

## TENTATIVE RULINGS

DEPT. CM7 + CM4

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## TENTATIVE RULING

Date: 05/14/2024

Case #	Case Name	Tentative
(01362710)	Van Strauhal - Trust	<p style="text-align: center;"><b>TENTATIVE RULING</b></p> <p><b>Case:</b> (01362710) <b>Calendar No.:</b> 1</p> <p style="text-align: right;"><b>Date:</b> 05/14/2024</p> <hr/> <p style="text-align: center;"><b>MOTION TO EXPUNGE LIS PENDENS</b></p> <p>Before the court is a motion by Respondent and Trustee Steven Worden ("Trustee") to expunge the notice of pendency of action recorded by Petitioner Ronald Worden ("Petitioner") on 11/29/23.</p> <p><b><u>Evidentiary Objections</u></b></p> <p>Petitioner's Evidentiary Objections are <b>SUSTAINED</b> as to Objections 1, 4, 5, 6 and 7.</p> <p>As to Objections 2 and 3, not all of the statements in the paragraph objected to should be excluded. On such basis, the objection made to entire paragraph is <b>OVERRULED</b>.</p> <p><b><u>Merits of the Motion</u></b></p> <p>A motion to expunge a lis pendens must be granted where a lis pendens is improper, either because: (1) the pleading on which the lis pendens is based does not contain a real property claim; or (2) the claimant cannot establish the probable validity of its real property claim(s) by</p>

		<p>a preponderance of the evidence. (Code Civ. Proc., §§ 405.31, 405.32; Prob. Code, § 1000.) Unlike most other motions, when a motion to expunge is brought, the burden is on the party <u>opposing</u> the motion to both show the existence of a real property claim and the probable validity of that claim. (<i>Kirkeby v. Superior Court</i> (2004) 33 Cal.4th 642, 647; Code Civ. Proc., § 405.30.)</p> <p><u>States a Real Property Claim</u></p> <p>A “real property claim” is one which, if meritorious, would affect title to, or the right to possession of, specific real property; or the use of an easement identified in the pleading. (Code Civ. Proc., § 405.4.) The allegations of the relevant pleading determines whether a “real property claim” is involved; no independent evidence is required. (See <i>Urez Corporation v. Superior Court</i> (1987) 190 Cal.App.3d 1141, 1149.) The Petition contests the validity of the Fourth Amendment to the Trust. The principal asset of the Trust is a Condo located in San Clemente. The outcome of this case will determine whether Petitioner will inherit the Condo in its entirety or whether the Condo will go equally to Petitioner and Respondent Derek Worden (“Respondent”). Thus, the Amended Petition states a real property claim.</p> <p><u>Probable Validity of Real Property Claim</u></p> <p>“Probable validity,” with respect to a real property claim, means that it is more likely than not that the claimant will obtain a judgment against the defendant on the claim. (Code Civ. Proc., § 405.3.) As noted above, the party opposing the motion has the burden of showing the probable validity of at least one of the real property claims upon which the lis pendens is based. (<i>Kirkeby v. Superior Court</i>, <i>supra</i>, 33 Cal.4th at p. 647; Code Civ. Proc., § 405.32.)</p> <p>Here, Petitioner has not produced admissible evidence sufficient to show that Petitioner is more likely than not to obtain a judgment on the real property claim. It is clear that the decedent did not have capacity to execute a trust document 6/27/23 when Mr. Meunch visited her, but there is insufficient evidence as to the decedent’s mental condition on 6/16/23 when she signed and notarized the Fourth Amendment. The facts that the Petitioner did not ask Mr.</p>
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		<p>Meunch to draft the Fourth Amendment, and that the Trustee does not know who drafted it, raise questions as to its validity. But without knowing more about the circumstances of when and by whom the Fourth Amendment was drafted, these facts alone are not determinative. Petitioner argues that Respondent was in a position to unduly influence Petitioner because he was her caretaker. However, the fact that Respondent was taking care of the decedent while the Petitioner was living out of state might also establish the reason decedent wanted to amend her trust.</p> <p>This is not to say that the record presented on this motion shows or suggests that Petitioner would not ultimately prevail at trial. Petitioner appears to have at least a 50% chance of prevailing, but the court cannot determine at this juncture that Petitioner is "more likely than not" to prevail. It was Petitioner's burden to show a probability that he will prevail. He did not do so. While the circumstances alleged by Petitioner raise suspicion of lack of capacity and undue influence, the evidence proffered in opposition to this motion is not sufficient to demonstrate that the decedent lacked capacity or that she did not act on her own free will when she executed the Fourth Amendment.</p> <p>Thus, the motion to expunge lis pendens is <b>GRANTED</b>.</p> <p><b><u>Attorney's Fees and Costs</u></b></p> <p>When ruling on a motion to expunge lis pendens, the court must award the prevailing party its reasonable attorney's fees and costs incurred in making or opposing the motion, unless the court finds either that: (1) the non-prevailing party acted with substantial justification; or (2) other circumstances make the imposition of attorney's fees and costs unjust. (Code Civ. Proc., § 405.38.) Such an award is to be made against the losing party only, not counsel. (<i>Doyle v. Superior Court</i> (1991) 226 Cal.App.3d 1355, 1359.)</p> <p>The court finds that Petitioner acted with substantial justification, given the competing claims to the property and the circumstances of this case.</p>
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