

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

**Department 3
Honorable William J. Monahan, Presiding**

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

DATE: 7/16/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (7/15/2024) 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 or by Teams. If you must appear virtually, please use video.

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.

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	21CV387255	3265 Scott Blvd LLC vs Peter Kim et al	Hearing: Demurrer to the Cross-Complaint of Tep Group Inc and Peter Kim by Cross Defendant DANIEL MINSOO PARK Ctrl Click (or scroll down) on Line 1 for tentative ruling. The court will prepare the order.
LINE 2	23CV416112	Patrick Ng vs Hongyi Marston et al	Motion: Protective Order and for sanctions by Plaintiff Patrick Ng Plaintiff Patrick Ng (“Plaintiff”)’s motion for protective order is DENIED. All requests for monetary sanctions are DENIED. Other circumstances make the imposition of sanctions unjust. The court will prepare the order.

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LINE 3	23CV416112	Patrick Ng vs Hongyi Marston et al	<p>Motion: Judgment on Pleadings by Defendants Hongyi Marston aka Hongyi Xie</p> <p>Ctrl Click (or scroll down) on Line 3 for tentative ruling. The court will prepare the order.</p>
LINE 4	23CV425593	Andrew Dagley vs Marriott International, Inc et al	<p>Motion: Strike Portions of Plaintiff Andrew Dagley's Second Amended Complaint by Defendant BCore 660 El Camino Real TRS LLC</p> <p>Unopposed and GRANTED WITH 15 DAYS LEAVE TO AMEND.</p> <p>Moving party to serve notice of entry of order.</p> <p>Moving party to prepare order for court's signature.</p>
LINE 5	24CV431733	Spencer Nurse vs John Doe	<p>Motion: Quash Subpoena Issued to Google by Plaintiff Spencer Nurse and for Sanctions</p> <p>APPEAR.</p>
LINE 6	23CV423564	Spring Oaks Capital Spv LLC vs Richard Singh	<p>Motion: Admissions Deemed Admitted</p> <p>Motion for order to deem the truth of each matter specified in plaintiff Spring Oaks Capital SPV, LLC ("Plaintiff")'s request for admissions, set one, Nos. 1-11 served on defendant Richard Singh on 11/21/2023</p> <p>Unopposed and GRANTED. Moving party to submit order for court's signature.</p>
LINE 7	23CV428289	Brandon Lum vs FORMA ALMADEN VALLEY LLC et al	<p>Motion: Withdraw as attorney (by Jamie E. Wright) for Plaintiff Brandon Lum</p> <p>Unopposed and GRANTED. Moving attorney to submit order for court's signature.</p>

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LINE 8	24CV433109	In RE: Quality Loan Service Corp. vs 282 Bangor Avenue, San Jose, CA 95123	<p>Motion: Order</p> <p>Motion for order to release deposited funds to the claimant by claimant Larry Fernandez</p> <p>Unopposed and GRANTED.</p> <p>Moving party to submit order for both lines 8 and 9 combined (which involve the same deposited \$426,702.91 surplus funds, minus any reasonable fee that the clerk may charge.)</p>
LINE 9	24CV433109	In RE: Quality Loan Service Corp. vs 282 Bangor Avenue, San Jose, CA 95123	<p>Hearing: Other</p> <p>Verified Claim for Surplus Funds and Accompanying Documents filed by Claimant Larry Fernandez</p> <p>Unopposed and GRANTED.</p> <p>Moving party to submit order for both lines 8 and 9 combined (which involve the same deposited \$426,702.91 surplus funds, minus any reasonable fee that the clerk may charge.)</p>
LINE 10			
LINE 11			
LINE 12			

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Calendar Line 1

Case Name: 3265 Scott Blvd LLC v. Peter Kim et al. (and related cross-actions)

Case No.: 21CV387225

I. Factual and Procedural Background¹

Cross-complainants TEP Group Inc. (“TEP”), Peter Kim (“Kim”), and Vivian Yun (“Yun”) (collectively, “Cross-Complainants”) bring their cross-complaint (“XC”) against cross-defendants Silverlake Ramen Holdings, LLC (“Silverlake”), Jitaek Lim (“Lim”), Young H. Park (“Young”),² Daniel Minsoo Park (“Daniel”), and Michael Max Murphy (collectively “Cross-Defendants”). 3265 Scott Blvd LLC (“Scott”) is the plaintiff and landlord in the underlying action brought against TEP, Silverlake Ramen, Kim, and Yun.

According to the allegations of the XC, on or around January 21, 2019, Kim entered into a written franchise agreement with Silverlake to operate a Silverlake Ramen restaurant. (XC, ¶ 14.) Kim thereafter incorporated TEP, intending that TEP would operate the Silverlake Ramen restaurant. (XC, ¶ 16.) On June 12, 2019, on direction from Silverlake, TEP entered into a lease agreement with Scott/Landlord to operate a Silverlake Ramen franchise on Scott’s property. (XC, ¶ 18.)

Due to COVID-19, on July 16, 2020, Landlord advised Kim that it could delay commencement of the lease and rental payments. (XC, ¶ 19.) Lim told Cross-Complainants that he felt the property was a promising location and that he wanted to use the premises for the franchise. (XC, ¶ 20.) Lim advised Cross-Complainants not to terminate the lease and that Silverlake would take care of everything regarding the lease. (*Ibid.*)

On October 20, 2020, Landlord issued a notice of default, stating that TEP was in default under the lease for failure to pay rent and setting a deadline by which default must be cured. (XC, ¶ 23.) Kim immediately forwarded the notice to Lim and Lim responded 3 days later stating he would submit an application to Landlord. (*Ibid.*) On October 29, 2020 Lim texted Kim that he was in touch with Landlord and a month later notified Kim that he had sent Landlord an application and financial statement and was awaiting an answer. (XC, ¶¶ 24, 25.)

On January 23, 2021, Lim texted Kim that documents stating TEP was no longer a party to the lease agreement would be ready within a couple weeks. (XC, ¶ 26.) On or about March 16, 2021, Landlord sent Kim a document called Consent to Assignment by which TEP assigned the lease to Silverlake and Landlord waived all its alleged rights to receive rent from TEP. (XC, ¶ 27.) Kim immediately signed the documents, believing that these documents were to formalize the agreement that Silverlake and Lim had promised to obtain. (*Ibid.*) However, Silverlake refused to execute the Consent to Assignment agreement because it determined it was not in its best financial interest. (XC, ¶ 28.)

On August 16, 2021, Scott/Landlord filed a complaint in this action, seeking at least \$250,000 and sent the complaint to Lim. (XC, ¶ 31.) A month later, in September 2021, Kim was introduced to Young via email, where Young was referred to as legal counsel. (XC, ¶ 29.) Kim received notice of the complaint on or around November 3, 2021 and immediately contacted Lim who told him there was nothing to worry about. (XC, ¶ 31.)

¹ The Cross-Complaint contains numerous factual allegations. For clarity, the Court includes the allegations most relevant to the instant demurrer.

² As multiple individuals share a surname, the Court will refer to them by their first names for purposes of clarity. No disrespect is intended. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

On January 12, 2022, Scott filed a request for entry of default since there had been no response to the summons and complaint. (XC, ¶ 32.) On January 26, 2022, Cross-Complainants were informed that Daniel would represent them in the action at Silverlake's expense. (XC, ¶ 33.) Kim and Yun agreed and signed and returned an engagement letter. (*Ibid.*) On March 1, 2022, Park told Kim that the Landlord agreed to set aside the default and Park continued to represent them. (XC, ¶ 34.)

Without Cross-Complainants knowledge, Cross-Defendants negotiated with Plaintiff for assignment of the lease to PBY Development and/or BBY Development to take over the franchise. (XC, ¶ 35.)

In or around February or March 2022, Landlord offered to excuse Cross-Complainants of all obligations under the lease in exchange for a \$324,215.04 payment. (XC, ¶ 39.) Neither Daniel nor Young informed Cross-Complaints about the offer and Lim briefly informed Kim of the proposal via telephone but said he felt it was an unreasonable demand. (*Ibid.*) Lim then told Cross-Complainants that Silverlake would counter-offer \$150,000 to be split equally by Silverlake and TEP, and Silverlake would then reimburse Cross-Complainants through waiver of monthly franchise fees for Kim's Silverlake Ramen franchise in Georgia. (*Ibid.*)

On February 21, 2024, Cross-Complainants filed their XC, asserting the following causes of action:

- 1) Promissory Fraud [against Silverlake, Lim, and Young];
- 2) Breach of Contract [against Silverlake];
- 3) Negligence [against Silverlake, Lim, and Young];
- 4) Breach of Fiduciary Duty [against Silverlake, Lim, and Young];
- 5) Promissory Estoppel [against Silverlake, Lim, and Young];
- 6) Negligent Misrepresentation [against Silverlake, Lim, and Young];
- 7) Legal Malpractice [against Young];
- 8) Legal Malpractice [against Daniel]; and
- 9) Legal Malpractice [against Michael Murphy].

On June 7, 2024, Daniel filed a demurrer to the XC. Cross-Complainants oppose the motion.

II. Demurrer

Daniel demurs to the eighth cause of action for legal malpractice on the grounds it fails to state facts sufficient to constitute a cause of action and it is uncertain.

a. Legal Standard

In ruling on a demurrer, the court treats it "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.)

b. Eighth Cause of Action – Legal Malpractice

“Generally, to state a cause of action for legal malpractice, a plaintiff must plead (1) the duty of the attorney to use such skill, prudence, and diligence as members of his or her profession commonly possess and exercise; (2) breach of that duty; (3) a proximate causal connection between the breach and the resulting injury; and (4) actual loss or damage resulting from the attorney’s negligence. To show damages proximately caused by the breach, the plaintiff must allege facts establishing that, but for the alleged malpractice, it is more likely than not the plaintiff would have obtained a more favorable result.” (*Jocer Enterprises, Inc. v. Price* (2010) 183 Cal.App.4th 559, 572 [internal citations and quotations omitted].)

i. Failure to State Sufficient Facts

Daniel contends that Cross-Complainants cannot establish the causation element of legal malpractice. Specifically, he asserts that Cross-Complainants must show that “but for the attorney’s negligence, the harm would not have occurred” and that here, the XC admits that they had actual knowledge of Landlord’s settlement offer from Lim, but instead relied on Lim’s promise to fully reimburse them if they made a counteroffer. (Demurrer, p. 8:19-20, 24-27.)

In opposition, Cross-Complainants argue that the malpractice allegations “span a broad array of negligent and willful acts that cause harm” and further, that Daniel concedes that they learned of the settlement offer from Lim and not from their own attorney. (Opposition, p. 5:6-9.) Cross-Complainants assert that they plainly allege Daniel failed to pursue a resolution or even advise his clients on the subject and he was negligent, regardless of whether they found out about the offer through another source. (Opposition, p. 5:17-22, citing XC, ¶¶ 35, 39, 40, 90, 91.)

The Court is persuaded by Cross-Complainants’ argument. Daniel cites no authority to support the contention that because Cross-Complainants learned of a settlement through another party, he no longer had a duty to inform or advise his clients of the settlement offer. (See Cal. Rules of Prof’l Conduct, Rule 1.4.1 [“A lawyer shall *promptly communicate* to the lawyer’s client: . . . all amounts, terms, and conditions of any written offer of settlement made to the client in all other matters.”][emphasis added].)³

Here, the XC alleges 1) Cross-Complainants were not kept reasonably informed of developments in their representation by Daniel (XC, ¶ 35); 2) Daniel received a written proposal from Landlord offering to excuse Cross-Complainants in exchange for a payment and Daniel did not inform Cross-Complainants of the offer or seek their input regarding a response (XC, ¶ 39); 3) Daniel failed to fully apprise Cross-Complainants of the positions being asserted by the Landlord against them and deprived them of the ability to negotiate (XC, ¶ 40); 4) Daniel breached his duty due to the foregoing actions and by favoring Silverlake and Lim over Cross-Complainants and failing to properly advise Cross-Complainants (XC, ¶ 90); and 5) Cross-Complainants were injured as a direct and proximate result of Daniel’s legal malpractice which exposed them to liability to Landlord in the underlying action which Landlord claims exceeds \$1.5 million (XC, ¶ 91).

The Court finds these allegations to be sufficient for purposes of a demurrer and declines to sustain the demurrer on the basis that Cross-Complainants fail to allege causation.

ii. Uncertainty

³ Cal. Rules of Prof’l Conduct, Rule 1.4.1, Commentary: An oral offer of settlement made to the client in a civil matter must also be communicated if it is a “significant development” under rule 1.4.

Daniel also asserts that in a legal malpractice case, Plaintiff must prove actual loss or damage sustained as a result of the attorney's negligence. (Demurrer, p. 10:1-2, citing *Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 130 (*Williams*)). The *Williams* case, however, was not decided on demurrer, but rather a motion after trial. On demurrer, a court considers well pleaded allegations of a complaint, and a court is not concerned with the "plaintiff's ability to prove . . . allegations, or the possible difficulty in making such proof." (*Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496.)

Daniel further contends the damages alleged against him in the amount of \$1.5 million cannot be deemed a legal certainty because the damages element in the underlying action has not been established by Landlord. (Demurrer, p. 10:7-12.)

"The mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm –not yet realized—does not suffice to create a cause of action for negligence. Hence, until the client suffers appreciable harm as a consequence of the attorney's negligence, the client cannot establish a cause of action for malpractice. The cause of action arises, however, before the client sustains all, or even the greater part, of the damages occasioned by the attorney's negligence. Any appreciable and actual harm flowing from the attorney's negligent conduct establishes a cause of action upon which the client may sue." (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 750 [internal citations, quotations, and emphasis omitted].)

In opposition, Cross-Complainants cite to *Adams v. Paul* (1995) 11 Cal.4th 583, 591-592 (*Adams*) to support their argument that "the determination of actual injury does not necessarily depend upon or require some form of final adjudication, as by judgment or settlement. . . . The facts may demonstrate that plaintiff suffered damage when . . . compelled to incur and pay attorney's fees and legal costs and expenditures as the result of the malpractice." (*Adams, supra*, at p. 591 [internal citations and quotations omitted].) Cross-Complainants argue they have alleged damages flowing from Daniel's malpractice including: "the actual but as yet unquantified amount of exposure to Plaintiff's claims," and the fees in defending against the Landlord. (Opposition, p. 8:3-8.)

Accordingly, the Court does not find damages to be uncertain such that a special demurrer may be sustained as to the eighth cause of action.

Based on the foregoing, the demurrer to the eighth cause of action is OVERRULED in its entirety.

The Court shall prepare the final order.

Calendar Line 2

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Calendar Line 3

Case Name: *Patrick Ng v. Hongyi Marston aka Hongyi Xie, et al.*

Case No.: 23-CV-416112

Motion for Judgment on the Pleadings to the Second Amended Complaint by Defendant
Hongyi Marston aka Hongyi Xie

Factual and Procedural Background

This is an action for financial elder abuse and other claims.

According to the second amended complaint (“SAC”), Amy Ng (“Amy”) is 78-years old, blind, suffering from diminished mental capacity and substantially unable to manage her own financial resources.⁴ (SAC at ¶ 1.)

Plaintiff Patrick Ng (“Patrick”) is Amy’s son and her attorney in fact as outlined in an instrument entitled “General Power of Attorney.” (SAC at ¶ 2, Ex. A.) Patrick is also the successor trustee of The Amy Ng Revocable Trust dated 10-21-2010, restated on 2-10-2021 and subsequently amended (“the Trust”). (Id. at ¶ 2.)

Defendant Hongyi Marston aka Hongyi Xie (“Marston”) was a friend, business adviser, and care provider to Amy. (SAC at ¶ 3.) Defendant Jin Rong Zheng (“Zheng”) was also a friend and care provider to Amy. (Id. at ¶ 4.) Over the years, Amy became dependent on Marston and Zheng for emotional support, basic needs and guidance, and reposed trust and confidence in them. (Id. at ¶¶ 3-4.)

Defendant Anthony Bayard Devolo (“Devolo”) acted as Amy’s attorney in preparing estate planning documents and drafting the Trust. (SAC at ¶ 5.)

For many years, Amy was the owner of certain residential real property commonly known as 20661 McClellan Road in Cupertino, California (“McClellan Property”). (SAC at ¶ 11.) Amy was the settlor of the Trust and the McClellan Property, under the terms of the Trust, was an asset of the Trust. (Id. at ¶ 12.)

On July 25, 2021, defendant Marston retained the services of Devolo and instructed him to prepare a deed from Amy transferring the McClellan Property to Marston and Zheng, and paid him for such services. (SAC at ¶ 24.) Defendant Devolo did not consult with Amy to determine her comprehension of the transaction or obtain her consent of the transfer to Marston and Zheng. (Id. at ¶ 25.)

On August 1, 2022, defendants, taking advantage of Amy’s weakness of mind, induced her to sign a deed giving them possession of the McClellan Property. (SAC at ¶ 14.) The purported deed was recorded the same day and defendants thereafter attempted to collect rent from lessees at the time. (Id. at ¶¶ 16, 20.)

On December 2, 2022, the date that a restraining order was issued, Patrick informed defendants in writing of his intention to cancel the deed. (SAC at ¶ 17.) And, pursuant to the restraining orders, defendants have been enjoined from, among other things, collecting any rent from the lessees. (Id. at ¶ 20.)

On January 26, 2024, Patrick filed the operative SAC against defendants alleging the following causes of action:

- (1) Cancellation of Deed [against Marston and Zheng];
- (2) Financial Abuse and Elder Abuse [against Marston, Zheng, Devolo];
- (3) Financial Abuse and Elder Abuse [against Zheng and Marston]; and
- (4) Breach of Fiduciary Duty [against Devolo].

⁴ At times, the court refers to the parties by their first names for purposes of clarity. No disrespect is intended. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

On February 20, 2024, defendant Marston filed an answer generally denying allegations of the SAC and setting forth an affirmative defense for lack of standing.

On May 28, 2024, defendant Marston filed the motion presently before the court, a motion for judgment on the pleadings to the SAC. Patrick filed written opposition. Marston filed reply papers. Both sides submit requests for judicial notice.

Motion for Judgment on the Pleadings to the SAC

Defendant Marston moves for judgment on the pleadings on the ground that Patrick lacks standing to pursue this action. (Code Civ. Proc., § 438.)

Marston'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 support, Marston requests judicial notice of the SAC, the operative pleading in this action. (See Request for Judicial Notice at Ex. 1.) The court however declines to take judicial notice of the SAC as it must necessarily be considered in ruling on the merits of the motion for judgment on the pleadings. (See *Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1091, fn. 1 [Sixth Appellate District denies request for judicial notice as unnecessary as the court must consider allegations in the complaint and attached exhibits in ruling on demurrer].)

Accordingly, the request for judicial notice is DENIED.

Patrick's Request for Judicial Notice

In opposition, plaintiff Patrick states he will file a request for judicial notice attaching an endorsed-filed copy of a Petition for Appointment of Probate Conservator of the Person and Estate of Amy Ng as soon as it is obtained. (See OPP at pp. 1:24-26, 5:5-8.) But, as conceded in the opposition, no such petition has been submitted to the court for consideration in connection with the motion for motion for judgment on the pleadings. Furthermore, any request for judicial notice must be made in a separate document listing the specific items for which notice is requested and must comply with California Rules of Court, rule 3.1306(c). (See Cal. Rules of Court, rule 3.113(l).)

Therefore, the request for judicial notice is DENIED.

Legal Standard

A complaint must contain substantive factual allegations sufficiently apprising the defendant of the issues to be addressed. (See *Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

A motion for judgment on the pleadings tests the legal sufficiency of factual allegations in the complaint. (*Lee v. Kotyluk* (2021) 59 Cal.App.5th 719, 728.) Like a demurrer, a motion for judgment on the pleadings challenges only defects on the face of the complaint. (*Ibid.*) The grounds for the motion must appear on the face of the complaint or from a matter of which the court may take judicial notice. (*Ibid.*) “Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings.” (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.)

On such motions, “[t]he court accepts as true all material factual allegations, giving them a liberal construction, but it does not consider conclusions of fact or law, opinions, speculation, or allegations contrary to law or judicially noticed facts.” (*Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1254.)

Standing

Law

“A litigant’s standing to sue is a threshold issue to be resolved before the matter can be reached on the merits.” (*Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1000 (*Blumhorst*).) California courts will not address the merits of litigation when a plaintiff lacks standing as courts have no power to render advisory opinions or give declaratory relief. (*Ibid.*) Thus, standing goes to the existence of a cause of action. (*Ibid.*)

“To have standing to sue, a person, or those whom he properly represents, must ‘have a real interest in the ultimate adjudication because [he or she] has [either] suffered [or] is about to suffer any injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented.’ [Citation.]’ [Citation.] Code of Civil Procedure section 367 establishes the rule that ‘[e]very action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.’ A real party in interest is one who has ‘an actual and substantial interest in the subject matter of the action and who would be benefitted or injured by the judgment in the action.’ [Citation.]” (*Martin v. Bridgeport Community Assn., Inc.* (2009) 173 Cal.App.4th 1024, 1031-1032.)

A party may challenge lack of standing at any time in the proceeding, including by motion for judgment on the pleadings, at trial or on appeal. (*Blumhorst, supra*, 126 Cal.App.4th at p. 1000; see *Farber v. Bay View Terrace Homeowners Assn.* (2006) 141 Cal.App.4th 1007, 1013 [lack of standing raised by motion for judgment on the pleadings].)

Analysis

Defendant Marston argues plaintiff Patrick, acting as an attorney in fact, lacks standing to file and maintain a lawsuit on behalf of Amy. Marston directs the court to the General Power of Attorney, attached as Exhibit A to the SAC, and contends that none of the 48 separate powers allows Patrick to file claims and litigation with respect to this action.

“ ‘A power of attorney is a written authorization to an agent to perform specified acts on behalf of the principal. [Citation.] The rights and liabilities created by the exercise of such authority are centered in the law of agency. [Citation.]’ [Citation.]” (*Estate of Huston* (1997) 51 Cal.App.4th 1721, 1727.) “The scope of a power of attorney depends on the language of

the instrument, which is strictly construed.” (*Tran v. Farmers Group, Inc.* (2002) 104 Cal.App.4th 1202, 1214.)

Plaintiff Patrick brings this action, in part, as an attorney in fact which is defined under Probate Code section 4014 as follows:

- (a) “Attorney-in-fact” means a person granted authority to act for the principal in a power of attorney, regardless of whether the person is known as an attorney-in-fact or agent, or by some other term.
- (b) “Attorney-in-fact” includes a successor or alternate attorney-in-fact and a person delegated authority by an attorney-in-fact. (Prob. Code, § 4014, subds. (a) – (b).)

Despite the points raised in the moving papers, plaintiff Patrick persuasively argues the General Powers of Attorney enable him to bring the instant lawsuit. In support, Patrick relies on several paragraphs contained in the instrument which include the following:

Paragraph 1: Authority to Manage and Maintain Real Property. Subject to paragraph 30 below, to manage, control, lease, sublease, and otherwise act concerning the principal’s interest in any real property described on Exhibit A, attached to this instrument and incorporated herein by reference (the “ Real Property”); to collect and receive rents or income therefrom; pay taxes, charges, and assessments on the same; repair, maintain, protect, preserve alter and improve the same; commit the principal’s resources and contract on the principal’s behalf regarding the same; **and do all things necessary or expedient to be done in the agent’s judgment in connection with the property.**

Paragraph 5: Authority to Deal with Debts; Income or Assets. To collect and deposit for the benefit of the principal all debts, interest, dividends or other assets that may be due or belong to the principal, and to execute and deliver receipts and other discharges therefor; **to demand, arbitrate, and pursue litigation on the principal’s behalf concerning all rights and benefits to which the principal may be entitled;** and to compromise, settle, and discharge all such matters as the agent considers appropriate under the circumstances.

Paragraph 28: General Authority. **Generally, to do, execute, and perform any other act, deed matter of thing, that in the opinion of the agent ought to be done, executed, or performed in conjunction with this power of attorney, of every, kind and nature, as fully and effectively as the principal could do if personally present.** The enumeration of specific items, acts, rights, or powers in this instrument does not limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers granted to the agent except where powers are expressly restricted. (See SAC at Ex.A, pp. 2,-3, 7, emphasis added.)

In the alternative, Patrick would still have standing to bring suit as he also alleges claims in this action as a successor trustee on behalf of the Trust. (See SAC at ¶ 2; see also *Johnson v. Curley* (1927) 83 Cal.App.627, 630 [“The trustee may sue at law respecting the trust estate or defend a suit brought against him if the instrument by which the trust is created does not inhibit.”].) Such allegations are not contested in the moving papers. Nevertheless,

Marston, in reply, contends there is no allegation of a “triggering event” for Patrick to assume the role of a settlor trustee. (See Reply at pp. 2:8-3:2.) This contention however is not supported by citation to legal authority and appears to be a factual issue that cannot be resolved on a motion for judgment on the pleadings. (See *United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 153 [court may disregard conclusory arguments that are not supported by pertinent legal authority or fail to disclose the reasoning by which the appellant reached the conclusions he or she wants us to adopt]; see also *Burnett v. Chimney Sweep* (2004) 123 Cal.App.4th 1057, 1068 [factual issues cannot be resolved on a motion for judgment on the pleadings].) Thus, the successor trustee allegations are sufficient to satisfy the standing to sue requirement and overcome the instant pleading motion. (See *Hudson v. County of Los Angeles* (2014) 232 Cal.App.4th 392, 408 [motion for judgment on the pleadings must be denied if the pleading states a cause of action on any theory].)

Consequently, the motion for judgment on the pleadings is DENIED.

Disposition

The motion for judgment on the pleadings to the SAC is DENIED.

The court will prepare the Order.

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