

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: TUESDAY
DATE: JUNE 15, 2021
CALENDAR: 1:30 P.M. ADVERSARY PROCEEDINGS

COURT REOPENING

Effective June 14, 2021, courthouses for the Eastern District of California are reopened to the public. General Order No. 631 ¶ 1. Each judge within the district has discretion to continue to hold hearings remotely or to hold hearings in person. *Id.* at ¶ 4. The Honorable Fredrick E. Clement will hold remote and live hearings under the following schedule:

Until July 11, 2021

From the effective date of General Order No. 631 through July 11, 2021, Department A will continue to conduct hearings exclusively on a remote basis. Persons who wish to appear must do so by way of CourtCall; reservations for such an appearance may be arranged by calling (866) 582-6878.

On and After July 12, 2021

Starting July 12, 2021, Department A will resume in person hearings. However, any person preferring to appear via CourtCall may do so, notwithstanding any limitation contained in the "Telephonic Court Appearance through CourtCall Conference Service" on the court's website.

RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be

heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[21-2005](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
5-7-2021 [[119](#)]

AME ZION CHURCH OF PALO ALTO,
INC. V. AME ZION WESTERN
CANDICE FIELDS/ATTY. FOR MV.

Tentative Ruling

Motion: Dismiss Adversary Complaint

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted in part with leave to amend, denied in part

Order: Civil minute order

Defendant Sandra K. Davis ("Davis") moves to dismiss AME Zion Church of Palo Alto's ("AME Zion Palo Alto") complaint against her. AME Zion Palo Alto opposes the motion.

FACTS

Davis is a lesser actor in a larger dispute. The facts giving rise to that dispute are set forth in this court's ruling on Yosemite Capital, LLC's motion to dismiss and are incorporated by reference. Memorandum 2:11-8:20, May 3, 2021, ECF No. 104.

Specific allegations against Davis include: (1) she was the agent, employee, alter ego and/or representative of AME Western Episcopal District ("Western Episcopal District"), Compl. 6:12-18, 9:11-18, ECF No. 1; (2) from October 24, 2018 forward, she was Western Episcopal District's agent for service of process, *Id.* at 17:6-7; (3) she interfaced with the California Secretary of State to have AME Zion Palo Alto suspended corporate status reinstated, *Id.* at 19-22-20:3; (4) she executed the deed of trust on behalf of Western Episcopal District encumbering 3549 Middlefield Road, Palo Alto as security for a \$3.64 million loan, *Id.* at 23:2-21; and (5) she communicated with AME Zion Palo Alto. *Id.* at 24:10-13.

PROCEDURE

"In late July 2020, facing multiple foreclosures, the AME Zion Western Episcopal District filed for Chapter 11 protection. In March 2021, Jeffrey I. Golden was appointed the Chapter 11 trustee. AME Zion Palo Alto subsequently brought this adversary proceeding against the debtor, its officers, Bishop Staccato Powell, and the October 27, 2019 Lenders. The complaint pleads five causes of action: (1) preliminary and permanent injunction; (2) declaratory relief; (3) quiet title; (4) rescission; (5) fraud; [and (6) unjust enrichment.]" Memorandum 8:22-9:1, ECF No. 104.

The October 27, 2019 Lenders moved to dismiss the complaint against them. After issuing a memorandum decision the court denied that motion. Order, May 3, 2021, ECF No. 106.

JURISDICTION

As to Davis, this court has jurisdiction, 28 U.S.C. §§ 1334, 157 (a), (b) (1); General Order No. 182 of the U.S. District Court for the Eastern District of California. But unlike the October 2019 Lenders, as to Davis, except as to the first cause of action (injunctive relief)-possibly, this is a non-core proceeding in which this court may not enter final orders and judgment, 28 U.S.C. § 157(b) (2). As pertinent to Davis, this dispute arises under state-not bankruptcy-law, and Davis has not filed a Proof of Claim.

Even if the matters raised by this adversary proceeding are non-core, this court may enter final orders and judgment with the consent of the parties. 11 U.S.C. § 157 (c) (1), (2); *Wellness Int'l Network, Ltd. v. Sharif*, 135 S.Ct. 1932 (2015). Here, AME Zion Palo Alto has consented to the entry of final orders and judgments by this court; Davis has not yet consented to the entry of final orders and judgments by this court.

LAW

Under Federal Rule of Civil Procedure 12(b) (6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b) (6), *incorporated by* Fed. R. Bankr. P. 7012(b). "A Rule 12(b) (6) dismissal may be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008); *accord Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

"After *Iqbal* and *Twombly*, courts employ a three-step analysis in deciding Rule 12(b) (6) motions. At the outset, the court takes notice of the elements of the claim to be stated. *Eclectic Properties East, LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014). Next, the court discards conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *United States ex rel. Harper v. Muskingum Watershed Conservancy District*, 842 F.3d 430, 438 (6th Cir. 2016) (the complaint failed to include "facts that show how" the defendant would have known alleged facts). Finally, assuming the truth of the remaining well-pleaded facts, and drawing all reasonable inferences therefrom, the court determines whether the allegations in the complaint "plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 679; *Sanchez v. United States Dept. of Energy*, 870 F.3d 1185, 1199 (10th Cir. 2017). See generally, *Wagstaff Practice Guide: Federal Civil Procedure Before Trial*, *Attacking the Pleadings, Motions to Dismiss* § 23.75-23.77 (Matthew Bender & Company, Inc. 2019).

Plausibility means that the plaintiff's entitlement to relief is more than possible. *Twombly*, 550 U.S. at 570 (the facts plead "must cross the line from conceivable to plausible"); *Almanza v. United Airlines, Inc.*, 851 F.3d 1060, 1074 (11 Cir. 2017). Allegations that are "merely consistent" with liability are insufficient. *Iqbal*, 556 U.S. at 662; *McCauley v. City of Chicago*, 671 F.3d 611, 616 (7th Cir. 2011);

In re Jorgensen, No. 18-14586-A-13, 2019 WL 6720418, at *4 (Bankr. E.D. Cal. Dec. 10, 2019)

In addition to looking at the facts alleged in the complaint, the court may also consider some limited materials without converting the motion to dismiss into a motion for summary judgment under Rule 56. Such materials include (1) documents attached to the complaint as exhibits, (2) documents incorporated by reference in the complaint, and (3) matters properly subject to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); accord *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (per curium) (citing *Jacobson v. Schwarzenegger*, 357 F. Supp. 2d 1198, 1204 (C.D. Cal. 2004)). A document may be incorporated by reference, moreover, if the complaint makes extensive reference to the document or relies on the document as the basis of a claim. *Ritchie*, 342 F.3d at 908 (citation omitted).

DISCUSSION

First Cause of Action: Injunction

Davis contends that the cause of action for preliminary and permanent injunction should be dismissed because the complaint should be dismissed because the complaint fails to state facts from which this court might conclude that she is likely to "take any further actions with respect to 3549 Middlefield Road." Mem. P.&A. 4:8-11, May 7, 2021, ECF No. 120.

The standard for granting a preliminary injunction is well known.

'A plaintiff seeking a preliminary injunction must establish that he is *likely to succeed on the merits*, that he is *likely to suffer irreparable harm* in the absence of preliminary relief, that the *balance of equities tips in his favor*, and that an *injunction is in the public interest*.'" *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.2011) (quoting *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008)). We evaluate these factors via a "sliding scale approach," such that "'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Id.* at 1131, 1135.

Arc of California v. Douglas, 757 F.3d 975, 983 (9th Cir. 2014) (emphasis added).

For the purposes of a motion to dismiss, the complaint is sufficient. Facts also suggest a plausible claim of irreparable harm, i.e., further transactions by Davis, in the absence of an injunction. Davis played a significant role in facilitating the deed of 3549 Middlefield Road from AME Zion Palo Alto to Western Episcopal District and execution of the trust deed in favor of the October 2019 Lenders. Comp. 19:22-20:4, 23:2-21. Moreover, Davis' response to inquiry about overdue ad valorem real property taxes

from AME Zion Palo Alto is less than completely straightforward. "[T]he property location for University AME Zion remains the same. We have a new name for the church etc. The year may have confused the agency. Thank you!" Compl. 24:4-13, ECF No. 1. While these facts alone would probably not support actually granting a preliminary injunction, they do give rise to a plausible claim of irreparable injury absent relief. The motion will be denied as to the first cause of action.

Second Cause of Action: Declaratory Relief

Bankruptcy courts may give declaratory relief. Fed. R. Bankr. P. 7001(9).

Davis correctly observes that federal courts may not rule on a matter for which no dispute has arisen. *Aetna Life Ins. Co. of Hartford, Conn. v. Haworth*, 300 U.S. 227, 240 (1937); *Webster v. Reproductive Health Services* (1989) 492 US 490, 500 (1989).

Article III of the Constitution limits the jurisdiction of federal courts to cases or controversies (terms that appear to be synonyms), which is to say to actual legal disputes. *It would be very nice to be able to ask federal judges for legal advice—if I do thus and so, will I be subject to being sued and if I am sued am I likely to lose and have to pay money or even clapped in jail?*

Klinger v. Conan Doyle Est., Ltd., 755 F.3d 496, 498 (7th Cir. 2014) (emphasis added).

The case and controversy requirement functions slightly differently in the context of declaratory relief actions.

By contrast, there is no question as to the power of federal courts to grant declaratory relief. *As long as the parties' dispute is of sufficient "immediacy and reality" to constitute a "controversy" in the constitutional sense, the exercise of federal judicial power is specifically authorized under the Declaratory Judgment Act (28 USC § 2201)....*

On the other hand, there is no subject matter jurisdiction to grant declaratory relief as to rights or liabilities that *do not yet exist* or are not certain to arise.

Virginia A. Phillips and Karen L. Stevenson, *California Practice Guide: Federal Civil Procedure Before Trial*, Subject Matter Jurisdiction § 2:4431 (Rutter Group 2021) (internal citations omitted) (emphasis added).

Davis argues that the complaint fails to allege that she disputes AME Zion Palo Alto's fee ownership of 3549 Middlefield Road, that no actual controversy exists, and, therefore, that the complaint must be dismissed. Mem. P. & A. 5:22-6:3, May 7, 2021, ECF No. 120.

This court disagrees. The complaint alleges that Western Episcopal District is Davis' alter ego. Compl. at 6:13-18. Davis played a central role in AME Zion Palo Alto's deeding of 3549 Middlefield Road to Western Episcopal District and the district's encumbering of that property. Compl. at 19:22-20:4, 23:2-21. By inaction, Western Episcopal District has refused to turn title to AME Zion Palo Alto. Compl. at 24:16-28:12. Together these constitute a dispute of immediacy and reality. The motion will be denied as to the second cause of action.

Third Cause of Action: Quiet Title

The elements of a quiet title action are well known.

[1] [a] description of the property that is the subject of the action. In the case of tangible personal property, the description shall include its usual location...[;]
[2] [t]he title of the plaintiff as to which a determination under this chapter is sought and the basis of the title....[;]
[3] [t]he adverse claims to the title of the plaintiff against which a determination is sought[;]
[4] [t]he date as of which the determination is sought...; [and]
[5] [a] prayer for the determination of the title of the plaintiff against the adverse claims.

Cal. Code of Civ. Proc. 761.020; see also *Townsend v. Wells Fargo Bank, N.A.*, 831 F. App'x 338, 339 (9th Cir. 2020)

Here, the only evidence before this court is that title is held by Western Episcopal District. Compl. at 20:19-26; see also Grant Deed, Exh. B, January 14, 2021, ECF No. 1. There is no suggestion that Davis, herself, claims an ownership interest in 3549 Middlefield Road.

The complaint does plead that Davis was "an agent, servant, employee, alter ego, and/or other representative of [Western Episcopal District]." Compl. at 6:12-18, 9:11-17. Without more, this is a conclusion, not a fact. The motion will be granted with leave to amend as to the third cause of action.

Fourth Cause of Action: Rescission

Defrauded parties may rescind the transaction and recover their consideration. *Seeger v. Odell*, 18 Cal.2d 409, 417 (1941); *Denevi v. LGCC*, 121 Cal.App.4th 1211, 1220 (2004).

Davis argues that she, personally, as opposed to Western Episcopal District, does not hold, and has never held, title to 3549 Middlefield Road. As a consequence, she cannot be forced to rescind the 2018 Grant Deed. AME Zion Palo Alto does not oppose this argument. The motion will be granted with leave to amend as to the fourth cause of action.

Fifth Cause of Action: Fraudulent Concealment

The elements of fraudulent concealment are well known.

[1] suppression of a material fact; [2] by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; [3] with intent to deceive a person unaware of the concealed fact and who would not have acted had he known of the fact.

Melanson v. United Air Lines, Inc., 931 F.2d 558, 563 (9th Cir. 1991).

Ordinarily, the failure to disclose a known fact will not sound in concealment. 5 Witkin, *Summary of California Law*, Torts § 913 (11th ed. 2021). But a duty to disclose may arise from a fiduciary relationship, a statutorily imposed duty, or where the facts are in the exclusive knowledge of the defendant. *Id.* "The duty to disclose may arise without any confidential relationship where the defendant alone has knowledge of material facts that are not accessible to the plaintiff. (internal citations omitted). *Id.* at § 916.

Here, AME Zion Palo Alto contends that the "Debtor-Defendants" concealed certain facts. The plaintiff's failure to delineate the role of the different defendants makes the complaint unclear. But summarized, it contends that Davis concealed: (1) that the transfer was not made in trust; (2) that the 2018 Grant Deed was not made in the manner required by The Book of Discipline; and (3) that the Western Episcopal District had executed the March 26, 2018, deed of trust two days prior to the 2018 Grant Deed.

There are at least three problems with the complaint. First, that the property was not held in trust was known to AME Zion Palo Alto. Pastor-in-Charge Kaloma A. Smith signed the 2018 Grant Deed and, since he is the church representative, the plaintiff is fairly charged with knowledge of the absence of the in-trust language. Second, prior execution of the March 26, 2018, trust deed was not material. Third, the pleading does not include facts from which this court may plausibly find that Davis was aware of these facts. Hence, there is no showing of intent. The motion will be granted with leave to amend as to the fifth cause of action.

Sixth Cause of Action: Unjust Enrichment

Receipt of property or money belonging to the plaintiff is the sine qua non of unjust enrichment. *Walker v. Geico Gen. Ins. Co.*, 558 F.3d 1025, 1027 (9th Cir. 2009).

But the complaint does not contain any facts that Davis personally received money or property belonging to AME Zion Palo Alto. Much to the contrary, the complaint pleads that Western Episcopal District received 3548 Middlefield Road. Compl. 20:19-27. The motion will be granted with leave to amend as to the sixth cause of action.

CIVIL MINUTE ORDER

It is hereby ordered that:

1. the motion is (A) denied as to the first and second causes of action; and (B) granted with leave to amend as to all other causes of action;
2. Leave to File First Amended Complaint
 - A. if AME Zion Palo Alto elects to file a First Amended Complaint:
 1. it shall do so not later than July 6, 2021;
 2. simultaneously with filing the First Amended Complaint, the plaintiff shall file and serve a redline copy showing all amendments, modifications, and deletions;
 3. not later than July 27, 2021, Sandra K. Davis shall file and serve an answer or a motion under Rule 12;
 4. if Sandra K. Davis files a motion under Rule 12(b) or otherwise, rather than an answer, the motion shall be set for hearing consistent with LBR 9014-1(f)(1) on August 31, 2021, at 1:30 p.m.;
 5. the parties shall not enlarge time for filing a responsive pleadings or motion without order of this court. Such enlargement may be sought by ex parte application, supported by stipulation or other admissible evidence;
 6. if Sandra K. Davis fails to answer and fails to respond by Rue 12 motion, the plaintiff shall forthwith and without delay seek the entry of her default;
 - B. if AME Zion Palo Alto elects not to file a First Amended Complaint:
 1. not later than July 27, 2021, Sandra K. Davis shall file an answer to the complaint;
 2. the parties shall not enlarge time for filing a responsive pleadings or motion without order of this court. Such enlargement may be sought by ex parte application, supported by stipulation or other admissible evidence; and
 3. in the event that Sandra K. Davis does not file a timely answer to the First Amended Complaint, the plaintiff shall forthwith and without delay seek the entry of her default.

2. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[21-2016](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-10-2021 [[1](#)]

AFRICAN METHODIST EPISCOPAL
ZION CHURCH ET AL V. AME ZION
HAGOP BEDOYAN/ATTY. FOR PL.

Final Ruling

The status conference is continued to July 20, 2021, at 1:30 p.m. to coincide with the motion to abstain, ECF No. 30. A civil minute order will issue.

3. [20-23029](#)-A-7 **IN RE: SEAN RILEY**
[20-2169](#) [DNL-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
5-14-2021 [[15](#)]

SMITH V. RILEY
J. CUNNINGHAM/ATTY. FOR MV.
DEFENDANT NON-OPPOSITION

Final Ruling

This matter is continued to July 20, 2021, at 1:30 p.m. Not later than June 21, 2021, the plaintiff shall serve the motion and notice of the continued hearing on all creditors. Fed. R. Bankr. P. 7041. The notice of the continued hearing shall require written opposition to be filed not later than July 5, 2021.

4. [15-23746](#)-A-7 **IN RE: GORDON BONES**
[15-2160](#) [MAS-6](#)

MOTION FOR SUMMARY JUDGMENT AND/OR MOTION FOR SUMMARY
ADJUDICATION
5-4-2021 [[165](#)]

MELISSA JOSEPH, AS TRUSTEE OF
THE RICHARD W. DE SI V. BONES
MICHAEL SCHAPS/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

This motion is continued to July 20, 2021 at 1:30 p.m.

5. [20-25550](#)-A-7 **IN RE: BEN KHANG**
[21-2022](#)

STATUS CONFERENCE RE: COMPLAINT
4-17-2021 [[1](#)]

KHANG V. WELLS FARGO BANK,
N.A.
GEORGE BURKE/ATTY. FOR PL.
ADVERSARY PROCEEDING DISMISSED: 5/26/2021

Final Ruling

The Adversary case having been dismissed the Status Conference is concluded.