directors and officers, and use of one as a mere shell or conduit for the affairs of the other. (*Id.* at 538-539.)

Here, Plaintiffs recite these factors but fail to allege facts to support their conclusory allegations. Accordingly, Ms. Espinosa's demurrer to the fourth cause of action for piercing the corporate veil, is SUSTAINED with LEAVE TO AMEND 20 days from the service date of the final order.

Calendar Line 10

Case Name: *Mendel Saturnino vs Arleen Ruiz*

Case No.: 23CV420525

Before the Court is Plaintiff's Partition Petition. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

Plaintiff filed this action on August 7, 2023 seeking partition of a single family residence located at 1775 San Ramon Ave., Mountain View, CA 94043 (the "Property"). Plaintiff Mendel Jermone Saturnino and Defendant Arleen Ruiz, siblings, are each 50% owners of the Property; that is not disputed. Ruiz has lived in the Property with her daughter nearly her entire life and cared for her parents in their later years. Ruiz has also been paying the taxes, costs for upkeep and maintenance for the Property, and a mortgage taken out in her name to buy out a third sibling who also inherited a portion of the Property upon their mother's death.

Ruiz maintains their mother's wishes were for her to be the sole heir to the Property, and that now Saturnino is forcing a sale because of a falling out related to an inheritance Ruiz's daughter received from an aunt that Saturnino expected to receive. Ruiz argues selling the Property could leave her homeless and provide Saturnino with an undeserved windfall.

This matter was originally set to be heard on March 26, 2024. The Court issued a tentative ruling granting the petition on March 25, 2024, and the parties appeared for argument. During argument, Defendant urged the Court to continue the hearing to permit further briefing, representing that a verified document recently filed in a related probate proceeding directly impacted and could change the Court's tentative ruling. The Court granted the requested continuance over Plaintiff's strong objection, set a further hearing for May 9, 2024, and ordered that each party could serve one brief. Defendant submitted no further information to the Court. In Defendant's case management conference statement, Defendant represents her intent to stipulate to the relief requested in this petition. However, just as there is no further documentation from Defendant before the Court despite the requested continuance being granted, there is no stipulation. The Court finds Plaintiff has waited long enough for the relief sought, which relief the Court is bound by clear statutory mandate to grant. Thus, as explained below, Plaintiff's request is granted. There will be no further delay.

II. Legal Standard and Analysis

In a partition action, the court must find (1) the plaintiff has a right to partition; (2) determine the ownership interests of the parties; and (3) direct the manner of partition. (Code Civ. Pro. §§872.710, 872.910.) If plaintiff has a right to partition and the ownership interests of the parties are indisputable, the court “shall” appoint a partition referee. (Code Civ. Pro. §872.010.) “A co-owner of property has an absolute right to partition unless barred by a valid waiver.” (*Orien v. Lutz* (2017) 16 Cal.app.5th 957; Code Civ. Pro. §872.710(b); *Bacon v. Wahrhaftig* (1950) 97 Cal.App.2d 599, 603; *American Medical International, Inc. v. Feller* (1976) 59 Cal.App.3d 1008, 1013; *Miranda v. Miranda* (1947) 81Cal.App.2d 61, 68.) A waiver may be found where there is a writing evincing “an agreement among co-owners of a property. . .” (*Orien v. Lutz* (2017) 16 Cal.app.5th 957, 963.)

The parties do not dispute that each owns a 50% interest in the Property. Defendant’s arguments center around waiver and fairness. Cases where courts have found waiver in the partition context are rare and typically include a writing or known prior restriction. (See, e.g., *American Medical International, Inc. v. Feller* (1976) 59 Cal.App.3d 1008, 1013; *Pine v. Tiedt* (1965) 232 Cal. App. 2d 733; *Thomas v. Witte* (1963) 214 Cal. App. 2d 322; *Miranda v. Miranda* (1947) 81Cal.App.2d 61, 68.) Neither of those circumstances are present here.

And, while the Court agrees that selling the Property will cause pain and difficulties, fairness or equity is not a basis for the Court to deny partition. In fact, the case law in this area suggests that it is precisely facts like those present here that partition is designed to address. While this issue is not before the Court on this motion and the Court is thus not making a determination at this time, if during the accounting phase of this proceeding Ruiz is found to have been paying the mortgage, taxes, and expenses for maintaining the Property, it may be found that she is entitled to a greater share of the sale proceeds to reimburse her for those expenses that Saturnino has not incurred. Thus, those concerns will be addressed during the accounting; they are not a basis for the Court to deny partition.

Accordingly, Plaintiff’s motion for interlocutory judgment and appointment of partition referee is GRANTED.