

**CHARTER-SMITH, et al. v MALLERY**

**24CV47281**

**PLAINTIFF'S MOTION TO COMPEL DEPOSITION AND REQUEST MONETARY SANCTIONS**

Plaintiffs Alison Charter-Smith and Anthony Jaehnichen ("Plaintiffs") filed their Complaint arising out of alleged wrongful foreclosure. Now before the Court is Plaintiff's Motion to Compel the Deposition of Ronda Copeland and Request for Monetary Sanctions.

The motions do not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

**Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court [emphasis in original.]**

Based on the failure to include this language, the Motion is DENIED, without prejudice to properly refile.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal Order is required.

**ANGELS GUN CLUB, INC. v TRYON, et al.**

**24CV47497**

**DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS**

This matter involves a lengthy land dispute between Plaintiff Angels Gun Club, Inc (“Gun Club”) and Defendants Thomas M. Tryon, individually and as trustee of the Thomas M. Tyron and Denise E. Tryon Family Trust UDT dated October 12, 2000 (“Trust”), Denise E. Tryon as trustee of the Trust, John C. Tryon, individually and as trustee of the 1991 Tryon Trust and Elizabeth Pease Tryon, trustee of the 1991 Tryon Trust and Mary E. Tryon (collectively, “Defendants”).

**I. Factual and Procedural Background**

The instant matter is just one of several lawsuits that have taken place between the Gun Club and Defendants. In the current case, Gun Club seeks to quiet title to real property (“Property”) located in Calaveras County.

As has been hashed out in multiple rulings by this Court, on or about September 5, 1984, the Gun Club entered into a Land Swap Agreement (“Agreement”) with Lucy Tryon, Thomas Tryon, John Tryon and Mary Tryon. (Complaint ¶ 7.) The Agreement specified that the Gun Club was “in the process of purchasing property called the Tracy Quartz Mine, identified as Parcels B, D, and E, on Exhibit A of the Agreement. (Complaint, Ex. B.) The Agreement also specified that the Tryons were the owners of other property identified on that exhibit as Parcels A and C. (*Ibid.*) The Agreement provided that “thereafter and simultaneously” with Gun Club’s purchase of the Tracy Quartz Mine, Gun Club would deed Parcels D and E to the Tryons and that the Tryons would deed Parcels A and C to Gun Club. The Agreement further provided that “any rights” either side has in the property deeded to the other side “are hereby extinguished” and that the Agreement was binding on heirs and successors. (*Ibid.*) The Agreement stated that the Tryons would be allowed to continue using Parcels A and C for various purposes, including cattle grazing.

On or about June 12, 1987, Gun Club recorded a Quitclaim Deed granting title to the Tracy Quartz Mine to Gun Club. (Complaint ¶ 10.) Apparently, the boundaries of the various parcels as identified in the Agreement and the boundaries shown on the Official Records differed slightly. (Complaint ¶ 11.) Because of this discrepancy, a lot line adjustment was needed before the grant deeds swapping the various parcels could be

processed. (Complaint ¶ 11.) However, for unknown reasons, neither the lot line adjustment nor either of the grant deeds were made or recorded. (*Ibid.*)

Nearly twenty years later, in 2005, the Gun Club realized that the grant deeds had never been made or recorded. (Complaint ¶ 12.) Gun Club asserts that in or around that time, Thomas Tryon came to a Gun Club meeting and orally reiterated his family's commitment to the Agreement. (*Ibid.*) However, once again no deeds were made or recorded.

Defendant Thomas Tryon originally filed a complaint against the Gun Club on February 2, 2017 regarding the Gun Club's contamination of the Tryon property ("2017 Action"). (Complaint ¶ 14.) On January 15, 2019, the Gun Club filed a cross-complaint seeking to quiet title to the same property that is the subject of the instant action. (*Id.* ¶ 15.)

On June 12, 2020, the Court granted Gun Club's motion to file a third-amended cross-complaint ("TACC") in order to remove the causes of action for quiet title. In the TACC, Gun Club dismissed the two quiet title causes of action and alleged a breach of contract claim regarding the Agreement and sought the same relief as the dismissed quiet title causes of action claim.

Thereafter, on August 7, 2022, Thomas Tryon dismissed the underlying complaint in the 2017 Action. (Complaint ¶ 14.) Gun Club alleges that sometime in 2022, Thomas Tryon orally agreed to make and record the deeds contemplated by the Agreement. (*Id.* ¶ 15.) The Gun Club expended resources to hire a surveyor in anticipation of the making and recording of the deeds.

On January 22, 2023, Gun Club filed a Fourth Amended Cross-Complaint ("FACC") adding four new defendants (Denise Tryon, John Tryon, Elizabeth Tryon and Mary Tryon). The FACC maintained the same causes of action and did not seek to add back in a cause of action to quiet title.

In the fall of 2023, Thomas Tryon reported to the Gun Club board that the Tryons would not sign any of the deeds. Thereafter, on March 29, 2024, Gun Club moved for leave to file a fifth amended complaint to re-add the cause of action for quiet title. On April 19, 2024, the Court denied Gun Club's motion and stated:

Cross-Complainant's current effort to restore cause of action for Quiet Title is unnecessary and from this Court's perspective reflects excessive pleading practice, as Cross-complainant is now seeking to come full circle and reinstate cause of action that the very same party previously formally brought before this Court to delete.

The Court further stated that adding the quiet title action back in was unnecessary because "The existing pleadings put at issue equitable, title, legal, and beneficial interests in the parties' property, and seek the right to formal legal title."

On May 17, 2024, the Court ruled on the Tryon's demurrer and motion for judgment on the pleadings and determined that the statute of limitations barred the breach of contract cause of action as against the newly added defendants. At that time, the Court also held that the statute of limitations did not apply to Thomas Tryon under the doctrine of equitable tolling based upon his filing the initial complaint.

On June 28, 2024, this court denied the Gun Club's request to specially set a trial on the Fourth Cause of Action prior to the expiration of five years after the filing of the Cross-complaint. On July 18, 2024, Gun Club dismissed the remaining causes of action in the FACC and on that same day filed the instant action attempting to renew its claim for quiet title action based upon the alleged breach of the Agreement.

## **II. Legal Standard**

A motion for judgment on the pleadings serves the same function as a demurrer but is made after the time for demurrer has expired. (Code Civ. Proc., § 438(c)(2); *Cloud v. Northop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.) Except as provided by statute, the rules governing demurrers apply. (*Id.*) The court must accept as true the factual allegations of the complaint and must give them a liberal interpretation. (*Gerawan Farming, Inc., v. Lyons* (2000), 24 Cal. 4th 468, 515-516.) In addition, the court is limited in its consideration to the face of the pleadings or matters entitled to judicial notice. (Code Civ. Proc. § 438(d).)

## **III. Legal Discussion**

### **A. The Complaint is Barred by the Statute of Limitations.**

Defendants first argument is that the quiet title action is barred by the four year breach of contract statute of limitations because the underlying theory of relief is the alleged breach of the 1984 Agreement. (Complaint ¶ 19)(Code of Civil Procedure section 337(1).)

The elements of an action to quiet title are: 1) the plaintiff is the owner and in possession of the land and 2) the defendant claims an interest therein adverse to the plaintiff. (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 740.) The limitations period for a quiet title cause of action depends on the underlying theory of relief. (*Muktarian v. Barmby* (1965) 63 Cal.2d 558, 560.)

Gun Club concedes that any claim for title that is based on breach of the Agreement is barred by the statute of limitations. However, Gun Club argues that its current claim for quiet title is not based on the 1984 Agreement, but rather on representations made by Thomas Tryon in May of 2024. Specifically, Gun Club argues that it was not aware that the Tryons were denying the Gun Club's right to ownership of the Property until Thomas Tryon made such statement to a state agency. (Opp p. 3.)

Despite Gun Club's argument to the contrary, the only basis in the Complaint for claiming ownership rights to the properties at issue is the 1984 Agreement. The Complaint refers repeatedly to the Agreement as being the basis for Gun Club's belief that it is entitled to possession of the Property. (Complaint ¶¶ 6-17;19-24.) The only reference to representations made by Thomas Tryon relate to oral comments he made in the fall of 2023 in which he repudiates any intention to comply with the Agreement. (Complaint ¶ 17.)

Based on the allegations in the Complaint, the Gun Club's theory of relief underlying its quiet title claim is the 1984 Agreement. The Gun Club was aware, as of at least 2005, that neither it, nor the Tryons, had made or recorded any of the deeds called for in the Agreement. Giving Gun Club the benefit of the doubt, it was at the very least on notice that the Tryons did not believe Gun Club had any rights to ownership when Gun Club filed its first Cross-Complaint to quiet title in 2019. As such, the Complaint is barred by the statute of limitations.

## **B. The Complaint is Barred by Collateral Estoppel and Res Judicata.**

Collateral estoppel, or issue preclusion, prevents a party from relitigating issues that were previously decided even where the second lawsuit raises different causes of action. (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.) "Under California law, 'issue preclusion applies (1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party.'" (*Kemper v. County of San Diego* (2015) 242 Cal.App.4th 1075, 1088 [citation omitted].) A party not named in the first suit can raise issue preclusion in a subsequent action. (*Id.*)

In the 2017 Action, this Court found that the Gun Club's claims to the land at issue arose out of the 1984 Agreement, however the claims were actually titled. It further found that, at least as to Denise Tryon, John Tryon, Elizabeth Tryon and Mary Tryon, the claims based on the Agreement was barred by the four year statute of limitations. As to Thomas Tryon, the Court had previously held that the statute of limitations did not apply to him under equitable tolling because Thomas had filed the initial complaint.

As stated above, the Agreement is once again providing the basis for Defendants' assertion of ownership. However, this Court has already concluded that the statute of limitations for breach of contract bars a cause of action based on the Agreement. The previous equitable tolling on that statute of limitations as to Thomas Tryon no longer exists, as Mr. Tryon is not the person who filed the Complaint in this matter.

Likewise, Gun Club's Complaint is barred by the doctrine of res judicata, which "precludes piecemeal litigation by splitting a single cause of action or relitigation of the same cause of action on a different legal theory or for different relief." (*Weikel v. TCW Realty Fund II Holding Co.* (1997) 55 Cal.App.4th 1234, 1245.) Further, res judicata bars the litigation "not only of issues that were actually litigated, but also issues that **could have been litigated** in that proceeding [citation]." (*Zevnik v. Superior Court* (2008) 159 Cal.App.4th 76, 82 [emphasis added].)

In the 2017 action, Gun Club based its quiet title action and its breach of contract actions both on the 1984 Agreement. The Court held that the causes of action were essentially one and the same and were barred by the statute of limitations. Even Gun Club recognized the overlap between the causes of action in its motion for leave to file its Third Amended Complaint in the 2017 Action when it chose to dismiss the quiet title action, stating: "[T]he Club's quiet title cause of action is superseded and enveloped by the asserted breach of contract and declaratory relief actions. Simply put, if the Club prevails in these causes of action, the quiet title action is duplicative and ancillary." (RJN, Exh. H.) Thus because the Court previously held that the statute of limitations barred the cause of action based on the 1984 Agreement, the causes of action are the same, and the parties are the same, res judicata applies.

#### **IV. Conclusion.**

Based on the foregoing, Defendants' motion for judgment on the pleadings is **GRANTED** WITHOUT Leave to Amend and Judgment is entered on behalf of Defendants. Plaintiff did not seek leave to amend the Complaint nor did Plaintiff provide any argument as to how the Complaint could be amended to state a cause of action. Given the lengthy history of litigation between the parties and the extensive pleading practice that has been conducted, the Court views this lack as a tacit recognition that the matter has run its course.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendants to prepare a formal Order complying with Rule of Court 3.1312 in conformity with this Ruling.

**MECHANICS BANK v TWISTED OAK WINERY, LLC**

**25CV47803**

**PLAINTIFF'S MOTION FOR APPOINTMENT OF A RECEIVER**

Plaintiff Mechanics Bank ("Plaintiff") brings this action for judicial foreclosure and appointment of a receiver of a 120-acre 4 vineyard and winery located at 4280 Red Hill Access Road and 4002 Red Hill Access Road, 5 Vallecito, CA 95251 ("Real Property") against Defendant Twisted Oak Winery, LLC ("Twisted Oak".) The Complaint was filed on January 6, 2025. Defendant has not made any appearance.

Now before the Court is Plaintiff's request for a receiver, to which Defendant has not filed any opposition.

**I. Background**

On or about October 18, 2004, Plaintiff and the Stai Family Trust entered into a Business Loan Agreement ("BLA")(Complaint ¶ 9, Ex. A.) On that same day, Jeff Stai and Mary Stai, as trustees of the Stai Family Trust, executed and delivered to Plaintiff a Promissory Note ("Note")(Complaint ¶ 10, Ex. B.) The Note evidenced a loan from Plaintiff to the Stai Family Trust ("Borrower") in the principal amount of \$2,546,000 ("Loan") which required Borrower to make payments to Plaintiff every month until October 18, 2033. (Complaint ¶ 10.)

The Note is guaranteed by Twisted Oak, and is secured by a Deed of Trust made by Twisted Oak in favor of Plaintiff, dated October 29, 2024 ("Deed of Trust") (Complaint ¶ 11, Ex. C.) The Deed of Trust irrevocably grants to Plaintiff, in trust, with power of sale, all of the Real Property, including any buildings, improvements, fixtures, water rights, and mineral, oil and gas rights. (*Id.*) Plaintiff also received the right to title and interest in all present and future leases ("Property"). The Deed of Trust also imposed an affirmative duty on Twisted Oak to maintain, protect and preserve the Property and prevent nuisance. (*Id.*) In the event of foreclosure, the Deed of Trust also gave Plaintiff the right to have a receiver appointed. (*Id.*, p. 6.)

In or about August 2013, the parties entered into a Change in Terms Agreement which deferred outstanding interest and changed the interest rate applicable to the Loan but all other terms remained in place. (Complaint ¶ 23-24.)

On or about October 24, 2021, Twisted Oak filed for Chapter 11 bankruptcy. (Complaint ¶ 25.) As part of the bankruptcy plan, ("Plan"), the Loan was to be paid in full with interest at 5.75% per annum on 25 years amortization with a January 1, 2033 maturity



date; interest and principal payments of \$11,948.88 per month commencing October 1, 2022 and continuing for 123 months; and a balloon payment for the remaining balance due January 1, 2033. (*Ibid.*) However, Plaintiff alleges that Borrower failed to make the payment that was due under the Note on March 1, 2024, or any payment that came due thereafter. (Complaint ¶ 26.)

Plaintiff recorded Notice of Default in Calaveras County on May 13, 2024, to initiate non-judicial foreclosure. However, Plaintiff then learned it would be unable to procure appropriate policies of insurance post-foreclosure. (Complaint ¶ 29.) On or about October 2024, Twisted Oak abandoned the Property. (Complaint ¶ 30.) Plaintiff has been made aware that the water to the Property may be turned off which will cause a significant risk of fire danger and further that once the water meters are removed, there is no guarantee they can be reinstalled. (Complaint ¶ 30.)

## II. Legal Analysis

California law authorizes the appointment of a receiver in any pending case which it is necessary to preserve the property or rights of any party. (Code Civ. Proc. § 564, subds. (a)-(b).) Pursuant to subsection (b)(9), the Court may appoint a receiver in cases “where necessary to preserve the property or rights of any party.” Further, where the parties have contractually agreed to the appointment of a receiver as part of the loan or contract, this provides evidentiary weight in favor of appointing a receiver. (*Barclays Bank of California v. Superior Court* (1977) 69 Cal.App.3d, 599-600.)

Here, the Plaintiff has provided evidence that the Property is currently at risk of destruction or devaluation because it has been abandoned and may lose its source of water. (Declaration of Jeffrey B. Kirschenbaum (“Kirschenbaum Decl.”) Ex A.) The various agreements between the parties contemplated that in the event of default (as has happened here) the Plaintiff would be able to seek appointment of a receiver to protect the Property and assets. The Court finds that under these circumstances, the appointment of a receiver is proper and necessary in order to preserve and protect the Property during the pendency of this litigation.

Plaintiff requests that the Court appoint Peter F. Martin as receiver. Mr. Martin avers that he is not a party to the action and has not interest in its outcome. (Declaration of Peter F. Martin (“Martin Decl.”) ¶ 2.) He avers that he has over 35 years of experience in the real estate industry and as acted as a state court receiver since 1995. (*Id.* ¶¶ 3, 4.) He further avers that he has acted as a receiver in most northern California counties and for many different types of properties. (*Id.* ¶¶ 3-5.) Mr. Martin avers that he charges \$250 per hour and plans to hire BLR Asset Management (“BLR”) to assist in the property management and BLR charges \$550.00 per month. (*Id.* ¶¶ 7, 8.)

Based on the foregoing, the Court **GRANTS** Plaintiff's Motion for Appointment of Peter F. Martin as receiver and approves his involvement of BLR to assist in management of the property.

The parties will be charged equally for the receiver's fees and costs. The Court finds that the costs and fees charged by Mr. Martin and BLR are reasonable on their face and in keeping with that typically charged in this County for such services. The Court retains jurisdiction for any motion contesting the reasonableness and appropriateness of the fees and costs of either Mr. Martin or BLR.

The Court finds under the totality of the circumstances that a bond is waived.

The Clerk shall provide notice of this Ruling to the parties forthwith. The Court intends to sign the submitted Order.