Case Number B 257876

In the

Court of Appeal

of the

State of California

SECOND APPELLATE DISTRICT
DIVISION FIVE

JAIME DEJESUS GONZALEZ,

Plaintiff-Appellant

v.

ALTA STANDARD ONE, LLC,

Defendant-Respondent.

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HON. MARY H. STROBEL, JUDGE, (RECUSED FOR CAUSE)
HON. MICHELLE R. ROSENBLATT, JUDGE

APPELLANT'S REPLY BRIEF

Paul Orloff, Esq. (SBN 216791)
ORLOFF & ASSOCIATES APC
8402 Florence Avenue, Suite B1
Downey, California 90240
Telephone: (562) 869-3034
Facsimile: (562) 869-3539
Paul@Orlofflitigation.com

Attorney for Appellant, Jaime DeJesus Gonzalez

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I. INTRODUCTION

This Reply Brief addresses the factual misstatements, erroneous legal presumptions and flawed theories raised by Respondent. It also clarifies the factual record, corrects misstated facts by Respondent, and highlights the fatal error in their responsive brief which attempts to litigate this entire case by brief.

Respondent is either negligently ignorant or intentionally obfuscatory about other cases involving the same property, (hereinafter, the "Alta Home"). At no time were Plaintiff's rights and claims to the Alta Home adjudicated, despite Respondent's muddling of the facts. Respondent ignores basic hornbook joint tenancy law and attempts to pull the wool over the eyes of this Court.

Naturally, the entire property may be sold of a joint tenant's interest because a joint tenant's interest in the property is undivided[1].
In McClanahan v Mansdorf, Los Angeles Superior Court Case Number BC 363659 (the "McClanahan Action"), Gonzalez's interest could not have been adjudicated in the order to sell and the case cannot have a res judicata effect because Gonzalez was not a party and Gonzalez's interests were not addressed; Gonzalez was never even given official notice.

[1] A joint tenancy deed by owner of realty in favor of herself and her brother vested title jointly in owner and her brother with right of survivorship to the entire property. *Hill v. Donnelly* (App. 2 Dist. 1942) 56 Cal.App.2d 387.

Despite the fact McClanahan's petition for order to sell claimed the Alta Home was in the Mansdorf Family Trust, McClanahan failed to exhibit the trust document and failed to identify any of the beneficiaries or other settlors. Had the court ordering the sale reviewed the trust (which it did not) and looked at the interests of the various unnamed beneficiaries (which it did not), the court would have been required to partition the property according to the ownership interest in the Alta Home as per the trust agreement.

However, the court identified that a joint tenancy in fact did exist and ordered the sale of the undivided joint tenancy interest of the then living Harry Mansdorf, ("Mr. Mansdorf").

Respondent in the present case is oblivious to the fact that the judge relied upon the joint tenancy deed to permit the sale of the Alta Home. The joint unities of time, title, interest and possession are necessary for the creation of a joint tenancy[2]. The unity of interest identifies that Mr. Mansdorf and Jaime Gonzalez held the same interest, an interest in the whole property. Due to the fact that the unity of interest to the whole Alta Home was held by each of them, the Court was able to authorize the sale of the Alta Home by Mr. Mansdorf's interest. The Court could have

[2] Under California law, estate in "joint tenancy" is created where interests of tenants are unified in title, time, interest, and possession, and is destroyed when one of those four unities is eliminated. (*Code of Civil Procedure* sections 683(a) and 683.2, *et seq)*; See *U.S. v. Real Property Located at Incline Village*, (1997) 976 F.Supp. 1321, 1322, 1327.

partitioned the property, but McClanahan failed to ask for a partition, most likely because the partition would have resulted in only a portion of the interests in the Alta Home being sold, which has considerably less marketability. The severance of the joint tenancy would not occur until the actual sale[3], provided that the judgment debtor did not die prior to the sale. However, Mr. Mansdorf died before the sale could occur and by operation of joint tenancy law, Mr. Mansdorf's interest ceased and 100% of the interest in the Alta Home vested with Gonzalez. At no time was there any indication that Gonzalez's interest in the Alta Home had been adjudicated and as such there was no res judicata effect

Gonzalez v. McClanahan, et al., Los Angeles Superior Court Case SC 119964 (the "First Quiet Title Action") was dismissed without prejudice prior to any ruling on the merits in that case. There is no evidence to the contrary. A case being dismissed without prejudice permits the filing of another action on the same causes. As such, there was no res judicata.

Alta Standard One LLC v Gonzalez and Mansdorf, Los Angeles Superior Court, Limited Jurisdiction Case Number 13R00769/13U00769). Respondent's claim that an unlawful detainer action has a preclusive res judicata effect is simply preposterous; there is no jurisdiction for an

[3] Execution may be had upon interest of one of joint tenants while all joint tenants are alive, and upon purchase of the interest of one of joint tenants at execution sale the joint tenancy is severed, and purchaser and other joint tenant or tenants become "tenants in common". (*Zeigler v. Bonnell* (App. 1 Dist. 1942) 52 Cal.App.2d 217, 219).

unlawful detainer court to adjudicate title. Otherwise, all claimants to title would file their quiet title actions in unlawful detainer court. Both attorneys in that action objected to the unlawful detainer Court having the jurisdiction to quiet title and the case is pending on appeal before the Second District Court of Appeals now, like this case.

Torjesen v Mansdorf, Los Angeles Superior Court Case Number BC 425880 (the "Torjesen Action"). Appellant Gonzalez's filed a Third Party Claim which was invalidated, but this third party claim has no res judicata effect on this case because there was no determination on the merits of the joint tenancy grant deed. Further, Mr. Mansdorf had died prior to the execution lien being in place, jurisdiction was with the Probate Court, and all actions under the Enforcement of Judgments law, (including the entire third party claim process) were void for lack of jurisdiction.

Most poignantly, Respondent completely ignored the trial court's ***actual*** ruling and the issue on appeal: should Respondent's demurrer have been sustained without leave to amend based upon the Res Judicata effect of the BC119964 case? Silence from Respondent - Nothing. No response, no argument, no facts, not a single solitary statement in defense of the issue directly regarding the trial court's ruling. Out of Respondent's entire demurrer, this is the *only* argument which the trial court considered worthwhile, yet Respondent completely ignored it on appeal despite 47 pages of briefing.

The supporting documentary evidence on appeal is light because the case was at the pleading stage. The facts and law obviate the need for any transcript, which is non-existent, (not simply intentionally unsubmitted, as Respondent would have this Court believe), due to a lack of funds to hire one at the time, and Respondent's own choice to not pay for one despite its ability to pay $4,581,000 at a Sheriff's Sale of a dead man's extinguished joint tenancy interest and "take its chances". Thus it appears the convenience of no transcript would fall upon the rich and well-to-do Respondent.

The standard on demurrer is based on the pleadings, assuming that all facts can be proven. Thus, the trial court judgment should be reversed, with directions to overrule the demurrer, allowing Petitioner the opportunity to have his rights and claims to the Alta Home adjudicated.

II. ARGUMENT IN REPLY

1. CONTRARY TO RESPONDENT'S ARGUMENTS, GONZALEZ'S CLAIM TO THE ALTA HOME IS WHOLLY SUPPORTED BY THE RECORD AND THE LAW

Respondent argued Gonzalez does not own the Alta Home. (Respondent's Opening Brief, ("RB"), 8, ¶2; 17(V)(A), ¶¶2-3). This argument is contradicted by the record and applicable law insofar as 1) Mr. Mansdorf held no record title for McClanahan's abstract to attach in April of 2008, 2) Gonzalez did not take his joint tenancy right "subject to" McClanahan's abstract because they attached "simultaneously," 3) there

was never a severance of the joint tenancy prior to Mr. Mansdorf's death, and 4) upon Mr. Mansdorf's death, 100% of the interests in the Alta Home vested in Gonzalez per *Zeigler v. Bonnell*, *infra*.

A. McClanahan's Abstract Did Not Attach To Mr. Mansdorf's Interest In The Alta Home At The Time Of Recordation Because Mr. Mansdorf Had No Record Interest At That Time; Mr. Mansdorf's Record Title Was "After Acquired"

A linchpin argument of Respondent is that McClanahan's abstract attached when it was recorded, April 18, 2008. (RB, 18, (1)(2)(citing 1 CT 91-96); 25, section "b"). The record shows this is not true.

Mr. Mansdorf as Trustee of his family trust held title to the Alta Home May 17, 2004, as determined by Order of the Probate Court. (2 CT 333-334).

Record title to the Alta Home was transferred from Harry Mansdorf as Trustee of the Mansdorf Family Trust on October 28, 2004. (2 CT 363-364). Until there was an adjudication of the 2004 transfer of title, there was no record title in the name of either Mr. Mansdorf or the Mansdorf Family Trust. Any recording upon the Alta Home would have been in the name of "Joint Venture Corp., LLC" or "Katherine Gatto". *Id.*

Mr. Mansdorf obtained title to the Alta Home upon Judge Palmer rendering his January 6, 2010, Judgment against Michele Giacomazza and related defendants. (2 CT 350-354).

These material facts have been repeatedly omitted by Respondent in all its arguments because they directly contradict the baseless claims of Respondent that McClanahan's abstract attached at the moment it recorded. California law requires a debtor have rights in collateral for security interest to attach[4], and Mr. Mansdorf did not have record title in the Alta Home at that time. Compare *Johnson v. E-Z Ins. Brokerage, Inc.*, (2009) 175 Cal. App. 4th 86, 95: (citing *In re Cady* (Bankr. 9th Cir. 2001) 266 B.R. 172, 182, affd. (9th Cir. 2003) 315 F.3d 1121 (*Cady*)):

> Affirming, the Ninth Circuit Bankruptcy Appellate Panel concluded the recordation of the abstract of judgment did not violate the automatic stay because it attached only to whatever interest the debtor had in the property. ([*Cady, supra*, 266 B.R. at p. 181].) At the moment the debtor filed his bankruptcy petition, all of the debtor's property became property of the bankruptcy estate. (*Ibid*.) The lien created by the abstract of judgment could only attach to whatever interest the debtor had in the property: Since the debtor had no interest after filing the bankruptcy petition, no interest attached. When the bankruptcy case closed, title to the property reverted to the debtor, and, at that moment, the abstract of judgment attached to the property under the doctrine of after-acquired title. (*Id*. at p. 182).

Johnson, *supra*, 175 Cal. App. 4th 95.

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[4] California *Commercial Code* section 9203(1)(c) and *Call v. Thunderbird Mortgage Co*. (1962) 58 Cal.2d 542, 548 (requiring a debtor to have rights in collateral for security interest to attach).

Respondent's arguments that McClanahan's abstract attached to Mr. Mansdorf's interests in the Alta Home have no legal or factual basis. Thus, it was not possible for the trial court to make this finding and determination, (even erroneously, given the direct facts and controlling law above), and neither can this Court on de novo review

B. As An Operation Of Law, McClanahan's Abstract, Mr. Mansdorf's After-Acquired Record Title Interest And Gonzalez's Joint Tenancy And Survivorship Rights All Attached Simultaneously

Respondent posits Appellant Gonzalez took his joint tenancy rights "subject to" McClanahan's abstract. This claim is not possible, given the facts, evidence and applicable law in this State:

1) No recorded interests of Mr. Mansdorf existed for McClanahan's abstract to attach to when it was recorded in April of 2008, (See Section 1(A), *infra*);

2) Gonzalez paid value for the joint tenancy interest, (1 CT 5: 16-20; 27-28; 3: 2);

3) No record interests of Mr. Mansdorf existed for the Joint Tenancy Grant Deed, ("JTGD") to vest rights in Gonzalez when it was executed and delivered in June of 2008, (See Section 1(A), *infra*);

4) January 6, 2010, Judge Palmer entered Judgment awarding title to the Alta Home to Mr. Mansdorf as Trustee of the Mansdorf family Trust;

5) Mansdorf's title in the Alta Home was therefore "after-acquired," and done so on January 6, 2010, when Judge Palmer rendered judgment giving title to Mr. Mansdorf as Trustee of the Mansdorf Family Trust;

6) Since Mr. Mansdorf's title was "after-acquired," McClanahan's abstract and Mr. Mansdorf and Appellant Gonzalez's joint tenancy and survivorship rights[5] had to attach "simultaneously" – the moment Judge Palmer rendered judgment, as follows:

   a. The Judicially Ordered Title in the name of Harry as Trustee took effect the moment of judgment. *Brown v. Superior Court* (1925) 70 Cal.App. 732, 735 [The rendition of a judgment is a judicial act, and a judgment thus has full force and effect once it has been rendered, regardless of whether it has been entered.];

   b. Simultaneously, the transfer of rights from Harry Mansdorf as Trustee of the Mansdorf Family Trust to Mr. Mansdorf and Appellant Gonzalez individually, in joint tenancy became effective. See *Johnson v. E-Z Ins. Brokerage, Inc.*, *supra* 175 Cal.App.4th at 95, (citing *Civil Code* section 1106) [Under the doctrine of after-acquired title, "[w]here a person purports by proper instrument to grant real property in fee simple, and subsequently acquires any title, or claim of title thereto, the same passes by operation of law to the grantee, or his successors"]); *Civil Code* section 1110, "An instrument purporting to be a grant of real property, to take effect upon condition precedent, passes the estate upon the performance of the condition;" see also, 4A Powell on Real Property (rev. ed. 1989) ¶ 615[1], p. 51-52; (to create a joint tenancy a conveyance must convey "to two or more persons at the same time the same title to the same interest with the same right of possession."); see also, *Civil Code* section 683);

   c. *Simultaneously*, McClanahan's judgment lien attached to Mr. Mansdorf's interest per *Code of Civil Procedure* section 697.340(b): "If any interest in real property in the county on which a judgment lien

[5] Principal feature of joint tenancy is "*jus accrescendi*," or right of survivorship: upon death of one joint tenant, surviving joint tenant automatically becomes owner of entire property. (*Tenhet v. Boswell*, (1976) 18 Cal.3d 150, 155-156).

> could be created under subdivision (a) is acquired after the judgment lien was created, **the judgment lien attaches *to such interest* at the time it is acquired." (Emphasis added).**

Finally, there has never been a jurisdictionally sound adjudication of Gonzalez's joint tenancy and survivorship rights, nor a determination that Gonzalez's interest were subject to the McClanahan judgment; such has only been the argument of Respondent's counsel and the limited jurisdiction court, (13R00769/13U00769), neither of which have authority to quiet title. As admitted by in its Response Brief, "Respondent concedes that the judgment in the UD Action is not final." (RB, 22, Section "2," ¶ 4.)

Since Appellant Gonzalez's joint tenancy and survivorship rights attached "simultaneously" with McClanahan's abstract, (Section 1(A), *infra*, Gonzalez could not have taken his rights "subject to" McClanahan's abstract.

The trial court would have determined the same, as should this Court on de novo review. A trust is an agreement between parties to hold property, so the trust did not need partitioning because all Legal and Beneficial interest transferred the Alta Home outright to Mr. Mansdorf and Gonzalez via the JTGD. Gonzalez should be afforded the opportunity to litigate these issues, in any event.

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/ / /

C. Contrary to Respondent's First Theory That Judge Kahn Reached Into the Mansdorf Family Trust to Order the Sale, The Record Shows Judge Kahn's Order Could Only Be Based upon Mr. Mansdorf's joint tenancy rights in the Alta Home

Respondent's "theory" of what occurred at the Order for Sale hearing is as follows:

> . . . the court in the McClanahan Action, after reviewing Mansdorf's Objection to Sale, Gonzalez's Application, and the arguments advanced in support thereof, specifically ordered the sale of the Property, which order was never appealed.

(RB, 10, ¶ 5. See also, RB, 18 Section "1" (the literal heading); 19, ¶ 5), ("Notably, the Court in the McClanahan Case did not order that Mr. Mansdorf s interest in the Property be sold, but instead ordered that the Property be sold."); and 19, ¶ 7-20, ¶ 1.

An analysis of the trust documents to determine who the Settlors and Beneficiaries were, (outside of Mr. Mansdorf simply being the "Trustee") was required for Judge Kahn to determine that the judgment against Harold Mansdorf could be satisfied with the sale of the Alta Home held in the name of "Harry Mansdorf, Trustee of the Mansdorf Family Trust." California *Probate Code* §§ 18200, 18201; *Bank One Tex. N.A. v. Pollack*, (1994) 24 Cal.App.4th 973. An analogous situation is (*Roberts v. Roberts*, (1914) 168 Cal. 307, 309, where the court held a will that has not been admitted to probate may not be used as evidence of title in a person therein

named as devisee. Similarly "reaching into the trust" could not have been done *without a trust document admitted providing Judge Kahn the requisite evidence to do so.*

Respondent does not, and cannot cite to any evidence that a trust document was submitted to Judge Kahn showing the Settlors or Beneficiaries of the Mansdorf Family Revocable Trust, dated August 31, 1967. Instead, Respondent cites to *Bank One Texas N.A. v. Pollack*, (1994) 24 Cal. App. 4th 973 and claims, "a lien attached to Mansdorf's interest in the Property, whether that interest was present or future, vested or contingent, legal or equitable." (RB 25, Section "b," ¶ 3) Respondent's reliance is misplaced.

Bank One Texas v. Pollack involved a deceased trust settlor who left his estate insolvent by transferring assets to a revocable inter vivos trust, and a creditor moving the probate court for a nunc pro tunc order amending the judgment to include Pollack's inter vivos trust. The case is easily distinguishable.

Pollack had a 1989 foreign judgment against him out of Texas based upon the origination, increase and default on various loan guarantees from 1982. (*Id.* at 976-977). After said loan origination and guarantees, Pollack transferred substantially all of his assets into a self-settled trust. (*Id.* at 977). Pollack later died in 1989, (*Id.* 976) ***and during the probate of his estate***, the creditor of the judgment sought a nunc pro tunc order amending

the judgment to include Pollack's inter vivos trust, relying upon California *Probate Code* Section 18201 and 18200. *Id.* 979-980, (emphasis added).

Conversely, in this case, no Probate Estate case was opened in which the trust document was presented and rights under and pursuant to that trust document were adjudicated. Nor was the trust document submitted, reviewed and rights thereto adjudicated even outside of probate. McClanahan scuttled this through before a Probate could be opened.

McClanahan attempted to use probate law while Mr. Mansdorf was living, (without a trust document), and Respondents are attempting to ignore probate law now that Mr. Mansdorf has died. These facts completely distinguish *Pollack* – the case is totally inapplicable here.

The *Pollack* case itself relied upon *Heywood v. Municipal Court*, (1988) 198 Cal. App. 3d 1438. The *Heywood* case facts are as follows:

> At a judgment debtor examination of Executrix, Heywood confirmed that Decedent, before his death, transferred virtually all his assets into the Trust, a revocable inter vivos trust, and that he and Executrix were trustees of the Trust. The original assets of the Trust were the community property of Decedent and Executrix. Decedent retained a general power of appointment presently exercisable at the time of his death over the assets transferred to the Trust by him[fn].
>
> The parties here concede the assets in Decedent's probate estate are insufficient to satisfy the judgment.

> Heywood moved in the municipal court for an order issuing a writ of execution on the judgment, against the Trust. The motion was denied. Heywood petitioned the superior court for a writ of mandamus or prohibition ordering the municipal court to issue a writ of execution against one or more assets of the Trust. [That writ was granted, and] Executrix appeals the order directing the municipal court to issue a writ of execution against the Trust.

Id. at 1441-1442, (footnote omitted). Reliance upon Pollock would have required the opening of a probate case or, at the least, some official review of the Trust Document.

Unquestionably, both *Heywood* and its progeny *Pollack* were cases dealing with a creditor seeking to enforce its judgment against trust assets through the Probate Court after the Probate Court had thoroughly reviewed the Trust Document for the trust in question, adjudicated rights thereto and thereunder, and for the specific reason that an estate was insufficient to satisfy the judgment – not the facts of this case in any phrase or sense. Thus *Heywood* is completely distinguishable as well.

California *Probate Code* section 18201 permitted a judgment creditor who establishes the inadequacy of estate assets to ignore the trust and reach directly those assets subject to the decedent settlor's power of revocation. (See Cal. Law Revision Com. com., Deering's Ann. Prob. Code, § 18200, p. 524.) However, this remedy was provided in and through the probate court in both *Pollack* and *Heywood*. Such a determination did not

and could not have happened in Judge Kahn's court during the order for sale because McClanahan did not even attempt to establish the inadequacy of Mr. Mansdorf's individual assets, *the application did not state "Harry Mansdorf as Trustee," and no trust document is on record or was even requested*. The *Pollack* and *Heywood* cases are completely distinguishable, and enlightening on the fatal deficiencies in Respondent's logic and theories.

Conversely, as shown by the record, the signed and notarized Joint Tenancy Grant Deed, ("JTGD") was submitted by John C. Torjesen with his Third Party Claim, along with argument relating to the same. (2 CT 425, 434; 3 CT 493-531). The JTGD *evidences* the property moving from Harry Mansdorf as Trustee of the Mansdorf Family Trust to Mr. Mansdorf and Jaime Gonzalez, individually. (3 CT 519-529; 531). See also, 2 CT 328: 24-25, (requesting the trial court take judicial notice of the officially recorded "Affidavit of Death of Joint Tenant," providing "public record to give notice of the date of death of Mr. Mansdorf as a Joint Tenant as it relates to the Alta Home.")

Is it more likely that judge Kahn reached into the MFT without a single trust document submitted to him? Or is it more likely Judge Kahn saw and considered the JTGD submitted by Torjesen which unquestionably moves the property to Mr. Mansdorf in his individual capacity, (just as the judgment), and thereafter entered the order based upon McClanahan's

judgment against "Harold Mansdorf?" The reality is that Judge Kahn presumably followed the law and recognized the JTGD.

No trust document was submitted to Judge Kahn or considered by him. No statement from Judge Kahn exists of what the interests of Mr. Mansdorf were, be it beneficiary, settlor, Joint Tenant, etc., that Judge Kahn *considered* in his decision, and ordered to be sold. Without any trust document submitted, but with the JTGD submitted, the JTGD must be the basis for Judge Kahn ordering the sale to satisfy the judgment.

Despite the above, Respondent in the trial court, and now in this Court, still claims:

> (Significantly, at no point in the McClanahan Action did Mansdorf ever allege that Gonzalez had any interest in the Property nor was there any mention of a joint tenancy deed (allegedly executed by Mansdorf in 2008 and purporting to give Gonzalez an interest in the Property) which deed would contradict Mansdorf s claim that the Property was owned by the Mansdorf Family Trust in 2012. See e.g., 1 CT 113-114.)

(RB at 5, ¶ 1). This is simply not true. Uncontestable facts in the record prove Respondent has advanced a totally false premise to this Court, most likely because Respondent purchased a nullity at the Sheriff's sale. Torjesen submitted the JTGD with his third party claim filings, but no one submitted the Trust Document for the Mansdorf Family Trust.

The ultimate effect of these facts and this evidence is:

1. McClanahan sought to collect on her judgment against "Harold Mansdorf" by applying to Judge Kahn for an order to sell Mr. Mansdorf's interests in the Alta Home;

2. No Trust documents were submitted to show the beneficial interest in the Alta Home;

3. The JTGD *was* submitted;

4. Judge Kahn ordered the sale as requested;

5. A Writ of Sale issued for the judgment debtor's interest in the Alta Home – the judgment debtor being Harold Mansdorf;

6. A Sheriff's deed transferring the "judgment debtor's interest in the Alta Home was issued;

7. The Judgment creditor sought a sale regarding, the court issued an order for sale regarding, the sheriff noticed and held a sale regarding, and Respondent purchased Mr. Mansdorf's interest in the Alta Home – period.

The record simply does not support what Respondent's counsel is arguing to this Court. Respondent's claims and position are untenable in the face of the actual record. The trial court could not have determined in such a manner, as a trial judge is presumed to know and follow the law.

D. Despite Respondent's counsel's interpretation of Judge Kahn's Order, Respondent did not purchase "the property;" rather, only bought, and *could only buy* the "judgment debtor's interest" in the real property at issue in this case

Respondent claimed in its brief:

> On August 6, 2012, after considering all of the pleadings filed and the oral argument of the interested parties, the Court in

> the McClanahan Case ordered the Property sold. 1 CT 122-140.

(RB, 5, ¶2). Further, "[i]t is undisputed that Respondent acquired an interest in the Property on October 31, 2012, pursuant to the Sheriff's Sale." (RB, Section 2(a), ¶ 1). Respondent's theory irreconcilably conflicts with the substance and holding of *Zeigler* and its progeny.

When other Settlors die, the trust corpus is changed to a testamentary trust and cannot change. California *Probate Code* section 16060.5.

Janice McClanahan only obtained a judgment against Harold and Mildred Mansdorf, individually. (1 CT 90). McClanahan's application for order to sell residential real property states:

> Plaintiff and Judgment Creditor hereby apply for an order for the sale of all right, title and interest of the judgment debtor, HARRY MANSDORF, in and to the dwelling and real property located at the street address of 811 North Alta Drive, Beverly Hills, California 90201 [the "Alta Home"].

(1 CT 97: 24-27- 98: 1-4).

The actual Order provides, "The Court orders the sale of the dwelling." (1 CT 122; 135: 6-7).

The Notice of Sheriff's Sale expressly states:

> In favor of MCCLANAHAN, JANICE K
> And against MANSDORF, HAROLD
> . . .
>
> Public notice is hereby given that I will sell at public auction . . . all the right, title and interest

> of the debtor(s) in the above described property . . .

(1 CT 141). Finally, The Sheriff's Deed itself provides:

> I sold all the right, title and interest of said judgment debtor(s) in the following described property . . .

(1CT 54).

Regardless of any Court order, the sheriff only sold the deceased Joint Tenant's rights in the Alta Home. Perhaps if the sheriff erred, Respondent should have brought an action against the Sheriff. Respondent is trying to show that he purchased something which he did not and erroneously convinced the lower court that such was the case. It is not

Respondent's assertions that it "purchased the property" are directly contradicted by statute, which itself *defines* exactly what Respondent purchased: *the judgment debtor's interest*. See *Code of Civil Procedure* section 701.640, "[t]he purchaser of property at an execution sale acquires any interest of the judgment debtor in the property sold (1) that is held on the effective date of the lien under which the property was sold or (2) that is acquired between such effective date and the date of sale.

The Statute does not provide for an execution sale purchaser to acquire "the property". Thus, it was not possible for the trial court to make the finding that Respondent purchased "the property," and neither can this Court on de novo review.

E. 100% Of the Interests In the Alta Home Vested In Gonzalez Upon the Death of Mr. Mansdorf Under Established Joint Tenancy Law

The after-acquired title facts, simultaneous attachment facts and the law proving Respondent only purchased the judgment debtor's interest all lead down the inescapable conclusion that no quantifiable interest of the judgment debtor existed at the time of sale for Respondent to purchase. Why? Because 100% of the interests in the property vested in Gonzalez when Mr. Mansdorf prior to the sale See *Zeigler v. Bonnell*, (1942) 52 Cal.App.2d 217, 220, (Prior to the sale, there is no title in a purchaser to relate back and the existing title in the joint tenants remains undisturbed except for the lien, which as we have repeatedly shown, does not sever the joint tenancy. Moreover, the "relation back" doctrine "only applies when the rights of innocent third parties have not intervened. Here the rights of the surviving joint tenant intervened between the date of the lien and the date of the sale.)

A plain reading of *Zeigler* shows 100% of the interests in the Alta Home vested in Appellant Gonzalez prior to the sale, leaving 0% interests in the judgment debtor for Respondent to purchase and later assert quantifiable rights sufficient to record an official deed without disparaging Appellant's title.

Even Respondent's theories and arguments on these points *fail, utterly and completely*.

Respondent's positions, claims and assertions are contradicted by the factual record, directly refuted by controlling law on the subject, and find direct condemnation in our State statutory scheme.

2. RESPONDENT'S CLAIMS THAT NUMEROUS COURTS HAVE FOUND GONZALEZ'S OWNERSHIP CLAIMS DEFICIENT IS MISLEADING AND INACCURATE

With no legitimate claims left, Respondent argued Appellant Gonzalez's joint tenancy and survivorship rights are barred by collateral estoppel. (RB, 1, ¶ 6; 9, section "E," ¶ 3; 11, ¶ 2; 21, ¶¶ 1-4). Collateral estoppel requires: (1) the claim is identical to a claim litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom estoppel is asserted was a party to the prior proceeding, or was in privity with a party to the prior proceeding. *Summerford v. Board of Retirement* (1977) 72 Cal.App.3d 128, 130. Further, the party asserting collateral estoppel bears the burden of establishing these requirements. [Citation.]" (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341, (fn. omitted, italics added.)

Initially, Respondents failed in meeting their burden. Citing to *Frommhagen v. Bd. Of Supervisors*, (1987) 197 Cal.App.3d 1292, 1301, (RB, 21, ¶ 4) without identification or discussion of the three requirements outlined above is insufficient pleading for Respondent to meet its burden. In each case referred to by Respondent, Gonzalez either was not a party,

Gonzalez's interest was not adjudicated, or the court had no jurisdiction to entertain the unlawful process proceeding before it.

Secondarily, Respondent's collateral estoppel arguments and claims are misplaced, as Appellant Gonzalez's expected "survivorship" rights were not fully vested at the time Judge Kahn ordered the sale. *In re Marriage of Hilke*, (1992), 4 Cal. 4th 215, 222 (a joint tenant has no vested interest in being the surviving tenant, the survivorship aspect is an "expectancy.")

The surviving joint tenant does not secure that right from the deceased joint tenant, but from the devise or conveyance by which the joint tenancy was first created. (*Green v. Skinner*, (1921) 185 Cal. 435, 440, (citing (Freeman on Cotenancy and Partition, sec. 28.)

The claim of Appellant Gonzalez owning the entire property via his rights of survivorship was not available at the time Judge Kahn issued his order for sale because Mr. Mansdorf was then "alive". This alone precludes application of the collateral estoppel doctrine to Gonzalez's joint tenancy and "survivorship" arguments.

Further and from a more fundamental point, the collateral estoppel cannot be used to divest ownership rights in real property which vest as a matter of fact, statutory and common law. "A distinctive feature of joint tenancy, as opposed to other interests in land, is the right of survivorship. This means that when one joint tenant dies, the entire estate belongs

automatically to the surviving joint tenant(s). [Citations.]" (*Grothe v. Cortlandt Corp*. (1992) 11 Cal. App. 4th 1313, 1317.)

The right of survivorship has been described as "a mere expectancy that arises 'only upon success in the ultimate gamble--survival--and then only if the unity of the estate has not theretofore been destroyed . . . by any . . . action which operates to sever the joint tenancy.' [Citation.]" (*Riddle v. Harmon*, (1980), 102 Cal.App.3d 524, 526-527, quoting *Tenhet v. Boswel*l, (1976) 18 Cal.3d 150, 155-156.) "The term expectancy describes the interest of a person who merely foresees that he might receive a future beneficence . . . . [T]he defining characteristic of an expectancy is that its holder has no enforceable right to his beneficence." (*In re Marriage of Brown* (1976) 15 Cal. 3d 838, 844-845.) The only severance which occurred was when Mr. Mansdorf died, thereby vesting 100% of the title to the Alta Home in Appellant Gonzalez.

Respondent's positions, claims and assertions are contradicted by the factual record, directly refuted by controlling law on the subject, and find direct condemnation in our State statutory scheme. As the trial court ignored Respondent's collateral estoppel and res judicata arguments based upon LASC BC363659, 425880 and 13R00769/13U00769, so should this Court.

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A. Respondent's Reliance on LASC BC363659 As a Res Judicata Basis Is Wholly Erroneous

LASC Case Number BC363659 is *McClanahan v. Mansdorf, Et al*., wherein McClanahan obtained a $12,000,000.00 default judgment, thus becoming the "creditor" who forced the Sheriff's Sale Respondent was the purchaser at. This case and the judgment obtained did not and do not discuss, nor legally constitute "res judicata" with regard to Plaintiff's joint tenancy and survivorship rights in title to the Alta Home alleged by Appellant Gonzalez to be defamed by Respondent. The ruling in the BC363659 case cannot constitute res judicata with relation to the survivorship rights of Appellant Gonzalez, *when said rights did not vest until after the Order for Sale.*

Worse, this ruling was submitted by Respondent as a basis for Res Judicata. The trial court did not rely upon this case, most likely because Gonzalez was not a party. Yet Respondent still felt the need to fraudulently alter its notice of ruling to include this case as a stated basis for the trial court's res judicata decision. Now, on appeal, when proven Respondent altered the trial court ruling to include this case as a res judicata basis, Respondent again makes the argument, on appeal, and follows that with the claim Appellant cannot reply at all because Appellant did not deal with this case in its opening brief. Is this really how we litigate now?

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B. Respondent's Reliance on LASC BC425880 As a Res Judicata Basis Is Wholly Erroneous

The third party claim ruling from LASC Case Number 425880 is confined to the issues raised in that case - whether Appellant Gonzalez provided sufficient information to explain the discrepancy in documents submitted by Attorney Elaine Etingoff[6], to prevent the sale of property pursuant to a writ of execution regarding real property in Ventura County, California, (not the Alta Home in the city of Beverly Hills, county of Los Angeles). This issue is non-existent in the defamation of title case, did not legally invalidate the joint tenancy grant deed, and did not legally invalidate Appellant Gonzalez's Joint Tenancy and Survivorship Rights in the Alta Home – the case has no res judicata or collateral estoppel effect here

C. Respondent's Reliance on LASC SC119964 In the Lower Court, Though Successful, Has Not Been Repeated On Appeal, Leaving Appellant's Opening Brief Unchallenged

Respondent therefore concedes the arguments found in the opening brief, and such will not be repeated.

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[6] Whom Gonzalez is currently suing for Legal Malpractice, Breach of Fiduciary Duty, and **fraud**, (fraud in that Appellant did not pay her, rather, two other individuals paid her in what appears to be a fraudulent scheme to use the legal system to divest Appellant Gonzalez and the Mansdorf Family Trust Beneficiaries of rights relating to real property in Ventura County).

D. Respondent's Reliance on LASC 13U00769/13R00769, (BV 030652) (B 261337 [Pending]) As a Res Judicata Basis Is Wholly Erroneous

The ruling deciding title out of LASC Case Number 13R00769, extends to title only through former Commissioner Ford exceeding his jurisdiction and that of the limited jurisdiction court he sat upon. The entire unlawful detainer case should have been ruled related with this case, (as Respondent now boldly attempts to do on appeal), and consolidated with that case – but Judge Mary H. Strobel ruled the cases unrelated, refuse to consolidate, then recused herself for being married to Attorney David M. Marcus – McClanahan's attorney who pushed the Order for Sale with Judge Kahn. Now Respondent is attempting to use the ruling by former commissioner Ford to sustain their demurrer on collateral estoppel and res judicata grounds in this Court of Appeal, is a corruption of justice and due process of the worst sort. Moreover, there is no res judicata effect because of a lack of jurisdiction. Both counsel in the unlawful detainer case objected to jurisdiction of the court to quiet title, albeit for different reasons.

3. RESPONDENT'S CLAIMS THAT GONZALEZ FAILED TO PROPERLY STATE A CLAIM ARE CONTRADICTED BY THE COMPLAINT

Now Respondent is literally claiming they bought "the whole property," not simply Mr. Mansdorf's interests, and such a sale is absolute after 90 days. Further, that Gonzalez has been "Forum Shopping." "Forum

shopping" is a gross misrepresentation of the facts and legal proceedings – scrambling to assert, protect and obtain enforcement of constitutional and basic civil rights while repeated attorneys bungle, fail and literally refuse to correctly, timely and effectively assert those same rights is an "accurate" description of the facts in this and the other cases Respondent cites to.

The reason for such desperate tactics: Mr. Mansdorf held no interest at the time the Abstract was recorded, Gonzalez's joint tenancy rights and McClanahan's abstract attached simultaneously with Mr. Mansdorf's after-acquired-title in the Alta Home, the joint tenancy grant deed was put before Judge Kahn by John C. Torjesen but *no one* submitted the Trust Document for the Mansdorf Family Trust, and just as the judgment, the writ and the Sheriff's Deed state, Judge Kahn's order, despite its inarticulateness, is of the sale of Mr. Mansdorf's interest in the Alta Home. Thus, based upon the joint tenancy grant deed, such interests ceased to exist the moment Mr. Mansdorf died and Appellant Gonzalez was vested with 100% interest in the Alta Home prior to the sale, leaving 0% interests for Respondent to purchase and later assert rights over.

A. <u>The Complaint Demonstrates Claims Which May Provide Relief</u>

"If upon consideration of all the facts stated it appears that the plaintiff is entitled to any relief, the complaint will be held good." *White v. Lieberman* (2002) 103 Cal.App.4th 210, 216. The Complaint as a whole is

sufficient to give notice of Defendant's liability, especially to the Fourth Cause of Action for Intentional Infliction of Emotional Distress. The sole function of the demurrer is to test the sufficiency of the pleading it challenges. See *Pena v. Sita World Travel* (1978) 88 Cal.App.3d 642, 644; See also *Bethman v. City of Ukiah* (1989) 216 Cal.App.3d 1395, 1398. A demurrer should not be granted if it is not clear that no liability attaches under substantive law pursuant to the facts alleged. See *Lawrence v. Bank of America* (1985) 163 Cal.App.3d 431, 436.

If the plaintiff has stated a cause of action under any possible legal theory, it is error for the trial court to sustain the demurrer. *Friedman v. Merck & Co*. (2003) 107 Cal.App.4th 454, 463. "The properly pleaded material factual allegations, together with facts that may be properly judicially noticed, are accepted as true. Reversible error exists if facts were alleged showing entitlement to relief under any possible legal theory." *Lee v. Los Angeles County Metropolitan Transit Authority* (2003) 107 Cal.App.4th 848, 853-854. (Italics in original.) "On demurrer, it is not the function of a trial court, or of this court, to speculate on the ability of a plaintiff to support, at trial, allegations well pleaded." *Meyer v. Graphic Arts International Union* (1979) 88 Cal.App.3d 176, 179.

In ruling on the demurrer, the court will deem all properly pleaded material allegations as admitted, but not contentions, deductions, or conclusions of law or fact, and will reasonably interpret the complaint as a

whole and its parts in context. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." *SKF Farms v. Superior Court* (1984) 153 Cal.App.3d 902, 905.

In reviewing the complaint, the important consideration is whether as a whole it contains sufficient facts to apprize the defendant of the basis upon which plaintiff is seeking relief. The paragraphs of a complaint must not be read in isolation, but should be read in context with the facts alleged in the entire pleading. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. A demurrer directed to the entire pleading will be overruled if any of the counts stated therein are not vulnerable to objection. *Bacon v. Wahrhafting* (1950) 97 Cal.App.2d 599, 605.

B. Plain Review of the Record shows Gonzalez stated a claim for defamation of title

"The elements of the tort [of slander of title] . . . have traditionally been held to be publication, falsity, absence of privilege, and disparagement of another's land which is relied upon by a third party and which results in a pecuniary loss." (*Appel v. Burman* (1984) 159 Cal.App.3d 1209, 1214.). Even "a publication of no real legal consequence" (*Id*. at p. 858) or one that "create[s] no interest in the property" may be the basis for a slander of title action if a third party might reasonably understand it as an announcement

that a defendant was claiming an interest in the property (*id*. at p. 859). Such is the case here.

A slander of title plaintiff need only "show[] title *or* interest in the property." (*Edwards v. Burris* (1882) 60 Cal. 157, 161; see also *Truck Ins. Exchange v. Bennett* (1997) 53 Cal.App.4th 75, 85, fn. 3; *Davis v Wood* (1943) 61 Cal.App.2d 788, 793-794 [leasehold interest sufficient to assert slander of title].) Finally, "Malice," in the context of a Slander of Title claim may be actual or implied (*Gudger v. Manton* (1943) 21 Cal.2d 537, 544, disapproved on another ground in *Albertson v. Raboff* (1956) 46 Cal.2d 375, 381) and will be implied when the circumstances are deemed in law to show a lack of privilege or good faith (*ibid*.)

Here, the recordation of the Sheriff's Deed constitutes the "publication" element. (1 CT 55; *Hill v. Allan*, (1968) 259 Cal.App.2d 470, 489.)(If the publication is reasonably understood to cast doubt upon the existence or extent of another's interest in land, it is disparaging to the latter's title.). The recordation of the Affidavit of Death of Joint Tenant (2 CT 328: 24-25) along with Defendants bold assertions that "they would take their chances later," (1 CT 6: 16-18), satisfies the falsity element. (*Seeley v. Seymour* (1987) 190 Cal.App.3d 844, 857, 858, 859).

Though a privilege normally exists for the recordation of documents in furtherance of a non-judicial foreclosure, here Defendant was put on notice by the facts and by Plaintiff himself at the sale. Mark Bohbot's

response to Gonzalez informing Bohbot he was purchasing a dead man's joint tenancy interest: "I'll take my chances." 1 CT 6: 16-18. Respondent does not enjoy any privilege for engaging in such actions. (5 Witkin, Summary of California Law (10th Ed. 2008) Torts, § 642-643; Restatement (2nd) Torts § 629; *Seeley v. Seymour, supra,* 190 Cal.App.3d 857, ("The recordation of an instrument facially valid but without underlying merit will give rise to an action for slander of title."); *Gudger v. Manton*, (1943) 21 Cal. 2d 537, 543 (if the publication as reasonably understood casts doubt on the existence and extent of another's interest in property, it is disparaging to his or her title where it is so understood by the person to whom it is published).

The Sheriff's Deed caused direct financial harm to Plaintiff insofar as he was and has been unable to obtain any financing against the Alta Home despite the fact such was free of any bank loans or liens. As a further and direct result, Plaintiffs have incurred legal fees and other costs associated with bringing this action, (1CT 6: 27), has been unable to transfer title or encumber the land. This satisfies the absence of privilege and disparagement elements.

Put simply, the knowingly wrongful recordation of the Sheriff's Deed by Defendants clouds Plaintiff's title and constitutes "disparagement" of the same.

Finally, Appellant alleged "Alta Standard has made an unprivileged or malicious publication of a false statement which disparages Plaintiff's title to real property and caused pecuniary damages to Plaintiff . . . Alta Standard knows that its recording of a lien against the Alta House will have a foreseeable effect because it clouds Plaintiff's title". (1 CT 6: 19-21, 25-26.)

The timing of the attachment of rights in the Alta Home, together with the correct factual and legal analysis of the three cases erroneously relied upon for Res Judicata, results in a straight-forward application of joint tenancy and survivorship law. Thus, Respondent's recorded Sheriff's Deed disparages Appellant's title, and Appellant is entitled to judgment for quiet title.

Here, the facts alleged in the verified complaint, if true, prove Defendants publicized documentation which disparaged Plaintiff's right, title and interest in the title to the Alta Home, which he owned, is entitled to record title to, and possession of. Thus, Appellant pled a viable cause of action for Defamation of Title and Declaratory Judgment for Quiet Title against Respondent claiming an interest in the Alta Home via the Sheriff's Deed

C. Plain Review of the Record Shows Gonzalez stated a claim for declaratory relief

To Quiet Title, a complaint in California must contain:

1. a description of the property that is the subject of the action. This must include both the legal description and the street address or common designation, if any.

2. the title of the plaintiff as to which a determination of quiet title is sought. If the complaint is based on adverse possession, the complaint must allege the specific facts constituting the adverse possession.

3. the adverse claims to plaintiff's title.

4. the date as of which the determination is sought. If the determination is sought as of a date other than the date the complaint is filed, the complaint must include a statement of the reasons why a determination as of that date is sought.

5. a prayer for the determination of plaintiff's title against the adverse claims.

Code of Civil Procedure section 761.020. These were met in the complaint as follows:

1. 1 CT 2: 21-26 (providing the address and legal description of the Alta Home);
2. 1 CT 2: 27-28 (detailing the title of Gonzalez being in the form of a joint tenancy, with rights of survivorship);
3. 1 CT 3: 8-12 (detailing how Respondent purportedly obtained title to the Alta Home);
4. 1 CT 3: 8-9 (on or about October 31, 2012, Defendant Alta Standard purportedly obtained title to the Alta House . . .)
5. 1 CT 4: 9-13 (Plaintiff desires a judicial determination and corresponding declaration that: (a) Plaintiff holds all rights, title and interest in and to the Alta House, (b)

> Defendants and each of them, hold no rights,
> title nor interest in and to the Alta House;

Plain review of the record shows Appellant Gonzalez stated a claim for declaratory relief which was in fact proper in asking for the relief of Quiet Title, given the allegations.

4. GONZALEZ'S COMPLAINT REQUIRES NO AMENDMENT, AND IF THE CASE IS REMANDED, AMENDMENT CANNOT BE PREVENTED

As shown above, Gonzalez stated a claim for Slander of Title and Declaratory Relief for Quiet Title. The trial court merely barred him on res judicata grounds. (3 CT 698; Augmented/ Supplemental Record, ("SR") C-1.) No amendment of the complaint is required, merely proper adjudication of the facts, evidence and applicable law. If this Court determines that amendment is necessary, Appellant respectfully requests leave to amend.

III. CONCLUSION

The simultaneous attachment shown by the after-acquired title facts requires a straight-forward application of the joint tenancy/survivorship principle announced and applied in *Zeigler, supra*.

The Trust document for the Mansdorf Family Revocable Trust was not submitted to Judge Kahn when he ordered the sale – but the JTGD was, leaving the joint tenancy interest the only possible basis for the order.

Respondent could not buy "the entire property" because the Sheriff only sold, and per statute, Respondent could only obtain "the judgment

debtor's interest" – the same thing levied, made the subject of the writ, and noticed to be sold.

Res Judicata and Collateral Estoppel have no application to survivorship rights which vested as a matter of law, and even under de novo review of all possible reasons to sustain Respondent's demurrer, not a single valid potential angle remains unanswered.

Dated April 1, 2015. ORLOFF & ASSOCIATES APC

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Paul Orloff, Esq. (SBN 216791)
8402 Florence Avenue, Suite B1
Downey, California 90240
Telephone: (562) 869-3034
Facsimile: (562) 869-3539
Paul@Orlofflitigation.com

Attorney for Appellant,
Jaime DeJesus Gonzalez

IV. CERTIFICATE OF COMPLIANCE

I hereby certify that, according to the word count provided in Microsoft Word, 2010, the foregoing brief contains 7,910 words, excluding the parts of the brief excluded under California Rules of Court, Rule 8.204 (c)(1), (including (i) Certificate of Interested Parties; (ii) Cover Page, (iii) Table of Contents and Authorities, iv) this Certificate of Compliance and v) Signature Blocks). The text of the brief is in proportional Times New Roman font with 13-point type, and the brief thus complies with the type-volume limitations, typeface requirements and type style requirements.

ORLOFF & ASSOCIATES APC

_____.

Printed Name:	Paul Orloff, Esq. (SBN 216791)
Address:	8402 Florence Avenue, Suite B1 Downey, California 90240
Telephone:	(562) 869-3034
Facsimile:	(562) 869-3539
Email:	Paul@Orlofflitigation.com

Counsel for Appellant, Jaime DeJesus Gonzalez

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, California, and am not a party to the within action; my business address is 8402 Florence Avenue., B1, Downey, CA 90240. On the date below, I served the following document described as "**APPELLANT'S REPLY BRIEF**," on the interested parties in this action as follows:

Stephen E. Foster Esq., SBN 214092
Nahla B. Rajan, SBN 218838
Mitchell Silberberg & Knupp LLP
11377 W Olympic Blvd,
Los Angeles, CA 90064

Attorneys for Respondent
Alta Standard One, LLC

Hon. Michelle R. Rosenblatt
Superior Court Judge
Los Angeles County Superior Court
111 N. Hill Street
Los Angeles, CA 90012

By placing a true copy thereof enclosed in a sealed envelope addressed as stated in the service list above. I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

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

Executed this 1st day of April, 2015, at Los Angeles, California.

_____ _____
Catherine Arias Signature