

1 James P. Cilley, Esq. (SB#168118)
Mark A. Schmuck, Esq. (SB#205164)
2 **TEMMERMAN, CILLEY & KOHLMANN, LLP**
140 Town and Country Drive, Suite A
3 Danville, California 94526
Tel: (925) 529-3999
4 Fax: (925) 837-7149

5 Attorney for Peter Ho
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO

11 In Re the Matter of the
12 TRUST A UNDER THE JAMES F. HO
13 AND GRACE C. HO DECLARATION OF
TRUST DATED SEPTEMBER 11, 1992
14 as amended

Case Number: **17PRO00973**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO MOTION
TO EXPUNGE NOTICES OF PENDING
ACTION**

Date: January 14, 2020
Time: 9:00 a.m.
Dept: 28
Judge: Hon. George A. Miram

17 PETITIONER PETER C. HO, TRUSTEE
18 OF TRUST A OF THE JAMES F. HO
AND GRACE C. HO DECLARATION OF
19 TRUST DATED SEPTEMBER 11, 1992
as amended

20 Petitioner,

21 vs.

22 DEBBY CHANG, and ,DOES 1 through
23 20, inclusive

24 Respondents.
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I.

INTRODUCTION

The instant case is perhaps one of the most egregious cases of financial elder abuse, fraud and unjust enrichment that could be portrayed. Over the course of many years, Respondent Debby Chang (“Debby”) took advantage of James Ho, deceased (“James”). Debby’s dishonesty resulted in James being deprived of actual title to two parcels of real property, one in Los Angeles and one in Redwood City. With regard to the Redwood City property, after having taken over \$1.1 million in cash from James, *Debby unilaterally and without James’ knowledge or consent changed the purchase contract to the Redwood City property from Debby and James to only Debby*. But for her fraudulent act of changing the purchase contract, James would be on title to the Redwood City property to this day.

With regard to the Los Angeles property, Debby acknowledges that James was, in fact, on title, but, *with the help of her personal estate planning attorney*, Debby convinced James, who was not represented by counsel, to transfer title to the Los Angeles property solely to Debby. Debby’s claim that James never owned the Los Angeles property is simply not credible. The cash transactions that took place leading up to the purchase of this property clearly demonstrate James’ ownership of the Los Angeles property, and, again, but for Debby’s dishonest way in which she caused title to be changed, James would be a co-owner of the Los Angeles property to the date of his death.

Thus, Debby’s Motion to Expunge Notices of Pendency of Action must be denied. The claims before the Court by Peter Ho, Trustee of Trust A of the James F. Ho and Grace C. Ho Declaration of Trust Dated September 11, 1992 as amended (“Peter”) are clearly “real property claims” that support the recording of lis pendens against both real properties at issue here. Furthermore, the facts that support Peter’s claims to actual title to both properties clearly demonstrate that he is likely to succeed on the merits of his claims.

Therefore, for the following reasons, the instant Motion to Expunge should be denied and Peter should be awarded his attorney’s fees for opposing this Motion.

II.

STATEMENT OF FACTS

A. Relevant Background Facts.

James F. Ho and Grace C. Ho ("James" and "Grace" respectively), were married in 1963. They had

1 three children, Peter Ho ("Peter"), Shan-Yuan Ho ("Shan-Yuan"), and Della Lau ("Della").

2 During their marriage, James and Grace executed The James F. Ho and Grace C. Ho Declaration of
3 Trust dated September 11, 1992, as Settlor and initial co-trustees. Upon the death of the first spouse, the
4 Trust was to be divided into two subtrusts, Trust A (The Survivors Trust) and Trust B (The Family Trust).
5 After 32 years of marriage Grace predeceased James in 1995.

6 The trust was amended twice, first in 1995 to reflect Grace's death and to eliminate a charitable
7 devise, and again in 2002 to modify the trustee provision naming Peter as successor trustee. James' children
8 remained the sole remainder beneficiaries following James' death.

9 Shortly after Grace's death, James began spending more time with Debby Chang ("Debby"). The two
10 had an on and off relationship for most of James' remaining years. On several occasions Debby suggested that
11 she and James get married, but he always refused.

12 For the majority of the time after Grace's death, Debby and James lived in separate residences. James
13 resided at his family home located at 148 CSM Drive, San Mateo (the "CSM Property") and Debby resided
14 at her home located at 1319 Brewster Court, El Cerrito (the "Brewster Property"). The pair resided in their
15 respective homes up until the final years of James' life when Debby moved in with James; a time when his
16 mental and physical condition severely deteriorated making him more vulnerable to Debby.

17 **B. The Onset of James' Illnesses.**

18 In 2006, at the age of 73, James was diagnosed with a brain tumor that was pressing on his frontal
19 lobe, which is central to decision making, impulse control, motor function and memory. The tumor caused
20 James' functioning to deteriorate over time. By 2012, James' cognition was impaired and only got worse as
21 the years progressed. James grew increasingly dependent on Debby as he got weaker and less coherent.

22 During most of James' entire marriage to Grace, and for almost two decades after Grace's death,
23 James lived at the CSM Property. James' children also grew up in this residence and the house was very
24 sentimental to them all. James always said he would not sell the house. He also knew that his children wanted
25 to keep the house in the family.

26 James turned 81 in 2014, by which time his age and brain tumor had caught up with him. The tumor
27 had increased in size and was compressing his frontal lobe even more. James realized his memory was
28 deteriorating.

1 James had always been wary of his finances, and he watched them closely. Debby often complained
2 that he was "cheap". In 2014, Debby was able to pressure James into selling the CSM Property, his longtime
3 family home. This sale resulted in James paying more than \$180,000.00 in capital gains taxes. James always
4 said that he would not sell his CSM Property. At the very least, James would never have sold the CSM
5 Property without first consulting his children, whom he trusted. Instead, Debby convinced James not to
6 consult his children on this major decision.

7 After selling the family home James lived in various residences in Foster City with Debby.

8 By June 2016, James' memory loss got worse, and his walking also deteriorated substantially. James
9 was also having difficulty with his hands in that he could not hold chopsticks or pick up a pen. Debby
10 grudgingly took care of James, often complaining to James as well as others that she was not compensated
11 enough.

12 Beginning July 2016, James endured 27 intensive rounds of radiation for his brain tumor which caused
13 swelling in his brain. Peter took his father to all but two of the treatments. The treatments and medication
14 left James very weak and fatigued. James became increasingly dependent on Debby for day to day necessities.

15 Around November of 2016, according to Debby, James was acting like a three year old child and
16 there was no way he could get better.

17 By December 2016 James was confined to a wheelchair and needed help with everything. That same
18 month James was diagnosed with multiple myeloma, a malignant, aggressive and fatal form of blood cancer.
19 James began chemotherapy treatment in hopes of prolonging his life. Debby was still living with James at this
20 time and he grew even more dependent on her.

21 By this point, James could not reliably retain information for very long and his short-term memory
22 was failing. Care instructions had to be given to Peter as James would forget things shortly after being told.
23 James' children tried to speak with their father about moving in with one of them, but he always responded
24 that he did not want to inconvenience them. He assured them that Debby would take care of him.

25 James' condition continued to get worse throughout 2017. The swelling in his brain worsened and
26 his neuro oncologist reported that his cognitive function had declined severely. James was also suffering more
27 memory loss. James' financial advisor grew concerned when in early 2017 when James wanted to access
28 accounts that had been closed for years, and was making strange requests. Debby herself even told Peter that

1 it was getting harder to take care of James. James was more unstable and even fell a few times. James was
2 unable to climb up stairs and often would not bathe as a result.

3 **C. Purchase of the Albany Property and Los Angeles Property.**

4 Debby's systematic draining of James' finances began in earnest in 2002. At that time, James took
5 out a \$250,000.00 mortgage for Debby against the CSM property, as a loan to Debby. Peter does not know
6 the purpose of the loan, and Debby claims that it was for the purchase of property located in Albany
7 (discussed below), but this is clearly not true. Nevertheless, Debby claims that she repaid the loan on
8 February 6, 2003 by writing a check directly to Washington Mutual, noting in the memo she was "pay[ing]
9 off loan #0039033147 address 148 CSM Drive." It is unclear what the loan was used for and Debby is far
10 too mendacious to provide a reliable account. While at her deposition, feigning an inability to speak English
11 after a series of different explanations, she ultimately simply stated that James intended the loan to be a "gift."

12 Debby attaches checks drawn on Washington Mutual account no. XXXX 9922 to her Declaration
13 as Exhibit 12, that she claims is payment of her own money to pay down a line of credit of James. That
14 account was a joint account between Debby and James. Most of the money deposited into that account was
15 rental income of both Debby and James.

16 Thereafter, James purchased a parcel of rental real property located at 718 Evelyn Ave, Albany (the
17 "Albany Property"). The Albany Property was purchased in October 2003, approximately eight months after
18 the earlier loan was repaid by Debby. The purchase price of the Albany Property was \$720,000.00. James
19 and Debby took title as tenants in common. James supplied \$189,267.00 for the down payment for the
20 purchase of the Albany Property, while the rest was financed through a \$540,000.00 mortgage in the names
21 of James and Debby.

22 The Albany Property was sold in April 2005 for \$1,100,000.00, with net sales proceeds of
23 \$347,665.81. Debby claims that the sale of the Albany Property was for the purpose of completing a 1031
24 exchange for a rental property in Los Angeles located at 1622-1627 McCollum Avenue, Los Angeles (the
25 "LA Property"). The LA property was purchased in August of 2005 for \$995,000.00. The initial deposit and
26 down payment were paid from the sales proceeds from the Albany Property, and the rest of the purchase was
27 financed with a \$646,750.00 mortgage. James and Debby took title to the LA property as tenants in
28 common.

1 Debby asserted that James had no ownership interest in the LA Property and that the only reason why
2 James was on title was because of the 1031 exchange. Debby also asserted that James had no ownership
3 interest because the loan that James obtained in 2002 against the CSM Property was for the purpose of
4 purchasing the Albany Property and that she repaid that loan. Debby's position is impossible because she
5 repaid the \$250,000.00 loan eight months before she and James purchased the Albany Property. Her
6 testimony to the contrary is simply not credible. Thus, the only sources of funds used to purchase the Albany
7 Property and the LA Property were James funds and mortgage loans.

8 When questioned about this transfer, Debby asserted that the real property transactions were designed
9 to help Debby build her credit and to help with her taxes. Then Debby claimed that the transfer of the LA
10 Property was intended by him to be a gift.

11 After an initial consultation on April 17, 2006, Debby's attorney, Paul Malone, assisted Debby in
12 transferring James' interest in the McCollum property to her trust. **On April 21, 2006, James was induced**
13 **to execute a deed transferring his interest in the McCollum property to Debby Chang as trustee of the**
14 **Debby Chang 2003 Revocable Trust, initially created May 21, 2003.** In a letter, attorney Malone wrote
15 to Debby stating that he had informed the County Recorder that the transfer by James to Debby's trust was
16 a "gift transfer" for no consideration, thus it was exempt from transfer taxes. James was not represented by
17 counsel in this transaction. As with all other transfers referenced herein, the purported "gift" was a product
18 of Debby's undue influence.

19 Until the spring of 2016, both Debby and James claimed one-half of the rental income from the LA
20 Property on their respective income tax returns, even though James never received any of that income. In the
21 spring of 2016, Debby convinced James to allow her to claim all of the interest in the McCollum Property
22 – James was too dependent on Debby to refuse.

23 **D. Purchase of the Redwood City Property.**

24 In February 2017, Debby convinced James to give her a cashiers check for \$1,100,000. By this point
25 James's cognitive function and memory had severely deteriorated. Debby received almost all of the cash in
26 James' Trust, as reflected in a statement from December 31, 2016. This payment ultimately went towards the
27 purchase of a new residence located in Redwood City.

28 That same month, Debby and her real estate agent began making offers for the purchase of a

1 residence located at 229 Fulton Street in Redwood City (the "Redwood City Property"). James's signature
2 and initials as a buyer of the Redwood City Property appear along with Debby's on dozens of seller disclosure
3 documents.

4 Peter learned that around this time Debby had been pressuring James to lend her funds to purchase
5 a home, which Debby claimed that she would repay on his death or sooner. Peter was opposed to this, but
6 he knew how dependent his father was on Debby. Given the debilitated condition his father was in, his care
7 was paramount. Peter reasoned that a "loan was a loan" - it had to be repaid, and if necessary Peter would
8 make sure that it was. Most importantly, James was to be listed as an owner on title to the Redwood City
9 property to secure the loan.

10 Debby and James made an offer on the Redwood City Property on February 15, 2017. That same day
11 a mortgage advisor wrote a letter to Debby and James for a pre-approved loan. In the comments he wrote
12 "buyer has excellent credit, stable employment and proof of seasoned funds..." However on a document from
13 Old Republic Title company dated March 25th 2017, Debby stated she had been retired for the past 10 years,
14 therefore refuting the possibility she had stable employment.

15 Debby and James entered in to a purchase agreement on February 17, 2017. The Redwood City
16 Property was purchased for \$2,235,000.00. James wrote a check to Old Title Republic Company for the
17 \$67,050.00 deposit on February 19, 2017. On February 22, 2017 Debby accompanied James to the bank and
18 caused him to issue her a cashier's check for \$1,100,000.00, an amount equal to the value of almost the entire
19 Trust assets.

20 Later that same day, Debby committed mortgage fraud by applying for a loan with Sterling Bank. The
21 loan application was in Debby's name only, and she stated her gross base monthly income as being \$18,500.00
22 plus the rents received from her rental properties. Debby even went so far as getting her friend to fill out an
23 employment verification to match the information on the loan application. It is undisputed that both Debby
24 and her friend committed mortgage fraud in order to obtain the loan. Despite the information on the loan
25 application and the verification, Debby was adamant that she was retired since 2001, including in her
26 Declaration filed in support of this Motion (Chang Decl. ¶ 4, p.1:10) and that she only helped her friend's
27 business out by providing advice on an informal basis, receiving less than \$1000 a year. Debby claims that
28 the information on the loan application regarding her income is inaccurate and that she did not provide it to

1 Geoffrey Garcia, the representative of Sterling Bank that helped her fill out the loan application. This
2 assertion is directly and emphatically contradicted by Mr. Garcia, who states that Debby provided all of the
3 data that was included in the loan application, including that she received monthly employment income of
4 \$18,500.00 per month from Evergreen Life Company and that James was Debby's husband.

5 **After obtaining almost \$1,200,000.00 from James, and despite the fact that James was always**
6 **on the purchase contract for the Redwood City Property, Debby had an addendum drawn up on**
7 **March 6, 2017 removing James from the purchase contract**, thereby preventing James from being named
8 on title as an owner of the Redwood City Property.

9 Thereafter, James wrote a note on March 20, 2017, stating "I borrowed 1 million from James Ho,
10 without interest. Will return at appropriate time." When the subject of the loan arose in a later conversation
11 with Peter, Debby said she was not going to pay anything because the money was a gift from James.

12 Around the time the Redwood City Property was purchased, James was unable to climb stairs or do
13 much for himself. The Redwood City Property was very ill suited for someone in James' condition.
14 Nevertheless, Debby and James moved in to the property in June 2017. All of the bedrooms were located on
15 the second floor. James struggled to climb the stairs to the second floor bedroom due to his fatigue and
16 weakness from two forms of cancer and their treatments. Very shortly after moving into the Redwood City
17 Property, James ended up sleeping on a cot in a corner of the living room next to the kitchen.

18 Debby even made James pay rent to live in the Redwood City Property despite his having funded all
19 of the purchase price (Rent check in attached as Exhibit E). In July 2017, Peter, again questioned Debby
20 about when she intended to repay the loan. Debby casually replied that the money had not been a loan but
21 a gift from James. Peter demanded that the money must be returned.

22 Debby and Jeanny Ho, Peter's wife, exchanged texts whereby Debby told Jeanny that she would put
23 a lien on her Brewster Property to repay the loan from James. However, Debby never had any intent on doing
24 so and refused to do so.

25 **E. Certificate of Independent Review.**

26 Apparently, Debby became concerned about James' family's suspicions of her transactions with their
27 father. As a result, in August 2017 Debby began looking for an estate planning attorney who would be
28 willing to certify that the \$1,167,050.00 in money paid by James to Debby was a gift. Reinhard Oesterle, who

1 is the long-time boyfriend of Debby's daughter, Rita, assisted Debby in her search. He found attorney John
2 Martin. After an initial phone call with Mr. Martin, Reinhard sent an email informing him that he spoke with
3 Debby and believed there was a good chance Debby could "convince" James to do whatever it takes to get
4 a Certificate of Independent Review that would legitimize the gift after-the-fact. A meeting was then arranged
5 without James' knowledge. At his deposition, attorney Martin admitted that this was the first Certificate of
6 Independent Review he had ever prepared. Moreover, incredibly, he admitted that the only time that he
7 spoke with James was during a meeting for the preparation of a Certificate of Independent Review and over
8 the phone approximately one hour prior. Attorney Martin's assignment was clearly defined via his contacts
9 with his true client, Debby (the undue influencer), and her son-in-law. Ultimately, Debby and her son-in-law
10 "scheduled an appointment" for attorney Martin to travel to the Redwood City Property home to actually talk
11 to James for the first and only time.

12 At approximately 10:00 p.m. the night before the meeting, Debby told Peter for the first time about
13 the meeting and spoke to James, who was very confused about the entire situation. James knew nothing
14 about the meeting, not even what it concerned. On the day of the meeting, Debby would not let Peter speak
15 to his father or be alone with him. Peter then cancelled the appointment acting as James' attorney-in-fact.
16 Debby found out about the cancelled appointment and forced a very confused James to reinstate the
17 appointment.

18 John Martin still made the house call. His notes from the meeting reflect that James was generally
19 confused about everything, and he could not remember much, often changing his responses to several
20 questions. James couldn't even remember where he lived or what he owned. After speaking with James, who
21 was clearly confused and lacking cognition, John Martin determined that James had the capacity and ability
22 to make the intervivos gift to Debby. He prepared and signed a Certificate of Independent Review, claiming
23 that James did, in fact, intend to make the \$1.1 million gift to Debby.

24 The day after the meeting, Peter found out about what happened and grew very concerned about his
25 father. James stayed with Peter that night. Two days after the meeting, while James was still staying with
26 Peter, Debby left a voicemail for Peter's wife in which she said, "I can no longer take care of [James] anymore
27" She also confirmed this in a text to Peter, adding, "besides I want to take a vacation to Taiwan and LA."
28 This clearly evidenced Debby's intentions: she got what she wanted from James and no longer needed him

1 around. Debby made no effort to see James until the day he died on September 5, 2017.

2 **III.**

3 **LEGAL DISCUSSION**

4 **A. Legal Standards for a Motion to Expunge Lis Pendens.**

5 The recordation of a lis pendens is permitted in any action by a “claimant” who has a “real property
6 claim”. Code of Civ. Proc. § 405.1. A “real property claim” is one which, if meritorious, would affect title
7 to, or the right to possession of, specific real property. Code of Civ. Proc. § 405.4.

8 **B. Peter’s Amended Petition Asserts Real Property Claims.**

9 If there is any case that justifies the allowance of lis pendens for a constructive trust claim, this is the
10 case. The above-described facts demonstrate Debby’s active involvement in schemes that not only deprived
11 James of money, but also deprived him of *actual title to the LA and Redwood City Properties*.

12 Debby’s Points and Authorities attempts to establish a blanket rule that all cases that allege a cause
13 of action for imposition of a constructive trust cannot support the recording of a lis pendens. However, there
14 is no authority to support such a blanket rule. Even Debby’s Points and Authorities acknowledges that the
15 analysis for the establishment of a “real property claim” must be done on a case-by-case basis:

16 There is no reason to believe the Legislature intended to change the scope of
17 the term “real property claim.” **The State Bar Report that supported the**
18 **legislation disclaimed any definitional strictures: it stated that the term**
“neither includes nor excludes claims of constructive trust or equitable
lien.”

19 Lewis v. Superior Court (1994) 30 Cal. App. 4th 1850, 1864 (emphasis added) (quoted in Debby’s MPA,
20 p.9:7-11). In effect, the determination of whether a lis pendens is properly recorded depends on whether the
21 underlying claims are bona fide claims to the ownership or possession of real property or whether the claim
22 is being used merely to secure a potential money judgment. See, e.g., Wardley Development Inc. v. Superior
23 Court (1989) 213 Cal. App. 3d 391, 394.

24 One such case that approved the filing and recording of a lis pendens on a constructive trust claim
25 is Coppinger v. Superior Court (1982) 134 Cal. App. 3d 883. In Coppinger, Defendants sold their house to
26 Plaintiff and disclosed the prior existence of a termite infestation that the Plaintiffs, through their real estate
27 agent, represented was mitigated and guaranteed for one year. The Defendants used the proceeds from the
28 sale of the house to purchase a new home. Less than a year later, Plaintiff discovered that the termite

1 infestation was not, in fact, mitigated and had spread to other areas of the house. Plaintiff also discovered
2 that the termite warranty was not actually a one-year warranty, but only a couple of months. Plaintiff sued
3 alleging several causes of action, including the imposition of a constructive trust over the Defendants'
4 subsequently-purchased home. In conjunction with the lawsuit, Plaintiff recorded a lis pendens on the later-
5 purchased real property. The trial court denied the Defendants' motion to expunge the lis pendens.

6 The Court of Appeals affirmed the part of the trial court's decision that the Plaintiff's claim was one
7 that affected title to or the right to possession of real property. The Court's reasoning was as follows:

8 **Constructive trust is an equitable remedy to prevent unjust enrichment**
9 **and enforce restitution, under which one who wrongfully acquires**
10 **property of another holds it involuntarily as a constructive trustee, and**
11 **the trust extends to property acquired in exchange for that wrongfully**
12 **taken.** (Haskel Engineering & Supply Co. v. Hartford Acc. & Indem. Co.
13 (1978) 78 Cal. App. 3d 371, 375; Kraus v. Willow Park Public Golf Course
14 (1977) 73 Cal. App. 3d 354, 373.) An action to impose a constructive trust
15 on real property has been held to be an action for the recovery of real property
16 within the meaning of Code of Civil Procedure section 318 prescribing a
17 five-year statute of limitations. (Marshall v. Marshall (1965) 232 Cal. App. 2d
18 232, 250.) We are satisfied that an action to impose a constructive trust on
19 real property is an action affecting title to or possession of real property.

20 Id. at 891 (emphasis added).

21 The allegations set forth in the Amended Petition, and the facts set forth in this Opposition,
22 demonstrate that the constructive trust claim and the associated lis pendens for the Redwood City Property
23 and the LA Property are much more than attempts by Peter to secure a future judgment for money damages.
24 In her Points and Authorities, Debby misconstrues the claims made in the constructive trust cause of action.
25 She focuses on the claims that she stole money from James, but completely ignores the facts that give rise
26 to claims that she **actively and fraudulently** deprived James of *actual title* to the LA and Redwood City
27 Properties. Rather, the constructive trust claim that supports the two lis pendens in this matter are designed
28 to secure the transfer of the LA Property and the Redwood City Property to remedy the wrongdoings
committed against James by Debby.

A constructive trust is an involuntary trust that is designed to prevent fraud and unjust enrichment.
Martin v. Kehl (1983) 145 Cal. App. 3d 228, 238. Upon a proper showing of proof of fraud or unjust
enrichment, a constructive trust may be applied to *either* real or personal property. See Weiss v. Marcus
(1975) 51 Cal. App. 3d 590, 594, 600.

The existence of a real property claim with regard to the Redwood City Property is particularly

1 compelling. The Amended Petition alleges, and the underlying evidence proves, that when James paid the
2 \$1.1 million to Debby for purposes of purchasing the Redwood City Property, he was to be named *as a*
3 *purchaser*. The Amended Petition alleges, and the underlying evidence proves, that had Debby not
4 unilaterally manipulated the purchase agreement to change the buyer to remove James from the contract,
5 James would have been an owner of record to and including the date of his death. Furthermore, the
6 allegation in the Amended Petition concerning the meeting that he had with attorney John Martin that
7 purportedly confirmed his intention to make a gift of \$1.1 million. That allegation includes a statement by
8 James of his belief that he actually owned the Redwood City property. Debby's behavior clearly establishes
9 James' right (and Peter's right, as the trustee of James' trust) to *title* to the Redwood City Property, not just
10 because he paid for it, but because he actually believed that he was buying it for himself.

11 The same analysis is true with regard to the LA Property, except in that instance James *actually*
12 *owned title* before Debby caused him to transfer it to Debby's trust *with the help of her personal lawyer*.
13 Peter's claim in that regard is simply to undo what Debby wrongfully caused to happen with the transfer of
14 title to her. There is no more clear "real property claim" than Peter's claim to revert title back to his father.

15 **C. Peter is Likely to Succeed on the Merits of His Claims.**

16 In addition, a lis pendens will not be expunged if the claimant (in this case, Peter) can show by a
17 preponderance of the evidence the probable validity of the real property claim. See Code of Civ. Proc. §
18 405.32. "Probable validity" of a claim means that it is more likely than not that the claimant will obtain a
19 judgment against the respondent on the claim. Code of Civ. Proc. § 405.3.

20 In this case, the overwhelming evidence supports the conclusion that Peter will prevail at trial on all
21 of his claims against Debby, not just on his constructive trust claim. With regard to the Redwood City
22 Property, there is no reasonable dispute that the purchase price was supplied entirely by James. The evidence
23 concerning Debby's attempt to obtain a loan from Sterling Bank demonstrates her willingness to commit
24 mortgage fraud by her representing that she was gainfully employed (which she was not) and that she was
25 James' wife (which she never was). Furthermore, the fact that Debby *unilaterally and without James'*
26 *knowledge or consent* changed the purchase contract to remove James as a purchaser of the Redwood City
27 Property on the purchase contract. Finally, and perhaps most damning for Debby, is the undisputed and
28 undisputable fact that she and her son-in-law procured a Certificate of Independent Review that purportedly

1 confirmed James' intent to give the \$1.1 million in purchase money to Debby as a gift. Undercutting that
2 Certificate, of course, is the statement by Debby's son-in-law to attorney Martin that Debby could convince
3 James to do anything and the fact that James actually believed that he *owned* the Redwood City Property at
4 the time that he met with Mr. Martin.

5 Curiously, Debby's declaration only addresses her allegations concerning the purchase and eventual
6 transfer to her of the LA Property. She does not address the circumstances surrounding the purchase of the
7 Redwood City Property at all. This is, perhaps, an acknowledgment that her actions with regard to the
8 Redwood City property are entirely indefensible.

9 Debby's attempt at an explanation of how the purchase of the LA Property simply does not make any
10 sense whatsoever, and is also wildly inconsistent. For example, Debby claims in Paragraph 12 of her
11 Declaration in support of her Motion that she paid down a \$200,000.00 line of credit with funds from a
12 Washington Mutual checking account (no. XXXX 9505) that she claims was her own. However, a careful
13 look at Exhibit 12 of her Declaration demonstrates that many of those payments were made from a *joint*
14 account of Debby and James (no. XXXX 9922). Most of the deposits into that account were rental deposits
15 of *both* Debby and James. (See Ho Decl. ¶ 22). Thus, this attempt at establishing her eventual individual
16 ownership of the LA Property is simply not credible.

17 The fact of the matter here is that Debby actually acknowledges that she *and James* purchased the
18 LA Property through a 1031 exchange. She acknowledges, and the facts support, the fact that James was
19 on title to the LA Property from the moment that it was purchased. She also acknowledges that James
20 claimed half of the income from the LA Property on his income tax returns. What Debby does not
21 acknowledge is the fact that she was able to convince James to transfer his interest in the LA Property to her
22 trust *with the aid of her lawyer and without any representation for James whatsoever*.

23 **D. Petitioner Should Be Awarded His Attorney's Fees in Defending This Motion.**

24 Code of Civil Procedure section 405.38 provides that the Court "shall" award to the prevailing party
25 on a Motion to Expunge the reasonable attorney fees and costs of making or opposing the Motion unless the
26 Court finds that the other party acted with substantial justification or other circumstances make the imposition
27 of fees and costs unjust. In this case, assuming that the Court denies Debby's Motion (as it should), the
28 court is required to award to Peter his attorney's fees in opposing the Motion. This case has been pending

1 for over two years and only now, when trial is scheduled to begin in late March, did Debby decide to seek
2 to expunge. Furthermore, the facts presented in her own moving papers and in this Opposition demonstrate
3 that Debby cannot bring herself to admit that her own actions deprived James of the property that he worked
4 his entire life to amass. Neither her Motion, nor her continued Opposition to the Amended Petition, are
5 justified. Therefore, the Court should award Peter his attorney's fees in opposing this Motion in the amount
6 of \$11,854.95. See Schmuck Decl.

7 **IV.**

8 **CONCLUSION**

9 In just a few short years, James went from owning or having access to assets worth well over \$3
10 million, including the home that he and his family shared for decades. By the time that James died, after
11 having suffered from two forms of cancer, including a large brain tumor that absolutely affected his physical
12 and mental capabilities, James had nearly nothing except abandonment by Debby. The evidence is substantial
13 and overwhelming. Peter will be successful in obtaining title to both the LA and Redwood City Properties.
14 Therefore, for these reasons, the Court should deny this Motion and award Peter his attorney's fees.

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16 Date: December 31, 2019

TEMMERMAN, CILLEY &
KOHLMANN, LLP

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19 By:

JAMES P. CILLEY, ESQ.
MARK SCHMUCK, ESQ.
Attorneys for Petitioner, Peter Ho, Trustee