SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 20, Honorable Eric Geffon, Presiding

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DATE: Thursday, December 14, 2023
TIME: 9:00 A.M.

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APPEARANCES.

Whether appearing in person or on a virtual platform, the usual custom and practices of decorum and attire apply. (See ***Jensen v. Superior Court (San Diego)*** (1984) 154 Cal.App.3d 533.). Counsel should use good quality equipment and with sufficient bandwith. Cellphones are very low quality in using a virtual platform. Please use the video function when accessing the Zoom platform. The Court expects to see the faces of the parties appearing on a virtual platform as opposed to listening to a disembodied voice.

For new Rules of Court concerning remote hearings and appearances, please review California ***Rules of Court***, rule 3.672.

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 8(E) and ***California Rules of Court***, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the Court at (408) 808-6856 before 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

Please notify this Court immediately if the matter will not be heard on the scheduled date. ***California Rules of Court***, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. ***California Rules of Court***, rule 3.1304(d). A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. California

Rules of Court, rule 3.1304(c). Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

All proposed orders and papers should be submitted to this Department's e-filing queue. Do not send documents to the Department email unless directed to do so.

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will malke it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are required in all courthouses. If you appear in person, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. If you are using the Zoom virtual platform, it will helpful if you "rename" yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the "rename" feature. You may type your name as: Line #/name/party. If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as "Public."

COURT REPORTERS.

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); ***California Rules of Court***, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

PROTOCOLS DURING THE HEARINGS.

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds of good quality will be of great assistance to minimize feedback and distortion.

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with ***California Rules of Court***, rule 3.1312.

TROUBLESHOOTING TENTATIVE RULINGS.

To access a tentative ruling, move your cursor over the line number, hold down the "Control" key and click. If you see last week's tentative rulings, you have checked prior to the posting of the current week's tentative rulings. You will need to either "REFRESH" or "QUIT" your browser and reopen it. Another suggestion is to "clean the cache" of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

This Court's tentative ruling is just that—tentative. Trial courts are not bound by their tentative rulings, which are superseded by the final order. (See *Faulkinbury v. Boyd & Associates, Inc.* (2010) 185 Cal.App.4th 1363, 1374-1375.) The tentative ruling allows a party to focus his or her arguments at a subsequent hearing and to attempt to convince the Court the tentative should or should not become the Court's final order. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 917.) If you wish to challenge a tentative ruling, please refer to a specific portion of the tentative ruling to which you disagree.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	20CV369499	*Eric Kutcher et. al. v. Vahe Tashjian, et. al.*	Demurrer is SUSTAINED WITH LEAVE TO AMEND. See, tentative decision, below.
LINE 2	20CV369499	*Eric Kutcher et. al. v. Vahe Tashjian, et. al.*	See, line 1 above.
LINE 3	22CV406644	*Gilbert Marosi et. al. v. TriCo Bancshares*	Defendant's Demurrer is SUSTAINED WITHOUT LEAVE TO AMEND. See, tentative decision below.
LINE 4	23CV423526	*Carmen Duffy v. City of San Jose, et. al.*	Defendant's Demurrer is OVERRULED. See, tentative decision below.
LINE 5	23CV412909	*In re: Michael Running Jr.*	Petitioner J.G. Wentworth moves this court to vacate its previous approval for transfer of payment rights by and between Petitioner and Michael Running, Jr. Petitioner indicates that Mr. Running no longer wishes to go forward with the transfer of the structured settlement. The motion to vacate the approval for transfer of payment rights is GRANTED. Petitioner is to prepare an order for court signature.
LINE 6	23CV413100	*Citlali Artega Reyes v. Harini Padmanaban, et. al.*	Defendants move for leave of this court to file a cross-complaint for indemnity and contribution against Plaintiff Citlali Reyes. Plaintiff has not filed an opposition to the motion. A failure to oppose a motion may be deemed a consent to the granting of the motion. (CRC Rule 8.54c.) Failure to oppose a motion leads to the presumption that Plaintiff has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489.) Defendants Motion for Leave to File a Cross-Complaint is GRANTED.

Calendar Line 1-2

Case Name: *Eric Kutcher, et al. v. Vahe Tashjian, et al.*

Case No.: 20CV369499

I. Statement of Facts.

This action arises from the sale of real property located at 24925 Oneonta Drive, Los Altos. Homebuyers Eric and Lauren Kutcher filed a complaint against Vahe Setrak Tashjian (Seller), Ahmad and Safoora Javid[1], and others. Ahmad and Safoora Javid, trustees of the Javid Trust, and their adult daughter, Roya[2], filed the operative first amended cross-complaint (FAXC) against two groups of cross-defendants: the Tashjian Defendants[3] and the demurring OCTC Defendants[4].

During the relevant period, the Tashjian Defendants operated as a developer of high-end real estate, primarily in Santa Clara County. (FAXC, ¶ 13.) Tashjian financed his real estate purchases and renovations through a combination of conventional mortgages through financial institutions and short-term bridge loans through private lenders, with the loans typically secured by deeds of trust recorded on Tashjian's investment and personal properties. (*Ibid*.) The Tashjian Defendants' real estate transactions were funneled primarily through Orange Coast Title Company and, more specifically, an employee of their Cupertino office: Susan Trujillo. (*Id.* at ¶ 15.) The Tashjian Defendants generated a high number of transactions, and Orange Coast and Trujillo profited from the relationship. (*Id.* at ¶¶ 16-17.)

In 2018, the Javid Trust loaned $2.7 million to Tashjian through his Oneonta LLC, which would be secured with a deed of trust recorded on 24925 Oneonta Drive, a high-end residential property Tashjian was renovating for sale. (FAXC, ¶ 19.) When recorded in 2018, the $2.7 million deed of trust held by the Javid Trust was second in position, behind a senior mortgage of $4.8 million. (*Id.* at ¶ 20.) Another deed of trust was later recorded on the Oneonta propertyas security for a loan by another private lender. (*Id.* at ¶ 21.) In early 2019, Tashjian asked Trujillo to contact Ahmad Javid and the other private lender: "let them know we have to recon both of their DR until we have the new loan in place and then we can put them back. We need to get their recons signed ASAP." (*Id.* at ¶ 22.)

Trujillo emailed Ahmad: "At this time I will ask for the Sub/Recon of your loan to be reconveyed so I can secure the new loan. Once that is completed, I will then re-record your Deed of Trust back to the property." (FAXC, ¶ 24.) Ahmad responded that he would only agree if the new loan amount does not exceed the existing loan amount. (*Id.* at ¶ 25.) On Tashjian's instruction, Trujillo informed Ahmad the new loan amount "remains equal to the existing loan

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[1] The complaint sues Ahmad and Safoora Javid individually and as trustees of the Javid Family Trust Dated June 24, 1981.

[2] "For the sake of clarity, we refer to the parties by their first names. We mean no disrespect in doing so. (See *Rubinstein v. Rubinstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)" (*In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 551, fn. 2.)

[3] The "Tashjian Defendants" are defined as Vahe Setrak Tashjian, 24925 Oneonta Drive, LLC, and 1575 Grant Drive, LLC. (FAXC, ¶¶ 3-5, 9.)

[4] The "OCTC Defendants" are defined as Orange Coast Title Company of Northern California and employee Susan Trujillo. (FAXC, ¶¶ 6-7, 12.)

amount." (*Id*. at ¶ 26.) Ahmad took Trujillo at her word. (*Id.* at ¶¶ 25-27.) Trujillo did not tell Ahmad that she simply relayed Tashjian's statement and that she did not otherwise verify the new loan amount. (*Ibid*.) Based on Trujillo's representations about the amount of the refinance mortgage and that their deed of trust would be re-recorded immediately, Ahmad and Safoora agreed to the reconveyance. (*Id.* at ¶ 27.)

Tashjian eventually obtained a refinancing offer for $7.05 million for the Oneonta property. (FAXC, ¶ 32.) Trujillo did not inform Ahmad that the refinance was $2.25 million more than the original senior mortgage. (*Ibid.*) Orange Coast's in-house underwriter recognized the refinance as a high-risk transaction but agreed to it. (*Id.* at ¶¶ 33-37.) Trujillo drafted the instructions for issuing title insurance, which included false information. (*Id.* at ¶ 38.) Orange Coast recorded the reconveyance for the Javid Trust deed of trust. (*Id.* at 40.) Trujillo altered the dates of Ahmad and Safoora's signatures to make it appear that they signed shortly before the recording. (*Id.* at ¶ 41.)

In 2018, Roya agreed to loan $1.8 million to Tashjian through his Grant Road entity. (FAXC, ¶ 42.) The loan was secured by a deed of trust against his Grant Road property, another high-end residential property that he was renovating for sale. (*Ibid*.) On 15 November 2018, Roya's deed of trust was recorded in third position, behind mortgages of roughly $2.16 million and $1.8 million. (*Id.* at ¶ 43.) On 31 July 2019, Trujillo emailed Ahmad to say she needed Roya to sign a reconveyance to secure a new first loan on the Grant Road property. (*Id.* at ¶ 44.)

When Trujillo followed up with Roya for an update, Roya replied: "Prior to signing the sub/recon, I will need a written guarantee that the re-recording will happen within 30 days." (FAXC, ¶ 45.) Tashjian emailed Roya: "Yes this is to confirm that you will have a DT back on [the Grant Road property] within 30 days of signing the recon." (*Id.* at ¶ 46.) On 5 August 2019, Roya signed the reconveyance. (*Id.* at ¶ 47.) The next month, Tashjian obtained a $5.11 million refinance mortgage for the Grant property, but Roya's deed of trust was not re-recorded within 30 days as promised. (*Id.* at ¶¶ 48-49.)

From early 2019 through the middle of 2020, Ahmad and Roya requested updates about the recording of their loans on the respective properties, but Tashjian and Trujillo did not provide them with accurate information. (FAXC, ¶¶ 50-66.) Roya called Trujillo in October 2019 to request an update on the recording status, but Trujillo never followed up – a pattern that repeated. (*Id.* at ¶ 59.) On 4 February 2020, Roya had a phone call with Tashjian in which he suggested recording a deed of trust against a different property to secure Roya's loan. (*Id.* at ¶ 66.) On 24 March 2020, Tashjian emailed Ahamd and Roya and asked if they would be willing to forego their quarterly interest-only payments because he was having a liquidity issue. (*Id.* at ¶ 66.)

Soon thereafter, the Javids began working with an attorney to discuss avenues of relief. (FAXC, ¶ 67.) In a videoconference with the Javids on 1 May 2020, Tashjian said that both the Oneonta Drive and Grant Road properties had been refinanced and would soon be sold, so he could not put the deeds of trust back on those properties. (*Id.* at ¶ 68.) From 8 May 2020 through 19 June 2020, the Javids had four more videoconferences with Tashjian. (*Id.* at ¶¶ 68-75.) On 28 May 2020, Tashjian sold the Grant Road property without informing Roya. (*Id.* at ¶ 73.) Concerned that Tashjian would also sell the Oneonta property before securing their loan, Ahmad and Safoora executed a rescission of reconveyance of the Javid Trust's deed of trust, recorded on 29 June 2020. (*Id.* at ¶ 79.)

On 8 July 2020, Trujillo emailed the following to Tashjian: "We have a situation on Oneonta….In handling the new DT for Oneonta last year, I was only given instruction to have [Ahmad and Safoora] sign the Sub/Recon – now I am implicated. After close I was not given further instructions to recording their DT back to or on another of your properties. Their expectation was that it would. Please call me today so we can discuss your business plan for the security of your private lenders and investors going forward." (FAXC, ¶ 87.)

On 10 July 2020, Tashjian sold the Oneonta Drive property to the Kutchers for $9.45 million. (FAXC, ¶ 90.) The sale was done through and insured by Chicago Title, with no funds paid to the Javid Trust. (*Ibid.*)

On 14 August 2020, the Kutchers filed a complaint against Tashjian, Ahamd and Safoora Javid, the Javid Trust, and others.

On 11 September 2020, Ahmad and Safoora, the Javid Trust, and Roya filed a cross-complaint against Tashjian, Orange Coast, Trujillo, and others.

On 13 October 2020, the Kutchers filed a demurrer to the Javid cross-complaint.

On 22 February 2020, the court issued its order overruling the Kutchers' demurrer to the Javid cross-complaint.

On 27 June 2023, Ahmad and Safoora, the Javid Trust, and Roya filed the operative FAXC against the OCTC Defendants and the Tashjian Defendants, asserting the following causes of action:

(1) Breach of Fiduciary Duty

(2) Slander of Title

(3) Fraud by Concealment

(4) Negligence

(5) Breach of Contract

(6) Aiding and Abetting Breach of Fiduciary Duty

(7) Fraud

(8) Violation of Penal Code §496

(9) Conspiracy

On 6 September 2023, Orange Coast Title and Trujillo filed the motion now before the court, a demurrer to the Javids' 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).) "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 (*Committee*).) "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. Analysis.

Orange Coast and Trujillo demur to the first, second and third causes of action of the FAXC. Roya opposes[5] She relates the following in her opposition: "At the time of filing of the First Amended Cross Complaint, Cross-Complainant Ahmad Javid and Safoora Javid, Trustee of the Javid Family Trust Dated June 24, 1981 and Cross-Complaint Roya Javid (collectively "Javids") were represented by the same counsel. Since then, Cross-Complainants have sought separate counsel. (Opp., p. 2, fn. 3.)

A. First Cause of Action – Breach of Fiduciary Duty

"The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) the breach of that duty; and (3) damages proximately caused by that breach." (*Mosier v. Southern California Physicians Insurance Exchange* (1998) 63 Cal.App.4th 1022, 1044; see also *IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 646 [stating same]; *Brown v. Cal. Pension Adm'rs & Consultants* (1996) 45 Cal.App.4th 333, 347-348 ["The absence of any of these elements is fatal to the cause of action"].)

"Fiduciary and confidential have been used synonymously to describe any relation existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party." (*Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 271— internal punctuation and citations omitted.) "The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert unique influence over the dependent party. [Citation.]" (*Ibid.*)

Orange Coast and Trujillo contend the Javids have not alleged facts giving rise to a fiduciary duty. (Mot., pp. 16-18.) Relying upon *Summit Financial Holding, Ltd. v. Continental Lawyers Title Co.* (2002), 27 Cal.4th 705, 711 (*Summit*), they argue there is no continuing fiduciary duty owed by an escrow holder after the close of escrow. In opposition, Roya argues

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[5] The demurrer is unopposed by Ahmad Javid and Safoora Javid, individually and as trustees of the Javid Trust. Court records show Ahmad Javid (individually as the successor in interest to Safoora Javid and as the sole trustee of the Javid Trust) submitted a two-paragraph response to the demurrer, asserting that in lieu of opposing the demurrer to the FAXC, Ahmad has filed an amended cross-complaint. No such (second) amended cross-complaint appears in the court's records, nor is there a record of an order permitting the same.

the OCTC Defendants "owed a fiduciary duty to the Javids given the fact that – on Trujillo's urging – the Javids reposed trust and confidence in OCTC related to the reconveyances." (Opp., p. 6.) She further asserts that a fiduciary relationship existed because Javids provided instructions and conditions to Orange Coast under which the Javids consented to reconvey their deeds of trust. (*Ibid.*)

"An escrow involves the deposit of documents and/or money with a third party to be delivered on the occurrence of some condition. An escrow holder is an agent and fiduciary of the parties to the escrow." (*Summit, supra*, 27 Cal.4th at p. 711—internal punctuation and citations omitted.) "The agency created by the escrow is limited—limited to the obligation of the escrow holder to carry out the instructions of each of the parties to the escrow." (*Ibid.*) "[A]n escrow holder has no general duty to police the affairs of its depositors; rather, an escrow holder's obligations are limited to the faithful compliance with the depositors' instructions." (*Ibid.*) "Absent clear evidence of fraud, an escrow holder's obligations are limited to compliance with the parties' instructions." (*Ibid.*)

Here, Roya's contention that the Orange Coast and Trujillo owed the Javids a fiduciary duty lacks support in the facts alleged and the authorities cited. The FAXC does not identify which specific escrow transaction(s) give rise to the alleged fiduciary duty and its breach, instead referring generally to "the 2018 loan/deed of trust transactions described above." (FAXC, ¶ 94.) As moving parties assert, an "existing trust deed holder cannot issue a binding order to the escrow agent." (*Claussen v. First Am. Title Guar. Co.* (1986) 186 Cal.App.3d 429, 436 [citing *Moss v. Minor Properties, Inc.* (1968) 262 Cal.App.2d 847, 855 (*Moss*).) "[It] is generally held that no liability attaches to the escrow holder for his failure to do something not required by the terms of the escrow or for a loss incurred while obediently following his escrow instructions. [Citations.]" (*Lee v. Title Ins. & Trust Co.* (1968) 264 Cal.App.2d 160, 163 (*Lee*); see also *Axley v. Transamerica Title Ins. Co.* (1978) 88 Cal.App.3d 1, 9 [stating same].)

Because the FAXC does not include or otherwise set forth the relevant escrow agreements or instructions, it fails to present facts supporting the allegation that Orange Coast and Trujillo owed fiduciary duties to the Javids and how such duty or duties were allegedly breached. Further, other than stating that the Javids placed trust in Orange Coast and Trujillo, Roya has not articulated a basis for the existence of the alleged fiduciary duty arising apart from the absent escrow instructions. The authorities cited by Roya (*Wolf v. Superior Court* (2003) 107 Cal.App.4th 25, 29; *Martinez v. Welk Group, Inc.* (S.D. Cal. 2012) 907 F.Supp.2d 1123, 1133; and *Richelle, supra,* 106 Cal.App.4th at p. 272) do not persuade the court that the FAXC sufficiently alleges the first cause of action. None of the cases referenced by Roya address the fiduciary duty owed by an escrow holder, and in each case, the appellate court found there to be no fiduciary owed on the facts before it.

Accordingly, Orange Coast and Trujillo's demurrer to the first cause of action [breach of fiduciary duty] of the FAXC for failure to allege facts sufficient to state a cause of action [Code Civ. Proc., §430.10, subd. (e)] is SUSTAINED with 10 days leave to amend.

B. Second Cause of Action – Slander of Title

To establish slander of title, a plaintiff must show: "(1) a publication, (2) which is without privilege or justification, (3) which is false, and (4) which causes direct and immediate pecuniary loss." (*Manhattan Loft, LLC v. Mercury Liquors, Inc.* (2009) 173 Cal.App.4th 1040, 1051 (*Manhattan Loft*); see also *Klem v. Access Ins. Co.* (2017) 17 Cal.App.5th 595, 612.) "What makes conduct actionable is not whether a defendant succeeds in casting a legal cloud on plaintiff's title, but whether the defendant could reasonably foresee the that the false publication might determine the conduct of a third person buyer or lessee. [Citation.] The thrust of the tort of disparagement or slander of title is protection from injury to the salability of property. [Citation.]" (*Truck Ins. Exchange v. Bennett* (1997) 53 Cal.App.4th 75, 84.)

Orange Coast and Trujillo assert that only the owner of the real property in question may have standing for a slander of title claim. (Mot., pp. 15-16.) But, in the court's opinion, the authorities cited by Orange Coast and Trujillo do not support this position. In *Slusher v. Buckley* (1959) 174 Cal.App.2d 324 (*Slusher*), the slander of title claim failed because the parties who asserted it sustained no damages by reason of a rescission in a related action. (*Id.* at p. 332.) Thus, in *Slusher*, the trial and appellate courts found the parties in question had no ownership interest in the property at any time, and therefore could not allege damages for slander of title. (*Ibid.*) A similar conclusion was reached in another decision cited, *Broadway Federal Sav. & Loan Assoc.* (1995) 133 Cal.App.2d 382, 401, where the appellate court observed: "No assertion is made that appellant had any interest in [the property]." But it does not follow that only an owner of a property has an interest in the property subject to protection in a slander of title action.

To the contrary, "[a]ny legally recognized interest in real estate that can be sold or is otherwise susceptible of profitable disposal is a 'protected' interest for purposes of a slander of title action. Thus, interests in reality such as fees, life estates, leaseholds, reversions and remainders (whether vested or contingent), easements, whether express or implied and trusts or other equitable interests, are included." (4 *Miller & Starr*, Cal. Real Estate (4th ed. 2018) § 10:42, p. 10-175.) For example, easements rights have been upheld as sufficient property interests to support a slander of title action. (*See Sumner Hills Homeowners' Assn,. Inc. v. Rio Mesa Holdings, LLC* (2012) 205 Cal.App.4th 999, 1028-1029; see also *Hill v. Allan* (1968) 259 Cal.App.2d 470, 489 ["If the matter is reasonably understood to cast doubt upon the existence or extent of another's interest in land, it is disparaging to the latter's title where it is so understood by the recipient"].)

Here, Roya contends her ownership interest is the deed of trust she received to secure her loan and that she could have sold her loan to a third party if she wished. (Opp., p. 6.) However, even if standing is presumed, neither the FAXC nor Roya's opposition address the elements of the claim. Rather, the FAXC alleges the Javids suffered damage by relying on Orange Coast and Trujillo's representations and agreeing to reconvey her deed of trust. (FAXC, ¶¶ 100-101.) Thus, the second cause of action does not identify the alleged publication made by Orange Coast or Trujillo, its alleged falsity, nor the publication's alleged lack of protection by privilege – including how the litigation privilege does not apply. (See *Wilton v. Mountain Wood Homeowners Assn.*, (1993) 18 Cal.App.4th 565, 569.)

Accordingly, Orange Coast and Trujillo's demurrer to the second cause of action [slander of title] of the FAXC for failure to allege facts sufficient to state a cause of action [Code Civ. Proc., §430.10, subd. (e)] is SUSTAINED with 10 days leave to amend.

C. Third Cause of Action – Fraud by Concealment

"The general rule for liability for nondisclosure is that even if material facts are known to one party and not the other, failure to disclose those facts is not actionable fraud unless there is some fiduciary or confidential relationship giving rise to a duty to disclose." (*La Jolla Village Homeowners' Assn. v. Superior Court* (1989) 212 Cal.App.3d 1131, 1151.) To maintain a cause of action for fraud through nondisclosure or concealment of facts, a plaintiff must demonstrate that the defendant was under a legal duty to disclose those facts. (*OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 845.) "Where … there is no fiduciary relationship, the duty to disclose generally presupposes a relationship grounded in some sort of transaction between the parties. Thus, a duty to disclose may arise from the relationship between seller and buyer … or parties entering into any kind of contractual agreement. All of these relationships are created by transactions between parties from which a duty to disclose facts material to the transaction arises under certain circumstances." (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 337, internal citations omitted (*LiMandri*).)

"Fraud actions are subject to strict requirements of particularity in pleading. … Accordingly, the rule is everywhere followed that fraud must be specifically pleaded." (*Committee, supra,* 35 Cal.3d at p. 216.) "The pleading should be sufficient to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud." (*Commonwealth Mortgage Assurance Co. v. Superior Court* (1989) 211 Cal.App.3d 508, 518.)

Orange Coast and Trujillo contend the duty to disclose is a fiduciary duty, and that the FAXC fails to sufficiently allege a fiduciary duty for the reasons addressed previously. (Mot., pp. 18-19.) Thus, the court understands cross-complainant's argument as to the third cause of action to be an extension of their argument as to the first cause of action. In opposition, Roya argues that fraud by concealment does not require a fiduciary relationship. (Opp., pp. 8-10.) But she acknowledges that the defendant must have been under a duty to disclose to the plaintiff. (*Id.* at p. 8, citing *Jones v. ConocoPhillips Co.* (2011) 198 Cal.App.4th 1187, 1198.)

The FAXC does not sufficiently state a claim for fraud by concealment because it fails to adequately allege the existence of relationship between the Javids and Orange Coast and Trujillo. Because an escrow holder's agency is limited, their duties to each party cannot be read to conflict with duties owed to another party. (*Lee, supra,* 264 Cal.App.2d at p. 164.) As stated above, an escrow holder does not have a duty to police the parties to the escrow or report suspicious activity. (*Summit, supra*, 27 Cal.4th at p. 711.) "Absent clear evidence of fraud, an escrow holder's obligations are limited to compliance with the parties' instructions." (*Ibid.*) Though it may implied from this rule that when an escrow *does* have clear evidence of fraud,

they *do* have a duty to disclose, whether that duty extends to lenders such as the Javids in this case does not appear to be addressed by our high court in *Summit*. Even if it was, the FAXC does not specifically allege that Orange Coast and Trujillo knew that Tashjian had a fraudulent intent to deprive the Javids of their security interests, thus having "clear evidence of fraud." (*Summit, supra*, 27 Cal.4th at p. 711.)

Here, the second cause of action does not allege facts showing "a relationship grounded in some sort of transaction between [the OCTC Defendants and the Javids]." (*LiMandri, supra*, 52 Cal.App.4th at p. 337.) As discussed previously, the FAXC does not identify which specific escrow transaction(s) give rise to the alleged duty to disclose and its breach. Without any pertinent agreements with the escrow holder or escrow instructions, the court cannot determine the nature of Orange Coast and Trujillo's relationship with the Javids and thus the existence or scope of any duties potentially owed. Further, Roya does not provide authority in opposition discussing the circumstances under which an escrow holder owes a duty of disclosure to a lender, particularly if the lender is not a party to the escrow in question. (See *Moss, supra*, 262 Cal.App.2d at p. 855 ["one who is not a party to an escrow cannot issue a binding order to the escrow agent not to close the escrow unless he consents"].)

Accordingly, Orange Coast and Trujillo's demurrer to the third cause of action [fraud by concealment] of the FAXC for failure to allege facts sufficient to state a cause of action [Code Civ. Proc., §430.10, subd. (e)] is SUSTAINED with 10 days leave to amend.

IV. Order.

As to cross-complainants Ahmad Javid and Safoora Javid, individually and as Trustees of the Javid Family Trust Dated June 24, 1981, who filed no opposition here, the demurrer to the first amended cross-complaint is SUSTAINED with 10 days leave to amend.

As to cross-complainant Roya Javid, who is now separately-represented and did file an opposition here, for the reasons set forth above, the demurrer by cross-defendants Orange Coast Title Company of Northern California and Susan Trujillo to the first, second, and third causes of action of the first amened cross-complaint for failure to allege facts sufficient to state a cause of action [Code Civ. Proc., §430.10, subd. (e)] is SUSTAINED with 10 days leave to amend.

Calendar Line 3

Case Name: *Gilbert Marosi, et al. v. TriCo Bancshares, et al.*

Case No.: 22CV406644

(1) Defendant TriCo Bancshares' Demurrer to Plaintiffs Gilbert and Cecilia Marosi's Verified Second Amended Complaint and Each and Every Cause of Action Alleged Therein

Factual and Procedural Background

On or about May 9, 2013, plaintiffs Gilbert and Cecilia Marosi (collectively, "Plaintiffs" or "Marosis") entered into a Commercial Property Purchase Agreement and Joint Escrow Instructions ("Purchase Agreement") for the purchase of a 153-acre parcel of real property located at 23760 Alamitos Road in San Jose ("Property") from Twin Creek Properties LLC ("TCP"). (Second Amended Complaint ("SAC"), ¶¶1 – 2 and Exh. A.) The Purchase Agreement unambiguously identifies the Marosis in their individual capacities. (SAC, ¶3.)

The Purchase Agreement was faxed to Fidelity National Title Company of California ("Fidelity Title") on or about May 17, 2013. (SAC, ¶4.) Fidelity Title accepted the Purchase Agreement which formed a contract with Fidelity Title to carry out the escrow instructions therein. (*Id.*)

In order to purchase the Property, plaintiff Gilbert Marosi initially contacted Chase Bank to arrange a loan in the approximate amount of $2,500,000 toward the $5,000,000 purchase price of the Property. (SAC, ¶5.) However, Chase Bank declined to lend to the Marosis. (SAC, ¶6.) TCP was anxious to sell the Property to the Marosis. (SAC, ¶7.) When TCP learned Chase Bank declined to lend to the Marosis, TCP informed the Marosis that FNB Bancorp ("FNB") held a mortgage on the Property and referred the Marosis to FNB. (SAC, ¶8.) Plaintiff Gilbert Marosi contacted FNB to request a loan. (SAC, ¶9.)

On or about July 22, 2013, FNB emailed a letter of interest ("Letter of Interest) to plaintiff Gilbert Marosi regarding a prospective loan attaching an individual financial statement for plaintiff Gilbert Marosi to complete. (SAC, ¶10 and Exh. B.) The Letter of Interest identified the Marosis as the borrowers, requested an acknowledgement of acceptance of the terms and conditions, and requested a $5,000 good faith deposit. (SAC, ¶¶11 – 12.) On July 23, 2013, plaintiff Gilbert Marosi accepted and agreed to the terms of the Letter of Interest. (SAC, ¶13 and Exh. C.) The Marosis executed the individual financial statement authorizing FNB to obtain a consumer credit report on plaintiff Gilbert Marosi to evaluate the loan application. (*Id.*) Plaintiff Gilbert Marosi emailed the acknowledgement and individual financial statement to FNB on July 23, 2013. (*Id*.)

On August 1, 2013, FNB emailed plaintiff Gilbert Marosi and stated, in relevant part, "Vesting in this purchase; we are assuming it will be yourself and wife??" (SAC, ¶14 and Exh. D.)

On September 12, 2013, FNB emailed a Commercial Loan Application ("Loan Application") to the Marosis. (SAC, ¶15.) That same day, the Marosis executed and emailed the Loan Application back to FNB. (SAC, ¶15 and Exh. E.) The Loan Application unequivocally shows the Marosis applied for a loan from FNB as individuals, not trustees of a

trust. (SAC, ¶16.) At no time did the Marosis contact FNB to request the Loan Application be amended to provide that they were to purchase the Property as a trust instead of as individuals. (SAC, ¶17.)

On or about October 15, 2013, without the Marosis' authorization or knowledge, Fidelity Title prepared and submitted to TCP a grant deed for execution purportedly conveying the Property to the Marosis as "Trustees of the Living Trust of Gilbert and Cecilia Marosi, dated 3/9/83 and amended 3/4/85" in breach of the escrow instructions in the Purchase Agreement and in abrogation of the Loan Application signed by both Marosis specifying the loan by FNB was for the Marosis to purchase the Property as individuals, not a trust. (SAC, ¶19.) TCP executed the grant deed as prepared which was then notarized on October 15, 2013. (SAC, ¶20 and Exh. F.) Unbeknownst to the Marosis, TCP executed the grant deed purporting to convey the Property to the Marosis as trustees of a living trust in breach of the Marosis' instructions in the Purchase Agreement. (SAC, ¶21.) The Marosis' living trust referred to in the grant deed had been superseded by the Marosis' amendment of their trust, dated May 19, 2009, making the grant deed erroneous as well as unauthorized. (SAC, ¶22.)

Unaware of the unauthorized and erroneous grant deed, the Marosis consummated the purchase of the Property by obtaining a cashier's check payable to Fidelity Title in the amount of $2,364,251.69 drawn on the individual bank account of plaintiff Gilbert Marosi and tendering the cashier's check to Fidelity Title for payment of the balance of the purchase price for the Property. (SAC, ¶23 and Exh. G.)

Unbeknownst to the Marosis, the unauthorized and erroneous grant deed executed by TCP was thereafter forged by Fidelity Title based on erroneous information provided by FNB to Fidelity Title on or about October 25, 2013 without the knowledge or authorization of the Marosis and recorded by Fidelity Title on October 28, 2013 to purportedly vest title to the Marosis, not as individuals as instructed in the Purchase Agreement, but instead to the Marosis as "Trustees of the Living Trust of Gilbert and Cecilia Marosi, dated 3/9/83 and amended 3/4/85 and June 5, 2008," which never existed. (SAC, ¶24 and Exh. H.)

Although the Marosis were settlors of a living trust created in 1983, at no time did the Marosis authorize Fidelity Title or have TCP convey the Property to their trust created in 1983 and later amended. (SAC, ¶25.) Contrary to the grant deed recorded by Fidelity Title on October 28, 2013, there was never a June 5, 2008 amendment to the Marosis' trust. (*Id.*)

The Marosis did not receive a copy of the forged October 28, 2013 grant deed because it was purportedly mailed to the Property instead of the mailing address the Marosis previously provided to Fidelity Title and FNB. (SAC, ¶26.) As a result, the Marosis were not aware Fidelity Title had breached the joint escrow instructions or that Fidelity Title had recorded the forged grant deed on October 27, 2013. (*Id.*) The Marosis did not discover or become aware of the forged October 28, 2013 grant deed until on or about August 12, 2021. (SAC, ¶¶78 – 80.)

The Marosis resigned as trustees of their trust in 2017. (SAC, ¶27.) One of their sons, Ricardo Marosi, became trustee of the Marosis' trust at that time. (*Id.*) The Marosis did not transfer the Property to their living trust at any time. (*Id.*)

In 2017, Ricardo Marosi purported to transfer the Property to a limited liability company, 23760 Alamitos Road LLC, of which the Marosis' trust became the managing member with Ricard Marosi as trustee acting on behalf of the trust. (SAC, ¶28.) The transfer of the Property to 23760 Alamitos Road LLC is invalid because the Property had not at any time become an asset of the Marosis' trust. (*Id.*)

On or about May 22, 2018, Midpeninsula Regional Open Space District ("MROSD") purported to purchase the Property from 23760 Alamitos Road LLC. (SAC, ¶29.) The purported purchase of the Property by MROSD is invalid and the deed to the Property issued to MROSD on or about May 22, 2018 is null and void. (SAC, ¶30.) Title to the Property is held by the Marosis in their individual capacities. (SAC, ¶31.) Title to the Property never passed to the Marosis' living trust nor to 23760 Alamitos Road LLC nor to MROSD. (SAC, ¶32.)

Subsequent to MROSD's purported purchase of the Property and while in adverse possession, MROSD demolished approximately 36 rental dwellings, appurtenances, and infrastructure such as access roads and bridges, an electrical power supply system, septic systems, and a water supply system, and amenities including a convenience store and community swimming pool (collectively, "Improvements") at the Property without the Marosis' consent thereby committing waste. (SAC, ¶33.) MROSD has refused to return the Property to the Marosis and to compensate the Marosis for waste. (SAC, ¶34.)

FNB is the predecessor in interest to defendant TriCo Bancshares ("TriCo"). (SAC, ¶39.) Defendant TriCo acquired FNB which then merged into TriCo on or about July 6, 2018. (SAC, ¶39.)

On October 31, 2022[6], Plaintiffs filed a complaint against defendant TriCo.

On February 6, 2023, defendant TriCo filed a demurrer to Plaintiffs' complaint. Prior to hearing on the demurrer, Plaintiffs filed a first amended complaint ("FAC") which asserted causes of action for:

Breach of Contract
Breach of Implied Covenant of Good Faith and Fair Dealing
Inducing Breach of Fiduciary Duty
Fraud
Inducing Breach of Contract Between Plaintiffs and TC
Intentional Interference with Contractual Relations Between Plaintiffs and Fidelity Title
Inducing Financial Elder Abuse
Violation of California Civil Code Section 2924
Declaratory Relief

On May 31, 2023, defendant TriCo filed a demurrer to the Marosis' FAC.

On August 3, 2023, the court adopted its tentative ruling which sustained, in part, and overruled, in part, defendant TriCo's demurrer to the Marosis' FAC

On August 15, 2023, the Marosis filed the operative SAC continuing to assert the same nine causes of action.

On September 14, 2023, defendant TriCo filed the motion now before the court, a demurrer to the Marosis' SAC and each and every cause of action alleged therein.

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[6] 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).)

I. Defendant TriCo's demurrer to the Marosis' SAC and each and every cause of action alleged therein is SUSTAINED.

A. Procedural violation.

As a preliminary matter, the court notes that the Marosis' memorandum of points and authorities in opposition to defendant TriCo's demurrer exceeds the page limitations set forth in California Rules of Court, rule 3.1113, subdivision (d) which states, "no opening or responding memorandum may exceed 15 pages." Plaintiff Marosis' opening memorandum of points and authorities is 19 pages. Plaintiff Marosis did not seek leave in advance from this court for a page extension as permitted by California Rules of Court, rule 3.113, subdivision (e).

"A memorandum that exceeds the page limits of these rules must be filed and considered in the same manner as a late-filed paper." (Cal. Rules of Court, rule 3.1113, subd. (g).) A court may, in its discretion, refuse to consider a late-filed paper but must indicate so in the minutes or in the order. (Cal. Rules of Court, rule 3.1300, subd. (d).) Plaintiff Marosis are hereby placed on notice that any future failure to comply with the California Rules of Court may result in the court's refusal to consider their papers.

B. Request for judicial notice.

The request for judicial notice, part one and part two, in support of defendant TriCo Bancshares' demurrer to plaintiffs Gilbert and Cecilia Marosi's verified second amended complaint and each and every cause of action alleged therein is DENIED as unnecessary. (See *Duarte v. Pacific Specialty Insurance Company* (2017) 13 Cal.App.5th 45, 51, fn. 6—denying request where judicial notice is not necessary, helpful or relevant.)

C. Statute of limitations.

In this court's ruling on defendant TriCo's prior demurrer to the Marosis' FAC, the court sustained defendant TriCo's demurrer on the ground that the FAC was barred by the statute of limitations.

Defendant TriCo again demurs to the Marosis' SAC on the ground that each cause of action is barred by the applicable statute of limitations. A court may sustain a demurrer on the ground of failure to state sufficient facts if "the complaint shows on its face the statute [of limitations] bars the action." (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315 (*E-Fab*). A demurrer is not sustainable on statute of limitations grounds if there is only a possibility that the cause of action is time-barred; the defense must be clearly and affirmatively apparent from the allegations of the pleading [and matters of which the court may properly take judicial notice]. (*Id.*, at pp. 1315-1316.) When evaluating whether a claim is time-barred, the court must determine: (1) which statute of limitations applies, and (2) when the claim accrued. (*Id.*, at p. 1316.)

Defendant TriCo asserts, unopposed by the Marosis, that each of the causes of action are governed by, at most, a four-year statute of limitations. Defendant TriCo goes on to assert that each of the causes of action directed against it are based upon the allegation that the October 28, 2013 grant deed gave title of the Property to the Marosis' trust rather than to the Marosis in their individual capacity. Defendant TriCo contends the Marosis had actual knowledge that title to the Property would be placed in their trust earlier on October 22, 2013

when presented with loan documents requesting their signatures on behalf of the trust.[7] As such, defendant TriCo contends the Marosis' claims accrued in 2013 and since the Marosis did not assert and claims against defendant TriCo until the October 31, 2022 complaint filed in this action (nine years later), the Marosis' claims are barred.

"With respect to torts, generally speaking, a claim accrues and the statute of limitations begins to run upon the occurrence of the last event essential to the cause of action, even if the plaintiff is unaware that a cause of action exists. The infliction of actual and appreciable harm will commence the limitations period. However, the discovery rule postpones commencement of the limitation period until the plaintiff discovers or should have discovered the facts essential to his cause of action. Under this rule, possession of 'presumptive' as well as 'actual' knowledge will commence the running of the statute. A plaintiff is charged with 'presumptive' knowledge so as to commence the running of the statute once he or she has notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to his investigation." (*Shamsian v. Atlantic Richfield Co.* (2003) 107 Cal.App.4th 967, 979 – 980; internal citations and punctuation omitted.)

Indeed, the Marosis rely upon the delayed discovery rule here in alleging they did not discover or become aware of the forged October 28, 2013 grant deed until on or about August 12, 2021. (SAC, ¶¶78 – 80.) However, "A plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence. The burden is on the plaintiff to show diligence, and conclusory allegations will not withstand demurrer." (*E-Fab*, *supra*, 153 Cal.App.4th at p. 1319.)

With regard to the manner of discovery, the Marosis allege, in relevant part, "In August 2021, without knowledge of the forged October 28, 2013 Grant Deed, the attorney for Plaintiffs sent a letter to MROSD asserting claims for quiet title and waste. On August 12, 2021, MROSD replied with a letter enclosing a copy of the forged October 28, 2013 Grant Deed. That was the first time that Plaintiffs became aware of the forged October 28, 2013 Grant Deed."

The court finds these allegations insufficient. The Marosis do not explain the events leading up to their attorney contacting MROSD. The Marosis allege earlier that their son, Ricardo, purported to transfer the Property to MROSD on or about May 22, 2018. Some other events must have necessarily occurred which would have caused the Marosis and/or their attorney to suspect MROSD of asserting a legal interest in the Property. Did the Marosis' son, Ricardo, disclose the purported transfer of the Property to MROSD and, if so, when? Did the Marosis visit the Property and observe evidence of MROSD's possession and, if so, when?

The Marosis allege further that they were unable to make earlier discovery of the October 28, 2013 Grant Deed (because the Grant Deed had been forged; loan documents presented for their signature by a mobile notary were not explained and rushed; Fidelity had the Grant Deed sent to the Property where the Marosis did not reside or have a dropbox and not to the Marosis' mailing address; their son, Ricardo, took over as trustee of the Marosis' trust

[7] See SAC, ¶¶67 – 68: "Subsequently, on October 22, 2013, Fidelity caused various documents to be presented to the Marosis for signature. … Various of the documents presented to the Marosis on October 22, 2013 requested signatures by the Marosis as individuals and/or as trustees of a trust that never existed and/or to a 'Deed of Trust' to 'FNB BANCORP (now TriCo BANCSHARES) relating to a purported mortgage on the Property for the loan to the Marosis to purchase the Property…."

after the Marosis resigned) but the court finds such allegations to conflict with or be undercut by other allegations, exhibits attached to the SAC, and reasonable inferences drawn therefrom.

To begin, the Marosis place emphasis on the Purchase Agreement, Letter of Interest and Loan Application being in the Marosis or Gilbert Marosis' individual names. However, the most significant document of these three is the Purchase Agreement. Despite the Marosis' allegation that the Purchase Agreement called for title of the Property to be placed in their individual names, section 16, subsection D states, "At Close of Escrow, Buyer shall receive a grant deed conveying title… Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL." As Plaintiffs should be well aware, "Exhibits attached to the complaint take precedence to the extent they contradict allegations in the complaint." (*Bank of New York Mellon v. Citibank, N.A.* (2017) 8 Cal.App.5th 935, 943.) The Purchase Agreement does not, as the Marosis assert, call for title to the Property to be placed in their names individually.

Then, as defendant TriCo points out, the Marosis themselves allege that "on October 22, 2013, Fidelity caused various documents to be presented to the Marosis for signature," some of which "requested signatures by the Marosis as individuals and others as individuals and/or trustees of a trust that never existed." (SAC, ¶¶67 – 68.) One such document purportedly thrust upon them for signature was "Escrow Instructions." (SAC, ¶¶104 – 105 and Exh. S.) The Marosis contend this document conflictingly and confusingly referred to the borrower as the Marosis individually and the Marosis' trust and leaves blank who should be named on the Deed of Trust. The document is signed by each of the Marosis twice, once in their individual capacity and once as trustee. If anything, this allegation suggests the Marosis held some suspicion or had information of circumstances to put a reasonable person on inquiry that something may be amiss given their alleged specific intent to hold title to the Property in their individual capacity.

Even if the court were to accept the Marosis' allegation that they were rushed through the signing of loan documents and did not completely understand what they were signing and that the grant deed to the Property was thereafter forged, the Marosis' SAC acknowledges and specifically alleges they never received the grant deed to the Property. While it is reasonable to infer that there is some delay to allow for recording, a real estate purchaser's failure to receive a grant deed should create some suspicion. Thus, the Marosis' allegation that they never received the grant deed to the Property is yet a further factual circumstance, reasonably inferred from the SAC, which would put a reasonable person on inquiry.

The Marosis do not allege whether they received a copy of the deed of trust which is normally given to a borrower. The trustor in the deed of trust would reflect the owner of the Property as only the owner of record could give a deed of trust. It is also reasonable for the court to infer that the lender would send monthly mortgage statements to the borrower. If the title holder to the Property and borrower was the Marosis' trust, mortgage statements would have been sent to the Marosis' trust, yet a further circumstance which would put the Marosis on inquiry as to whether they held title to the Property as individuals or as trustees of their trust.

If, as the Marosis allege, they were never sent the October 28, 2013 grant deed because the mailing address was incorrect, the court will also reasonably infer that property tax statements were sent to the same incorrect address and that the Marosis did not receive property tax statements for the Property. The failure to receive property tax statement is an

additional circumstance which would have put the Marosis and any reasonable person on inquiry that something was amiss.

The Marosis' SAC goes on to allege that, "On or about December 29, 2017, First American Title Insurance Company ('FATIC') on behalf of FNB BANCORP mailed to the Marosis at their personal residence a NOTICE OF DEFAULT AND ELECTION TO SELL UNDER THE DEED OF TRUST … [which] referenced 'a Deed of Trust dated 10/18/2013, executed by The Living Trust of Gilbert and Cecilia Marosi, dated March 9, 1983, amended March 4, 1985 and June 5, 2008.'" (SAC, ¶¶429 – 430 and Exh. P.) By their own allegation, the Marosis state they received a document which would lead them to suspect title to the Property is not held by them in their individual capacity. In conjunction with the other allegations and inferences above, this allegation leads the court to the inescapable conclusion that the Marosis had presumptive knowledge no later than December 29, 2017 that title to the Property was not as they intended thereby triggering the statute of limitations.[8] Since the Marosis did not commence this action until more than four years thereafter, their claims against defendant TriCo are barred.

Accordingly, defendant TriCo's demurrer to plaintiffs Marosis' verified SAC and each and every cause of action alleged therein on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)], i.e., the cause of action is barred by the applicable statute of limitations, is SUSTAINED WITHOUT LEAVE TO AMEND.

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[8] "Resolution of the statute of limitations issue is normally a question of fact." (*Fox, supra*, 35 Cal.4th at p. 810.) More specifically, as to accrual, "once properly pleaded, belated discovery is a question of fact." (*Bastian v. County of San Luis Obispo, supra*, 199 Cal. App. 3d at p. 527.) As our state's high court has observed: "There are no hard and fast rules for determining what facts or circumstances will compel inquiry by the injured party and render him chargeable with knowledge. [Citation.] It is a question for the trier of fact." (*United States Liab. Ins. Co. v. Haidinger-Hayes, Inc., supra*, 1 Cal.3d at p. 597 [reversing judgment after demurrer].) "However, whenever reasonable minds can draw only one conclusion from the evidence, the question becomes one of law." (*Snow v. A. H. Robins Co.* (1985) 165 Cal. App. 3d 120, 128 [211 Cal. Rptr. 271] [reversing summary judgment].)

(*E-Fab, supra*, 153 Cal.App.4th at p. 1320.)

Calendar Line 4
Case Name: *Carmen Duffy v. City of San Jose, et al.*
Case No.: 23CV423526

I. Statement of Facts.

On or about October 30, 2023, defendants City of San Jose, County of Santa Clara, and State of California, Department of Industrial Relations owned, managed, repaired, maintained and/or controlled the property or were responsible for designing, constructing, maintaining, cleaning, repairing, or managing the property located along the east sidewalk of Quimby Road approximately 120 yards south of the intersection of Tully Road in San Jose. (Complaint, ¶ 6.) Plaintiff Carmen Sandoval Duffy suffered serious injuries when she tripped and fell due to a change in elevation of the pavement that was not properly marked. (*Id.*, ¶¶ 13-14.)

Plaintiff filed a government entity claim with each defendant. (Complaint, ¶ 12.)

On September 27, 2023, Plaintiff filed a complaint against defendants City, County, and State, asserting causes of action for:

(1) Negligence

(2) Dangerous Condition of Government Property

On October 30, 2023, Plaintiff filed a request for dismissal as to defendant County only.

On November 15, 2023, defendant City filed the motion now before the court, a demurrer to the complaint.

II. Analysis

A. 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 (*Committee*).) "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."].)

B. Defendant City's Demurrer

City demurs on the grounds the complaint does not state facts sufficient to constitute a cause of action (*Code of Civil Procedure*, § 430.10, subdivision (e)), contending Duffy did not comply with the Government Claims Act (*Government Code*, sections 810-996.6[9]) and that the substantial compliance doctrine cannot salvage her claim. (Mot., pp. 2-3.) In opposition, Duffy asserts that City's response to her claim was not code-compliant and that she substantially complied with the Act. (Opp., pp. 6-9.)

1. Claim Presentation

The Act established a standardized procedure for bringing personal injury claims against local government entities. (*Hernandez v. City of Stockton* (2023) 90 Cal.App.5th 1222, 1230 (*Hernandez*).) In general, a suit for damages cannot be brought against a public entity until a written claim (or "government claim") is presented and rejected by the entity. (*Ibid.*; Sections 905 (listing exceptions not relevant here, 954.4.) "The required contents of a government claim are set forth in section 910 of [the Act]." (*Hernandez, supra,* 90 Cal.App.5th at p. 1230.)

Section 910 specifies that a government claim must include "the date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted" and a "general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim." (Section 910, subds. (c), (d).) "Compliance with the claims statutes is mandatory [citations]; and failure to file a claim is fatal to the cause of action. [Citations.]" (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 454 (*City of San Jose*).)

The purpose of the Act is "to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation." (*Stockett v. Assoc. of Cal. Water Agencies Joint Powers Ins. Auth.* (2004) 34 Cal.4th 441, 446 (*Stockett*) [quoting and citing *City of San Jose, supra,* 12 Cal.3d at p. 455].)

Here, there is no dispute that Plaintiff timely submitted a claim to City using the appropriate form. (See Declaration of Barry Witt in support of defendant City of San Jose's demurrer to complaint, Ex. 1 ("Claim").) Rather, the focus of the dispute is whether Plaintiff's Claim presented City sufficiently describes the location of the alleged incident to provide City with enough information to enable it to adequately investigate the claim and to settle it, if appropriate, without the expense of litigation.

Plaintiff's Claim identifies the place of the incident as: "at or near the intersection of Tully Rd & Quimby Rd, San Jose, CA 95122." It further describes the circumstances: "On

[9] Further unspecified statutory references are to the Government Code.

October 30, 2020, Claimant was walking on the side walk on Quimby Road, approaching the intersection of Tully Road. Claimant was walking towards friend's house when Claimant unexpectedly tripped and fell over uneven sidewalk causing Claimant to fall forward onto Claimant's nose." City contends the above description is insufficient to enable it to investigate the Claim because it does not specify how far away Plaintiff was from the intersection or from which direction on Quimby Road she was walking. (Mot., pp. 2-3.) In opposition, Plaintiff asserts that any deficiency is traceable to City's notice in reply to the Claim, which Plaintiff argues fails to state with particularity the alleged defects or omissions, as required by the Act.

Here, in the court's estimation, the Claim sufficiently apprises City of the location of the incident to enable it to investigate the claim and to settle it, if appropriate, without the expense of litigation. The Claim names a street and cross street where the incident occurred and identifies the cause as uneven sidewalk. Further, even if the location of the incident could be considered impermissibly vague, the Claim nevertheless substantially complies with the prefilling requirements of the Act such that the pleading at issue here withstands demurrer.

2. Substantial Compliance

"Where a claimant has attempted to comply with the claim requirements but the claim is deficient in some way, the doctrine of substantial compliance may validate the claim…. [Citation.]" (*Connelly v. County of Fresno* (2006) 146 Cal.App.4th 29, 38.) "The doctrine is based on the premise that substantial compliance fulfills the purpose of the claims statutes, namely, to give the public entity timely notice of the nature of the claim so that it may investigate and settle those having merit without litigation. [Citations.]" (*Ibid.*)

"The essential elements of a claim are set forth in Government Code section 910. They include (1) the name and addresses of the claimant and the person to whom notices are to be sent, (2) a statement of the facts supporting the claim, (3) a description of the injury *and* the amount claimed as of the time of presentation, and (4) the name(s) of the public employee(s) who caused the injury, if known." (*Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1082.) In applying the doctrine, courts apply a two-part test: "Is there *some* compliance with *all* of the statutory requirements; and if so, is this compliance sufficient to constitute *substantial* compliance." (*City of San Jose, supra,* 12 Cal.3d 447, 456-457.)

Here, after reviewing the Plaintiff's Claim and the parties' arguments, the court finds the doctrine of substantial compliance applicable. First, the only essential element of the Claim challenged by City is the "place … of the occurrence or transaction which gave rise to the claim asserted." (Section 910, subd. (c).) The Claim shows at least some compliance with this element by stating the incident occurred at or near the intersection of two public streets in San Jose. The Claim further identifies the place of the incident as being on uneven sidewalk on Quimby Road approaching the intersection with Tully Road.

This level of compliance in identifying the "place" of the occurrence is sufficient to constitute substantial compliance. The description of the place in the Claim is not so vague and broad as to prevent City from being able to conduct any sort of investigation in accordance with the purpose of the Act. Nor is the place stated incorrect or misleading. Rather, the underlying facts about the nature and location of the occurrence are fairly represented in the Claim. Plaintiff need not identify the specific piece of concrete in question to state a valid

claim under the Act. (See *Blair v. Superior Court* (1990) 218 Cal.App.3d 221, 225 [a claim need not specify each particular act or omission later proven to have caused the injury].)

City compares the facts here to those in *Hall v. Los Angeles* (1941) 19 Cal.2d 198 (*Hall*). There, the plaintiff's government claim describes the occurrence as: "Personal injuries received from slipping on sidewalk which was covered with mud, leaves and debris, resulting in injuries …." (*Id.* at p. 200.) Our high court found that the doctrine of substantial compliance did not apply due to the claim's "entire failure to designate in the claim the place where the accident occurred." (*Id.* at p. 203.) As argued by Plaintiff in opposition, *Hall* is readily distinguishable because, here, the Claim identifies the place where the incident occurred.

City points out that the complaint contains more detail as to the location of the incident, stating that it occurred along the east sidewalk of Quimby Road approximately 120 yards south of the intersection with Tully Road in San Jose. (Complaint, ¶ 6.) But the court does not find this factual divergence to be so great that the complaint alleges liability "on an entirely different factual basis than what was set forth in [the Claim]." (*Stockett*, *supra*, 34 Cal.4th 441, 448 [quoting and citing *Fall River v. Superior Court* (1988) 206 Cal.App.3d 431, 435].) "Where the complaint merely elaborates or adds further detail to a claim, but is predicated on the same fundamental actions or failures to act by the defendant, courts have generally found the claim fairly reflects the facts pled in the complaint. [Citation.]" (*Stockett*, *supra*, 34 Cal.4th at p. 447.)

Accordingly, the demurrer to the complaint is OVERRULED.

IV. Order.

Defendant City of San Jose's demurrer to plaintiff Carmen Duffy's complaint on the grounds that the complaint does not state facts sufficient to constitute a cause of action and that Plaintiff failed to comply with the claim filing requirements of the Government Claims Act is OVERRULED.