

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 03/13/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2203501

PRESIDING: HON. ANDREW SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: BENJAMIN GALE, ET AL

vs.

DEFENDANT: LEONARD STEVENS

NATURE OF PROCEEDINGS: MOTION – OTHER: (SPECIAL SET) LEONARD STEVENS’ APPLICATION FOR EXPUNGING LIS PENDENS

RULING

Defendant’s ex parte application to expunge the lis pendens is granted. Other ex parte relief is denied without prejudice.

Procedural Background

The Instant Action, Case No. CIV2203501

Plaintiffs Benjamin Gale (“Ben”) and Kristina Gale (“Kristina”) (together, the “Gales”) filed their original Complaint against Defendant Leonard Stevens (“Stevens”) on October 26, 2022. The Gales alleged among other things that they entered into a Contract for a Will with Stevens and that the parties reached additional agreements relating to, among other things, Stevens’ residence in a cottage on the property and management of the larger building on the property. The Gales asserted causes of action for specific performance, breach of fiduciary duty, negligent infliction of emotional distress, and declaratory relief. The Gales filed a First Amended Complaint on November 1, 2022, adding claims for retaliatory eviction and intentional infliction of emotional distress.

On January 25, 2023, Stevens filed a Cross-Complaint against the Gales, alleging that the Gales obtained an interest in his property by undue influence and/or with the intent to defraud Stevens. Stevens asserted causes of action for financial elder abuse and declaratory relief.

A lis pendens was recorded by the Gales on February 13, 2023. (Declaration of Paul Gruwell (“Gruwell Decl.”), Exh. B.)

On January 26, 2024, the Gales filed a Second Amended Complaint which replaced the cause of action for specific performance with a cause of action for breach of contract and removed the cause of action for retaliatory eviction. The Second Amended Complaint also asserts causes of action for breach of fiduciary duty, negligent and intentional infliction of emotional distress, declaratory relief, financial elder abuse, and for an accounting.

On February 15, 2024, Stevens filed a First Amended Cross-Complaint asserting causes of action for financial elder abuse, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, fraud, conversion, and declaratory relief.

The Restraining Order Action, Case No. CIV001788

On January 9, 2024, Stevens filed a Request for Elder or Dependent Adult Abuse Restraining Order against Ben, in Case No. CIV0001788. At the end of a two-day trial, the parties informed the Court that they had reached a settlement agreement (the “Settlement Agreement”) which also involved the instant action, Case No. CIV2203501. The Settlement Agreement was recited on the record and the Court issued an OSC re dismissal set for hearing on October 29, 2024. (Gruwell Decl., Exh. C.) The OSC hearing was later continued to December 3, 2024. On November 22, 2024, the clerk entered a dismissal of the case without prejudice.

The Settlement Agreement provides in part:

- 4.1 Leonard shall pay an amount of Three Hundred Twenty-Give Thousand Dollars to Kristina by April 3, 2024 via cashier’s check.
- 4.2 The 30% Grant Deed will be rescinded on or before April 3, 2024 . . .
- 4.3 The Contract for a Will is void.
- 4.4 Ben shall vacate the Property by February 27, 2024 at 5:00 p.m., or represents that he has already done so.
- 4.5 Kristina and Sarah Gale will vacate the Property on or before August 20, 2024.
- 4.6 After Ben has vacated the Property on February 27, 2024 and prior [to] the date when Kristina and Sarah Gale vacate the Property, Ben may visit the Property for periods of no more than two hours at a time, and depart from the Property no later than 9:30 p.m.
- 4.7 In the event that Ben visits the Property, a 24-hour notice will be provided to Leonard by Kristina in writing (“Notice”). Kristina will provide Leonard Notice to be delivered to Leonard’s

mailbox located on the outside of Leonard's studio on the Property.

4.8 Ben hereby acknowledges and agrees to be bound by the civil, non-CLETS stay-away order (entered into the record of the court on February 20, 2024[)], prohibiting him from coming within five (5) yards of Leonard from February 20, 2024 until February 20, 2025.

4.9 Ben shall have no contact with Leonard, directly or indirectly, in writing or otherwise, beginning on February 20, 2024 and ending on February 20, 2025. . . .

4.15 Following Kristina and Sarah Gale leaving the Property on or before August 20, 2024, the Settling Parties shall file a joint stipulation for dismissal of the Civil Lawsuit with prejudice

12 Enforcement. The Settling Parties stipulated on February 20, 2024 on the record of the Court in the Restraining Order Proceeding that the Court shall retain jurisdiction to enforce the parties' agreement, which shall include this Agreement, pursuant to Code of Civil Procedure section 664.6. If one of the Settling Parties is required to file a pleading to enforce this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorney's fees and costs for enforcement (but not for the underlying Civil Lawsuit, Probate Action or Restraining Order Proceeding).

(Gruwell Decl., Exh. D.)

Steven's Ex Parte Application in this Action

On March 3, 2025, Stevens filed an ex parte application seeking five forms of relief: (1) enforcement of the Settlement Agreement; (2) dismissal of this case with prejudice, consistent with the Settlement Agreement; (3) expungement of the lis pendens; (4) an award of attorney's fees incurred in enforcing the Settlement Agreement; and (5) an award of other damages.

At the hearing on March 4, 2025, the Court denied the ex parte application without prejudice and set a hearing on the request to expunge the lis pendens for March 13, 2025. The Court noted that any opposition by the Gales was required to be filed by March 7, 2025 and any reply by Stevens was to be filed by March 11, 2025.

Gales' New Action, Case No. CIV0005513

On March 3, 2025, the same day Stevens filed his ex parte application in this case, the Gales initiated a new action, Case No. CIV0005513, seeking to rescind the Settlement Agreement. The Gales allege that they learned after the Settlement Agreement was executed that Stevens was

insincere in his expressed reasons for the Settlement Agreement and that instead Stevens had secretly intended to take as much money from the Gales as he could, drive them from the property, and to use the equity they had added to the property for his own personal benefit. The Gales assert causes of action for misrepresentation, fraudulent concealment, procedural unconscionability and substantive unconscionability.

Stevens' Request to Expunge the Lis Pendens

In his ex parte papers, Stevens argues that the Gales were required to dismiss this action under the Settlement Agreement, which would then require the lis pendens to be withdrawn because it would have no legal basis at that point. Stevens further contends that he has taken all actions required of him under the Settlement Agreement (Gruwell Decl., ¶¶9, 11, 14) and that the Gales have failed to comply with their obligations under the Settlement Agreement by, among other things, staying at the property past the agreed upon times and failing to provide him with 24-hour notice prior to certain visits. (Declaration of Leonard Stevens ("Stevens Decl."), ¶2.) Stevens' real estate agent, Young Lee Lvorin, states that he listed the property on November 15, 2024 for \$2,995,000. After he listed the property, he was advised by multiple potential buyers that the "lawsuit" relating to the property was the main reason they failed to make acceptable offers. He thereafter reduced the asking price by \$345,000. (Declaration of Young Lee Dvorin, ¶¶3, 4.) The property is still not sold and is currently listed for \$2,650,000, and no reasonable offers have been made so far. (*Id.*, ¶5.) Stevens states that he vacated his tenants and made substantial repairs to the property to prepare it for a sale, and has moved into a new residence. (Stevens Decl., ¶3.) He is responsible for making monthly interest payments on the reverse mortgage which amount to over \$13,000 every month, and he still has to pay utility bills, property taxes, insurance and other expenses related to the property while it remains unsold, which he cannot afford on his fixed budget. (*Id.*, ¶4.) He is two months behind on his rent at his current residence at the Tamalpais Marin and is concerned that he will be evicted at 90 years old. (*Id.*, ¶5.)

The Gales' Opposition states that they have offered to withdraw the lis pendens so Stevens' request is moot. Stevens does not dispute this in his Reply, but states that there is no guarantee that the Gales will not record another lis pendens in the future. The Court concludes that the Gales' withdrawal of the lis pendens is a concession that the lis pendens is without merit and must be expunged. Stevens' request to expunge is therefore granted. Given this concession, the Court does not expect the Gales to file another lis pendens.

Other Relief Sought in Steven's Ex Parte Application

By Ex Parte Application, Stevens seeks orders 1) enforcing the settlement agreement between the parties; 2) dismissing Marin County Superior Court Case No. CIV2203501; 3) directing that Benjamin and Kristina Gale pay his attorney's fees and costs incurred in enforcing the settlement and for the Ex Parte Application; and 4) directing the Gales to pay him damages.

The request for an ex parte order directing the Gales to pay damages is denied. Stevens has presented no authority, nor is the court aware of any, to support such a claim or on an ex parte basis.

Standing alone, the remaining requests appear meritorious given the February 20, 2024, settlement agreement between the parties. However, after being served with the Ex Parte Application, the Gales filed *Gale v. Stevens*, Marin County Superior Court Case No. CV0005513, which is fashioned as a complaint to rescind the settlement agreement in Marin County Superior Court Case No. CIV2203501. It appears to the Court at this time that ex parte enforcement of the settlement is premature given this new case. Consequently, the ex parte requests for orders 1) enforcing the settlement agreement between the parties; 2) dismissing Marin County Superior Court Case No. CIV2203501; and 3) directing that Benjamin and Kristina Gale pay his attorney's fees and costs incurred in enforcing the settlement and for the Ex Parte Application are denied without prejudice.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for March, 2025 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1>

Meeting ID: 161 516 2449

Passcode: 073961

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marin.courts.ca.gov>