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Holdings LLC  
6  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF VENTURA**

10 COUNTY LINE HOLDINGS LLC, a  
11 Delaware limited liability company,

12 Plaintiff,  
13

14 v.

15 JAIME DE JESUS GONZALEZ, an  
individual; JANICE M. McClANAHAN, an  
16 individual; BEAU-MAISON, INC., a  
California corporation; MALIBU HILLS  
17 RANCH, a Nevada corporation; MALIBU  
HILLS RANCH CORP, a Nevada corporation;  
18 MALIBU HILLS RANCH INC., a corporation  
of unknown origin and/or fictitious business  
19 entity; COUNTY OF ORANGE  
(CALIFORNIA); CAPITAL ONE N.A., a  
20 national banking association; GERALD H.  
LUSHING, an individual; RONALD S.  
21 LUSHING, an individual; and DOES 1-100,  
22 inclusive.  
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24 Defendants.  
25

26 AND RELATED ACTIONS  
27  
28

Case No.: 56-2013-00444799-CU-OR-VTA

**PLAINTIFF COUNTY LINE HOLDINGS  
LLC'S NOTICE OF MOTION AND  
MOTION FOR JUDGMENT ON THE  
PLEADINGS AGAINST INTERVENOR  
JAIME DeJESUS GONZALEZ**

Date: April 27, 2015  
Time: 8:30 a.m.  
Dept.: 42

The Honorable Judge Henry Walsh

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on April 27, 2015 at 8:30 a.m. or as soon thereafter as  
3 may be heard in Department 42 of the above-entitled Court, Plaintiff and Defendant-in-  
4 Intervention County Line Holdings LLC ("CLH") will, and hereby does, move for entry of  
5 judgment on the pleadings against Jaime DeJesus Gonzalez's ("Gonzalez") First Amended  
6 Complaint-in-Intervention ("CII"), and the causes of action stated therein.

7 This Motion is brought on the grounds that the entire CII fails to state facts sufficient to  
8 constitute a cause of action against CLH. Alternatively, CLH brings the Motion on the grounds  
9 that each of the four causes of action contained in the CII (Claim No. 1 – The Deed is Void;  
10 Claim No. 2 – Equitable Redemption; Claim No. 3 – The Forging (By Alteration) of the Deed;  
11 and Claim No. 4 – The Deed Cannot Convey the Trust's Estate) do not state facts sufficient to  
12 state a cause of action against CLH.

13 This Motion is based on this Notice of Motion, the accompanying Request for Judicial  
14 Notice, the memorandum of points and authorities attached hereto, the pleadings and other  
15 papers on file herein, and upon such other argument as may be presented at the hearing on the  
16 Motion.

17  
18 DATED: April 3, 2015

ANTONI ALBUS, LLP

19  
20 By: 

John Antoni, Esq.

Kevin Tredway, Esq.

Attorneys for Plaintiff County Line Holdings  
21 LLC  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 In his First Amended Complaint-in-Intervention ("CII"), Intervenor Jaime Gonzalez  
5 ("Gonzalez") asserts four claims, all which request the same relief - an order that would set aside  
6 the April 18, 2013 sheriff's sale ("Sheriff's Sale") and return the subject property ("Malibu  
7 Property") to the Mansdorf Family Trust ("MFT").

8 In November 2014, Gonzalez tested his claims by filing a motion for summary  
9 adjudication ("MSA") on "Claim No. 1," which seeks to set aside the Sheriff's Sale by voiding  
10 the sheriff's deed ("Sheriff's Deed") given to the winning bidder, Plaintiff County Line  
11 Holdings, LLC ("CLH"). On March 25, 2015, the Court rejected Gonzalez's argument and  
12 denied the MSA. The Court ruled that Gonzalez cannot set aside the Sheriff's Sale because: (i)  
13 under CCP Section 701.680, sheriff sales are absolute; (ii) "any action to set aside the Sheriff's  
14 Sale must be brought within 90 days of the sale ... and that this is an absolute deadline;" and (iii)  
15 Gonzalez failed to file a challenge within the 90 day period. The Court also determined that  
16 Gonzalez's primary case, Stanley v. Westover (1928) 93 Cal.App. 97, is inapplicable because it  
17 was superseded by Section 701.680. See Exhibit "A" to the Request for Judicial Notice filed  
18 concurrently herewith ("RJN").

19 The Court's ruling is now law of this case, and requires that judgment be entered for  
20 CLH against Gonzalez on his claim nos. 1, 2, 3 and 4 in the CII.

21 **II.**

22 **AUTHORITY FOR MOTIONS**

23 **FOR JUDGMENT ON THE PLEADINGS**

24 A motion for judgment on the pleadings has the same function as a general demurrer and  
25 the rules governing demurrers apply. Cloud v. Northrup Grumman Group Corp. (1998) 67  
26 Cal.App.4th 995, 999. A motion for judgment on the pleadings may be filed on the grounds that  
27 "[t]he pleading does not state facts sufficient to constitute a cause of action." Hunt v. County of  
28 Shasta (1990) 225 Cal.App.3d 432, 440. The grounds for a motion for judgment on the

1 pleadings may appear on the face of the challenged pleading or be based on matters subject to  
2 judicial notice. *Id.* The motion may be based on either statutory or nonstatutory grounds  
3 (common law). CCP § 438; *Stoops v. Abbassi* (2001) 100 Cal.App.4th 644, 650; *Smiley v.*  
4 *Citibank (North Dakota) N.A.* (1995) 11 Cal.4th 138, 145, fn. 2. A nonstatutory motion may be  
5 made at any time, since the grounds for a general demurrer are never waived. *Sofias v. Bank of*  
6 *America* (1985) 172 Cal.App.3d 583, 586; *Stoops, supra*, 100 Cal.App.4th at 650.

### 7 III.

#### 8 **THIS COURT ALREADY DETERMINED THAT GONZALEZ’S “CLAIM** 9 **NO. 1 – THE DEED IS VOID” IS BARRED BY CCP SECTION 701.680**

10 Gonzalez’s first claim seeks set aside the Sheriff’s Sale on grounds that the judgment  
11 creditor who initiated the Sheriff’s Sale, John Torjesen & Associates (“JT”), was purportedly  
12 required to pursue collection through the probate courts rather than by execution sale following  
13 the death of the judgment debtor, Harry Mansdorf’s (“Harry”). CII, ¶¶ 20-29, 35, 37.

14 The Court has already ruled against this claim. On March 25, 2015, the Court denied  
15 Gonzalez’s MSA as to Claim No. 1, determining that CCP Section 701.680 is an absolute bar.  
16 See Exhibit “A” to the RJN. That ruling is now law of the case, and requires that judgment be  
17 entered for CLH against Claim No. 1.

18 Sheriff sales are “absolute” and cannot be set aside “for any reason” except as provided  
19 in CCP Section 701.680(c)(1). Section 701.680 states in relevant part:

20 (a) Except as provided in paragraph (1) of subdivision (c), a sale of property pursuant to  
21 this article **is absolute and may not be set aside for any reason . . . .**

22 (c) If the sale was improper because of irregularities in the proceedings, because the  
23 property sold was not subject to execution, **or for any other reason:** (1) The judgment  
24 debtor, or the judgment debtor's successor in interest, may commence an action within 90  
25 days after the date of sale to set aside the sale if the purchaser at the sale is the judgment  
26 creditor. (Emphasis added.)

27 In *Amalgamated Bank v. Superior Court* (2007) 149 Cal.App.4th 1003, a judgment  
28 creditor with a \$17 million judgment scheduled a sheriff’s sale to auction debtor’s property

1 worth \$6.5 million. On the morning of the sale, the creditor's representatives were stuck in  
2 traffic and missed the auction by a few minutes. They never contacted the sheriff to request a  
3 postponement. The defendant, a third party, submitted a \$2000 bid when the sale began. The  
4 bid was accepted as the last and highest bid. Amalgamated Bank, *supra*, at 1009. The judgment  
5 creditor filed an action to set aside the sale based on certain irregularities and on equitable  
6 grounds. The Court upheld the sale under Section 701.680:

7 [To] encourage fair bidding and the finality of sales, **the Legislature has provided that**  
8 **upon payment of the purchase price, a sheriff's sale to a third party is absolute,**  
9 subject only to the right of redemption, and may not be set aside . . . . Here, the property  
10 was sold to a third party. **By statute, only the judgment debtor can set aside the sale**  
11 **for irregularity and only where the purchaser was the judgment creditor.** By  
12 purchasing the property at the sheriff's auction, [defendant] became fee owner, subject  
13 only to the right of redemption. Because [debtor] did not bring an action to set aside the  
14 sale or exercise its right of redemption within the statutory time frames, [defendant's]  
15 title to the property has been perfected. There is simply no room in the statutory scheme  
16 for a judgment creditor (for whose benefit the foreclosure sale was held in the first place)  
17 to deprive a third party purchaser at a judicial foreclosure sale of his interest in the  
18 property by bringing an action to set aside the sale . . . . **If successful, this action would**  
19 **have the effect of defeasing a third party purchaser of his interest in the property.**  
20 **For the reasons we have noted, that result appears to be statutorily barred.** *Id.* at  
21 1018-1019 (emphasis added).<sup>1</sup>

22 If Gonzalez had a legitimate basis to challenge the Sheriff's Sale he was required to bring  
23 it "within 90 days after the date of sale," i.e., by July 17, 2013. He failed to do so. Moreover,  
24 even if Gonzalez brought a timely challenge, the challenge would have been denied because a  
25 third party purchased the Malibu Property. Gonzalez, on behalf of MFT as the judgment debtor,  
26

27  
28 <sup>1</sup> The Property is not subject to a right of redemption, since redemption rights only apply to judicial  
foreclosures of mortgages, where a deficiency judgment is sought. CCP § 729.010, et seq.; Yancey v.  
Fink (1991) 226 Cal.App.3d 1334, 1351.

1 would only be able to set aside the Sheriff's Sale if the purchaser was the judgment creditor. Id.  
2 In this case, a third party (CLH) acquired the asset.

3 Gonzalez cannot cite cases where a court voided an execution sale following the  
4 judgment debtor's failure to comply with the procedures of Section 701.680. Instead, Gonzalez  
5 repeatedly relies on a nearly 100 year old case, Stanley v. Westover (1928) 93 Cal.App. 97.  
6 This Court, in denying Gonzalez's motion for summary adjudication, already rejected Stanley  
7 because Section 701.680 superseded the opinion. See Exhibit "A."

8 In Stanley, the execution sale took place *after* decedent's will had been probated and the  
9 disputed property conveyed to decedent's heirs. Id. at 100. Here, Harry's will was not probated  
10 prior to the Sheriff's Sale (or, to CLH's knowledge, ever) and the Malibu Property was not  
11 conveyed to his heirs. Moreover, in Stanley the purchaser was the judgment creditor not, as  
12 here, a third party. Id. The court never addressed whether the sale could be voided as to a third-  
13 party purchaser. To the contrary, the Amalgamated Bank opinion specifically addresses this  
14 question and concludes that under the current applicable statutes, where the purchaser is a third  
15 party, the debtor cannot overturn the sale.

16 Stanley was also decided under two materially different statutes which no longer exist -  
17 CCP Sections 686 and 700(a). Section 686, enacted in 1872 and repealed in 1980, provided that  
18 an execution against a deceased judgment debtor may only issue if the judgment is for recovery  
19 of real or personal property, or for a lien thereon. Franklin v. Merida (1875) 50 Cal. 289, 291-  
20 292. Former CCP Section 1505 absolutely barred execution against a decedent, except under  
21 Section 686. Franklin, supra, at 292. The judgment in Stanley was a money judgment, not a  
22 judgment for recovery of real property or a lien on real property. The judgment creditor's  
23 execution against the decedent in Stanley was therefore void because former Sections 686 and  
24 1505 expressly barred such execution, not because the judgment creditor failed to follow the  
25 proscribed procedure.

26 Furthermore, the execution sale in Stanley took place prior to enactment of statutes that  
27 validate sheriff's sales. The Stanley execution took place in 1899. Stanley, supra, 93 Cal.App.  
28 at 101. CCP Section 701.680's predecessor statute, CCP Section 700(a), was not enacted until

1 1907, and until 1983 only provided that execution sales of real property were absolute where the  
2 real property was for an estate of less than a leasehold of two years. Yancey v. Fink (1991) 226  
3 Cal.App.3d 1334, 1346 fn. 9. The Stanley sale, therefore, was not protected by the current  
4 statute, which makes sheriff's sales "absolute" absent a timely challenge. Current CCP Section  
5 701.680, not Gonzalez's 87 year-old case, governs CLH's purchase at the April 18, 2013  
6 execution sale.

7 Gonzalez did not timely challenge the Sheriff's Sale, and "[t]here is simply no room in  
8 the statutory scheme . . . to deprive a third party purchaser" of its interest in the property.  
9 Amalgamated Bank, supra, at 1018. Judgment for CLH should be entered against Claim No. 1.

10 **IV.**

11 **CLH IS ENTITLED TO JUDGMENT AGAINST**  
12 **GONZALEZ'S CLAIM NO. 2 BECAUSE EQUITABLE**  
13 **REDEMPTION DOES NOT APPLY HERE**

14 In his Claim No. 2, Gonzalez seeks to set aside the Sheriff's Sale on the purported basis  
15 that CLH's winning bid of \$500,000 was "grossly inadequate." Gonzalez alleges the Malibu  
16 Property is worth "tens of millions of dollars" and that the Court must rectify this inequity by  
17 reversing the execution sale and cancelling the Sheriff's Deed. This claim fails for the same  
18 reason stated above – sheriff's sales are "absolute" and, absent a timely challenge (which  
19 Gonzalez failed to bring), may not be set aside "for any reason," including a claim that the sale  
20 price was grossly inadequate or "for any other reason." CCP § 701.680(c)(1).

21 Gonzalez attempts to sidestep Section 701.680 by citing Lang v. Roche (2011) 201  
22 Cal.App.4th 254. In Lang, the Court applied equitable redemption to a sale where: (i) the  
23 judgment debtor was never served with the underlying complaint; (ii) the judgment debtor was  
24 not even aware that a judgment had been entered against him; (iii) the judgment debtor was not  
25 notified that an execution sale of his residence was scheduled; and (iv) the judgment creditor (not  
26 a third party) purchased the property at the sale. The Lang court held that in such limited  
27 circumstances, where the judgment was *void ab initio* for lack of personal jurisdiction over  
28 defendant and the judgment creditor had surreptitiously created the inequity by failing to serve

1 notice of the complaint, the judgment or the sale, the absolute bar to redemption does not apply.  
2 *Id.* at 264-265.

3 Lang has no application here. CLH is a third party, not the judgment creditor. Equitable  
4 redemption does not apply as to third party purchasers. Gonzalez v. Toews (2003) 111  
5 Cal.App.4th 977, 983; Lang, *supra*, at 264, fn. 9. Furthermore, Gonzalez does not (and cannot)  
6 allege that JT's judgment against Harry and MFT was *void ab initio* for lack of personal  
7 jurisdiction or any other reason. Finally, Gonzalez cannot allege he lacked notice of the April  
8 2013 sale as he was present at the proceeding. See Exhibit "A" (Court found that Gonzalez "had  
9 knowledge" of the Sheriff's Sale).

10 Gonzalez cannot state a claim for equitable redemption. Judgment for CLH should  
11 therefore be entered against Gonzalez as to Claim No. 2.

12 **V.**

13 **GONZALEZ'S THIRD CLAIM – "THE FORGING (BY ALTERATION)**  
14 **OF THE DEED" – IS ALSO BARRED BY SECTION 701.680**

15 Gonzalez's Claim No. 3 asserts the Sheriff's Sale should be set aside because CLH's  
16 managing member added textual legal descriptions to the corresponding APN's identified on the  
17 Sheriff's Deed from the Ventura County Sheriff. CII, ¶ 41F. Gonzalez claims the addition of  
18 legal descriptions "materially altered" the Sheriff's Deed by making it recordable. CII, ¶ 41H.

19 CCP Section 701.680 provides that sheriff's sales are "absolute," but that a judgment  
20 debtor may bring an action within 90 days to set it aside based on "irregularities in the  
21 proceedings, because the property sold was not subject to execution, or for any other reason."  
22 CCP Section 701.680(c)(1). Gonzalez, therefore, had 90 days to file a challenge based on CLH's  
23 purportedly improper addition of legal descriptions to the APNs. Gonzalez did not do so.  
24 Accordingly, judgment for CLH should be entered against Gonzalez's Claim No. 3.

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**VI.**

**“CLAIM NO. 4” THAT THE SHERIFF’S DEED CANNOT CONVEY THE  
TRUST’S ESTATE IS INCONSEQUENTIAL AND OTHERWISE BARRED**

In his fourth and final claim, Gonzalez asks the Court to set aside the Sheriff’s Sale because the writ of execution, notice of levy and the Sheriff’s Deed identify MFT as a judgment debtor, in addition to Harry. CII, ¶¶ 42.1-42.4. Gonzalez claims that MFT is not a separate entity and cannot hold title to property. CII, ¶ 42.3. Gonzalez’s contention is unavailing.

First, the addition of “Mansdorf Family Trust” as a judgment debtor did not preclude JT from executing his judgment against Harry, the real party in interest. JT therefore levied Harry’s interest in the Malibu Property. The fact that the writ of execution and other sheriff’s sale documents also refer to the “Mansdorf Family Trust” is of no consequence.

Second, even if Gonzalez’s contention had any merit, he is precluded from challenging the Sheriff’s Sale pursuant to CCP Section 701.680. The absolute bar provides that sheriff’s sales are “absolute” except where a challenge is brought within 90 days of the sale. This includes challenges based on “irregularities in the proceedings,” or “because the property sold was not subject to execution,” or “for any other reason.” Gonzalez’s claim that the purported misidentification of MFT as a judgment debtor is nothing more than an untimely challenge to the Sheriff’s Sale, which is expressly prohibited by CCP Section 701.680.

**VII.**

**CONCLUSION**

CLH respectfully requests that the Court grant this Motion and enter judgment for CLH against Gonzalez as to his entire CII. Alternatively, CLH requests that the Court grant the Motion as to each of Gonzalez’s four separate claims in the CII (Claim Nos. 1, 2, 3 and 4).

DATED: April 3, 2015

ANTONI ALBUS, LLP

By: 

John Antoni, Esq.

Kevin Tredway, Esq.

Attorneys for Plaintiff County Line Holdings LLC

PROOF OF SERVICE  
(BY PERSONAL SERVICE and OVERNIGHT DELIVERY)

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 11836 W. Pico Boulevard, Los Angeles, California 90064.

On April 3, 2015 I served the foregoing document(s) described as **PLAINTIFF COUNTY LINE HOLDINGS LLC'S NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE PLEADINGS AGAINST INTERVENOR JAIME DeJESUS GONZALEZ** on the interested parties in this action as follows:

☒ BY PERSONAL SERVICE. I caused such documents to be hand delivered to the following parties:

Henry H. Dearing, Esq.  
Gifford, Dearing & Abernathy, LLP  
515 South Figueroa Street, Suite 2060  
Los Angeles, CA 90071  
Attorneys for Defendant  
Jaime DeJesus Gonzalez

☒ BY OVERNIGHT DELIVERY (FEDERAL EXPRESS), standard overnight delivery, to the offices of the addressee. I enclosed the documents in an envelope or package provided by an overnight delivery carrier (Federal Express) and addressed to the addressee. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

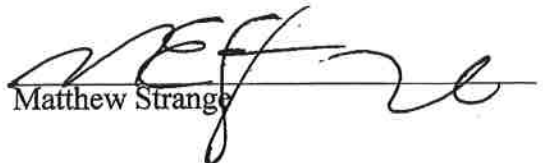
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Janice M. McClanahan

Executed on April 3, 2015, at Los Angeles, California.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
Matthew Strange