Tentative Rulings for November 28, 2023
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)
The above rule also applies to cases listed in this "must appear" section.

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

18CECG03415 ***Bray v. Horizon Health & Subacute, LLC*** **is continued to Thursday, December 7, 2023, at 3:30 p.m. *in Department 502*.**

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(03)

Tentative Ruling

Re: ***Chiasson v. Nicholas***
Superior Court Case No. 22CECG02499

Hearing Date: November 28, 2023 (Dept. 403)

Motion: Plaintiffs/Cross-Defendants' Demurrer and Motion to Strike Portions of First Amended Cross-Complaint

Tentative Ruling:

To overrule the plaintiffs' demurrer to the first, second, third, and fifth cross-claims in the first amended cross-complaint. To sustain the demurrer to the fourth cross-claim.

To grant the motion to strike part of paragraph 6, specifically the allegation "for poor performance." To grant the motion to strike part of paragraph 22, page 5, lines 21-27, starting with "However..." and ending with "…co-owned." To grant the motion to strike part of paragraphs 40 and 73, specifically the allegation "Since the 1940s." To deny the rest of the motion to strike. To deny leave to amend.

Explanation:

Demurrer: Plaintiffs first argue that the defendants' quiet title claims all fail to state valid causes of action because they do not include a legal description of the parcel of property in dispute, namely the portion of the Sadie Property on which the defendants' packing shed, road, gate, parking area, and propane tank allegedly encroach.

Under Code of Civil Procedure section 761.020, a quiet title complaint must include both a legal description of the real property for which title is to be quieted and the street address for the property. (Code Civ. Proc., § 761.020, subd. (a).)

Here, plaintiffs concede that defendants' first amended cross-complaint does include the street address for the Sadie Property, as well as a legal description of the property. (FACC, ¶ 19, and p. 8, fn. 1.) However, plaintiffs contend that this description is inadequate, because it does not describe the small portion of the property that is in dispute, which lies along the southern boundary of the Sadie Property.

The general rule is that "'a land description is good if it identified the land or affords a means for its identification.'" (*Podd v. Anderson* (1963) 215 Cal.App.2d 660, 665, citation omitted.) "[T]he description must be certain and definite and sufficient in itself to identify the land…" (*Best v. Wohlford* (1904) 144 Cal. 733, 737.) "To be sufficient the description must be such that the land can be identified or located on the ground by use of the same." (*Edwards v. City of Santa Paula* (1956) 138 Cal.App.2d 375, 380, citation omitted.) "It has often been stated that one of the tests for determining the sufficiency of a description is whether a competent surveyor would have any difficulty in locating the land and establishing its boundaries from the description contained in the agreement to convey." (*Leider v. Evans* (1962) 209 Cal.App.2d 696, 703, citations omitted.) "'[T]he rule

is that the description in a judgment affecting real property should be certain and specific, and that an impossible, wrong, or uncertain description, or no description at all, renders the judgment erroneous and void.'" (*Newman v. Cornelius* (1970) 3 Cal.App.3d 279, 284, citation omitted; see also *Lechuza Villas West v. California Coastal Com'n* (1997) 60 Cal.App.4th 218, 242.)

In the present case, the FACC contains an adequate description of the disputed property. As mentioned above, the cross-complaint has both the street address and the legal description for the entire Sadie Property. In addition, defendants have attached a copy of the disputed surveyor's report, which includes an aerial photo of the properties with the disputed property line marked clearly. (Exhibit A to FACC.) The photo also shows the location of the packing shed, road, parking lot, and other structures. (*Ibid*.) Plaintiffs themselves are also clearly aware of the location of the disputed portion of the property, since the same property line dispute is the basis of their own complaint. Therefore, the court intends to find that defendants have included an adequate description of the disputed parcel, and it will not sustain the demurrer on the ground that the complaint fails to describe the property.

Next, plaintiffs argue that the settlement agreement in the prior arbitration bars all of defendants' claims related to ownership of the Sadie Property. They note that the parties litigated their claims to the Sadie Property in the prior arbitration, and that the settlement agreement contains a release and waiver of all claims known or unknown related to the property. Thus, they contend that the settlement agreement acts as res judicata and that defendants cannot bring any claims that assert that they own part of the Sadie Property. (See Plaintiffs' Request for Judicial Notice, Exhibit 3, p. 4, §§ 3.1, 3.2.)

First of all, the court cannot consider the contents of the settlement agreement when ruling on the demurrer. The general rule is that the court can only consider the allegations of the complaint and its attachments, plus judicially noticeable facts and documents, when ruling on a general demurrer. *(Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Here, the settlement agreement itself is not a judicially noticeable document under Evidence Code section 452. While the court may take judicial notice of a party's responses to requests for admission, it does not follow that the court may also take judicial notice of the contents of documents that the party has admitted are true and correct.

"The court will take judicial notice of records such as admissions, answers to interrogatories, affidavits, and the like, when considering a demurrer, only where they contain statements of the plaintiff or his agent which are inconsistent with the allegations of the pleading before the court. The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of affidavits, declarations, depositions, and other such material which was filed on behalf of the adverse party and which purports to contradict the allegations and contentions of the plaintiff." (*Del E. Webb v. Superior Court* (1981) 123 Cal.App.3d 593, 604–605, citations and footnotes omitted.)

Here, plaintiffs are improperly attempting to turn the hearing on the demurrer into a contested evidentiary hearing by having the court consider documents that are not part of the cross-complaint, and do not directly contradict its allegations. Plaintiffs seek to have the court not only judicially notice the settlement agreement and its contents,

but also to interpret the agreement's provisions to bar the defendants' claims. The court declines plaintiffs' invitation to turn the demurrer into a hearing on factual issues such as whether settlement agreement bars all claims, including whether defendants have an easement on the edge of the Sadie Property or where the boundary of the Sadie Property lies.

Plaintiffs have also argued that all of the defendants' claims are barred by the doctrine of laches and the statute of limitations. They contend that defendants unduly delayed in raising their claims regarding adverse possession and equitable easement, which they concede have existed for decades, and therefore they should not be allowed to raise them now.

However, the defense of laches does not apply to claims of adverse possession. "Defendants cite no cases holding laches to bar a claim of adverse possession, and apparently no published California opinion so holds. Other jurisdictions addressing this issue have reached the opposite conclusion. (*Marriage v. Keener* (1994) 26 Cal.App.4th 186, 191, citations omitted.) "California law does not require a plaintiff to bring an action to perfect his or her claim of adverse possession. Rather, it is the record owner — not the intruder — who must bring an action within five years after adverse possession commences in order to recover the property." (*Ibid,* citation omitted.) Likewise, laches does not bar a claim for prescriptive easement. (*Connolly v. Trabue* (2012) 204 Cal.App.4th 1154, 1162-1164.) Thus, defendants were not required to assert their claims for adverse possession or prescriptive easement within a reasonable time in order to preserve their rights. Rather, the burden was on the plaintiffs whose property was allegedly being encroached upon to assert that defendants were trespassing on their property. As a result, plaintiffs have not shown that the doctrine of laches bars defendants' claims, or that they are barred by the statute of limitations.

Next, plaintiffs have demurred to the first cause of action for quiet title, again contending that it fails to state a claim because it does not include a legal description of the disputed property. Also, they contend that, if defendants are seeking to state a claim based on breach of contract, then their claim is barred by the statute of limitations because it was not brought within four years of the date that Helen sold her 50% interest in the property to Janie.

However, as discussed above, the defendants have adequately described the property in dispute, so plaintiffs' first argument is without merit. Also, plaintiffs' second argument appears to misconstrue the nature of defendants' claim. Defendants have alleged that they are the rightful owners of a one-half interest in the disputed portion of the Sadie Property, and that they are disputing the accuracy of the survey which forms the basis of plaintiffs' claims regarding defendants allegedly encroaching on the Sadie Property. (FACC, ¶¶ 49-52.) "On information and belief, contrary to the survey purportedly conducted by Plaintiffs, Rick and Martha hold record title to the Disputed Property." (*Id*. at ¶ 50.) They also allege that plaintiffs have asserted that they are the rightful owners of the disputed property. (*Id*. at ¶ 51.) Therefore, they seek to quiet title to the disputed property and to preserve their right to challenge the survey conducted by plaintiffs. (*Id*. at ¶ 52.)

As a result, defendants are not alleging a breach of contract claim based on Janie's alleged failure to pay for her 50% share of the Sadie Property in 2002. Instead, they are asserting that they own the disputed property because the survey conducted by plaintiffs was incorrect and the property line is actually different than shown in the survey. In other words, the property line is farther north than what is shown in the survey, and their structures do not encroach on plaintiffs' property. As a result, plaintiffs have failed to show that defendants' claim is barred by the statute of limitations, and the court intends to overrule the demurrer to the first cause of action.

Plaintiffs demur to the second cause of action for quiet title based on adverse possession, arguing that the defendants have not and cannot allege a valid claim for adverse possession because they admit that their use of the Sadie Property was permissive rather than hostile. They point out that defendants have alleged that they farmed the Sadie Property for decades under a "specialty farming arrangement", which plaintiffs contend was actually a lease to farm the property. They contend that there was a landlord-tenant relationship between defendants and the owner of the property, and Sadie consented to the defendants' use of the property for farming in exchange for receiving a portion of the farming profits. Since their occupancy and use of the property was permissive, they conclude that defendants cannot obtain quiet title by adverse possession.

"In an action to quiet title based on adverse possession the burden is upon the claimant to prove every necessary element: (1) Possession must be by actual occupation under such circumstances as to constitute reasonable notice to the owner. (2) It must be hostile to the owner's title. (3) The holder must claim the property as his own, under either color of title or claim of right. (4) Possession must be continuous and uninterrupted for five years. (5) The holder must pay all the taxes levied and assessed upon the property during the period." (*Dimmick v. Dimmick* (1962) 58 Cal.2d 417, 421–422, citations omitted.)

"Where possession and use is permissive at the beginning, one cannot acquire title by adverse possession unless he gives clear and actual notice to the owner of the adverse nature of his subsequent possession." (*Johnson v. Ocean Shore Railroad Co.* (1971) 16 Cal.App.3d 429, 436, citation omitted.) "The possession must be actual, open and notorious, and exclusive. The use must be adverse. Thus, where the owner permits usage of the property, that use is not adverse." (*Machado v. Southern Pacific Transportation Co.* (1991) 233 Cal.App.3d 347, 361–362, citations omitted.) Also, "so long as the relation of landlord and tenant exists, the tenant cannot acquire an adverse title as against his landlord." (*Potrero Nuevo Land Co. v. All Persons Claiming Interest in the Real Property Described* (1916) 29 Cal.App. 743, 753, citation omitted.)

Here, defendants have alleged that they and their father farmed the Sadie Property for decades under a "specialty farming arrangement" rather than a lease, and that they were only permitted to access and use the property for the purpose of farming citrus there. (FACC, ¶¶ 14, 17, 20, 21, 23, 24, 55.) Under the terms of the arrangement, defendants were not allowed to encroach on the Sadie Property for the purpose of building a packing shed, road, parking area, or to install propane tanks. (*Ibid*.) Any such encroachment would have been without Sadie's permission. (*Id*. at ¶¶ 20, 55.)

Thus, defendants have sufficiently alleged that they did not have permission to build a packing shed, road, parking area, gate, or install propane tanks on the Sadie Property, and that their occupation of her property was adverse and hostile to Sadie's interests. While plaintiffs argue that their encroachments were allowed as part of the lease of the property, defendants have specifically alleged that there was no lease and that the farming arrangement did not allow them to encroach on the property for any purpose other than to farm citrus. The court must assume that these allegations are true for the purpose of ruling on the demurrer. Although plaintiffs contend that there was a lease rather than a "specialty farming arrangement", the court cannot resolve this dispute on demurrer.

Also, while plaintiffs argue that any statements about whether Sadie would have permitted the encroachments are nothing more than speculation and hearsay and should not be considered by the court, such evidentiary objections are not proper when ruling on a demurrer. Again, the court must assume that the complaint's allegations are true when deciding a general demurrer. Demurrers are not evidentiary hearings, so objections to evidence based on hearsay or speculation are not proper in the context of a demurrer. In any event, defendants allege that the farming agreement did not provide them with the right to access the property for any purpose other than to farm it, and that any further encroachments would have been inconsistent with the agreement. Their allegation that Sadie would not have permitted the encroachment is simply a restatement of the terms and legal effect of the agreement, and as such is not hearsay. (*Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 316.)

Plaintiffs further argue again that defendants' use of the property was permissive, and thus was not adverse to Sadie's ownership interests and cannot from the basis for an adverse possession claim. Yet, as discussed above, defendants have alleged that they were only allowed to access the property for the purpose of farming citrus there, and not to construct a packing shed, road, or parking area, or to install propane tanks. Therefore, defendants have adequately alleged that their occupation of the property was hostile and adverse to Sadie's interests as the owner of the property.

Next, plaintiffs argue that defendants failed to satisfy the five-year statute because they only adversely possessed the property after the lease expired in February of 2022. Again, however, defendants have alleged that their occupation of the property since the 1960s was hostile to Sadie's ownership interests, as the construction of the packing shed, road, parking area, and installation of the propane tank was not allowed under the parties' farming agreement. Therefore, defendants have alleged that they occupied the property for more than five years.

Plaintiffs have also argued that defendants cannot state a claim for adverse possession based on a mistake about the property lines. Since defendants have alleged that they mistakenly believed that the packing shed, road, parking area, and propane tank were on their property rather than the Sadie Property, plaintiffs conclude that defendants have not stated a valid claim for adverse possession.

However, the California Supreme Court has ruled that, "[a]lthough there is some conflict in cases from other jurisdictions, the rule is settled in California that the requisite hostile possession and claim of right [for quiet title by adverse possession or prescriptive

easement] may be established when the occupancy or use occurred through mistake. In *Woodward v. Faris*, the court pointed out that most cases of adverse possession commenced in mistake and that the possession must be by mistake or deliberately wrong. To limit the doctrine of adverse possession to the latter possession places a premium on intentional wrongdoing contrary to fundamental justice and policy. Numerous cases have since recognized that title by adverse possession may be acquired though the property was occupied by mistake." (*Gilardi v. Hallam* (1981) 30 Cal.3d 317, 322, citations omitted.)

Gilardi also discussed an exception to the "mistake" rule: where the land is occupied through mistake as to the property line with the intention to claim only to the true line, such a claim for adverse possession will be denied. (*Ibid*.) "[T]he hostility requirement 'means, not that the parties must have a dispute as to the title during the period of possession, but that the claimant's possession must be adverse to the record owner, 'unaccompanied by any recognition, express or inferable from the circumstances of the right in the latter.' In effect, the exception requires the claimant to act consistently with respect to the rights claimed. Consequently, a claimant's use or occupancy will not be deemed hostile to the rights of another if the claimant simultaneously acknowledges those rights." (*Brewer v. Murphy* (2008) 161 Cal.App.4th 928, 940, quoting *Gilardi, supra*, at pp. 322-323.)

Therefore, plaintiffs are incorrect that defendants can never seek to quiet title by adverse possession based on a mistake about the property line. In general, a mistake about the property line will support a claim for adverse possession. Here, defendants have sufficiently alleged that their occupation of part of the Sadie Property was due to a mistake about the property line, which they honestly believed was in a different place. The question of whether the exception to the general rule applies here depends on the resolution of factual disputes about the parties' intent and their behavior with regard to the property line. Therefore, the court will not sustain the demurrer based on the fact that defendants were mistaken about the property line.

Plaintiffs have also argued that defendants have not alleged sufficient facts to show that they paid property taxes on the Sadie Property, and thus they have not stated a claim for quiet title by adverse possession. However, defendants have clearly alleged that they paid taxes on the Sadie Property from the 1970s to 2020. (FACC, ¶ 25.) Therefore, they have adequately alleged payment of taxes. While plaintiffs have argued that these taxes were only related to their farming of the property, the FACC does not allege any facts that indicate that the taxes were for anything other than ownership of the property. Therefore, the court intends to overrule the demurrer to the second cause of action.

The court will also overrule the demurrer to the third cause of action for quiet title by prescriptive easement. Plaintiffs raise the same arguments with regard to the third cause of action that they raised with regard to the second cause of action. Because the second cause of action states a valid claim, the third cause of action does as well, and the court intends to overrule the demurrer to the third cause of action.

On the other hand, the court intends to sustain the demurrer to the fourth cause of action for quiet title by implied easement. Plaintiffs argue that defendants have not

and cannot state a claim for implied easement because there was no "separation of title", which is a required element of an implied easement claim. (*Leonard v. Haydon* (1980 110 Cal.App.3d 263, 266.)

"The rule of common law on this subject is well settled. The principle is, that where the owner of two tenements sells one of them, or the owner of an entire estate sells a portion of it, the purchaser takes the tenement or portion sold with all the benefits and burdens that appear at the time of sale to belong to it, as between it and the property which the vendor retains. ... No easement exists so long as the unity of possession remains, because the owner of the whole may at any time rearrange the quality of the several servitudes; but upon severance by the sale of a part, the right of the owner to redistribute ceases, and easements or servitudes are created corresponding to the benefits or burdens existing at the time of sale." (*Warfield v. Basich* (1958) 161 Cal.App.2d 493, 498, citation and quote marks omitted.)

Here, the facts alleged in the FACC show that there was no sale or other separation of title with regard to the Sadie Property other than the separation that occurred when Rick's grandfather died in the 1940s and left the property to his six children. (FACC, ¶ 13.) The construction of the packing shed, road, and installation of the propane tank did not occur until the 1960s, many years after the separation of title. Thus, no implied easement could have arisen. Defendants concede that plaintiffs' arguments as to the implied easement claim have merit and do not attempt to show how they could allege new facts to cure the defect in their cause of action. Therefore, the court intends to sustain the demurrer to the fourth cause of action, without leave to amend.

Finally, plaintiffs demur to the fifth cause of action for quiet title by equitable easement. They contend that equitable easement is an affirmative defense, not a cause of action, so defendants cannot state a claim for equitable easement. They also argue that defendants' encroachment was not innocent, since the allegations of the FACC show that they were on notice of the property line, so they cannot establish the elements of an equitable easement claim. They also claim that they will suffer irreparable harm to their private property rights if the easement is granted, whereas defendants will suffer only minimal harm if the easement is denied. Therefore, they ask the court to sustain the demurrer to the fifth cause of action.

"'When a trial court refuses to enjoin encroachments which trespass on another's land, "the net effect is a judicially created easement by a sort of non-statutory eminent domain." However, the courts are not limited to judicial passivity as in merely refusing to enjoin an encroachment. Instead, in a proper case, the courts may exercise their equity powers to affirmatively fashion an interest in the owner's land which will protect the encroacher's use.' That interest is commonly referred to as an equitable easement." (*Nellie Gail Ranch Owners Assn. v. McMullin* (2016) 4 Cal.App.5th 982, 1003, citations omitted.)

"For a trial court to exercise its discretion to deny an injunction and grant an equitable easement, 'three factors must be present. First, the defendant must be innocent. That is, his or her encroachment must not be willful or negligent. The court should consider the parties' conduct to determine who is responsible for the dispute.

Second, unless the rights of the public would be harmed, the court should grant the injunction if the plaintiff "will suffer irreparable injury ... regardless of the injury to defendant." Third, the hardship to the defendant from granting the injunction "must be greatly disproportionate to the hardship caused plaintiff by the continuance of the encroachment and this fact must clearly appear in the evidence and must be proved by the defendant....' 'Unless all three prerequisites are established, a court lacks the discretion to grant an equitable easement.'" (*Id.* at pp. 1003–1004, citations omitted.) Thus, a party accused of encroaching on another owner's property may seek the remedy of an equitable easement upon a proper showing. (*Romero v. Shih* (2022) 78 Cal.App.5th 326, 355-362.)

Plaintiffs have not cited to any authorities stating that an equitable easement may only be raised as an affirmative defense, and it appears that such a remedy can be properly sought as a cause of action in a complaint or cross-claim by the party accused of encroaching on the other party's land. Therefore, the court will not sustain the demurrer to the fifth cause of action based on the contention that an equitable easement is merely an affirmative defense rather than a cause of action.

Also, to the extent that plaintiffs ask the court to make a finding that defendants were not innocent trespassers, or that plaintiffs would suffer irreparable harm if the easement were granted that outweighs the harm to defendants if the easement is denied, plaintiffs are improperly seeking to resolve factual issues that cannot be adjudicated on a demurrer. The only issue on a general demurrer is whether the complaint states facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) The court cannot resolve any disputed facts when ruling on a demurrer. Here, the FACC alleges all of the required elements of an equitable easement claim, so the court intends to overrule the demurrer to the fifth cause of action.

Motion to Strike: Plaintiffs move to strike paragraphs 2, 6, 16, 20, 22, 29, 30, 34, 36, 37, 38, 40, 42, 43, 55, 61, 68, 73 and 74 of the FACC on the grounds that they contain irrelevant, false, and improper statements. (Code Civ. Proc., §§ 435, 436.)

Paragraph 2 alleges that the parties were "involved in a contentious arbitration with Rick over their mother's trust." Plaintiffs contend that the allegation is irrelevant to the claims and should be stricken. However, it appears that the allegation is properly alleged and relevant, as it provides background information about the parties' disputes over the property, as well as whether plaintiffs have acted with good faith and clean hands with regard to the present dispute over the property line. The court will need to consider whether plaintiffs are acting in good faith in order to decide the equitable easement claim. Therefore, the court will not strike the allegations of paragraph 2.

Paragraph 6 alleges that plaintiff Janie Chiasson was terminated from her job as a bookkeeper at the family business in 2010 "for poor performance." Plaintiffs contend that this allegation is irrelevant to the cross-claims and should be stricken. It does appear that the allegation that Janie was terminated "for poor performance" is irrelevant to the cross-claims, as the cross-complaint has nothing to do with the reasons that Janie was terminated from her job at the family company in 2010. The present case deals with a property line dispute, not the termination of a plaintiff from the family company.

Therefore, the court intends to grant the motion to strike the allegation "for poor performance" from paragraph 6 of the cross-complaint.

Paragraph 16 alleges "In addition, also in the 1970s, Rick began acquiring and farming his own land as a sole proprietor." Plaintiffs argue that this allegation is irrelevant to the cross-claims and should be stricken. However, the allegation is proper and relevant, as it provides background information about the parties and their relationships, including the fact that Rick has been farming his own land since the 1970s. The allegation helps to explain why Rick was allowed to farm the Sadie Property as well as his own land, and what his relationship was to Sadie and the plaintiffs. Therefore, the court will deny the motion to strike this allegation.

Paragraph 22 alleges that, "In December 2001, Helen Nicholas (Rick's mother) purchased the Sadie Property from Ms. Khouri. Janie Chiasson asked her mother if she could purchase the Sadie Property 50/50 with her. Helen agreed. However, despite multiple requests from Helen, Janie refused to and never paid for her 50% interest in the property. Rather, the entire purchase price was paid by H&R Citrus. In 2002, H&R Citrus was owned and operated by Rick Nicholas and his mother, Helen. Janie was not an owner of the business. Thus, while Janie claims she became a 50/50 owner of the Sadie Property in 2002, the reality is that the Sadie Property was conveyed to Helen and Janie in 2002, but Janie did not pay and has never paid for her 50% interest in the property. Rick and Helen paid for it out of the H&R Citrus account they co-owned."

Plaintiffs contend that the entirety of paragraph 22 is irrelevant, except for the statement that "the Sadie Property was conveyed to Helen and Janie in 2002." Defendants argue that the statements regarding Janie's alleged failure to pay for her share of the property are relevant to the question of whether she has been acting in good faith and with clean hands in the current dispute, which is a relevant question with regard to the equitable easement claim.

However, it is not clear why Janie's alleged failure to pay for her share of the Sadie Property in 2002, about 20 years before the current dispute arose, is relevant to the question of whether plaintiffs are acting in good faith with regard to the current property line dispute. The FACC is not alleging a breach of contract dispute with regard to Janie's purchase of the Sadie Property, nor are defendants' claims dependent on whether Janie rightfully owns the property. Indeed, they appear to concede that she is the owner of the property. Therefore, her alleged failure to pay for the property in 2002 is not relevant to the issues of the cross-complaint, and the court intends to strike the allegations of paragraph 22 after the first three sentences, starting with "However…" and ending with "…co-owned."

Paragraph 29 alleges that, "Since the lease was terminated, Janie and Bill have effectively abandoned the Sadie Property. The orange trees have not been watered and the property has been poorly maintained." Plaintiffs contend that this allegation is irrelevant and should be stricken. However, the allegation is relevant to the issue of whether plaintiffs will suffer irreparable harm if the equitable easement is granted. This is a key issue for the court to determine in deciding whether to grant the easement, as if the plaintiffs have essentially abandoned the property and no longer farm it, then granting an equitable easement to defendants to allow them to operate their packing

shed would presumably cause plaintiffs no harm. (*Nellie Gail Ranch Owners Assn. v. McMullin*, *supra*, 4 Cal.App.5th at pp. 1003-1004.) Therefore, the court will not strike this allegation.

Paragraph 30 alleges that, "Despite the poor condition, on information and belief, cross complainants believe multiple buyers have attempted to purchase the Sadie Property from Bill and Janie but have been rebuffed by them." Again, plaintiffs argue that this allegation should be stricken, as it is irrelevant to defendants' cross-claims. Yet the allegation is relevant to the question of irreparable harm. If plaintiffs are not attempting to sell the property despite multiple offers, then they would presumably suffer no real harm if defendants are allowed to continue operating their packing shed despite the encroachment across the property line. Therefore, the court will deny the motion to strike paragraph 30.

Paragraph 34 alleges that, "In the mid-to-late 1960s, Rick's father constructed a packing shed on the property. The packing shed, which is at issue in this lawsuit, has been located in the exact same location since it was built in the 1960s and is where the family packs its citrus." Plaintiffs contend that this paragraph is false, since it is contradicted by paragraph 40 and 73, which allege that, "Since the 1940s, the Nicholas family and the parties to this action have always understood that the packing shed, the road, the gate, the property up to and including the propane tank and the empty lot were part of the Home/Packing Shed property and have used them in connection with their operation of the Home/Packing Shed." Plaintiffs contend that, if the packing shed was constructed in the 1960s, the parties cannot have known about its existence since the 1940s. Therefore, the allegation is false and should be stricken.

However, the allegations of paragraph 34 do not appear to be false or irrelevant. The FACC consistently alleges that Rick's father built the packing shed in the 1960s and that it has remained in the same spot ever since. While the allegations of paragraphs 40 and 73 allege inconsistently that the family has known of the existence of the shed "since the 1940s", this allegation does not necessarily render the allegations of paragraph 34 false. If anything, it appears that the allegations of paragraphs 40 and 73 are incorrect, as the family cannot have known of the existence of the shed in the 1940s if the shed was not built until the 1960s. The proper solution therefore is to strike the allegation "since the 1940s" from paragraphs 40 and 73, not paragraph 34. Therefore, the court will deny the motion to strike paragraph 34.

Paragraph 36 alleges that, "There is a road entering Home/Packing Shed from Cove Road at the northwest corner of the property that travels along the northern boundary of the property. This road, which is at issue in this lawsuit, was used as a driveway to the family home and has been in existence since Rick can remember, which would be sometime in the 1950s or early 1960s. When Rick's father constructed the Packing Shed, he extended the road further along the northern boundary of his property to provide access to and from the shed for trucks. It has always been in the exact same location. Since at least the 1960s, the road has been used as the driveway to the family home and as the road leading to the packing shed. Specifically, the road is used by trucks to deliver oranges to the packing shed and to the storage area."

Plaintiffs contend that this allegation is false for the same reason they cite with regard to paragraph 34, namely that paragraphs 40 and 73 state that the road has been in existence since the 1940s, not since the 1950s or 1960s. However, the allegation is not necessarily false or contradicted by paragraphs 40 and 73. Defendants only allege that the road "has been in existence since Rick can remember, which would be sometime in the 1950s or early 1960s." In other words, it could have been in existence even earlier than the 1950s, and could have existed in the 1940s. Rick simply has no recollection of when the road was installed, except that it existed by the 50s or 60s. Also, even assuming that the allegations of paragraph 36 are inconsistent with paragraphs 40 and 73, it appears that paragraphs 40 and 73 contain the false statements about the road being in existence since the 1940s. The correct solution is to strike the allegation "since the 1940s" from paragraphs 40 and 73, not to strike paragraph 36.

Paragraph 37 alleges that, "There is a gate on the driveway/road that was installed in approximately 2000 and has always been used to secure the packing shed and to prevent trespassers from entering the property." Again, plaintiffs contend that this allegation is false and should be stricken, since the allegations of paragraphs 40 and 73 state that the family has been aware of the gate since the 1940s, which could not be true if the gate was installed in 2000. Yet, as discussed above, the allegations of paragraphs 40 and 73 appear to be incorrect. The correct solution is to strike the allegation "since the 1940s" from paragraphs 40 and 73, not to strike paragraph 37, which appears to be correct and relevant.

Paragraph 38 alleges that, "The propane tank involved in this lawsuit is located immediately north of the driveway/road and has been in the same location since the 1960s." Plaintiffs move to strike this allegation as false, again arguing that the allegations of paragraphs 40 and 73 contradict the allegation, as they allege that the family has been aware of the propane tank since the 1940s. Again, however, it appears that the allegations of paragraphs 40 and 73 are incorrect, not the allegations of paragraph 38. The correct solution is to strike the allegation "since the 1940s" from paragraphs 40 and 73, not to strike paragraph 38.

Paragraph 40 alleges that, "Since the 1940s, the Nicholas family and the parties to this action have always understood that the packing shed, the road, the gate, the property up to and including the propane tank and the empty lot were part of the Home/Packing Shed property and have used them in connection with their operation of the Home/Packing Shed." Plaintiffs argue that this allegation is false, as it is contradicted by the other paragraphs, which allege that the packing shed, road, and propane tank were installed and have been in the same place since the 1960s, and that the gate was installed in 2000. (FACC, ¶¶ 34, 36, 37, 38.)

As discussed above, the allegation that "since the 1940s" the family has been aware of the packing shed, road, gate, the propane tank, and the empty lot does appear to be false, as defendants elsewhere allege that these structures and fixtures were not installed until the 1960s, or in the case of the gate, 2000. Therefore, the court will strike the allegation "since the 1940s" from paragraph 40 as false. The court will not strike the rest of the paragraph, however, as there is no indication that the remaining allegations are also false.

Paragraph 42 alleges that, "Since 2019, the Parties have been involved in a contentious arbitration before Hon. Howard Broadman related to Helen Nicholas' trust. In April 2022, Judge Broadman issued a ruling in favor of Rick and Penny Nicholas and against Janie and Bill Chiasson, including awarding Rick and Penny their attorney's fees in the arbitration."

Plaintiffs move to strike this allegation as irrelevant, contending that it has nothing to do with defendants' cross-claims. However, the court intends to deny the motion to strike paragraph 42, as it contains relevant background information about the parties and their relationships. It may also be relevant to the issue of whether plaintiffs are acting in good faith and have clean hands, which is material to the equitable easement claim. Therefore, the court will not strike this allegation.

Paragraph 43 alleges that, "On information and belief, Janie and Bill Chiasson raised these issues out of spite and sour grapes over Judge Broadman's ruling." Plaintiffs move to strike this allegation, contending that it is irrelevant to the issues raised by defendants' cross-claims. However, it appears that the allegation is relevant to the question of whether plaintiffs are acting in good faith and have clean hands with regard to the property line dispute, or whether they are simply suing out of spite or malice. These issues are material to the question of whether the court should issue the equitable easement. Therefore, the court intends to deny the motion to strike paragraph 43.

Paragraph 73 alleges that, "Since the 1940s, the Nicholas family and the parties to this action have always understood that the packing shed, the road, the gate, the property up to and including the propane tank and the empty lot were part of the Home/Packing Shed property and have used them in connection with their operation of the Home/Packing Shed. Accordingly, Rick's parents and Rick's encroachments were innocent, and were not willful or negligent."

Again, plaintiffs argue that this allegation should be stricken as false, since the family could not have known about the packing shed, road, gate, the propane tank, and empty lot "since the 1940s" when they were not constructed until decades later. They also argue that the allegations stating that the encroachments were innocent and not willful or negligent are improper legal conclusions that should be stricken.

It does appear that the allegation "since the 1940s" is false and should be stricken, as it is contradicted by the other allegations in paragraphs 34, 36, 37, and 38. The family cannot have known about the packing shed, road, gate, propane tank, or empty lot "since the 1940s" if those structures and fixtures were not constructed until the 1960s or later. Therefore, the court should strike the allegation "since the 1940s." However, the court will deny the plaintiff's motion to strike the rest of the paragraph, which is properly alleged.

Paragraphs 20, 55, 61, 68, and 74 all contain the allegation that "Any such encroachments and use of the Sadie Property would have been without Aunt Sadie's permission." Plaintiffs contend that this allegation is improper, false, and irrelevant, as there is no way to know whether Sadie would have granted permission for the encroachments, as she is dead. They also contend that the allegation is nothing more

than speculation or inadmissible hearsay, and as a result it should be stricken as inadmissible.

However, a motion to strike is not an evidentiary hearing, and the court cannot rule on the admissibility of evidence when deciding a motion to strike. Indeed, the court has to assume the truth of the matters alleged in the cross-complaint when ruling on a motion to strike. Thus, the court will not strike the allegation regarding whether Sadie would have granted permission for the encroachments based on the theory that such statements are inadmissible hearsay or speculation. In any event, it appears that defendants are properly alleging that Sadie would not have granted permission for the encroachments because such encroachments were not allowed under the "specialty farming arrangement" between Sadie and defendants. Therefore, the court intends to deny the motion to strike paragraphs 20, 55, 61, 68, and 74.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 11/17/2023.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***In Re Alyssa Rylee Thompson***
Superior Court Case No. 23CECG04594

Hearing Date: November 28, 2023 (Dept. 403)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To deny without prejudice. In the event that oral argument is requested the minor is excused from appearing.

Explanation:

The petition at Item 12b(5)(b)(i) (at .pdf p. 5) states that Valley Children's Hospital charged and was paid $9,428.05, such that $0 is to be paid from the settlement. However, the documentation from Valley Children's Hospital (at .pdf p. 32) reflects only the charges of $9,428.05, but no payments from either insurance or private payment. The Blue Shield documentation (at .pdf p. 37) states that it paid a total of only $6,248.61, and Item 14 indicates that petitioner has paid none of the fees or expenses listed in Items 12 or 13. Thus, petitioner needs to show that Valley Children's Hospital has either been paid in full through insurance payments and contractual adjustments to its bill, or that petitioner has negotiated a reduction (to $0) of any amount not paid by insurance.

Also, petitioner failed to submit an Order Approving Compromise (MC-351).

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 11/21/2023.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Reynolds v. Froneri US., Inc.***
Superior Court Case No. 22CECG02673

Hearing Date: November 28, 2023 (Dept. 403)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To continue to Thursday, December 7, 2023, to allow petitioner's counsel to file a declaration addressing the issues noted below. Said declaration must be filed on or before Friday, December 1, 2023. If counsel needs more time to draft and file the declaration, he may call the calendar clerk and request a continuance, referencing the court's permission given herein.

Explanation:

Pursuant to the California Rules of Court, rule 7.955, if attorney fees are requested on a petition for approval of the compromise of a minor's claim, a declaration from the attorney explaining the basis for the request, including a discussion of applicable factors listed in 7.995(b), must be attached to the petition. Here, no such declaration was filed or attached to the petition. The Judicial Council has preempted all local rules relating to the determination of reasonable attorney's fees to be awarded from the compromise of a minor's claim. (Cal. Rules of Court, rule 7.955(d).) Counsel also needs to give some detail which will explain why the settlement offer of only $5,000 should be considered reasonable. Also, the declaration should explain the court costs designated as "filing fees," since these do not appear to be correlated to the filing fees noted in the court's online case management system, which shows $435 paid on August 30, 2022, and $150 paid on March 23, 2023. If instead these are fees charged by an e-filing service provider, they do not appear to be correlated to the dates when plaintiff filed documents in the case.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS (Judge's initials) on 11/22/2023 (Date).

(35)

Tentative Ruling

Re:	***Fresno Guest Home Holdings, I, LP v. Wallace et al.*** Superior Court Case No. 22CECG03074
Hearing Date:	November 28, 2023 (Dept. 403)
Motion:	By Plaintiff Fresno Guest Home Holdings, I, LP, for Entry of Judgment

Tentative Ruling:

The court intends to deny the application for entry of court judgment.

Explanation:

Plaintiff Fresno Guest Home Holdings, I, LP ("Plaintiff") seeks an entry of judgment to quiet title. In all cases where a judgment of quiet title is sought, the court shall examine into and determine the plaintiff's title against the claims of all the defendants, and require evidence of plaintiff's title and hear such evidence as may be offered respecting the claims of any of the defendants. (Code Civ. Proc. § 764.010.)

A plaintiff seeking to quiet title shall name as defendants in the action the persons having adverse claims to the title of the plaintiff against which a determination is sought. (Code Civ. Proc. § 762.010.) If the name of the person required to be named as a defendant is not known to the plaintiff, the plaintiff shall so state in the complaint and shall name as parties all persons unknown in the manner specified by statute. (*Id.*, § 762.020; *see id.*, § 762.060.) A person named and served as an unknown defendant has the same rights as are provided by law in cases of all other defendants named and served, and the action shall proceed against unknown defendants in the same manner as against other defendants named and served, and with the same effect. (*Id.*, § 762.070.)

Plaintiff alleges that a portion of the property at issue at some point reverted back into ownership of certain prior owners and subsequently forgotten. Plaintiff further alleges that the forgotten portion remains vested with defendants John A. Wallace, Norma Wallace, Mary Bollman, and Genevieve Bollman (collectively "Decedent Defendants") since 1983.

Based on the above, Plaintiff named as defendants four deceased individuals, their successors and assigns, a trust, the Fresno Irrigation District, and "All Persons Unknown". Inconclusive evidence was provided to support Plaintiff's application for entry of judgment. Plaintiff submits, pertinent to the judgment it seeks, that the parcel in question, identified by Plaintiff as "Parcel 2", remains vested in the Decedent Defendants since 1983. (Plaintiff's Request for Judicial Notice, Ex. 2.)[1] While there is much evidence regarding the handling of "Parcel 1," or "Lot 44", nothing in the deed of Parcel 1, or its

[1] Plaintiff's Request for Judicial Notice is granted.

history, suggests that the portion described in Parcel 2 was ever a part of Parcel 1. In other words, Parcel 2 was always a standalone property, adjacent to Parcel 1, and the Quitclaim Deed by the Fresno Irrigation District was not a sort of reunification of "Lot 44". The legal description of Parcel 2 distinguishes itself from Parcel 1 and starts with "Beginning at the Northwest Corner of Lot 44…" There is only an unsupported conclusion that Parcel 2 "inadvertently remains vested in the [Decedent Defendants] pursuant to the original 1983 Quitclaim Deed from the Irrigation district, it should be vested in Plaintiff." (Lavinsky Decl., ¶ 25.) From the above, the inadvertence was not a scrivener's error.

Instead, Plaintiff submits a stipulation suggesting that there is no dispute that Parcel 2 should be titled to Plaintiff. (Stipulation for Entry of Judgment, ¶ 3.) However, for reasons self-evident, the signatories to the stipulation are not the Decedent Defendants. No evidence was submitted regarding the disposition of the estates of the Decedent Defendants, that probates were ever opened, and if applicable, with whom title would have passed. Though the Verified Complaint states on information and belief that no probates were ever opened (Complaint, ¶¶ 6,8), the stipulation submitted identifies various executors and nominated executors. A person has no power to administer an estate until the person is appointed and the appointment becomes effective through issued letters. (Prob. Code § 8400, subd. (a).)

Based on the above, it is entirely unclear whether the estates of the Decedent Defendants are proper parties to a stipulated judgment based on whether the estates of the Decedent Defendants still exist[2], or whether there are knowable successors following the successful administration of those estates who currently hold the Decedent Defendants' interests in Parcel 2 who should be directly named as defendants[3]. (Code Civ. Proc. § 762.010.)

Moreover, the court's jurisdiction to enter judgment against these parties is in doubt. There are no proofs of service of summons for defendants (1) the estate of John A. Wallace; (2) the estate of Norma Wallace; (3) the estate of Mary L. Bollman, each of whom are purported signatories to the stipulation. No proof of service or any other indication of notice was given for All Persons Unknown. No general appearances have been made. The docket reflects only notices of acknowledgement by defendant Sharon L. Nunes, successor trustee to the Wallace Family Trust dated November 20, 2023, defendant Estate of Genevieve M. Bollman by and through its nominated executor, Frank Nunes, and the Fresno Irrigation District. Jurisdiction over a party runs from the time summons is served or when a general appearance is made. (Code Civ. Proc. § 410.50, subd. (a).) Accordingly, the court's jurisdiction to enter judgment as to the unserved defendants is not established.

Entry of judgment of quiet title is binding and conclusive on all persons knowns and unknown who were parties to the action and who have any claim to the property, whether present or future, vested or contingent, legal or equitable, several or undivided. (Code Civ. Proc. § 764.030, subd. (a).) The court cannot enter judgment as sought. (*E.g.*,

[2] The court notes that the Stipulation was signed by Frank Nunes and Susan Wallace Sims, who are noted as only nominated executors.

[3] For example, the stipulation is signed by entities not named in the suit, namely the Genevieve M. Bollman Living Trust, and the Mary L. Bollman 1989 Trust.

id., § 1908, subd. (a)(2) [stating, among other things, that the conclusiveness of a judgment requires jurisdiction to pronounce the judgment and notice of the pendency of the action, actual or constructive].)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 11/26/2023.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Perez v. Shaw Housing Partners, L.P.***
Superior Court Case No. 23CECG02114

Hearing Date: November 28, 2023 (Dept. 403)

Motions (x2): Petitions to Compromise Claim of a Minor

Tentative Ruling:

To grant both petitions and sign the proposed orders. No appearances necessary.

The court sets a status conference for Tuesday, February 27, 2024, at 3:30 p.m., in Department 403, for confirmation of deposit of the minors' funds into blocked accounts. If Petitioner files the Acknowledgments of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 11/26/2023.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***In re Julian Sales***
Superior Court Case No. 23CECG04259

Hearing Date: November 28, 2023 (Dept. 403)

Motion: Petition to Compromise the Claim of Minor

Tentative Ruling:

To grant. Orders Signed. No appearances necessary. The court sets a status conference for Thursday, March 7, 2024, at 3:30 p.m., in Department 403, for confirmation of deposit of the minor's funds into the blocked account. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 11/27/2023.
(Judge's initials) (Date)