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**TEITELBAUM v. CHOLODENKO**

**DEMURRER TO FIRST AMENDED COMPLAINT ("FAC") AND MOTION FOR AN AWARD OF ATTORNEYS FEES**

Date of Hearing: September 26, 2016      Trial Date: None  
Department: A      Case No.: LC102992

Moving Party: Defendants Paul Cholodenko, Freidin-Saks, Inc. and Centinela Holdings, LLC  
Responding Party: Plaintiff

TENTATIVE: DEMURRER IS OVERRULED AS TO THE 7th 8th 9th 10th 13th 14<sup>th</sup> CAUSES OF ACTION; AND, SUSTAIN WITHOUT LEAVE AS TO 15TH CAUSE OF ACTION.

**MOTION FOR ATTORNEY'S FEES IS DENIED**

**BACKGROUND**

This is an action based upon a series of usurious loans and to quiet title to commercial real property located in Studio City. Plaintiff borrowed monies from Defendants Paul Cholodenko and his company, Defendant Freidin-Saks, Inc. There were six loans in total and all loans contained usurious interest rates. Plaintiff further owned property located at 12301 Ventura Blvd, Studio City ("Income Property"). The Property secured two of the loans made by Defendant Cholodenko/Freidin-Saks. Plaintiff alleges that Defendant defrauded Plaintiff out of ownership of the Property and the rental income that it derived by misrepresenting the true nature of the documents executed in consolidating debts owed to Defendant Cholodenko/Freidin-Saks and non-party Indra Jahveri.

As part of one of the loans secured by the income property, defendant insisted plaintiff execute and deliver a deed of trust on plaintiff's personal residence (Personal Residence) and a deed of trust on plaintiff's second home (Second Home).

At some point, Cholodenko convinced plaintiff that in order to retire the two loans on the Income Property, plaintiff needed to deed the property over to Centinela Holdings as part of a sham purchase agreement and plaintiff would be granted an interest in Centinela. Cholodenko would then arrange for financing to pay off the loans owed to him and to a third party with Centinela as the ostensible borrower. Plaintiff was to hold an interest in Centinela and be entitled to a portion of the rent proceeds of the property while the remaining rents would go toward paying off the new loan. After plaintiff deeded the property to Centinela as part of the a sham purchase agreement, Cholodenko refused to give her an interest in Centinela and refused to give her any

This is sufficient for a Constructive Trust claim.

#### Unjust Enrichment

The elements of the claim are:

1. Receipt of a benefit;
2. unjust or wrongful retention of the benefit; and
3. at the expense of another.

Peterson v. Cellco Partnership (2008) 164 Cal.App.4th 1583, 1593; Lectrodryer v. SeoulBank (2000) 77 Cal. App. 4th 723, 726; Marina Tenants Assn. v. Deauville Marina Development Co. (1986) 181 Cal. App. 3d 122, 134; Hirsch v. Bank of Amer. (2003) 107 Cal.App.4th 708, 716, 722. See Nibbi Bros. v. Home Fed. Sav. & Loan Ass'n (1988) 205 Cal. App. 3d 1415, 1422 (for enrichment to be unjust, a benefit ordinarily must have been conferred by mistake, fraud, coercion or request, and not officiously)

Here plaintiff alleges that defendants obtained legal title to plaintiff's property by fraudulent means and will not return the property to plaintiff or provide plaintiff with any rents generated from the property.

The claim is stated.

#### Intentional Infliction of Emotional Distress

Generally a plaintiff cannot recover emotional distress damages for economic injury. Ragland v. U.S. Bank National Assn. (2012) 209 Cal.App.4th 182, 203-04 (cases disallowing emotional distress damages for economic or property losses are inapposite to intentional infliction of emotional distress). Plaintiff has alleged nothing that requires the court to vary from that general principal.

Accordingly the 15<sup>th</sup> cause of action is sustained without leave.

#### **MOTION FOR ATTORNEY'S FEES**

**The plaintiff seeks sanctions for defendants filing a so called frivolous demurrer and for dilatory tactics during discovery.**

**The court will summarily deny the motion. There was nothing frivolous about the demurrer and in fact it was a close call. Second, to the extent plaintiff seeks discovery sanctions or an order that Mr. Cholodenko attend his deposition, plaintiff should file a motion with the court under the appropriate discovery statutes.**