

Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR DEPARTMENT NAME
HON. JUDGE Carol L. Henson

Date: 04/05/2024

Court Room Rules and Notices

#	Case Name	Tentative
1	Horwich - Trust 01045532	<p style="text-align: center;">MOTION FOR SUMMARY ADJUDICATION</p> <p><u>PRELIMINARY MATTERS</u></p> <p><u>Good Cause for Delay</u></p> <p>The court finds good cause to hear this motion later than 30 days before the initial trial date. The delay in hearing is the result of (1) a non-stipulation to the temporary judge on October 25, 2023; (2) the opposing party's filing of a 170.6 Declaration on October 25, 2023, and the appeal of the denial thereof; and (3) the court's availability.</p> <p><u>Opposition by Holly M. Emge</u></p> <p>This Motion for Summary Adjudication affects the 2nd, 3rd, and 13th causes of action in 6th Amended Petition filed by Jeffrey Horwich and Paul Horwich (ROA 826), as well as the 2nd and 4th causes of action in the Fifth Amended Petition filed by Robert Horwich and Pamela Roossin (ROA 710). None of these causes of action are brought by or against Holly M. Emge, the Emge Law Group, or Chapman Delesk & Emge. Thus, the court disregards the papers filed by Respondent Holly M. Emge in opposition to this motion.</p> <p><u>Evidentiary Rulings</u></p> <ul style="list-style-type: none">- The Jeffrey Parties' Request for Judicial Notice (ROA 1135) is GRANTED as to Exhibits 1-21.- Robert's Request for Judicial Notice (ROA 1225) is GRANTED as to Exhibits H, I, J, and K.- The Jeffrey Parties' Evidentiary Objections (ROA 1262) are SUSTAINED as to objections 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, and OVERRULED as to objections 3 and 4.- Robert's Evidentiary Objections (ROA 1267) are SUSTAINED as to Exhibits 6, 7, 8, and 22 (objections 1-3, 8) for lack of authentication. There is no declaration or affidavit supporting the Appendix of Evidence (ROA 1137). The objections are OVERRULED as to Exhibits 10, 12, 13, and 14 (objections 4-7).

Practical Considerations

The court notes that this motion seeks summary adjudication on two different Petitions. For ease of reference, the court addresses this matter as two separate motions, one for each Petition.

MSA ON SIXTH AMENDED PETITION (ROA 826)

The Jeffrey Parties' motion for summary adjudication as to the 6th Amended Petition (ROA 826) is **DENIED**.

Jeffrey Horwich ("Jeffrey") and Paul Horwich ("Paul") (collectively, the "Jeffrey Parties") are the Petitioners of the Sixth Amended Petition ("SAP").

The Jeffrey Parties seek summary adjudication as to the 2nd, 3rd, and 13th causes of action in the SAP. These causes of action seek to determine the validity of three trust documents, respectively: (1) a Nomination of Successor Trustee, (2) an Amendment to Survivor's Trust, and (3) a Special Needs Trust (collectively, the "2014 Trust Documents"). The 2014 Trust Documents were executed by decedent June Horwich ("June") on September 19, 2014. (UMF 1, 18, 34.) The SAP alleges that the 2014 Trust Documents are invalid because June signed them without capacity and/or as a result of undue influence perpetuated by Robert Horwich ("Robert"). Robert is the trustee of the Horwich Family Trust ("HFT") pursuant to the 2014 Trust Documents.

In a previous civil case, Orange County Superior Court, Case No. 2015-00783925 ("*Horwich I*"), the court found that June was unduly influenced to sign certain deeds to real property in May 2014, as well as a Trust Transfer Deed on September 19, 2014 (collectively, the "2014 Deeds"). The Jeffrey Parties move for summary adjudication as to the 2nd, 3rd, and 13th causes of action on the grounds of collateral estoppel and judicial estoppel based on the Statement of Decision and Judgment rendered in *Horwich I*. (Motion RJN, 1-4.)

Collateral Estoppel

"Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings." (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) This doctrine applies when: "(1) there is a final decision on the merits (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." (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921; *Samara v. Matar* (2018) 5 Cal.5th 322, 327; *Grande v. Eisenhower Med. Ctr.*

(2022) 13 Cal.5th 313, 323; *DKN Holdings LLC v. Faerber* (2015) 61 Ca1.4th 813, 825.)

Whether June Was Unduly Influenced to Execute the 2014 Trust Documents

The SAP alleges that June signed the 2014 Trust Documents as a result of undue influence perpetuated by Robert. The Jeffrey Parties argue that this issue was resolved in *Horwich I*. In support of this argument, the Jeffrey Parties offer the following evidence:

- (1) the Statement of Decision in *Horwich I* (UMF 9, 25, 42);
- (2) ¶¶ 58, 95, 96, 100, 101 of the First Amended Complaint filed in *Horwich I* (UMF 8, 24, 41); and
- (3) ¶ 19, 20, 21, 22, 24 of the Cross-Complaint, filed in *Horwich I* (UMF 8, 24, 41).

The court has reviewed all such evidence. None of the cited paragraphs in the *Horwich I* pleadings pertain to the 2014 Trust Documents or to events of September 19, 2014; moreover, the First Amended Complaint pertains to allegations of undue influence perpetuated by Jeffrey, not by Robert. Likewise, the Statement of Decision in *Horwich I* ("SOD") establishes that June signed the 2014 Deeds as a result of undue influence, but the SOD is silent as to the 2014 Trust Documents.

The SOD, under the heading "Introduction and Factual Overview," and the subheading "2014 - The Battle of the Deeds," reflects the court's findings that Robert unduly influenced June to sign four deeds (pertaining to condos 1-4) on May 3, 2014, and Jeffrey unduly influenced June to sign three deeds (pertaining to condos 2-4) on May 5, 2014. (Motion RJN, Ex. 1, 12:3-15.) There are no factual findings as to who presented June with the September 19, 2014 Trust Transfer Deed. The September 19, 2014 Trust Transfer Deed is mentioned only under the heading, "CONCLUSIONS OF LAW," as follows:

*"With respect to the 2014 deeds
(including the September [1]9, 2014 Trust
Transfer to the Survivor's Trust) (Exh. 11),
the Court concludes that due to depression over
Harvey's death, the onset of dementia and an
overriding desire to keep her family happy, June
simply did not appreciate or fully understand
what she was being asked to sign. Instead, she
apparently was willing to sign **the seven deeds**
that were placed in front of her by her children
without regard to their actual effect, such that
her children effectively overcame June's free
will. Indeed, it is not at all clear to the Court*

that attorney Emge necessarily knew (or could have known) June's true wishes at the time of trial.

Considering all of the evidence surrounding the 2014 deeds, the Court concludes that June signed each of the deeds at issue as a result of undue influence by the party offering her the deeds for signature.” (Motion, RJN, Ex. 1, SOD 13:11-22, emphasis added, and Ex. 4 [Nunc Pro Tunc order correcting date to September 19, 2014].)

Thus, while the SOD mentions the September 19, 2014 Trust Transfer Deed in parenthesis, it goes on to conclude that “the **seven deeds** that were placed in front of [June] by her children” (clearly referring to the four deeds proffered by Robert on May 3, 2014, and the three deeds proffered by Jeffrey on May 5, 2014) were not signed of June’s free will. It is not clear from the face of the SOD why the September 19, 2014 Trust Transfer Deed is included in the SOD. The separate statement in support of this motion does not offer evidence to clarify its inclusion.

More importantly, the SOD only discusses the 2014 Deeds; it says nothing about the 2014 Trust Documents. Clearly, the court in *Horwich I* did not actually litigate or decide the issue of whether June was unduly influenced to sign the 2014 Trust Documents.

Whether June Was “Subject to” Undue Influence When She Executed the 2014 Trust Documents

It appears that the Jeffrey Parties may have brought this motion to establish only that June was *subject to* undue influence when she executed the 2014 Trust Documents based on the findings in *Horwich I*. The court agrees that *Horwich I* conclusively established that June was subject to undue influence in May and September of 2014. However, such finding in *Horwich I* is not grounds for granting this motion.

Summary adjudication must completely dispose of a cause of action; it is not sufficient to establish one element of a cause of action. (Code of Civ. Proc. § 437c(f)(1).) When a plaintiff/petitioner moves for summary adjudication, each element of the cause of action must be satisfied in order to dispose of the entire cause of action.

Welfare and Institutions Code section 15610.70(a) reflects the factors the court must consider in determining whether June executed the 2014 Trust Documents as a result of undue influence:

(a) "Undue influence" means excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity. In determining whether a result was produced by undue influence, **all** of the following **shall** be considered:

(1) **The vulnerability of the victim.**

Evidence of vulnerability may include, but is not limited to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim's vulnerability.

(2) **The influencer's apparent authority.** Evidence of apparent authority may include, but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification.

(3) **The actions or tactics used by the influencer.** Evidence of actions or tactics used may include, but is not limited to, all of the following:

(A) Controlling necessities of life, medication, the victim's interactions with others, access to information, or sleep.

(B) Use of affection, intimidation, or coercion.

(C) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.

(4) **The equity of the result.** Evidence of the equity of the result may include, but is not limited to, the economic consequences to the victim, any divergence from the victim's prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship.

The evidence presented by the Jeffrey Parties establishes collateral estoppel only as to one element of undue influence, to wit, June's vulnerability. Specifically, the Jeffrey Parties demonstrate that *Horwich I* decided that June was *susceptible* to undue influence at the time she executed the 2014 Trust Documents. (See e.g., UMF 5, 12, 13, 14, 21, 28 ["subject to" undue influence].) The Jeffrey Parties have not presented evidence that *Horwich I* made any findings as to Robert's

“apparent authority”; “actions or tactics” employed by Robert; or the “equity of the result.”

As Robert correctly points out in his opposition, “undue influence” is not a state of being. The SOD establishes that when June signed the 2014 Deeds, she was depressed, had dementia, and wanted to make her family happy. (Motion, RJN, Ex. 1, SOD 13:12-15.) This is evidence of June’s vulnerability. Vulnerability is only one element of undue influence.

Paragraph 171 of the SAP demonstrates the difference between being “subject to” undue influence and being “subjected to” undue influence. It reads as follows: “[The Jeffrey Parties] are informed and believe and thereupon allege that *after* the time that JUNE became *subject to undue influence* she was *induced to sign* the Successor Trustee Nomination” (Emphasis added.) Here, the Jeffrey Parties demonstrate that *Horwich I* resolved the issue of whether June had become subject to undue influence before she executed the 2014 Trust Documents. The Jeffrey Parties have not demonstrated that June was induced to sign the 2014 Trust Documents against her will.

In short, the fatal defect with regard to the collateral estoppel argument is that the moving papers establish collateral estoppel only as to one element of undue influence (i.e., vulnerability). If the Jeffrey Parties wanted the court to resolve a single issue rather than the entire cause of action, they were required to comply with Code of Civil Procedure section 437c(t). They did not do so.

Judicial Estoppel

“[J]udicial estoppel, sometimes called the doctrine of ‘preclusion of inconsistent positions’ [Citation] precludes a party from obtaining an advantage by asserting one position, and then seeking a second advantage by asserting an incompatible position.” (*Minish v. Hanuman Fellowship* (2013) 214 Cal.App.4th 437, 448–449.) “The doctrine applies when ‘(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.’” (*Id.* at p. 449, citations omitted.)

Again, the Jeffrey Parties conflate the issue of whether June was “subject to” undue influence with the issue of whether Robert actually induced June to act against her free will.

The position that Robert took in *Horwich I* was that June was susceptible to undue influence *and* that Jeffrey unduly influenced her to sign deeds on May 5, 2014. The position that Robert is taking in the present case is that June signed the 2014 Trust Documents of her own free will, despite her vulnerability at that time. These two positions are not “totally inconsistent.” Certainly, someone who is susceptible to undue influence may still act of his or her own free will.

The Jeffrey Parties fail to show that the 2nd, 3rd, and 13th causes of action in the SAP are barred by the doctrines of collateral or judicial estoppel. This motion for summary adjudication is **DENIED** as to issues 1-6.

MSA ON FIFTH AMENDED PETITION (ROA 710)

The Jeffrey Parties’ motion for summary adjudication as to the 5th Amended Petition (ROA 710) is **DENIED**.

Robert and Pamela Roossin are the Petitioners of the Fifth Amended Petition filed on November 15, 2021 (“FAP”). The 2nd and 4th causes of action in the FAP are for Ouster and Accounting, respectively.

Horwich I quieted title to Four Condos in Jeffrey and June as joint tenants. When drafting the proposed judgment in *Horwich I*, Jeffrey included the following language:

“Petitioners [i.e., Robert, June, and the HFT] are enjoined from further setting up a claim to the following properties [i.e., the Four Condos]:
a. 25761 Marguerite, Unit 1-101, Mission Viejo, California.
b. 25252 Tanoak Lane, Unit 4, Lake Forest, California.
c. 25869 Marguerite, Unit 4-103, Mission Viejo, California.
d. 25256 Tanoak Lane, Unit 6, Lake Forest, California.” (Opp. RJN, Ex. H, 2:9-3:9.)

Robert, June, and the HFT objected to the inclusion of such language in the Judgment, and Jeffrey argued for its inclusion as follows:

“The heart of this action is a dispute over these four properties. The sole claim made by Respondent’s pleadings is to Quiet Title to these four properties. The purpose of this Court’s Judgment is to bring full resolution to this claim. The language of Paragraph 2 is essential to fulfilling this purpose as Petitioner’s objection, if granted, would lead to an incomplete Judgment.

'Injunctive relief is a proper remedy to terminate expensive and unmeritorious litigation with respect to the ownership of property by one who has been decreed to be the owner thereof. Such relief is incident to a decree quieting title. [...] ' Injunctive relief incident to a decree quieting title is an ancient remedy growing out of what has been termed the 'bill of peace in a court of chancery.' It is a proper inherent remedy to terminate expensive and troublesome interference with the ownership and right of possession of property by one who has been regularly determined by a court of equity to be entitled thereto.' *Mansfield v. Kaiser* (1959) 176 Cal. App. 2d 633 at 637 (emphasis added) [Citing *Taylor v. Hawley* (1935) 6 Cal. App. 2d 576]; see also *Welch v. Kai* (1970), 4 Cal. App. 3d 374, *Brewer v. King* (1956) 139 Cal. App. 2d 33; *Wolf v. Gall*, 174 Cal. 140, 144; *Welch v. Kai* (1970), 4 Cal. App. 3d 374.

Injunctive relief as part of a successful quiet title claim is in fact considered '[t]he ordinary manner of giving repose from continuous actions against property ... by enjoining a defeated party from further asserting a hostile claim.' *Wolf v. Gall* (1916) 174 Cal. 140.

A Judgment to effectively Quiet Title would be empty if Petitioners can simply set up a further claim after this action was unsuccessful. Accordingly, Respondent has not removed this Paragraph from the revised Proposed Judgment submitted concurrently herewith as the language is essential to a full resolution of Respondent's claim for Quiet Title." (Id.)

Despite the foregoing argument, the court in *Horwich I* chose not to include this proposed injunction in the Judgment. Instead, it enjoined Robert, HFT, and June from making any claims as to *past* rental income from the Four Condos; and it enjoined only June from making any claims as to *future* rental income from the Four Condos. (Motion RJN, Ex. 3, Judgment 5:17-23.) In other words, the court in *Horwich I* specifically refrained from imposing injunctive relief to prevent the HFT from setting up any claim pertaining to the Four Condos.

Shortly after entry of judgment in *Horwich I*, Robert used his power of attorney over June to execute four deeds transferring June's interest in the Four Condos to the HFT (the "2018 Deeds"). The 2018 Deeds effectively terminated the joint tenancy and

caused the Four Condos to be jointly owned by Jeffrey and the HFT as tenants in common.

Upon learning of the 2018 Deeds, Jeffrey filed a post-judgment motion in *Horwich I* for contempt against Robert and to invalidate the 2018 Deeds. The motion was denied. The Notice of Ruling on the motion recounted that the Jeffrey Parties had requested and argued for an injunction enjoining the HFT from making future claims to the Four Condos and that the court had refused to include such an injunction in the Judgment. (Motion RJN, Ex. 15, 3:13-4:1.) The Court in *Horwich I* concluded that the motion was essentially asking the court to modify the Judgment to include the injunctive language that had been previously rejected, and it refused to do so. (Id. at 4:2-4.)

The Notice of Ruling on the post-judgment motion in *Horwich I* also stated, "The conduct about which [the Jeffrey Parties] complain occurred *after* the Court entered Judgment and affects the title to the subject properties *post-Judgment* and in no way alters the Court's Judgment as to the state of the title as of the date of the Judgment." (Id. at 3:5-7, emphasis added.) Thus, the court in *Horwich I* affirmatively stated that it made no findings as to the effect of the 2018 Deeds.

The Judgment in *Horwich I* found that Jeffrey was the beneficial owner of the Four Condos as between Jeffrey and June pursuant to an oral agreement between Jeffrey and June (and Harvey). (Motion RJN, Ex. 1, SOD, 7:14-24; 8:13-21; 12:22-24.) The Judgment in *Horwich I* did **not** decide what would happen if June transferred her interest to a third party. Thus, the Jeffrey Parties' arguments regarding collateral estoppel and claim preclusion fail.

The instant probate action concerns the effect of the 2018 Deeds on the oral agreement regarding Jeffrey's beneficial ownership of the Four Condos. The Jeffrey Parties insist that the oral agreement between Jeffrey and June (and Harvey) was not affected by the 2018 Deeds, and that Jeffrey remains the beneficial owner of the Four Condos as between Jeffrey and the HFT. Robert argues that the oral agreement became null once June transferred her interest in the Four Condos, and that the HFT now has a right to possession and income from the Four Condos. In short, this court must decide what happened to the oral agreement regarding Jeffrey's beneficial interest in the Four Condos once June transferred her ownership interest in the Four Condos to the HFT. This issue was not, and could not have been, decided in *Horwich I*. Nor can this issue be decided on this motion for summary adjudication, as the separate statement is silent as to the terms of the oral agreement.

With regard to Judicial Estoppel, the Jeffrey Parties assert that in *Horwich I*, "Robert took the position that the [2018 Deeds]

did nothing to establish a claim for rental income or otherwise disrupt the injunction against rental income as ordered by the Court.” (UMF 15.) The court has read and considered the evidence in support of this assertion (i.e., “Contempt Opp. 1:20, 6:25-26, and 8:4-5”). The court disagrees that this evidence shows Robert taking a position as to the effect of the 2018 Deeds on the issue of rental income. The post-judgment contempt motion in *Horwich I* concerned the propriety of the act of executing the 2018 Deeds, not the effect of the 2018 Deeds. Thus, the argument for judicial estoppel also fails.

The Jeffrey Parties fail to show that the 2nd and 4th causes of action in the FAP are barred by the doctrines of res judicata, collateral estoppel, or judicial estoppel. This motion for summary adjudication is **DENIED** as to issues 7-10.

Final Observations from the Court

This motion for summary adjudication is the Jeffrey Parties’ 4th attempt at obtaining an order that the HFT has no right to collect rent on the Four Condos as a result of the findings in *Horwich I*. The first attempt involved adding injunctive relief to the Judgment in *Horwich I*; the second attempt was to bring the post-judgment contempt motion in *Horwich I*; and the third attempt was to bring a demurrer to the FAP in this action. In ruling on their demurrer, the court rejected the same arguments as to collateral estoppel. The minute order on the demurrer states in relevant part as follows:

Horwich I found that Jeffrey was the beneficial owner of the condos, and it quieted title in June and Jeffrey as joint tenants. The judgment further decreed that June was enjoined from collecting future rents due to an oral agreement with Jeffrey. But Horwich I did not contemplate what occurred after the judgment issued: Robert, acting as attorney-in-fact for June, broke the joint tenancy and placed June’s 50% interest in the condo into the Trust. June then passed away shortly thereafter. Horwich I did not address what would happen to the rents and possession under these facts. Accordingly, this demurrer argument is unsuccessful. (ROA 663.)

This court will be the first to decide the effect, if any, of the 2018 Deeds on Jeffrey’s beneficial ownership of the Four Condos. The parties are respectfully requested to prepare for trial accordingly.

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