
PARTIES/ATTORNEYS

Plaintiff	Antonio Zaranda Salinas	Self-Represented
Defendants	Juana Velazquez Moreno Iran Yadira Zaranda Velazquez Michelle Stephanie Zaranda Velazquez	Emilie de la Motte Carmel & Naccasha LLP

TENTATIVE RULING

The court denies the request for judicial notice establishing decedent's issue for purposes of intestate succession. This undermines defendants' argument that plaintiff cannot proceed as a self-represented litigant. The remainder of the request for judicial notice is granted.

The court sustains the demurrer to the fraud causes of action (1st – 4th) on the basis that the allegations lack the necessary factual specificity as to which defendant delivered the misrepresentation and the content of the misrepresentation. The court likewise sustains the demurrer to the 8th cause of action for negligence because the cause of action inadequately alleges duty.

The demurrer to the 9th cause of action for quiet title is sustained because it is not verified. Moreover, the SAC is internally inconsistent to the extent it suggests plaintiff is the only heir of decedent. This inconsistency must be addressed should leave to amend be allowed.

The demurrer as to Michelle is sustained for the reasons stated below.

The demurrer to the remaining causes of action is overruled for the reasons stated below.

The court will consider at the hearing whether it will grant leave to amend the SAC. Plaintiff must be prepared to advise the court whether he has any additional facts that might cure the defects identified.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)

MEMORANDUM

This case involves alleged elder abuse of Jose Ramiro Saranda Alvarez (decedent). He was born in Mexico on March 18, 1928, and died in California on November 29, 2023, at the age of 95. In 1988, decedent became the owner of real property at 615 W. Alvin Ave. in Santa Maria in joint tenancy with his grandson, Jose Dominquez. In 1999, decedent's son, Armando, his wife, Juana Velazquez Moreno, and their daughters, Iran and Michelle¹, moved in with decedent at the property. In 2004, Jose Dominquez deeded his interest in the property to decedent, making decedent the owner in fee simple.

For several years preceding his death, decedent relied on caregivers to help with his daily needs and to manage his personal care. Decedent did not drive for approximately the last 20 years of his life and never had a valid California Driver's License. Defendants Juana, Iran, and Michelle assumed the role of care custodians of decedent by providing health and social services to him. Defendant Juana increasingly grew to be in control of decedent's finances as the primary caretaker. Defendant Juana gained access to decedent's bank account and used the funds to pay most of the household's expenses, including those incurred by or personal to defendants. She allegedly withdrew money from decedent's account(s), deposited it into her bank account, and then distributed it back to decedent as "payment" for bills, such as the mortgage.

On or about October 16, 2020, defendants caused decedent to unknowingly sign a Grant Deed conveying his fee simple interest in the Subject Property to Defendants and Armando as joint tenants. Defendants were aware that decedent could not read or write and was wholly reliant on their representations as to what the document contained.

In November 2021, decedent tested positive for COVID. He was ultimately admitted to the hospital on December 4, 2021. Both Armando and decedent's daughter, Maria, succumbed to COVID. Decedent was discharged on January 5, 2022, and was displaced by defendants to the cold, uninhabitable, unpermitted garage at the property. During this time Plaintiff spent as much time as possible with his father and observed decedent being left alone for long periods of time by defendants when decedent was unable to properly care for himself.

On February 17, 2022, Juana and Iran presented decedent with a gift deed conveying his 25% interest in the property to Iran, which decedent signed. On March 8, 2022, Iran executed and recorded an Affidavit Death of Joint Tenant to

¹ For ease of reference, the court refers to the parties by their first names. No disrespect is intended.

remove Armando's name from the property's title and recorded the gift deed conveying decedent's interest to her.

In March of 2022, decedent moved in with his son, Antonio, the plaintiff in this action. Antonio's daughter investigated the ownership interests of the property and she and Antonio informed decedent that the property had been transferred. Decedent professed having no memory of signing the 2022 Gift Deed and no understanding that he signed a Grant Deed in 2020. He was actively looking for a way to address the fraud up until his death. Decedent died on November 28, 2023.

As is relevant for this demurrer, on February 7, 2025, plaintiff filed a second amended complaint on behalf of himself and as successor in interest to decedent against defendants Juana, Iran, and Michelle for the following causes of action: (1) intentional misrepresentation (2) fraudulent concealment; (3) constructive fraud; (4) negligent misrepresentation; (5) breach of fiduciary duties; (6) elder abuse [financial, physical, neglect, abandonment, & isolation]; (7) intentional infliction of emotional distress; (8) negligence; (9) quiet title; (10) cancellation of written instruments; (11) constructive trust.²

Defendants demur to the second amended complaint. No opposition has been filed and would now be untimely.

Demurrer

A demurrer tests the legal sufficiency of a complaint. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) A demurrer admits, provisionally for purposes of testing the pleading, all material facts properly pleaded. (*Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1247.) A demurrer can be used only to challenge defects that appear on the face of the pleading under attack; or from matters outside the pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) No other extrinsic evidence can be considered. (*Ion Equip. Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881—error for court to consider facts asserted in memorandum supporting demurrer; *Afuso v. United States Fid. & Guar. Co., Inc.* (1985) 169 Cal.App.3d 859, 862 (disapproved on other grounds by *Moradi-Shalal v. Fireman's Fund Ins. Cos.* (1988) 46 Cal.3d 287)—error for court to consider contents of release which was not part of any court record; *640 Tenth, LP v. Newsom* (2022) 78 Cal.App.5th 840, 852, fn. 7—court ignores “a three page ‘Introduction’ resembling closing argument in a jury trial” and looks only to “well-pleaded factual allegations and matters properly subject to judicial notice.”)

² On July 29, 2024, Juana and Iran filed a cross-complaint against Antonio and his wife, Teresa Hernandez Zaranda, alleging elder abuse for forcibly removing decedent from his home, isolating him, and manipulating him into believing they betrayed him.

Defendants demur on grounds that plaintiff lacks standing to bring some of the causes of action in the FAC, and alternatively, on grounds that the causes of action alleged are both uncertain and fail to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10.)

1. Request for Judicial Notice

Defendants request the court take judicial notice that:

- “Plaintiff has filed no probate action on behalf of the estate of the decedent, Jose Ramiro Saranda Alvarez;”
- “Plaintiff’s original lawsuit in this suit was filed January 19, 2024;”
- “Decedent Jose Ramiro Saranda Alvarez, with his wife, Elodia Alvarez(dec), had four children together: Armando (dec), Plaintiff Antonio, Ramiro (dec), and Guadalupe (dec). Armando had five children/heirs with defendant Juana, including Defendants Iran and Michelle, and three other children not involved in this lawsuit. One of Armando’s children predeceased decedent, leaving a daughter. Ramiro has four children/heirs. These are Decedent’s estate’s beneficiaries.”

There is no opposition to this request and the court thus grants it as to the first two bulleted items. (Evid. Code, § 452, subd. (d).)

However, the court denies the request as to the third bullet point (i.e., to determine the issue of decedent for purposes of intestate succession). As defendant notes, a court may take judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. C. § 452, subd. (h).) Although defendants argue that decedent’s issue may be easily ascertained by resort to birth and death records, none were actually submitted. There is thus an evidentiary gap. Moreover, plaintiff alleges that he is the successor in interest to decedent. (SAC, ¶ 6.) Taking judicial notice would thus improperly resolve an evidentiary conflict. The court is unwilling to do so on this record. Thus, judicial notice is denied as to the evidence contained in the third bullet point in order to determine decedent’s issue and, accordingly, his heirs.³

2. Standing

Defendants challenge plaintiff’s standing to proceed as a self-represented litigant as decedent’s successor in interest because he is acting on behalf of decedent’s heirs, which violates the rule against practicing law without a license. To credit this theory, the court must rely on defendants requested judicial notice to

³ The court does note that the SAC is inconsistent on its face to the extent it purports to allege plaintiff is decedent’s only heir. See discussion, below.

ascertain decedent's issue, which the court has denied. The court likewise denies the demurrer on this basis.

3. Fraud Based Causes of Action (1st – 4th Causes of Action)

Defendants argue that plaintiff has failed to allege sufficient facts to support the fraud causes of action. These causes of action are specifically alleged by plaintiff as successor in interest of decedent against all defendants. The elements of a cause of action for fraud are: (1) a misrepresentation, which includes a concealment or nondisclosure; (2) knowledge of the falsity of the misrepresentation, i.e., scienter; (3) intent to induce reliance on the misrepresentation; (4) justifiable reliance; and (5) resulting damages. (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 173.) The same elements comprise a cause of action for negligent misrepresentation, except there is no requirement of intent to induce reliance. (*Ibid.*) In California, fraud must be pled specifically; general and conclusory allegations do not suffice. Thus, the policy of liberal construction of the pleadings will not ordinarily be invoked to sustain a pleading defective in any material respect. This particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.)

Here, the allegations describing the misrepresentation and/or concealment are as follows.

- “On or about October 16, 2020, Defendants caused Decedent to unknowingly sign a Grant Deed conveying his fee simple interest in the Subject Property to Defendants and Armando (who was still living at the time) as joint tenants.” (SAC, ¶ 21.)
- “[O]n or about February 17, 2022 [] Defendants caused Decedent to sign a Gift Deed unknowingly conveying his 25% interest in the Subject Property to Defendant Iran.” (SAC, ¶ 26.)
- “Defendants, and each of them, fraudulently misrepresented the contents of the 2020 Grant Deed with the intent to induce Decedent into unknowingly making Defendants, along with Armando, joint tenants of the Subject Property.” (SAC, ¶ 32.)
- “Defendants, and each of them, fraudulently misrepresented the context and contents of the 2022 Gift Deed to Decedent while lacked capacity.” (SAC, ¶ 33.)
- The misrepresentations and concealment were made directly to decedent “by and through Defendants and each of them.” (SAC, ¶¶ 32-33.)

These allegations lack the necessary factual specificity as to which defendant delivered the misrepresentation and the content of the misrepresentation. The same is true of the concealment. These causes of action are insufficiently pled. While it is true that the doctrine of less particularity may be appropriate where the alleged

wrongdoer is likely to have withheld information (see *Doe v. City of Los Angeles*, *supra*, 42 Cal.4th at 550), the pleading must do more than make these general allegations where fraud is involved.

The court sustains the demurrer.

4. Breach of Fiduciary Duty (5th Cause of Action)

A cause of action for breach of fiduciary duty requires the existence of a fiduciary relationship, breach of fiduciary duty, and damages. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 820.) There are two kinds of fiduciary duties: those imposed by law and those undertaken by agreement. (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 221; *GAB Business Services, Inc. v. Lindsey & Newsom Claim Services, Inc.* (2000) 83 Cal.App.4th 409, 416.) Before a person can be charged with a fiduciary obligation, he must either knowingly undertake to act on behalf and for the benefit of another, or must enter into a relationship which imposes that undertaking as a matter of law. (*City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 386.)

Defendants argue there is no authority to support the notion that one owes fiduciary duties simply by being related to a person. “Consanguinity of itself does not create a fiduciary relationship.” (*Estate of Lingenfelter* (1952) 38 Cal.2d 571, 585.) Nor does being a trusted in-law. (*McMillin v. Eare* (2021) 70 Cal.App.5th 893, 912.)

Here, however, plaintiff alleges that defendants Juana and Iran created a fiduciary relationship between themselves and decedent by agreeing to be his care custodian. (SAC, ¶ 59.) Initially, the court notes that even if it were to credit this allegation, it fails to allege a fiduciary relationship between decedent and defendant Michelle. It isn’t clear that being a care custodian would suffice to create a fiduciary relationship as to financial matters. “Care custodian” is legal term of art that means a person who provides services “to a dependent adult because of the person's dependent condition, including, but not limited to, the administration of medicine, medical testing, wound care, assistance with hygiene, companionship, housekeeping, shopping, cooking, and assistance with finances.” (Prob. Code, § 21362, subd. (a)-(b).) It is used to determine whether a presumption of fraud or undue influence applies to certain enumerated transfers from a person who makes a donative transfer to a care custodian. (See Prob. Code, § 21380.)

Defendants did not address this theory in their demurrer and this court found only one case that suggested that the evidence relating to the determination whether a person was a care custodian also supports a finding that the care custodian owed the person a fiduciary duty. (*Shook v. LaFarre* (2015) 2015 WL

9195001, at *9—evidence withstood posttrial challenge.) While the case is unpublished and therefore not binding on this court, its analysis is nevertheless persuasive:

As one well-known treatise aptly explains: “Those who oversee the day-to-day needs of the aged in facilities for their care, and whom the aged perceive as controlling their continued peaceful enjoyment of the care and comfort they receive, are in a confidential and controlling relationship.” (79 Am.Jur.2d Wills, § 367; see also *Stevens v. Marco* (1956) 147 Cal.App.2d 357, 374 [“this rule [of fiduciary obligation] does not apply merely to those who bear a formal relation of trust to those with whom they deal—not only to attorneys, physicians, trustees, clergymen, kinsmen, and others who by the very force of their occupations or relationship are presumed to be in the class of persons bound to act with the utmost good faith. It applies in every case where there has been a confidence reposed which invests the person trusted with an advantage in treating with the person so confiding ”].)

(*Id.*)

Plaintiff alleges that decedent never learned to read or write in any language, and that defendants knew that Decedent was illiterate. (SAC, ¶ 13.) He did not drive for the last 20 years of his life. (SAC, ¶ 18.) In addition, plaintiff alleges that Juana, Iran, and Michelle assumed the role of care custodians for decedent. Decedent trusted and relied on them for his everyday decisions, care, meals, medicine, clothing, bathing, finances, etc. Defendant Juana was paid for approximately eight years through a program with the State of California to provide care to Decedent. Defendant Iran represented herself as the “family spokesperson” for Decedent while he was hospitalized in order to communicate with his doctors regarding his care. Defendants would contact medical professionals and an attorney on Decedent’s behalf during their time as care custodians. Defendants administered medication to Decedent and consulted doctors on his behalf regarding the same. (SAC, ¶ 18.)

While the familial relationship alone is insufficient to find a fiduciary duty, the facts alleged here are sufficient. The court overrules the demurrer to this cause of action as to Juana and Iran, who are both alleged to have been involved in decedent’s finances. The demurrer is sustained as to defendant Michelle.

5. Elder Abuse (6th Cause of Action)

The elements of a cause of action for financial elder abuse are (1) the defendant took, hid, appropriated, obtained or retained plaintiff’s property; (2) plaintiff is at

least 65 years of age or a dependent adult; (3) the defendant took, hid, appropriated, obtained or retained plaintiff's property for a wrongful use, with the intent to defraud, or by undue influence; (4) the plaintiff was harmed; and (5) the defendant's conduct was a substantial factor in causing plaintiff's harm. (See CACI No. 3100.)

Defendants argue that plaintiff has failed to allege this cause of action with the required specificity: "He states Defendants collectively tricked Decedent in transferring title, but provides no details in support or explain who did or said what." (Demurrer, p. 14, ll. 11-12.) While this may be true to the extent the action was taken with the intent to defraud (see above), defendants have not addressed whether sufficient allegations to support a taking by undue influence. The court finds the same allegations that support a breach of fiduciary duty support a taking by undue influence.

The court overrules the demurrer to this cause of action as to Juana and Iran, who are both alleged to have been involved in decedent's finances. The demurrer is sustained as to defendant Michelle.

6. Intentional Infliction of Emotional Distress (8th Cause of Action)

To state a cause of action for intentional infliction of emotional distress a plaintiff must show: (1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless disregard of the probability of causing emotional distress; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. Conduct, to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized society. In order to avoid a demurrer, the plaintiff must allege with great specificity 'the acts which he or she believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community. (*Yau v. Santa Margarita Ford, Inc.* (2014) 229 Cal.App.4th 144, 161.)

Defendants argue: "Here, the facts are too speculative, uncertain, and without support to show "extreme" or "outrageous" conduct. Plaintiff provides no details of the alleged misrepresentations, he has no witnesses to support these claims, and admits his father had no memory of the events to prove that the deed transfers were done fraudulently." (Demurrer, p. 15, ll. 12-15.) However, the court disagrees. The same facts that support a breach of fiduciary duty and elder abuse causes of action support (at least for pleading purposes) this IIED cause of action.

7. Negligence (8th Cause of Action)

This cause of action is alleged by plaintiff individually and as successor in interest to decedent. Defendants argue that the cause of action is unintelligible

because Defendants cannot decipher whether they owed a duty to Plaintiff, Decedent, some combination of the two, or what each Defendant did to breach this alleged duty. The court agrees. The demurrer to this cause of action is sustained.

8. Quiet Title (9th Cause of Action)

This cause of action asserts that decedent owned the property before its improper transfer; that decedent's estate would have been distributed via intestate succession pursuant to Probate Code § 6400; that he is decedent's "only living child and an heir under Probate Code §240;" and that his claim to title is superior to all other claimants. He thus seeks to quiet title to the property.

A complaint for quiet title must be verified. (Civ. Code, § 761.020.) Here, the complaint has not been verified and it thus subject to demurrer. The demurrer is sustained.

The court notes that the complaint is also internally inconsistent. This cause of action suggests that plaintiff is the only heir to decedent's property. However, the part of the intestate estate not passing to the surviving spouse passes "[t]o the issue of the decedent, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take in the manner provided in Section 240." Probate Code section 240 states: ". . . the property shall be divided into as many equal shares as there are living members of the nearest generation of issue then living and deceased members of that generation who leave issue then living, each living member of the nearest generation of issue then living receiving one share and the share of each deceased member of that generation who leaves issue then living being divided in the same manner among his or her then living issue."

Here, according to the SAC, there are at least two other heirs, e.g., defendants Iran and Michelle. (SAC, ¶¶ 8-9.) In addition, the SAC identifies another grandson, Jose Dominquez (SAC, ¶ 15) who may also be an heir. Therefore, on the face of the complaint, it appears that plaintiff is not the only heir to the property.

9. 10th (Cancellation of Written Instrument) and 11th (Constructive Trust) Causes of Action

Defendants argue that both requests are remedies and not causes of action and therefore the demurrer should be sustained as to each.

Whether a constructive trust may be asserted as a free-standing claim, or whether, instead, it must be tethered to a legal cause of action, is subject to a split of authority. (*Glue-Fold, Inc. v. Slautterback Corp.* (2000) 82 Cal.App.4th 1018, 1023 [constructive trust "is not an independent cause of action but merely a type of

remedy for some categories of underlying wrong”]; compare *Higgins v. Higgins* (2017) 11 Cal.App.5th 648, 659, fn. 2 [disagreeing with *Glue-Fold*]; and at p. 658 [stating, “An action to impose a constructive trust is a suit in equity to compel a person holding property wrongfully to transfer the property interest to the person to whom it rightfully belongs”].) Here, the court will err on the side of caution and allow the constructive trust claim to proceed as a separate cause of action. The court reaches the same conclusion regarding the cancellation of instrument cause of action. In any event, the court notes that the elder abuse and breach of fiduciary duty causes of action survive demurrer, thus providing a tether for the constructive trust claim.

The demurrer based on this argument is overruled.

10. Leave to Amend

It is not up to the judge to figure out how the complaint can be amended to state a cause of action. Rather, the burden is on plaintiff to show in what manner plaintiff can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349; *Moore v. Centrelake Med. Group, Inc.* (2022) 83 Cal.App.5th 515, 537; *Medina v. Safe-Guard Products* (2008) 164 Cal.App.4th 105, 112, fn. 8; *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145—“onus” on plaintiff to show specific ways in which complaint can be amended, and denial of leave to amend affirmed where plaintiff “proffered no specific amendments to the trial court”; *Mohler v. County of Santa Clara* (2023) 92 CA5th 418, 428—leave to amend properly denied where plaintiff failed to describe what additional facts she would plead to cure defect.) Here, plaintiff should be prepared to advise the court whether he has any additional facts that might cure the defects.

If amendment is permitted, plaintiff will be directed to file a “redlined” version of the amended complaint identifying all additions and deletions of material as an appendix to the amended complaint.

11. Summary of Rulings

The court denies the request for judicial notice establishing decedent’s issue for purposes of intestate succession. This undermines defendants’ argument that plaintiff cannot proceed as a self-represented litigant. The remainder of the request for judicial notice is granted.

The court sustains the demurrer to the fraud causes of action (1st – 4th) on the basis that the allegations lack the necessary factual specificity as to which defendant delivered the misrepresentation and the content of the

misrepresentation. The court likewise sustains the demurrer to the 8th cause of action for negligence because the cause of action inadequately alleges duty.

The demurrer to the 9th cause of action for quiet title is sustained because it is not verified. Moreover, the SAC is internally inconsistent to the extent it suggests plaintiff is the only heir of decedent. This inconsistency must be addressed should leave to amend be allowed.

The demurrer to the remaining causes of action is overruled for the reasons stated below.

The court will consider at the hearing whether it will grant leave to amend the SAC. Plaintiff must be prepared to advise the court whether he has any additional facts that might cure the defects identified.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)