

July 11, 2025 Civil Tentative Rulings – Judge Frederick Horn

1. CU0000001851

Paul Edward Gilbert vs. Clear Recon Corp. et al.

- **Non-party Seth Michael Harris’ Motion to Quash Subpoena Duces Tecum**
- **Clear Recon Corp. Defendants’ Demurrer**
- **Defendant Citibank’s Demurrer**

Non-party Seth Michael Harris’ Motion to Quash Subpoena Duces Tecum

Non-party Seth Michael Harris’ (“Harris”) motion to quash the subpoena duces tecum issued to Harris by Plaintiff is granted, the subpoena is quashed in its entirety, and sanctions are awarded in a reduced amount. The Subpoena is hereby quashed. Harris shall not be required to appear and the documents sought in the Subpoena shall not be required to be produced. Harris is awarded his reasonable attorneys’ fees and costs in bringing the motion to quash in the amount of \$1,755.00. Plaintiff shall pay \$1,755.00 to Tiffany & Bosco, P.A., counsel for Harris, via certified funds within ten (10) days of this Order.

On April 3, 2025, Plaintiff issued a subpoena duces tecum to Harris. (Declaration of Crystal R. Davieau, ¶ 4; Ex. A.) The subpoena sought the following documents from Harris:

1. “A certified copy of [Harris’] license to practice law in the State of California, as required under California Business and Professions Code § 6067.
2. A letter of authorization or corporate resolution from Citibank, N.A., specifically authorizing you to act as legal counsel in this matter, signed by a member of Citibank’s Board of Directors or an authorized corporate officer.
3. Any communication or retainer agreement that identifies the scope of your authority to act in any judicial or non-judicial proceedings regarding the property located at 11782 Blackberry Place, Nevada City, California.”

Pursuant to Code of Civil Procedure section 1987.1, subdivision (a), courts “may make an order quashing [a] subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders[.]”. The scope of discovery is limited to evidence which “is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.” (Code Civ. Proc. § 2017.010.) “Relevant evidence means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (Evid. Code § 201.)

Here, Plaintiff seeks documents related to Harris’ law license, as well as documents related to his representation of Defendant Citibank in a previous foreclosure action. Regarding Subpoena Item 1, Plaintiff has failed to provide any supporting authority that Harris’ law license is relevant to the underlying action, nor as to any reason it would be required to be produced under Business & Professions Code Section 6067. Regarding Subpoena Items 2 and 3, Plaintiff has not demonstrated that the documents sought regarding Citibank’s retention of Harris would be helpful to prove or

disprove any issues in the pending dispute between Plaintiff and defendants, and thus has not demonstrated that they are reasonably calculated to lead to the discovery of admissible evidence. Moreover, the documents sought regarding Harris' representation of Citibank are privileged and confidential. Cal. Evid. Code § 952. A client has the privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the client and their lawyer. Cal. Evid. Code § 954. "[T]he privilege is absolute and disclosure may not be ordered, without regard to relevance, necessity, or any particular circumstances peculiar to the case." *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 732.

Plaintiff has failed to show good cause for the documents and information sought, and thus the subpoena is quashed in its entirety.

Regarding the request for sanctions, the Court may impose a monetary sanction towards one engaging in the misuse of the discovery process, and order him to pay the reasonable expenses, including attorneys' fees, incurred as a result of that conduct. Cal. Code Civ. Proc. § 2030.030(a). Misuse of the discovery process includes, "[p]ersisting, over objection and without substantial justification, in an attempt to obtain information or materials that are outside the scope of permissible discovery" and "[e]mploying a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense". Cal. Code Civ. Pro. § 2023.010(a) & (c). Here, Harris attempted to meet and confer with Plaintiff regarding the irrelevance and privilege of the documents sought by the subpoena; however, Plaintiff persisted in proceeding with the subpoena, forcing Harris to file this motion. Because Plaintiff was not justified in proceeding with the subpoena seeking documents and information which are irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and confidential and protected by the attorney-client privilege, the Court finds that sanctions are warranted.

Harris seeks a total of \$2,745.00 in attorney's fees and costs. (Declaration of Crystal R. Davieau, ¶¶ 8-11.) The fee request is broken down as follows:

1. 4 hours expended to research, prepare and draft the motion;
2. 2 hours for review of Plaintiff's opposition brief and to draft a reply;
3. 1 hours to prepare and present the motion at the hearing; and
4. First appearance fee of \$435 for filing the motion.

For the above-listed hours, Counsel seeks a rate of \$330.00 per hour. Plaintiff's opposition did not address sanctions. Likewise, the *prospective* time to prepare and present the motion for hearing is speculative and unwarranted. The balance of fee requests are adequately supported by the pleadings and the requested hourly rate is reasonable. Monetary sanctions are accordingly awarded for four (4) hours of attorney time based on an hourly rate of \$330.00 plus for the first appearance fee of \$435, for a total of \$1,755.00.

Clear Recon Corp. Defendants' Demurrer

Clear Recon Corp. Defendants' ("CRC Defendants") demurrer is sustained as to all six causes of action for failure to state facts sufficient to constitute a cause of action. Leave to amend is denied.

Standard of Review

A demurrer tests the sufficiency of the factual allegations in the complaint and whether facts are pled with sufficient certainty and particularity. *See Banerian v. O'Malley* (1974) 42 Cal.App.3d 604, 610-611; *see also* Code Civ. Proc., § 430.10(e). Because a demurrer tests the legal sufficiency of a complaint, the plaintiff must show that the complaint alleges facts sufficient to establish every element of each cause of action. *See Rakestraw v. California Physicians Service* (2000) 81 Cal.App.4th 39, 43. Where a complaint fails to adequately plead all necessary elements of a cause of action, a demurrer is properly sustained. *See Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 884- 85. "Where a demurrer is sustained . . . as to the original complaint, denial of leave to amend constitutes an abuse of discretion if the pleading does not show on its face that it is incapable of amendment." *Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848, 1852. Finally, while all material facts properly pled are generally accepted as true, "contentions, deductions or conclusions of fact or law" are not. *Evans v. City of Berkeley*, 38 Cal. 4th 1, 6 (2006).

A pleading "is uncertain" where it is "ambiguous and unintelligible." Cal. Civ. Proc. Code § 430.10(f). Although allegations in a complaint "must be liberally construed," a court "must not so liberally construe the allegations . . . so as to deny the defendant adequate notice to defend the case." *People ex rel. Dep't of Transp. v. Superior Ct.*, 5 Cal. App. 4th 1480, 1485 (1992). Demurrers for uncertainty under Code of Civil Procedure section 430.10, subdivision (f) are disfavored. *Likiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135. "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616. "[W]here the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled...." *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695.

A demurrer should be sustained without leave to amend if there is no reasonable possibility the complaint can be cured by amendment. *Levy v. Nelson* (2000) 83 Cal.App.4th 1061, 1063.) The burden is on the plaintiff to show in what manner he can amend his complaint and how the amendment would change the legal effect of his pleading. *Goodman v. Kennedy* (1976) 18 Cal 3d. 335.

First Cause of Action: Breach of Judicial Duty

The demurrer to the first cause of action is sustained without leave to amend.

There is no cause of action for “breach of judicial duty.” However, if a demurrer is “made on the ground that “the pleading does not state facts sufficient to constitute a cause of action” pursuant to the Code of Civil Procedure section 430.10 (e), it is not necessary that the cause of action be the one intended by plaintiff. So long as the essential facts of some valid cause of action are alleged, the complaint is good against a general demurrer.” *Quelimane Co., Inc. v. Stewart Title Guar. Co.* (1988) 19 Cal.4th 26, 38-39; *Adelman v. Associated Internat. Ins. Co.* (2001) Cal.App.4th 352, 359. Assuming that Plaintiff meant to plead “breach of fiduciary duty,” the Court will examine that cause of action as well.

The elements of a cause of action for breach of fiduciary duty are: “(1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach.” *Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086; *see also Benasra v. Mitchell Silberberg & Knupp LLP* (2004) 123 Cal.App.4th 1179, 1183. The Complaint does not plausibly allege facts showing that any defendant owed plaintiff a fiduciary duty. Mortgage lenders, loan servicers, and deed of trust trustees do not owe borrowers a fiduciary duty. *See Nymark v. Heart Fed. Sav. & Loan Assn.*, (1991) 231 Cal.App.3d 1089, 1093 (“The relationship between a lending institution and its borrower-client is not fiduciary in nature.”); *Hatch v. Collins*, 225 Cal.App.3d (1990) 1104, 1111-12, modified (Nov. 27, 1990) (rejecting argument that a deed of trust trustee stands in a fiduciary relationship to the trustor). In the absence of facts showing any moving defendant owed plaintiff a fiduciary duty, plaintiff has no claim for breach of fiduciary duty.

Thus, even affording every inference in favor of Plaintiff, as the Court must on demurrer, the Court concludes for the purposes of the demurrer that Plaintiff’s allegations fail to state facts constituting a cause of action for breach of fiduciary duty, and the demurrer must be sustained.

Second Cause of Action: Breach of California Commercial Code

The demurrer to the second cause of action is sustained without leave to amend.

A claim for Breach of California Commercial Code under §§ 9623 and 9601 applies to secured transactions in personal property, not real property. Additionally, California Commercial Code does not apply to non-judicial foreclosures. *Debrunner v. Deutsche Bank National Trust Company* (2012) 204 Cal.App.4th 433, 441. Non-judicial foreclosure of deeds of trust against real property is governed exclusively by Civil Code §§2924-2924k, which provide a comprehensive statutory framework for such foreclosures which is intended to be exhaustive. *Id.*, *see also Moeller v. Lien* (1994) 25 Cal.App.4th 822, 830-934; *I.E. Associates v. Safeco Title Ins. Co.* (1985) 39 Cal.3d 281, 285 [216 Cal.Rptr. 438, 702 P.2d 596] “Because of the exhaustive nature of this scheme, California appellate courts have refused to read any additional requirements into the non-judicial foreclosure statute.” *Lane v. Vitek Real Estate Indus. Group* (E.D.Cal.2010) 713 F.Supp.2d 1092, 1098.

Plaintiff has alleged no facts allowing the Court to overrule a demurrer. He has alleged only that a secured party provide accounting and communication regarding foreclosure processes. CRC is not a secured party, it is a foreclosure trustee. Plaintiff has not sued the secured party in this lawsuit. Therefore, no cause of action is stated. Thus, even affording every inference in favor of Plaintiff, as the Court must on demurrer, the Court concludes for the purposes of the demurrer that Plaintiff’s

allegations fail to state facts constituting a cause of action for breach of California Commercial Code.

Neither Plaintiff's Complaint nor his opposition state any facts or claim any knowledge that could cure these deficiencies. Therefore, the demurrer to the Second Cause of Action as to the CRC Defendants is sustained without leave to amend.

Third Cause of Action: Civil Conspiracy

The demurrer to the third cause of action is sustained without leave to amend.

Civil conspiracy is not an independent cause of action. Plaintiff has alleged no facts alleging any underlying tortious conduct by the CRC Defendants. He alleges "procedural violations under California Civil Code § 2924," in a conclusory fashion with no elaboration or particularity. As discussed above, California Commercial Code § 9263 does not apply to a nonjudicial foreclosure of real property, and so Plaintiff's reference to "statutory obligations under California Commercial Code § 9623" is inapplicable. Plaintiff wholly fails to allege what defects in the foreclosure process were. Even affording every inference in favor of Plaintiff, as the Court must on demurrer, the Court concludes for the purposes of the demurrer that Plaintiff's allegations fail to state facts constituting any cause of action involving civil conspiracy, regardless of whether it is one that was intended by Plaintiff.

Neither Plaintiff's Complaint nor his opposition state any facts or claim any knowledge that could cure these deficiencies. Therefore, the demurrer to the Third Cause of Action as to the CRC Defendants is sustained without leave to amend.

Fourth Cause of Action: Abuse of Process

The demurrer to the fourth cause of action is sustained without leave to amend.

To succeed on an abuse of process claim, a plaintiff must prove: (1) the defendant had an ulterior motive or purpose for using a legal process, and (2) they committed a willful, improper act by using the process in an improper manner. *Coleman v. Gulf Insurance Group* (1986) 41 Cal.3d 782, 792; *see also* 5 Witkin, Cal. Proc. 6th Plead § 757 (2024). The common law tort arises when a defendant uses a court process for a purpose other than that for which the process was designed. It is a "misuse of the power of the court; it is an act done in the name of the court and under its authority for the purpose of perpetrating an injustice." *S.A. v. Maiden* (2014) 229 Cal.App.4th 27, 41. The court action may be the direct initiation of a legal proceeding by a summons or writ, or the initiation of ancillary proceedings such as attachment. *Meadows v. Bakersfield Savings & Loan Assn.* (1967) 250 Cal.App.2d 749, 753. Moreover, simply filing or maintaining a lawsuit for an improper purpose is not abuse of process, because abuse of process requires misuse of the rules the law affords litigants once they are in a lawsuit. *S.A., supra*, 229 Cal.App.4th at pp. 41-42.

Here, as a preliminary matter and as discussed above, CRC Defendants did not initiate any court proceeding against Plaintiff. Defendants initiated a non-judicial foreclosure. Therefore, the analysis fails before it begins as there was no "process" used against Plaintiff as required by the

elements of the tort. Further, the Complaint identifies no court proceeding initiated by CRC Defendants, so fails to state a claim.

Neither Plaintiff's Complaint nor his opposition state any facts or claim any knowledge that could cure these deficiencies. Therefore, the demurrer to the Fourth Cause of Action as to the CRC Defendants is sustained without leave to amend.

Fifth Cause of Action: Violation of Due Process

The demurrer to the fifth cause of action is sustained without leave to amend.

The Complaint fails to state a claim for a violation of Plaintiff's constitutional rights. "California's nonjudicial foreclosure does not constitute state action and is therefore immune from the procedural due process requirements of the federal Constitution." *Garfinkle v. Superior Ct.* (1978) 21 Cal.3d 268, 281. *See also Homestead Savings v. Darmiento* (1991) 230 Cal.App.3d 424, 428-429 [Civil Code § 2924 does not violate debtor's due process rights]. Further, Plaintiff's Complaint makes only conclusory allegations of state action, which are insufficient to invoke constitutional protections. The law is clear that no constitutional claims lie pertaining to the nonjudicial foreclosure procedure of the subject property. *See Gasperini v. Ctr. For Humans., Inc.*, (1996) 518 U.S. 415, 418; *Garfinkle, supra*, 21 Cal.3d at 281. Therefore, Plaintiff's Complaint fails to state a claim for a violation of due process.

Neither Plaintiff's Complaint nor his opposition state any facts or claim any knowledge that could cure these deficiencies. Therefore, the demurrer to the Fifth Cause of Action as to the CRC Defendants is sustained without leave to amend.

Sixth Cause of Action: Constructive Fraud

The demurrer to the sixth cause of action is sustained without leave to amend.

Constructive fraud, pleaded in the fifth cause of action, "is a unique species of fraud applicable only to a fiduciary or confidential relationship." *Prakashpalan v. Engstrom, Lipscomb & Lack*, 223 Cal.App.4th 1105, 1131 (2014), as modified on denial of reh'g (Feb. 27, 2014). As discussed above, Plaintiff does not allege facts demonstrating a fiduciary or confidential relationship between any defendant and Plaintiff. Therefore, Plaintiff fails to state a claim on that basis alone, and asserts no facts showing the cause could be cured by amendment. Moreover, "[i]n California, fraud must be pled specifically; general and conclusory allegations do not suffice." *Lazar v. Superior Court* (1996) 12 Cal.4th 631. Plaintiff fails to allege any fraudulent conduct by any defendant with the required particularity. The vague and conclusory allegations in Plaintiff's Complaint do not suffice to meet the required particularity standard and fails to support a cause of action for constructive fraud.

Neither Plaintiff's Complaint nor his opposition state any facts or claim any knowledge that could cure these deficiencies. Therefore, the demurrer to the Sixth Cause of Action as to the CRC Defendants is sustained without leave to amend.

Defendant Citibank's Demurrer

Defendant Citibank's ("Citibank") demurrer is sustained as to all six causes of action for failure to state facts sufficient to constitute a cause of action. Leave to amend is denied. Citibank's unopposed request for judicial notice is granted.

Judicial Notice

Plaintiff's request for judicial notice of recorded property records (Exhibits 1 and 2) is granted. Plaintiff's request for judicial notice of court records in this and other courts (Exhibits 3, 4, 5, 6, 7, and 8) is also granted.

Standard of Review

A demurrer tests the sufficiency of the factual allegations in the complaint and whether facts are pled with sufficient certainty and particularity. *See Banerian v. O'Malley* (1974) 42 Cal.App.3d 604, 610-611; *see also* Code Civ. Proc., § 430.10(e). Because a demurrer tests the legal sufficiency of a complaint, the plaintiff must show that the complaint alleges facts sufficient to establish every element of each cause of action. *See Rakestraw v. California Physicians Service* (2000) 81 Cal.App.4th 39, 43. Where a complaint fails to adequately plead all necessary elements of a cause of action, a demurrer is properly sustained. *See Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 884- 85. "Where a demurrer is sustained ... as to the original complaint, denial of leave to amend constitutes an abuse of discretion if the pleading does not show on its face that it is incapable of amendment." *Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848, 1852. Finally, while all material facts properly pled are generally accepted as true, "contentions, deductions or conclusions of fact or law" are not. *Evans v. City of Berkeley*, 38 Cal. 4th 1, 6 (2006).

A demurrer should be sustained without leave to amend if there is no reasonable possibility the complaint can be cured by amendment. *Levy v. Nelson* (2000) 83 Cal.App.4th 1061, 1063.) The burden is on the plaintiff to show in what manner he can amend his complaint and how the amendment would change the legal effect of his pleading. *Goodman v. Kennedy* (1976) 18 Cal 3d. 335.

Plaintiff's Complaint is Barred by Citibank's Unlawful Detainer Proceeding (CL0001902)

Plaintiff's complaint is barred by the Unlawful Detainer proceeding under the doctrine of res judicata. On December 9, 2005, Plaintiff obtained a loan from Home Loan Center, Inc. d/b/a Lending Tree Loans in the amount of \$353,000.00, secured by the Property via a Deed of Trust recorded on December 19, 2005. [Request for Judicial Notice ("RJN"), Exhibit 1]. Plaintiff defaulted on this loan and on May 22, 2024, a duly noticed foreclosure sale under the Deed of Trust secured by the Property was held. [RJN, Exhibit 2]. Citibank was the prevailing purchaser at the foreclosure sale and a Trustee's Deed Upon Sale transferring title of the Property to Citibank was recorded on July 5, 2024. *Id.*

Thereafter, on July 30, 2024, Citibank initiated an unlawful detainer proceeding in this Court seeking to obtain possession of the Property – Case No. CL0001902. [RJN, Exhibit 3]. Plaintiff,

who was the named defendant in the unlawful detainer complaint, filed a formal response thereto contesting the validity of the foreclosure sale and the unlawful detainer by advancing the same exact arguments he now seeks to adjudicate in the Complaint. [RJN, Exhibit 4]. Trial in the unlawful detainer matter was held in this Court on December 9, 2024, and on December 13, 2024, the Court issued its Memorandum Decision and Order Regarding Bench Trial, awarding possession of the Property to Citibank, along with entering Judgment in Citibank favor that same day. [RJN, Exhibit 5].

Res judicata operates as a bar to a second suit between the same parties on the same cause of action. *People v. Barragan* (2004) 32 Cal.4th 236, 252. Res judicata principles bar claims related to unlawful detainer actions because those claims could have been raised as defenses in the initial action. *Needelman v. DeWolf Realty Co., Inc.* (2015) 239 Cal.App.4th 750, 759-760. "The crucial issue in the case before us is whether plaintiff did have a 'fair adversary hearing' in the municipal court, one that resulted in a judgment on the merits of his case, precluding his subsequent suit." A party can have a full adversary hearing in an unlawful detainer action where all issues involved in a subsequent proceeding are determined. *Wood v. Herson* (1974) 39 Cal.App.3d 737, 745 (citing *Gonzalez v. Gem Properties, Inc.* (1974) 37 Cal.App.3d 1029, 1033.)

Here, the elements of res judicata have been met: 1) the present action is on the same cause of action as the prior proceeding, and Plaintiff's claims arise solely from the alleged invalidity of the foreclosure sale and Citibank's actions in proceeding with the unlawful detainer case; (2) the prior proceeding resulted in a final judgment on the merits (*see* RJN Exhibit 5); and (3) the parties in the present action or parties in privity with them were parties to the prior proceeding." *Bullock v. Philip Morris USA, Inc.* (2011) 198 Cal.App.4th 543, 557. Plaintiff has had his day in court and so has litigated or had the opportunity to litigate the same matter in a former action, and "should not be permitted to litigate it again to the harassment and vexation of his opponent." *Saunders v. New Capital for Small Businesses, Inc.* (1964) 231 Cal.App.2d 324, 330-331.) Public policy and the interest of litigants alike require that there be an end to litigation. *Id.*

Plaintiff's Complaint Fails to State Facts Sufficient to Constitute Any Cause of Action

First Cause of Action: Breach of Judicial Duty

The demurrer to the first cause of action is sustained without leave to amend.

Preliminarily, the cause of action does not allege any facts relating to Citibank at all. Secondly, there is no cause of action for "breach of judicial duty." However, if a demurrer is "made on the ground that "the pleading does not state facts sufficient to constitute a cause of action" pursuant to the Code of Civil Procedure section 430.10 (e), it is not necessary that the cause of action be the one intended by plaintiff. So long as the essential facts of some valid cause of action are alleged, the complaint is good against a general demurrer." *Quelimane Co., Inc. v. Stewart Title Guar. Co.* (1988) 19 Cal.4th 26, 38-39; *Adelman v. Associated Internat. Ins. Co.* (2001) Cal.App.4th 352, 359. Assuming that Plaintiff meant to assert facts related to Citibank and to plead "breach of fiduciary duty," the Court will examine that cause of action as well.

The elements of a cause of action for breach of fiduciary duty are: “(1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach.” *Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086; *see also Benasra v. Mitchell Silberberg & Knupp LLP* (2004) 123 Cal.App.4th 1179, 1183. The Complaint does not plausibly allege facts showing that any defendant owed plaintiff a fiduciary duty. Mortgage lenders, loan servicers, and deed of trust trustees do not owe borrowers a fiduciary duty. *See Nymark v. Heart Fed. Sav. & Loan Assn.*, (1991) 231 Cal.App.3d 1089, 1093 (“The relationship between a lending institution and its borrower-client is not fiduciary in nature.”); *Hatch v. Collins*, 225 Cal.App.3d (1990) 1104, 1111-12, modified (Nov. 27, 1990) (rejecting argument that a deed of trust trustee stands in a fiduciary relationship to the trustor). In the absence of facts showing any moving defendant owed plaintiff a fiduciary duty, plaintiff has no claim for breach of fiduciary duty.

Thus, even affording every inference in favor of Plaintiff, as the Court must on demurrer, the Court concludes for the purposes of the demurrer that Plaintiff’s allegations fail to state facts constituting a cause of action for breach of fiduciary duty against Defendant Citibank, and the demurrer must be sustained without leave to amend.

Second Cause of Action: Breach of California Commercial Code

The demurrer to the second cause of action is sustained without leave to amend.

This cause of action also fails to reverence Citibank at all, and is solely focused on the senior lien’s foreclosure sale. Moreover, California Commercial Code does not apply to non-judicial foreclosures. *Debrunner v. Deutsche Bank National Trust Company* (2012) 204 Cal.App.4th 433, 441. Non-judicial foreclosure of deeds of trust against real property is governed exclusively by Civil Code §§2924-2924k, which provide a comprehensive statutory framework for such foreclosures which is intended to be exhaustive. *Id.*, *see also Moeller v. Lien* (1994) 25 Cal.App.4th 822, 830-934; *I.E. Associates v. Safeco Title Ins. Co.* (1985) 39 Cal.3d 281, 285 [216 Cal.Rptr. 438, 702 P.2d 596] “Because of the exhaustive nature of this scheme, California appellate courts have refused to read any additional requirements into the non-judicial foreclosure statute.” *Lane v. Vitek Real Estate Indus. Group* (E.D.Cal.2010) 713 F.Supp.2d 1092, 1098. Plaintiff has alleged no facts allowing the Court to overrule a demurrer because there is no cause of action available under the California Commercial Code or the UCC.

Neither Plaintiff’s Complaint nor his opposition state any facts or claim any knowledge that could cure these deficiencies. Therefore, the demurrer to the Second Cause of Action as Defendant Citibank is sustained without leave to amend.

Third Cause of Action: Civil Conspiracy

The demurrer to the third cause of action is sustained without leave to amend.

Civil conspiracy is not an independent cause of action. Plaintiff has alleged no facts demonstrating that Citibank participated in the formation and operation of any alleged conspiracy, nor does Plaintiff allege any underlying tortious conduct by Citibank. He alleges “procedural violations under California Civil Code § 2924,” in a conclusory fashion with no elaboration or particularity,

but also alleges that Citibank is a Bona Fide Purchaser, stating, “Citibank...unknowingly participat[ed] in a flawed foreclosure process.” (Complaint at 5:18.) Therefore, Plaintiff failed to plead any unlawful conduct. Further, Citibank did not owe a legal duty to Plaintiff, and so was incapable of committing the tort. *Das v. Bank of America, N.A.* (2010) 186 Cal.App.4th 727, 740, citing *Nymark v. Heart Fed. Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089 1096. Even affording every inference in favor of Plaintiff, as the Court must on demurrer, the Court concludes for the purposes of the demurrer that Plaintiff’s allegations fail to state facts constituting any cause of action involving civil conspiracy, regardless of whether it is one that was intended by Plaintiff.

Neither Plaintiff’s Complaint nor his opposition state any facts or claim any knowledge that could cure these deficiencies. Therefore, the demurrer to the Third Cause of Action as to the Defendant Citibank is sustained without leave to amend.

Fourth Cause of Action: Abuse of Process

The demurrer to the fourth cause of action is sustained without leave to amend.

To succeed on an abuse of process claim, a plaintiff must prove: (1) the defendant had an ulterior motive or purpose for using a legal process, and (2) they committed a willful, improper act by using the process in an improper manner. *Coleman v. Gulf Insurance Group* (1986) 41 Cal.3d 782, 792; see also 5 Witkin, Cal. Proc. 6th Plead § 757 (2024). The common law tort arises when a defendant uses a court process for a purpose other than that for which the process was designed. It is a “misuse of the power of the court; it is an act done in the name of the court and under its authority for the purpose of perpetrating an injustice.” *S.A. v. Maiden* (2014) 229 Cal.App.4th 27, 41. The court action may be the direct initiation of a legal proceeding by a summons or writ, or the initiation of ancillary proceedings such as attachment. *Meadows v. Bakersfield Savings & Loan Assn.* (1967) 250 Cal.App.2d 749, 753. Moreover, simply filing or maintaining a lawsuit for an improper purpose is not abuse of process, because abuse of process requires misuse of the rules the law affords litigants once they are in a lawsuit. *S.A., supra*, 229 Cal.App.4th at pp. 41-42.

Here, Plaintiff fails to plead any facts to support his claims. Additionally, Plaintiff’s claim fails because the unlawful detainer action resulted in a judgment for Citibank, and thus Plaintiff has not and cannot set forth any facts that Citibank acted outside the purpose of the unlawful detainer action. [RJN, Exhibits 3-5].

Neither Plaintiff’s Complaint nor his opposition state any facts or claim any knowledge that could cure these deficiencies. Therefore, the demurrer to the Fourth Cause of Action as to Defendant Citibank is sustained without leave to amend.

Fifth Cause of Action: Violation of Due Process

The demurrer to the fifth cause of action is sustained without leave to amend.

The Complaint fails to state a claim for a violation of Plaintiff’s constitutional rights. “California’s nonjudicial foreclosure does not constitute state action and is therefore immune from the procedural due process requirements of the federal Constitution.” *Garfinkle v. Superior Ct.* (1978)

21 Cal.3d 268, 281. *See also Homestead Savings v. Darmiento* (1991) 230 Cal.App.3d 424, 428-429 [Civil Code § 2924 does not violate debtor's due process rights]. Further, Plaintiff's Complaint makes only conclusory allegations of state action, which are insufficient to invoke constitutional protections. The law is clear that no constitutional claims lie pertaining to the nonjudicial foreclosure procedure of the subject property. *See Gasperini v. Ctr. For Humans., Inc.*, (1996) 518 U.S. 415, 418; *Garfinkle, supra*, 21 Cal.3d at 281. Therefore, Plaintiff's Complaint fails to state a claim for a violation of due process.

Neither Plaintiff's Complaint nor his opposition state any facts or claim any knowledge that could cure these deficiencies. Therefore, the demurrer to the Fifth Cause of Action as to Defendant Citibank is sustained without leave to amend.

Sixth Cause of Action: Constructive Fraud

The demurrer to the sixth cause of action is sustained without leave to amend.

Constructive fraud, pleaded in the fifth cause of action, "is a unique species of fraud applicable only to a fiduciary or confidential relationship." *Prakashpalan v. Engstrom, Lipscomb & Lack*, 223 Cal.App.4th 1105, 1131 (2014), as modified on denial of reh'g (Feb. 27, 2014). As discussed above, Plaintiff does not allege facts demonstrating a fiduciary or confidential relationship between any defendant and Plaintiff. Therefore, Plaintiff fails to state a claim on that basis alone, and asserts no facts showing the cause could be cured by amendment. Moreover, "[i]n California, fraud must be pled specifically; general and conclusory allegations do not suffice." *Lazar v. Superior Court* (1996) 12 Cal.4th 631. Plaintiff fails to allege any fraudulent conduct by any defendant with the required particularity. The vague and conclusory allegations in Plaintiff's Complaint do not suffice to meet the required particularity standard and fails to support a cause of action for constructive fraud.

Neither Plaintiff's Complaint nor his opposition state any facts or claim any knowledge that could cure these deficiencies. Therefore, the demurrer to the Sixth Cause of Action as to Defendant Citibank is sustained without leave to amend.