

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

**Department 20 (Calendar will be heard in Department 8)  
Hon. Eric S. Geffon (Covering for Hon. Socrates Manoukian)**

191 North First Street, San Jose, CA 95113

Telephone: 408-882-2210

**DATE: March 19, 2024      TIME: 9:00 A.M.**

**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.

**NEW INFORMATION – PLEASE READ:** The court is now fully open for in-person hearings. The court **strongly prefers** in-person appearances for all contested law-and-motion matters. If you need to appear remotely for a law-and-motion hearing, please file and serve Form RA-010 at least two court days in advance. (Cal. Rules of Court, rule 3.672(g).) For all other hearings (e.g., case management conferences), Form RA-010 is not required to appear remotely. While parties and attorneys may appear either in person or remotely for CMCs, the court **strongly prefers** either in-person or video appearances rather than audio-only appearances.

**CourtCall is no longer available.** The court uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 8: [https://www.scscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml). Again, if you are appearing remotely, please log in using a computer or phone with video capability, and please turn your camera on when your case is called. Although MS Teams allows for audio-only appearances, they cause significant disruptions to court proceedings and should be used only as a last resort.

**Recording is prohibited:** As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

**Court reporters:** Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See [https://www.scscourt.org/general\\_info/court\\_reporters.shtml](https://www.scscourt.org/general_info/court_reporters.shtml).

**Troubleshooting Tentative Rulings**

If you do not see this week's tentative rulings, either they have not yet been posted, or your web browser cache (temporary internet files) is pulling up an older version. You may need to "REFRESH" your browser or "QUIT" and reopen it – or adjust your internet settings so you only see the current version of the web page. Otherwise, your browser may continue to show an older version of the web page even after the current tentative rulings have been posted.

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| LINE #                 | CASE #     | CASE TITLE  | RULING   |
|------------------------|------------|---|--|
| <a href="#">LINE 1</a> | 23CV410186 | <i>John Kellerby, et. al. v. Richard L. Cain, Ph.D.</i> | <p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE.<br/><a href="https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>This matter is set for an Order of Examination. It is unclear from the papers whether the judgment debtor was served with a copy of the order. Plaintiff should attend the hearing and bring proof of service of the Order of Examination.</p> |

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|                        |                  |  |  |
|------------------------|------------------|--|--|
| <a href="#">LINE 2</a> | 2015-1-CV-280711 | <i>Cavalry, SPV I, LLC v. A. Cordova</i>                   | <p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE.<br/><a href="https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>The claim of exemption is DENIED. Judgment Debtor will be ordered to pay \$50.00 per pay period, which will be garnished from wages.</p> <p>Judgment Creditor is to prepare the appropriate paperwork for Court signature.</p> |
| <a href="#">LINE 3</a> | 23CV423546       | <i>Irina Buckvar, et. al., v. Bernard Buckvar, et. al.</i> | <p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE.<br/><a href="https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>See tentative ruling, below.</p>   |

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|                                  |            |   |  |
|----------------------------------|------------|---|--|
| <u><a href="#">LINES 4-5</a></u> | 23CV426470 | <i>David Williams v. AccuRadio, LLC</i> | <p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE.<br/><a href="https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>Defendant brings two motions: A demurrer to the first, second, third and fourth causes of action, and a motion to strike the requests for punitive damages and attorney fees. Defendant alleges that the complaint does not allege conduct by the defendant was committed with “malice, oppression or fraud,” and that there is no contractual or statutory basis for the recovery of attorney fees in this case.</p> <p>The motion was properly noticed and served on Plaintiff. Plaintiff has not filed any opposition to this motion. The failure to file an opposition can be considered consent to the granting of the motion. (Cal. Rule of Court, 8.54(c).)</p> <p>The demurrer is SUSTAINED and the motion to strike is GRANTED, both with leave to amend. Plaintiff shall have 10 days from service of the final order on these motions to amend the complaint.</p> <p>Defendant is ordered to prepare a final order for court signature.</p> |
|----------------------------------|------------|---|--|

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|----------------------------|------------|--|---|
| <a href="#">LINES 6-7</a>  | 23CV427682 | <i>Abdelsalam Mogasbe, et. al. v. Sandra Gavney, et. al.</i> | <p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE.<br/><a href="https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>On the court's own motion, this matter is continued to April 16, 2024 at 9:00 in Department 20.</p> |
| <a href="#">LINES 8-11</a> | 18CV326154 | <i>Richard Soukoulis v. Diana Southern, et. al.</i>          | <p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE.<br/><a href="https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>See tentative decision below.</p>   |

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|-------------------------|------------|---|---|
| <a href="#">LINE 12</a> | 20CV369499 | <i>Eric Kutcher v. Vahe Tashjian, et. al.</i>               | <p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE.<br/><a href="https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>On the court's own motion, this matter is continued to April 4, 2024 at 9:00 a.m. in Department 20.</p> |
| <a href="#">LINE 13</a> | 21CV382651 | <i>Gregory Gilbert, MD v. Stanford Health Care, et. al.</i> | <p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE.<br/><a href="https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>On the court's own motion, this matter is continued to April 4, 2024 at 9:00 a.m. in Department 20.</p> |

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|-------------------------|------------|---|--|
| <a href="#">LINE 14</a> | 22CV395429 | <i>Melissa Pocek v. Apple, Inc.</i>                         | <p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE.<br/><a href="https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>On the court's own motion, this matter is continued to April 11, 2024 at 9:00 a.m. in Department 20.</p>                                   |
| <a href="#">LINE 15</a> | 20CV373378 | <i>Arthur Mungaray v. Greenpoint Mortgage Funding, Inc.</i> | <p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE.<br/><a href="https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>This case has a noticed hearing set on August 8, 2024 at 10:00 a.m. in Department 20. The court's intention is to leave that date set.</p> |

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|-------------------------|------------|---|---|
| <a href="#">LINE 16</a> | 23CV425911 | <i>Joeanna DeFranco v. Target Corp.</i> | <p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE.</p> <p><a href="https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>Plaintiff attorney is invited to attend this hearing to discuss the request to set aside the default. The court has questions.</p> |
|-------------------------|------------|---|---|

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### Calendar Line 3

**Case Name:** *Irina Buckvar, et al. v. Bernard Buckvar, et al.*

**Case No.:** 23CV423546

## I. Background.

### Irina and Owen's Complaint

According to the underlying complaint, plaintiffs Irina Buckvar (“Irina”) <sup>1</sup> and Owen Buckvar (“Owen”) seek partition of real property: a single-family home on Linda Vista Drive in Cupertino (the “Cupertino Property”). (Complaint, ¶¶1-2.) Owen is married to Irina and is the son of defendant Bernard Buckvar (“Bernard”). (*Id.* at ¶3.) Owen is the owner of an undivided one-eighth tenant-in-common interest in the Cupertino Property, and Irina is owner of an undivided three-eighths interest in the Cupertino Property. (*Id.* at ¶¶3-4.) Bernard is the father of Owen, the father-in-law of Irina, a trustee of the Bernard Buckvar Revocable Trust dated October 24, 2014 (the “Trust”), and the owner of undivided one-half interest in the Cupertino Property. (*Id.* at ¶5.)

On 2 December 2014, Bernard and Owen granted their interests in the Cupertino Property to Bernard, as trustee of the Trust, and Owen, as joint tenants through a Grant Deed. (Complaint, ¶12, Ex. B.) On 21 September 2018, Bernard, as trustee of the Trust, and Owen quitclaimed their interests in the Cupertino Property to Bernard, as an unmarried man, and Owen, as a married man as his sole and separate property, as joint tenants. (*Id.* at ¶13, Ex. C.) That same day, Bernard and Owen secured a Deed of Trust with Mortgage Electronic Registration Systems, Inc. (“MERS”), which has since been released through an execution of a Full Reconveyance. (*Id.* at ¶14, Ex. D.) Also on that day, Bernard and Owen quitclaimed their interests in the Cupertino Property to Bernard, as trustee of the Trust, and Owen, as tenants-in-common through a Quitclaim Deed. (*Id.* at ¶15, Ex. E.)

On August 20, 2020, Bernard, as trustee of the Trust, and Owen secured an Adjustable Rate Deed of Trust with MERS. (Complaint, ¶16, Ex. F.) That same day, Bernard, as trustee of the Trust, and Owen secured a Second Deed of Trust with the Commissioner of Housing and Urban Development. (*Id.* at ¶17, Ex. G.) On 9 January 2023, Owen transferred a portion of his undivided one-half interest in the Cupertino Property through Grant Deed, granting himself an undivided one-eighth interest and Irina an undivided three-eighths interest in the Cupertino Property. (Complaint, ¶18, Ex. H.)

The parties’ relationship has deteriorated, and they have been unable to reach an agreement to divide the Cupertino Property. (Complaint, ¶19.) Irina and Owen have obtained a Title Guarantee and a Property Details Report for the Cupertino Property. (*Id.* at ¶20, Exs. I and J.) Irina and Owen are owners of the Cupertino Property and have a right to interlocutory judgment for partition, a right to full use and occupancy, and a right to writ of possession for the Cupertino Property. (*Id.* at ¶¶23-24.) A physical partition of the Cupertino Property is infeasible. (*Id.* at ¶¶22, 25-27.) Irina and Owen seek, among other things, an order for the appointment of a partition referee to prepare the Cupertino Property for sale and an order for disbursement. (*Id.* at ¶30, p. 5, Ins. 7-18.)

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<sup>1</sup> Because individuals involved in this case share the same last name, the court will refer to them by their first names. No disrespect is intended. (See *In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 551, fn. 2; *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

On 28 September 2023<sup>2</sup>, Irina and Owen filed a verified complaint stating a sole cause of action for partition against Bernard, as trustee of the Bernard Buckvar Revocable Trust dated October 24, 2014; Mortgage Electronic Registration Systems, Inc., and the Commissioner of Housing and Urban Development (“HUD”).

On 13 November 2023, Bernard filed a verified answer and a verified cross-complaint against Irina and Owen.

On 20 December 2023, Bernard filed the operative First Amended Verified Cross-Complaint (“Bernard’s Cross-Complaint”) against Irina and Owen, stating causes of action for:

- (1) Breach of Fiduciary Duty (against Owen)
- (2) Accounting (against all cross-defendants)
- (3) Financial Elder Abuse (against Owen)
- (4) Quiet Title (against all cross-defendants)
- (5) Violation of Penal Code § 496 (against all cross-defendants)

### **Bernard’s Cross-Complaint**

According to Bernard’s cross-complaint, Bernard is the father of Owen and father-in-law of Irina, who is currently married to Owen. (Bernard’s Cross-Complaint, ¶9.) Bernard was born in 1937. (*Id.* at ¶ 10.) In or around 1970, Bernard and his late wife, Helga Buckvar (“Helga”), purchased the subject Cupertino Property on Linda Vista Drive for approximately \$37,000. (*Id.* at ¶11.)

In or around May 2004, Bernard received title and ownership to real property located on Kanner Highway in Stuart, Florida (the “Florida Property”). (Bernard’s Cross-Complaint, ¶12.) Bernard has rented out the Florida Property since acquiring it. (*Id.* at ¶13.) Over the years, Bernard took out mortgages against the Cupertino Property. (*Id.* at ¶14.) At the time of Helga’s death in 2009, there were no longer any loans against the Cupertino Property, and Bernard became the sole owner as surviving joint tenant. (*Id.* at ¶¶15-17.)

In 2012, Owen became interested in purchasing a home for himself, but was unable to do so on his own. (Bernard’s Cross-Complaint, ¶18.) Owen asked Bernard if he would be willing to loan Owen money for the purpose of obtaining a new home. (*Id.* at ¶19.) Owen suggested that Bernard take out a mortgage against the Cupertino Property in order to fund Owen’s purchase of a new home and Owen agreed. (*Ibid.*) Bernard and Owen also agreed that when Owen purchased a new home, he would obtain a mortgage against it to repay the mortgage against the Cupertino Property. (*Id.* at ¶20.)

In July 2012, Bernard put Owen on title to the Cupertino Property to help his son obtain a loan to purchase his own home. (Bernard’s Cross-Complaint, ¶21.) Prior to this, Owen had never contributed monetarily to the Cupertino Property, including the payment of any mortgage, tax, or other expense. (*Id.* at ¶22.) On or about 30 July 2012, Bernard and Owen obtained a loan from JP Morgan Chase in the amount of \$285,000. (*Id.* at ¶23.) On or about 22

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<sup>2</sup> This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (Government Code, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil Rules of Court, Rule 3.714(b)(1)(C) and (b)(2)(C).)

August 2012, using the proceeds of the loan, Owen purchased a home located on Essex Avenue in Sunnyvale (the “Sunnyvale Property”), paying the purchase price of \$425,000 in cash. (*Id.* at ¶¶24-25.)

Owen agreed to pay the monthly payment on the loan against the Cupertino Property. (Bernard’s Cross-Complaint, ¶26.) In or around 2020, Owen stated that he would no longer make any of the monthly payments on the mortgage on the Cupertino Property. (*Id.* at ¶27.) At that time, Bernard was living on a fixed income from his retirement. (*Id.* at ¶28.) On or about 3 September 2020, Bernard obtained a reverse mortgage against the Cupertino Property. (*Id.* at ¶29.)

In the last four years, Owen, and Irina (and not Bernard) have retained all the funds from the rent for the Florida Property. (Bernard’s Cross-Complaint, ¶30.) Also in the last four years, Irina and Owen have taken Bernard to an attorney’s office to make changes to Bernard’s trust, in order to benefit Irina and Owen. (*Id.* at ¶31.) Irina and Owen attempted to put all of Bernard’s property in a trust of their own creation. (*Id.* at ¶32.) Owen has repeatedly asked Bernard to take out money from Bernard’s life insurance policy as a loan, but Owen has never made any payments for these loans. (*Id.* at ¶33.) Owen and Irina have taken advantage of Bernard to enrich themselves. (*Id.* at ¶34.)

Without Bernard’s knowledge, Owen transferred part of his claimed joint tenant interest in the Cupertino Property to Irina. (Bernard’s Cross-Complaint, ¶35.) Owen and Irina are now trying to deprive Bernard of the Cupertino Property, which he has owned for the past 53 years, and take half of the proceeds from the sale despite never providing payment towards the property. (*Id.* at ¶36.)

On 23 January 2024, Irina and Owen filed the motion now before the court, a demurrer to Bernard’s FAXC.

## **II. Demurrers in General**

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 demurrer tests the legal sufficiency of a complaint. It is properly sustained where the complaint or an individual cause of action fails to “state facts sufficient to constitute a cause of action.” (*Code Civ. Proc.*, §430.10, subd. (e).) “[C]onclusionary allegations . . . without facts to support them” are insufficient on demurrer. (*Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 537.) “It is fundamental that a demurrer is an attack against the complaint on its face, it should not be sustained unless the complaint shows that the action may not be pursued.” (*Yolo County Dept. of Social Services v. Municipal Court* (1980) 107 Cal.App.3d 842, 846-847.)

“It is not the ordinary function of a demurrer to test the truth of the plaintiff’s allegations or the accuracy with which he describes the defendant’s conduct. A demurrer tests only the legal sufficiency of the pleading.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213 (*Children’s Television*).) “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.’ [Citation.]” (*Id.* at pp. 213-214; see *Cook v. De La Guerra* (1864) 24 Cal. 237, 239 “[I]t is not the office of a demurrer to state facts, but to raise an issue of law upon the facts stated in the pleading demurred to.”).)

### **III. Cross-defendants Irina and Owen’s Demurrer to Bernard’s Cross-Complaint**

Irina and Owen demur to each cause of action against them on the ground it fails to allege sufficient facts under *Code of Civil Procedure* section 430.010, subdivision (3). (Notice of Motion and Motion, p. 3:1-20.)

#### **A. First Cause of Action: Breach of Fiduciary Duty**

This cause of action is against Owen. “In order to plead a cause of action for breach of fiduciary duty, there must be shown the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach. The absence of any of these elements is fatal to the cause of action.” (*Brown v. California Pension Administrators & Consultants, Inc.* (1996) 45 Cal.App.4th 333, 347-348; see also *CACI*, No. 605.) “While breach of fiduciary duty is a question of fact, the existence of legal duty in the first instance and its scope are questions of law.” (*Kirschner Brothers Oil, Inc. v. Natomas Co.* (1986) 185 Cal.App.3d 784, 790.) A claim for breach of fiduciary duty can be based on the failure to use reasonable care, the duty of undivided loyalty, or the duty of confidentiality. (See *CACI*, Nos. 4101-4103.)

“Our Supreme Court has acknowledged that it is difficult to enunciate the precise elements required to show the existence of a fiduciary relationship.” (*Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 632 (*Oakland Raiders*) quoting and citing *Children’s Television, supra*, 35 Cal.3d at p. 221.) “But the high court has noted that ‘before a person can be charged with a fiduciary obligation, he must either knowingly undertake to act on behalf and for the benefit of another, or must enter into a relationship which imposes that undertaking as a matter of law. [Citations.]’” (*Ibid.*)

Here, the pleading alleges: “Based upon OWEN’s representations, his long-standing familial relationship with BERNARD, and the confidence reposed by BERNARD in the integrity of OWEN that was voluntarily accepted and/or assumed by OWEN, OWEN owed BERNARD a fiduciary duty to act with utmost good faith in the best interests of BERNARD, as to the [Cupertino Property], the rents from the Florida Property, and the insurance policies for which OWEN received funds from BERNARD.” (Bernard’s Cross-Complaint, ¶38.) The pleading does not set forth what specific representations Owen allegedly made, and Bernard cites to no authority indicating that a long-standing familial relationship may give rise to a fiduciary duty. (See *Opp.*, pp. 4:13-21.) In short, the pleading does not sufficiently allege how Owen knowingly undertook to act on behalf of Bernard or entered into a relationship which imposes that undertaking as a matter of law. (See *Oakland Raiders, supra*, 131 Cal.App.4th at p.632.)

Accordingly, the demurrer to the first cause of action is SUSTAINED with 20 days leave to amend.

## **B. Second Cause of Action: Accounting**

This cause of action is alleged against Irina and Owen, who argue that an accounting is not a cause of action. (Dem., pp. 4:14-5:7.) Courts have recognized accounting as a cause of action in cases similar to this case. (See *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179 (*Teselle*)). “A cause of action for an accounting requires showing that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting.” (*Ibid.*) “However, a fiduciary relationship between the parties is not required to state a cause of action for accounting. All that is required is that some relationship exists that requires an accounting. [Citation.] (*Ibid.*)

Irina and Owen assert this cause of action cannot be maintained because there is an adequate remedy at law, pointing to *Code of Civil Procedure* section 872.140, which provides for an accounting in a partition action.<sup>3</sup> (Dem., pp. 4:17-28.) This may be true with respect to Irina and Owen’s own action for partition by sale of the Cupertino Property. But in his cross-complaint, Bernard is also seeking an accounting relating to the Florida Property and his life insurance policies. (Opp., p. 5:26.) The cross-complaint sufficiently alleges a relationship between Bernard and the cross-defendants, and further that they owe him unknown sums. “[T]he purpose of the accounting is, in part, to discover what, if any, sums are owed to the plaintiff, and an accounting may be used as a discovery device. [Citation.]” (*Tesselle, supra*, 173 Cal.App.4th at p. 180.)

Accordingly, the demurrer to the second cause of action is OVERRULED.

## **C. Third Cause of Action: Financial Elder Abuse**

This cause of action is against Owen. “The Elder Abuse Act makes certain enhanced remedies available to a plaintiff who proves abuse of an elder, i.e., a ‘person residing in this state, 65 years of age or older.’ (*Welf. & Inst. Code*, § 15610.27.) In particular, a plaintiff who proves ‘by clear and convincing evidence’ both that a defendant is liable for physical abuse, neglect or financial abuse (as these terms are defined in the Act) and that the defendant is guilty of ‘recklessness, oppression, fraud, or malice’ in the commission of such abuse may recover attorney fees and costs. (*Welf. & Inst. Code*, § 15657, subd. (a).)” (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 404 (*Carter*)).

In order to state a claim for financial elder abuse, a plaintiff must plead and prove the following: (1) the plaintiff was “elderly” within the meaning of the Elder Abuse Act (*Welfare & Institutions Code* § 15600, et seq.), i.e., 65 years of age or older; (2) the defendant took or retained the plaintiff’s property with the intent to defraud the plaintiff, for a wrongful use, or by undue influence; (3) the plaintiff was harmed; and (4) the defendant’s conduct was a substantial factor in causing in the plaintiff’s harm. (See CACI No. 3100; *Welf. & Inst. Code*, § 15610.30.)

A cause of action for elder abuse is statutory and, therefore, must be pleaded with particularity. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790 (*Covenant Care*)). “Accordingly, [the] ‘[u]se of such terminology [as fraudulently and recklessly] cannot

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<sup>3</sup> *Code of Civil Procedure* section 872.140 provides, “The court may, in all cases, order allowance, accounting, contribution, or other compensatory adjustment among the parties according to the principles of equity.”

cure [the] failure to point out exactly how or in what manner the [respondent] transgressed.’ [Citation.]” (*Carter, supra*, 198 Cal.App.4th at p. 410.)

Here, Bernard’s Cross-Complaint fails to plead this cause of action with the required particularity. The pleading employs general terminology in alleging that Owen harmed Bernard by taking property that belonged to him. But the pleading does not sufficiently describe the nature of any agreement or arrangement between Bernard and Owen with respect to what Owen allegedly took. Thus, the cross-complaint does not allege how the alleged taking was for a wrongful use or by undue influence, nor how Bernard was harmed by the alleged taking or retention of property.

Accordingly, the demurrer to the third cause of action is SUSTAINED with 20 days leave to amend.

#### **D. Fourth Cause of Action: Quiet Title**

This cause of action is against Irina and Owen. “To maintain an action to quiet title a plaintiff’s complaint must be verified and must include (1) a description of the property including both its legal description and its street address or common designation; (2) the title of plaintiff as to which determination is sought and the basis of the title; (3) the adverse claims to the title of the plaintiff against which a determination is sought; (4) the date as of which a determination is sought and, if other than the date the complaint is filed, a statement why the determination is sought as of that date; and (5) a prayer for determination of plaintiff’s title against the adverse claims.” (*Code Civ. Proc.*, § 761.020.)

The purpose of a quiet title action is to settle all conflicting claims to the property and to declare each interest or estate to which the parties are entitled. (See *Newman v. Cornelius* (1970) 3 Cal.App.3d 279, 284.) “Quieting title is the relief granted once a court determines that title belongs in plaintiff. . . [T]he plaintiff must show he has a substantive right to relief before he can be granted any relief at all.” (*Leeper v. Beltrami* (1959) 53 Cal.2d 195, 216 (*Leeper*).)

Irina and Owen assert that Bernard must allege fraud because they are holders of legal title to the Cupertino Property as tenants-in-common. (Dem., p. 6:3-14., citing *Liberty National Enterprises, L.P. v. Chicago Title Ins. Co.* (2013) 217 Cal.App.4th 62, 81.) They further argue the cross-complaint fails to allege fraud with particularity. (*Ibid.*) The pleading, however, does not support this cause of action with allegations of fraud. Instead, it alleges that Irina and Owen hold any interest as both a resulting trust and a constructive trust. (Bernard’s Cross-Complaint, ¶¶97-98, citing *Novak v. Novak* (1967) 249 Cal.App.2d 438 (*Novak*).)

Bernard contends *Novak* is directly on point, but the court finds the decision distinguishable. There, the plaintiff executed a quitclaim deed to his son and daughter-in-law to enable them to complete financing to avoid foreclosure on plaintiff’s home. (*Novak, supra*, 249 Cal.App.2d at p. 440.) The plaintiff continued to reside on the premises and made all payments on the house, believing that title would revert to him upon repayment of the loan. (*Ibid.*) The trial court found the plaintiff conveyed his interest to the defendants for the sole purpose of effecting the required loan, and that it was understood between the parties when the loan was effected that plaintiff would make the payments on the loan and that if he were still living

when the loan was paid in full, defendants would reconvey the property back to plaintiff at his request. (*Id.* at p. 441.) The *Novak* court found that the plaintiff was entitled to a reconveyance on the theory of either a resulting or a constructive trust. (*Id.* at p. 442.)

Here, Bernard's Cross-Complaint does not allege an understanding that Owen would reconvey his interest in the Cupertino Property back to Bernard. While Bernard's opposition emphasizes similarities with some facts in *Novak*, it fails to set forth the requirements for a resulting trust or a constructive trust or provide factual support for Bernard's position that he is entitled to a reconveyance of interest he transferred.<sup>4</sup>

Accordingly, the demurrer to the fourth cause of action is SUSTAINED with 20 days leave to amend.

**E. Fifth Cause of Action: Violation of *Penal Code* section 496**

This cause of action is against Irina and Owen. *Penal Code* section 496 states:

(a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170.

(Pen. Code, § 496, subd. (a).)

The elements of the claim are: “(1) that the particular property was stolen, (2) that the accused received, concealed, or withheld it from the owner thereof, and (3) that the accused knew that the property was stolen. [Citation.]” (*Finton Construction, Inc. v. Bidna & Keys, APLC* (2015) 238 Cal.App.4th 200, 213.) A violation of the statute requires some form of criminal intent. (*Siry Investment LP v. Farkenhondehpour* (2022) 13 Cal.5th 333, 361-362.) In general, statutory causes of action must be pleaded with particularity. (*Covenant Care, supra*, 32 Cal.4th at p. 790.)

Here, the cross-complaint alleges Owen “took the rents from the Florida Property,” and by putting them in Owen and Irina's personal bank accounts, obtained Bernard's property by theft. (Bernard's Cross-Complaint, ¶102.) It further alleges that Owen knew that he was depriving Bernard of his property, and Irina knew that she was receiving stolen funds. (*Id.* at ¶¶104-105.) Owen and Irina suggest that the cause of action is for conversion and argue the cross-complaint does not adequately allege that a specific sum was stolen. (Dem., pp. 6:19-7:11.) As Bernard notes in opposition, the cause of action is for violation of *Penal Code* section 496, not for conversion. That being the case, it is a statutory cause of action subject to a heightened pleading standard, requiring Bernard to set forth particular facts in support. The cross-complaint only offers general and conclusory allegations as to what particular property was stolen.

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<sup>4</sup> The court notes that Bernard's initial cross-complaint stated causes of action for resulting trust and constructive trust that do not appear in his amended cross-complaint.

Accordingly, the demurrer to the fifth cause of action is SUSTAINED with 20 days leave to amend.

#### **IV. Order.**

The demurrer to first, third, fourth, and fifth causes of action on the ground that the pleading fails to sufficiently state causes of action [*Code Civ. Proc.*, § 430.010, subd. (e)] for breach of fiduciary duty, financial elder abuse, quiet title, and violation of *Penal Code* section 496 is SUSTAINED with 20 days leave to amend.

The demurrer to second cause of action on the ground that the pleading fails to sufficiently state a cause of action [*Code Civ. Proc.*, § 430.010, subd. (e)] for accounting is OVERRULED.

The court will prepare the final order.



**Calendar Lines 8-11**

**Case Name:** *Richard D. Soukoulis v. Diana Avila Southern, et al.*

**Case No.:** 18CV326154

**(1) DIANA AVILA SOUTHERN AND RICHARD SOUTHERN’S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES, AS TO RICHARD SOUKOULIS AND ROBIN SOUKOULIS’ CROSS-COMPLAINT; AND  
(2) CROSS-COMPLAINANTS DIANA AVILA SOUTHERN AND RICHARD SOUTHERN’S MOTION FOR SUMMARY ADJUDICATION OF ISSUES AS TO THEIR SECOND, FOURTH AND FIFTH CAUSES OF ACTION AND THE SIXTEENTH AND EIGHTEENTH AFFIRMATIVE DEFENSES OF SHANNON AND ELIZABETH CRAWFORD**

**Factual and Procedural Background**

**Soukoulis FAC**

Plaintiff Richard D. Soukoulis (“Soukoulis”) is the owner of residential real property commonly known as 21296 Cinnabar Hills Road in San Jose (“Soukoulis Property”). (First Amended Complaint (“FAC”), ¶1.)

Defendants Diana Avila Southern and Richard Southern (collectively, “Southerns”) are owners of residential real property commonly known as 21283 Cinnabar Hills Road in San Jose (“Southern Property”). (FAC, ¶2.) Defendant Southerns placed the Southern Property into the Southern Family Revocable Trust dated 4-15-2003 (“Southern Trust”) for which they are trustees. (*Id.*)

Cinnabar Hills Road is a roadway parcel and is recognized as a recorded 30 foot wide non-exclusive ingress and egress easement (“Roadway Parcel”) with a stated purpose of allowing passage to homes and properties off the Roadway Parcel. (FAC, ¶5.)

Plaintiff Soukoulis’s recorded grant deed specifically identifies the Roadway Parcel and expressly grants plaintiff Soukoulis an ingress/ egress easement over the Roadway Parcel. (FAC, ¶6.) Defendant Southerns’ own recorded grant deed also specifically identifies the Roadway Parcel easement. (FAC, ¶7.)

Defendant Southerns have altered the Roadway Parcel easement and have constructed and/or continue to maintain various and significant encroachments upon the Roadway Parcel including by maintaining a private wrought iron fence in the easement which deprives plaintiff Soukoulis and other co-owners of easement rights while usurping easement property for

defendant Southern's private and exclusive use. (FAC, ¶9.) Plaintiff Soukoulis has contacted defendant Southern on several occasions to inform them of their encroachments and to request they voluntarily clear them. (FAC, ¶10.) Defendant Southern have admitted that they are encroaching on the Roadway Parcel easement which is confirmed by their own engineers and land surveyors' survey. (*Id.*) Despite these admissions, defendant Southern have refused and continue to refuse to remove their encroachments. (*Id.*)

On 5 April 2018<sup>5</sup>, plaintiff Soukoulis filed a complaint against defendant Southern, individually and as trustees of the Southern Trust, asserting causes of action for:

- (1) QUIET TITLE
- (2) DECLARATORY AND INJUNCTIVE RELIEF
- (3) SPECIFIC PERFORMANCE

Following an order of 23 August 2018 granting defendant Southern's motion to strike plaintiff Soukoulis's complaint with leave to amend, plaintiff Soukoulis filed the operative FAC which continues to assert the same three cause of action.

After an unsuccessful motion to strike plaintiff Soukoulis's FAC, defendant Southern filed an answer to plaintiff Soukoulis's FAC on 15 February 2019 and also filed a cross-complaint.

### **Southern's Cross-Complaint**

According to the Southern's cross-complaint, plaintiff Soukoulis and his wife, Robin G. Soukoulis (collectively, "Soukoulises") own and reside at property commonly known as 8108 Cinnabar Hills Road in San Jose. (Southern Cross-Complaint, ¶2.) In addition to their residence, the Soukoulises are owners and landlords of two residential rental properties located facing Cinnabar Hills Road but which have an address of 21296 Bertram Road ("Soukoulises' Rental Property"). (*Id.*) The Soukoulises' Rental Property is located immediately downhill and adjacent to the Southern Property. (*Id.*)

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<sup>5</sup> This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (**Government Code**, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil **Rules of Court**, Rule 3.714(b)(1)(C) and (b)(2)(C).)

Cross-defendants Shannon D. Crawford and Elizabeth T. Crawford (collectively, “Crawfords”) reside at 756 Onyx Court in San Jose. (Southern Cross-Complaint, ¶3.)

The Southern Cross-Complaint acquired their property from the Crawfords by grant deed dated 4 May 2015. (Southern Cross-Complaint, ¶9.) Prior to the sale, the Crawfords provided the Southern Cross-Complaint with a Real Estate Transfer Disclosure Statement dated 20 November 2014 (“Disclosure”). (*Id.*) In the Disclosure, the Crawfords represented that they were unaware of various conditions and issues including, but not limited to “encroachments, easements or similar matters that may affect your interest in the subject property.” (Southern Cross-Complaint, ¶11.) As it turns out, these representations were false. (*Id.*)

The Southern Cross-Complaint did not erect the fence that Soukoulis alleged they erected in his FAC. (Southern Cross-Complaint, ¶14.) The fence was in place at the time the Southern Cross-Complaint acquired the property from the Crawfords. (*Id.*) On information and belief, the Southern Cross-Complaint allege the fence was constructed in or about 2007/ 2008 by or on behalf of the Crawfords and which the Crawfords maintained for several years before the Southern Cross-Complaint purchased the property. (*Id.*) The Southern Cross-Complaint were completely unaware the fence might be intruding into a right of way until they commissioned a survey as part of a swimming pool construction project in 2017. (Southern Cross-Complaint, ¶15.) The fence is set back several feet from the paved road surface such that the fence in no way interferes with the routine transit of vehicles on the road nor is there any impediment to emergency vehicles’ access/ ingress/ egress. (*Id.*)

Portions of the Soukoulis’ Rental Property is constructed in the right of way and the risk to vehicular traffic is exacerbated by the Soukoulis allowing their tenants to park multiple vehicles that extend into the roadway. (Southern Cross-Complaint, ¶16.) Soukoulis’s acts and omissions have created a dangerous condition on Cinnabar Hills Road in that he has, at times, modified the street surface by removing material from the edge of the road to facilitate a plumbing repair without replacing asphalt. (Southern Cross-Complaint, ¶17.) Soukoulis has also forced other residents to move a different fence back which has exposed a corner of the Roadway Parcel to excessive wear from vehicles, many of which are related to Soukoulis’s own uphill activities and social events. (Southern Cross-Complaint, ¶19.)

The Southern's cross-complaint asserts the following causes of action:

- (1) **QUIET TITLE [AGAINST CROSS-DEFENDANT SOUKOULISES]**
- (2) **BREACH OF CONTRACT [AGAINST CROSS-DEFENDANT CRAWFORDS]**
- (3) **INTENTIONAL MISREPRESENTATION/ FRAUD & DECEIT [AGAINST CROSS-DEFENDANT CRAWFORDS]**
- (4) **NEGLIGENT MISREPRESENTATION [AGAINST CROSS-DEFENDANT CRAWFORDS]**
- (5) **NEGLIGENCE [AGAINST CROSS-DEFENDANT CRAWFORDS]**
- (6) **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS [AGAINST CROSS-DEFENDANT SOUKOULISES]<sup>6</sup>**
- (7) **TRESPASS [AGAINST CROSS-DEFENDANT SOUKOULIS]**
- (8) **PRIVATE NUISANCE [AGAINST CROSS-DEFENDANT SOUKOULISES]**
- (9) **PUBLIC NUISANCE [AGAINST CROSS-DEFENDANT SOUKOULISES]**
- (10) **EQUITABLE INDEMNITY [AGAINST CROSS-DEFENDANT CRAWFORDS]**
- (11) **CONTRIBUTION [AGAINST CROSS-DEFENDANT CRAWFORDS]**
- (12) **DECLARATORY RELIEF**

On 18 March 2019, the Soukoulises filed an answer to the Southern's cross-complaint.

### **Soukoulises' Cross-Complaint**

On 14 March 2019, the Soukoulises filed a cross-complaint against the Southern. In their cross-complaint, the Soukoulises note that the Southern's Cross-Complaint seeks to quiet title to a strip of land situated between the parties' adjoining properties approximately 30 feet wide and 110 feet long ("Prescriptive Easement Area") which includes an area approximately 30 feet by 30 feet and referred to by the parties as the "Parking Pad." (Soukoulises Cross-Complaint, ¶5.) The Soukoulises allege they (and their tenants, guests, and work crews) have continuously used the Prescriptive Easement Area for approximately 15 years by maintaining retaining walls, planting and maintaining gardens, using the area for recreation, using the area for long term storage, and parking their cars on the Parking Pad. (Soukoulises Cross-Complaint, ¶8.) In violation of the Soukoulises' prescriptive easement rights, the Southern have constructed and continue to maintain various and significant fences and gates with locks which deprive the Soukoulises of their rights to use and enjoy the Prescriptive Easement Area. (Soukoulises Cross-Complaint, ¶10.)

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<sup>6</sup> On 24 April 2023, pursuant to stipulation, the Southern dismissed the sixth cause of action and other allegations of their cross-complaint for intentional infliction of emotional distress against the Soukoulises.

The Soukoulises' cross-complaint against the Southernns asserts causes of action for:

- (1) QUIET TITLE**
- (2) DECLARATORY AND INJUNCTIVE RELIEF**

On 15 April 2019, the Southernns filed an answer to the Soukoulises' cross-complaint.

### **Crawfords' Cross-Complaint**

On 14 August 2019, the Crawfords filed an answer to the Southernns' cross-complaint and also filed a cross-complaint of their own against the Southernns demanding the Southernns defend, hold harmless, and indemnify the Crawfords for the claims made by Soukoulis. The Crawfords' cross-complaint asserts causes of action for:

- (1) INDEMNIFICATION [AGAINST SOUTHERNS]**
- (2) APPORTIONMENT OF FAULT [AGAINST SOUTHERNS]**
- (3) DECLARATORY RELIEF [AGAINST SOUTHERNS]**

On 18 September 2019, the Southernns filed an answer to the Crawford' cross-complaint.

On 2 October 2023, the Southernns filed the two motions now before the court: as cross-defendants, the Southernns make a motion for summary judgment/ adjudication of the Soukoulises' Cross-Complaint; and as cross-complainants, the Southernns also filed a motion for summary adjudication of the second, fourth, and fifth causes of action of their cross-complaint against the Crawfords as well as the sixteenth and eighteenth affirmative defenses asserted by the Crawfords.

## **II. Analysis.**

### **A. Cross-defendant Southernns' motion for summary judgment/ adjudication of cross-complainant Soukoulises' cross-complaint is DENIED.**

As noted above, the Soukoulises' cross-complaint asserts the Soukoulises have acquired prescriptive easement rights to an area that is approximately 30 feet by 110 feet,

immediately adjacent to the Southern Property. The Southern move for summary judgment/adjudication by arguing that what the Soukoulises actually seek (and what each of the Soukoulises' causes of action are premised upon) is more than merely prescriptive easement rights. According to the Southern, what the Soukoulises actually seek is exclusive, possessory rights to this Prescriptive Easement Area and the only way to obtain exclusive, possessory rights would be by adverse possession which requires the Soukoulises to have paid taxes for that property which they did not.

Generally, easements are distinguished from estates in land such as ownership in fee, tenancy in common, joint tenancy, and leaseholds, which are forms of possession of land. (12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, §§ 9–10, 382, pp. 59–60, 446–447.) “ ‘An easement involves primarily the privilege of doing a certain act on, or to the detriment of, another's property.’ [Citation.] An easement gives a nonpossessory and restricted right to a specific use or activity upon another's property, which right must be less than the right of ownership. [Citation.]” (*Mehdizadeh v. Mincer* (1996) 46 Cal.App.4th 1296, 1306 [54 Cal. Rptr. 2d 284], quoting *Wright v. Best* (1942) 19 Cal.2d 368, 381 [121 P.2d 702].) Thus, “[t]he owner of an easement is not the owner of the property, but merely the possessor of a ‘right to use someone's land for a specified purpose ... .’ ” (*Cody F. v. Falletti* (2001) 92 Cal.App.4th 1232, 1242 [112 Cal. Rptr. 2d 593], quoting *Long Beach Unified Sch. Dist. v. Godwin Liv. Trust* (9th Cir. 1994) 32 F.3d 1364, 1368; see *Kazi v. State Farm Fire & Casualty Co.* (2001) 24 Cal.4th 871, 881 [103 Cal. Rptr. 2d 1, 15 P.3d 223] [An easement “represents a limited privilege to use the land of another, but does not create an interest in the land itself.”].)

(*Blackmore v. Powell* (2007) 150 Cal.App.4th 1593, 1598.)

There is a difference between a prescriptive use of land culminating in an easement (i.e., an incorporeal interest) and adverse possession which creates a change in title or ownership (i.e., a corporeal interest); the former deals with the use of land, the other with possession ...

As the difference between prescriptive use and adverse possession is sometimes obscure, so is the difference between an exclusive easement and outright title. The former is a right to use property of another; every incident of ownership not inconsistent with enjoyment of the easement is reserved to the owner of the servient tenement; the latter may make use of any of the property which does not unduly interfere with the easement. (3 Witkin, Summary of Cal. Law, Real Property, §§ 340, 352, 353.) ***An exclusive interest labeled "easement" may be so comprehensive as to supply the equivalent of an estate, i.e., ownership.*** In determining whether a conveyance creates an easement or estate, it is important to observe the extent to which the conveyance limits the uses available to the grantor; an estate entitles the owner to the exclusive occupation of a portion of the earth's surface. (See *Elliott v. McCombs*, 17 Cal.2d 23, 28 [109 P.2d 329]; *Yuba Inv. Co. v. Yuba Consol. G. Fields*, 184 Cal. 469, 474–475 [194 P. 19];

*Van Slyke v. Arrowhead etc. Power Co.*, 155 Cal. 675, 678-679 [102 P. 816]; Rest., Property, § 471.) ""**If a conveyance purported to transfer to A an unlimited use or enjoyment of Blackacre, it would be in effect a conveyance of ownership to A, not of an easement.**"" (3 Powell on Real Property, § 405, p. 389, quoted in *Russell v. Palos Verdes Properties*, 218 Cal.App.2d 754, 772 [32 Cal.Rptr. 488].)

(*Raab v. Casper* (1975) 51 Cal.App.3d 866, 876-877; emphasis added.)

To prevail on their argument, cross-defendant Southernns assert the Soukoulises “seek **exclusive** rights to occupy certain portions of [the Southernns’] land without having paid taxes.” Yet, the evidence proffered by cross-defendant Southernns does not establish that the Soukoulises previously asserted or even now seek **exclusive** possession over the entirety of the disputed area. To illustrate this point, one discrete portion of the disputed area is the 30 by 30 feet Parking Pad. Although the Southernns proffer evidence that Soukoulis graded this Parking Pad and informed his tenants that they could park there, the evidence does not establish the Soukoulises’ **exclusive** use or possession of the Parking Pad. Even if the Southernns had met their initial burden, the Soukoulises proffer evidence in opposition which would present a triable issue with regard to the **exclusive** use and/or possession of the Parking Pad. As the court understands, the cyclone fence erected by Soukoulis only bordered the rear of the Parking Pad and did not preclude the Southernns’ use or possession of the Parking Pad.<sup>7</sup>

Accordingly, cross-defendant Southernns’ motion for summary judgment, or in the alternative, summary adjudication of issues, as to Richard Soukoulis and Robin Soukoulis’ cross-complaint is DENIED.

**B. Cross-complainant Southernns’ motion for summary adjudication of the second, fourth, and fifth causes of action of their cross-complaint against the Crawfords as well as the sixteenth and eighteenth affirmative defenses asserted by the Crawfords is GRANTED.**

On 3 January 2024, the court issued an order, pursuant to a stipulation between the Southernns and Crawfords, continuing the hearing on the Southernns’ motion for summary adjudication to 19 March 2024 based upon the representation that the stipulating parties were

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<sup>7</sup> See Soukoulises’ Response to Separate Statement of Undisputed Material Facts; Additional Material Facts, Fact No. 79.

“very close to reaching a settlement of the Southernns’ claims against the Crawfords.” The court order also stated that, “Opposition ... paperwork shall be filed pursuant to Code.”

Based upon a hearing date of 19 March 2024, opposition to the Southernns’ motion for summary adjudication had to be filed and served no later than 5 March 2024. The court records reflect the Crawfords did not file any opposition by that date.

On 11 March 2024, the Southernns filed a stipulation, executed also by the Crawfords, requesting a continuance of the Southernns’ motion for summary adjudication to allow the parties to continue settlement discussions and/or finalize settlement documents. The court will accommodate the parties’ request.

Hearing on cross-complainant Southernns’ motion for summary adjudication as to their second, fourth and fifth causes of action and the sixteenth and eighteenth affirmative defenses of Shannon and Elizabeth Crawford is hereby continued to 2 May 2024 at 9:00am in Department 20 of the above-entitled court.

### **III. Order.**

Cross-defendant Southernns’ motion for summary judgment, or in the alternative, summary adjudication of issues, as to Richard Soukoulis and Robin Soukoulis’s cross-complaint is DENIED.

Cross-complainant Southernns’ motion for summary adjudication as to their second, fourth and fifth causes of action and the sixteenth and eighteenth affirmative defenses of Shannon and Elizabeth Crawford is continued to 2 May 2024 at 9:00am in Department 20 of the above-entitled court.

The court will prepare the final order.

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