

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/25/16

DEPT. WEO

HONORABLE LISA HART COLE

JUDGE

N. LEE
P. REYNOSO, C/A

DEPUTY CLERK

HONORABLE
#6

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NANCY K. BRINK, CSR#6501 Reporter

8:30 am

SC117126

Plaintiff MARINA BOYD, PRO PER. (X)
Counsel

MARINA J. BOYD
VS
CITIMORTGAGE, INC. ET. AL.

Defendant CATHY GRANGER (X)
Counsel RIK TOZZI (X)

returned fm PI Hub 12-4-13

NATURE OF PROCEEDINGS:

DEFENDANT'S (CITIMORTGAGE, INC.) MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION;

The Court has posted a tentative ruling as follows, said tentative ruling not being stated verbatim on the record.

Defendant's Motion for Summary Judgment is GRANTED. Boyd was required to file her opposition 14 calendar days before the hearing date on 5/12/16. Despite the MSJ having been filed and served on 2/26/16, more than 80 days before the 5/26/16 hearing date, Plaintiff Boyd chose to file her opposition on 5/20/16, only 6 calendar days before the hearing date. The opposition is not supported by any POS.

Defendant filed a reply. However, the reply objects to the opposition as untimely. Defendant also indicates the only copy of the opposition received was by email. The email also attached a copy of the separate statement, which failed to comply with CRC Rule 3.1350. However, the email did not include any of the referenced exhibits in Plaintiff's papers.

Plaintiff's failure to timely and properly serve her opposition papers deprived Defendant of due process. Defendant cannot respond to such a defective opposition. For this reason, the Court has

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the discretion to disregard Plaintiff's opposition pursuant to CRC 3.1300(d). Regardless, the Court reand considered Plaintiff's opposition, however declines to rule on Plaintiff's late filed objections.

Statutory immunity for disposal of Plaintiff's property

Defendant argues that it fully complied with the statutory requirements set forth under CC §1174, which governs disposal of personal property left on a premises after eviction. CC §1174(e) through (l) provide:

(e) Personal property remaining on the premises which the landlord reasonably believes to have been lost shall be disposed of pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code. The landlord is not liable to the owner of any property which is disposed of in this manner If the appropriate police or sheriff's department refuses to accept that property, it shall be deemed not to have been lost for the purposes of this subdivision.

(f) The landlord shall give notice pursuant to Section 1983 of the Civil Code to any person (other than the tenant) reasonably believed by the landlord to be the owner of personal property remaining on the premises unless the procedure for surrender of

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property under Section 1965 of the Civil Code has been initiated or completed.

(g) The landlord shall store the personal property in a place of safekeeping until it is either released pursuant to subdivision (h) or disposed of pursuant to subdivision (i).

(h) The landlord shall release the personal property pursuant to Section 1965 of the Civil Code or shall release it to the tenant or, at the landlord's option, to a person reasonably believed by the landlord to be its owner if the tenant or other person pays the costs of storage as provided in Section 1990 of the Civil Code and claims the property not later than the date specified in the writ of possession before which the tenant must make his or her claim or the date specified in the notice before which a person other than the tenant must make his or her claim.

(i) Personal property not released pursuant to subdivision (h) shall be disposed of pursuant to Section 1988 of the Civil Code.

(j) Where the landlord releases personal property to the tenant pursuant to subdivision (h), the landlord is not liable with respect to that property to any person.

(k) Where the landlord releases personal property

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pursuant to subdivision (h) to a person (other than the tenant) reasonably believed by the landlord to be its owner, the landlord is not liable with respect to that property to:

- (1) The tenant or to any person to whom notice was given pursuant to subdivision (f); or
- (2) Any other person, unless that person proves that, prior to releasing the property, the landlord believed or reasonably should have believed that the person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of that person.

(1) Where personal property is disposed of pursuant to Section 1988 of the Civil Code, the landlord is not liable with respect to that property to:

- (1) The tenant or to any person to whom notice was given pursuant to subdivision (f); or
- (2) Any other person, unless that person proves that, prior to disposing of the property pursuant to Section 1988 of the Civil Code, the landlord believed or reasonably should have believed that the person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of that person.

CC §1988 provides for disposal of property by auction: "If the personal property described in the notice is not released pursuant to Section 1987, it

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shall be sold at public sale by competitive bidding. However, if the landlord reasonably believes that the total resale value of the property not released is less than seven hundred dollars (\$700), the landlord may retain the property for his or her own use or dispose of it in any manner. Nothing in this section shall be construed to preclude the landlord or tenant from bidding on the property at the public sale." CC §1988(a).

CC §2080 provides: "Any person who finds a thing lost is not bound to take charge of it, unless the person is otherwise required to do so by contract or law, but when the person does take charge of it he or she is thenceforward a depository for the owner, with the rights and obligations of a depository for hire. Any person or any public or private entity that finds and takes possession of any money, goods, things in action, or other personal property shall, within a reasonable time, inform the owner, if known, and make restitution without compensation, except a reasonable charge for saving and taking care of the property ." CC §2080.

The writ of possession issued in connection with the UD judgment indicated that any personal property left on the premises would be disposed of in accordance with CC §1174, unless Plaintiff paid Defendant the reasonable cost of storage not later than 15 days after Defendant took possession of the premises. See Defendant's SSUMF No. 9. Plaintiff

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admits receipt of the writ of possession and knowledge of the notice regarding retrieval and disposal of any property left on the premises. Id. at No. 10. Defendant took possession of the property on 9/22/11 and Plaintiff had until 10/7/11 to retrieve the property. Id. at Nos. 12-13.

Defendant's records indicates they never received any written messages or calls from Plaintiff between 9/22/11 and 10/7/11. See Defendant's SSUMF No. 13. Mark Alton, agent of the real estate company in charge of the eviction and disposition of the property, testifies he received no communication from Plaintiff from 9/22/11 through 10/23/11, when the property was disposed of. See Defendant's SSUMF No. 15 and 18. Plaintiff attached a purported email from her sister to Defendant's agent, Mark Alston, dated 10/7/11 indicating that she would like to pick up her belongings. See Fourth Amended Complaint, Ex. VII. Defendant submits a declaration from Mr. Alston testifying that he never received such an email and he did not use the email address to which the email was sent at that time, alston@alstonMortgage.com. See Defendant's SSUMF No. 17. After 10/7/11, Defendant was entitled pursuant to CC §1174 to auction the property per CC §1988. Defendant disposed of the property on 10/23/11. See Defendant's SSUMF No. 15.

Defendant sufficiently establishes with admissible evidence that Plaintiff never requested return of

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her property prior to expiration of the 15-day retrieval period set forth in the writ of possess or prior to disposal of the property on 10/23/11. However, the immunity set forth under CC §1174(1) precludes imposition of any liability for disposing of Plaintiff's personal property under CC §1988. There is no evidence that Defendant auctioned Plaintiff's property at a public sale. Instead, Alston testifies a third-party contractor "trashed out" the premises. As such, MSJ cannot be granted based on the immunity under CC §1174(1).

Undisputed facts negate conversion and violation of CC §§1983, 1988 and 2080

Although the facts do not establish immunity under CC §1174(1), these same facts establish no violation of CC §§1983, 1988 and 2080. The undisputed evidence establishes that Plaintiff never requested return of her property, the property left behind was of little value, Plaintiff gradually retrieved all property she wanted from the premises and Plaintiff was abandoning the only property left behind.

Plaintiff alleges that Defendant violated CC §1983, which governs notice to former tenants and owners of personal property left behind on the premises after termination of the tenancy. However, Plaintiff was not a tenant and Defendant was not her landlord. Plaintiff was a foreclosed upon owner and Defendant the BFP at the foreclosure sale. CC §1174 also does

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not refer to or incorporate CC §1983. Moreover, Plaintiff admits that she received sufficient notice under CC §1174 that any personal property left behind on the premises had to be retrieved within 15 days.

Plaintiff alleges that Defendant failed to sell her personal property at public sale by competitive bidding in violation of CC §1988(a). Under the statute, if Defendant believed the resale value to be less than \$700, it was entitled to dispose of it in any manner. Alston testifies that he believed the property to be abandoned and the property to be of little to no value. See Alston Decl., ¶¶6-11. Alston testifies that he witnessed from 9/22/11 through 10/23/11 that the most valuable property was being removed from the premises. Id. Plaintiff also testified at deposition that the property disposed of on 10/23/11 consisted of pictures, trophies, things of sentimental value, old toys, clothes and boxes. See Defendant's SSUMF No. 26. However, Alston's testimony that neighbors witnessed Plaintiff breaking into the premises to remove that property is inadmissible. The evidence sufficiently supports a finding that the property was less than \$700 in value. Plaintiff filed no opposition to rebut this evidence and establish that the items were worth \$700 or more.

Plaintiff alleges that Defendant took possession of the property, which had been left behind

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inadvertently due to the eviction. Plaintiff therefore alleges that Defendant took possession of the property pursuant to CC §2080 and Defendant was therefore obligated to, "within a reasonable time, inform the owner, if known, and make restitution without compensation, except a reasonable charge for saving and taking care of the property." See CC §2080.

Plaintiff alleges that she repeatedly demanded that the property be returned to her by emails and phone calls from 10/7/11 through the time the property was disposed on 10/23/11. However, Defendant's evidence refutes Plaintiff's allegations that she demanded return of her property. Plaintiff's daughter testified that the movers took all the items they wanted and left behind those things they did not want. See Defendant's SSUMF No. 23. She also confirmed at deposition, by reference to photos, that those items left behind at the premises and disposed of on 10/23/11 were items she and her mother did not want. Id. at ¶24. The evidence submitted in support of this MSJ negates Plaintiff's assertion that the property was not abandoned and that she requested return of that property. As such, the evidence negates any allegation that Defendant violated CC §2080.

Undisputed facts establish there was no wrongful exercise of dominion under 1st c/a for conversion

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As stated above, Defendant's evidence establishes that Plaintiff abandoned the subject personal property, Plaintiff did not make a timely request to retrieve that property and Defendant fully complied with any and all legal obligations with regard to that property. Defendant was entitled to dispose of the property after expiration of the 15-days without any request from Plaintiff for return of the property. The undisputed facts establish that Defendant did not wrongfully exercise dominion over the property at issue. "Conversion is the wrongful exercise of dominion over the property of another." Farmers Ins. Exchange v. Zerlin (1997) 53 Cal.App.4th 441, 451-452.

The Order Appointing Court Approved Reporter Nancy K. Brink, license number 6501, as Official Reporter Pro Tempore is signed and filed this date.

The Court has posted a tentative ruling, a copy of which is given this morning to each side in court.

Matter is called for hearing.

The Court adopts its tentative ruling in its entirety as the final ruling; and further, the Court orders as follows.

Trial date of 6-27-16 at 9:30 a.m. in Dept. WE-0, the final status conference date of 6-24-16 at 9:30 a.m.

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in Dept. WE-0, and the hearing date of 6-17-16 at 8:30 a.m. in Dept. WE-0, for plaintiff's motion to compel Mark Alston to produce further responses to plaintiff's deposition subpoena for production of documents and things, are advanced and vacated.

Counsel for moving party is to give notice.

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