

FILED

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KRISTY A. MARGIN
MONTEREY COUNTY CLERK

Eva Santos

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6 (408) 424-6446

Attorney for Plaintiff

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

9 BARBARA J. RUSSELL,

) Case No. 78978

10 Plaintiff,

) FIRST AMENDED COMPLAINT FOR
) IMPOSITION OF CONSTRUCTIVE
) TRUST AND DECLARATORY RELIEF
) (C.C.P. §1060)

11 vs.

12 MICHAEL G. GALLOWAY, LORRAINE)
13 GALLOWAY, INVESTOR'S SERVICE)
14 COMPANY, INC., MOJAVE PATHOLOGY)
15 SERVICE, LTD. PENSION FUND,)
16 ALPHONSE PAUCHON, and STANLEY E)
17 WEDDING PROFESSIONAL DENTAL)
18 CORPORATION PENSION PLAN, and)
19 DOES I through VI, inclusive,)

Defendants.

20 FIRST CAUSE OF ACTION

21 1. Plaintiff is a resident of the County of Monterey,
22 State of California.

23 2. Plaintiff is the aunt of Defenant MICHAEL G.
24 GALLOWAY.

25 3. The true names and capacities of Defendants sued
26 herein as DOES I through XI, inclusive, are unknown to Plaintiff
27 at this time and Plaintiff will seek leave of Court to amend
28 complaint when such names and capacities become known to
Plaintiff.

4. On or about October 20, 1977, Plaintiff BARBARA J.

ISSUED SALINAS

1 RUSSELL and Defendants MICHAEL G. GALLOWAY, and his wife,
2 LORRAINE GALLOWAY entered into an agreement with regards to
3 property located at 415 Chaparral Street, Salinas, County of
4 Monterey, State of California. A copy of said agreement is
5 attached hereto as Exhibit "A".

6 5. Defendant took legal title to the property
7 described above and obtained a loan secured by said property
8 from the Bank of America. The Plaintiff remained in residence
9 on the property and paid to the Bank of America the monthly
10 payment to include an amount for taxes and insurance, provided
11 for in the first mortgage held by Bank of America.

12 6. Without notice to Plaintiff, Defendant encumbered
13 the property on three occasions. Defendant borrowed \$12,000.00
14 on January 19, 1980, secured by a Deed of Trust recorded February
15 6, 1980.

16 Defendant obtained a third loan in the amount of
17 \$6,300.00 on September 8, 1980, secured by a Deed of Trust
18 recorded September 29, 1980.

19 Plaintiff became aware of the encumbrance in May of
20 1981, when Plaintiff attempted to have the loan at Bank of America
21 transferred to herself. Plaintiff notified Defendant of her
22 intention to request a reconveyance of the property and was
23 advised by Defendant that he would remove the encumbrance and
24 thereafter reconvey the property. In reliance on Defendant's
25 acknowledgment of the debt and promise to release it, Plaintiff
26 took no further action.

27 Defendant obtained a fourth loan in the amount of
28 \$6,500.00 secured by a Deed of Trust recorded August 10, 1981.

1 7. Plaintiff became aware that the fourth Deed of
2 Trust is on foreclosure and that Defendant is delinquent in
3 payment of the second and third Deeds of Trust.

4 8. Plaintiff has requested that Defendant cure the
5 foreclosure and delinquences on the second, third and fourth
6 Deeds of Trust but Defendant has refused to do so.

7 Plaintiff has further requested that Defendant reconvey
8 the property but Defendant has refused to do so.

9 9. Plaintiff conveyed this property to Defendant
10 with the express intention of remaining in possession due to a
11 financial position of Plaintiff or a result of a divorce
12 proceeding. Defendant agreed to secure financing which required
13 his legal ownership of the property. Defendant further derived
14 funds for his personal use as the then present encumbrance of
15 the property was apparently less than the loan obtained.

16 In accordance with the intention of the parties,
17 Plaintiff has made all payments on the first Deed since 1977
18 and has paid the taxes and insurance thereon.

19 Defendant in breach of his position as Trustee
20 wrongfully misappropriated and endangered Plaintiff's ownership
21 of the property by encumbering the property without Plaintiff's
22 knowledge or consent. Defendant further advised and counseled
23 Plaintiff so as to induce her not to make inquiry as to Defendant's
24 wrongful acts.

25 As a proximate result of the wrongful acts of Defendant
26 Plaintiff has been damaged in the sum of \$75,000.00.

27 ////

28 ////

SECOND CAUSE OF ACTION

1
2 10. Plaintiff realleges and incorporates by reference
3 paragraphs 1 through 9 as stated in the First Cause of Action.

4 11. Investor's Service Company, Inc., 225 Grant Road,
5 Los Altos, Santa Clara County, California, is and was the Trustee
6 for the Deeds of Trust securing the second, third and fourth
7 Deeds of Trust on the property located at 415 Chaparral Street,
8 Salinas, California.

9 12. Investor's Service Company, Inc., has caused to be
10 filed a Notice of Default with regards to the fourth Deed of
11 Trust recorded on April 21, 1983, a copy of which is attached
12 hereto as Exhibit "B".

13 13. Defendant Galloway is in arrears as to the second
14 and third Deeds of Trust and these Deeds of Trust are in danger
15 of being foreclosed.

16 14. An actual controversy has arisen and now exists
17 between Plaintiff and Defendants concerning their respective
18 rights and duties in that Plaintiff contends that her equitable
19 interest in the property is prior to any interest of the
20 beneficiaries of the second, third and fourth Deeds of Trust.
21 Plaintiff's interest consists of the entire value of the
22 property subject only to the first Deed of Trust, which Deed was
23 the only encumbrance known to Plaintiff, whereas Defendant
24 disputes the contentions and contends that the second, third and
25 fourth Deeds of Trust are valid encumbrances on the real property.

26 15. Plaintiff desires a judicial determination of her
27 rights and duties, and a declaration that the real property is free
28 from the encumbrances of Defendants Deeds of Trust.

1 16. A judicial determination is necessary and appro-
2 priate at this time under the circumstances in order that
3 Plaintiff may ascertain her rights and duties under the written
4 agreement between Plaintiff and Defendant Galloways, and further
5 to ascertain whether her home will be foreclosed and forced to
6 sale as she is unable to meet obligations under the second, third
7 and fourth Deeds of Trust held by other Defendants.

8 17. Plaintiff is damaged to the extent of \$75,000.00,
9 due to the cloud on her title caused by Defendants actions.

10 WHEREFOR Plaintiff prays for judgment against
11 Defendants as follows:

12 FIRST CAUSE OF ACTION

- 13 1. Declaring that the title to the real property held
14 in the name of Defendant is held by him as Trustee or a construc-
15 tive trust for the benefit of Plaintiff and that Defendant has
16 no right, title or interest in the property;
- 17 2. For damages in the sum of \$75,000.00;
- 18 3. For costs of suit herein; and
- 19 4. For such other and further relief as the Court
20 may deem proper.

21 SECOND CAUSE OF ACTION

- 22 1. For a declaration that Plaintiff is the owner of
23 the real property located at 415 Chaparral Street, Salinas,
24 California. That the Deeds of Trust encumbering said property
25 be removed and that Defendants shall release any interest in
26 the property so as to provide Plaintiff with clear title;
- 27 2. For damages in the sum of \$75,000.00;
- 28 3. For issuance of a temporary restraining order,

5.

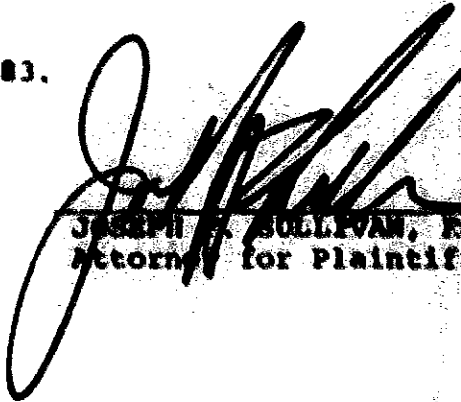
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preliminary injunction and permanent injunction restraining
and enjoining Defendants Investor's Service Company, Inc.;
Mojave Pathology Service, Ltd. Pension Fund; Alphonse Pauchon
and Stanley Wedding Professional Rental Corporation Pension
Plan from initiating or continuing foreclosure of Deeds of Trust
on the property located at 415 Chaparral Street, Salinas,
California, or in any way interfering with rights of Plaintiff
in use or ownership of that property;

4. For costs of suit herein; and

5. For such other and further relief as the Court
may deem proper.

DATED: 7/5, 1983.



JOSEPH F. SULLIVAN, Esq.,
Attorney for Plaintiff

AGREEMENT

IT IS HEREBY AGREED by and between BARBARA J. RUSSELL and MICHAEL G. GALLOWAY that the property located at 415 Chaparral Street, Salinas, California, although presently held in deed title by MICHAEL G. GALLOWAY, is being held for the beneficial use of BARBARA J. RUSSELL.

It is further agreed that upon sale of the property, which shall be at the option of BARBARA J. RUSSELL, the mortgage presently held against the property on a loan by MICHAEL G. GALLOWAY shall be paid off and the equity shall be turned over to BARBARA J. RUSSELL. In the event of the death of BARBARA J. RUSSELL the property shall be sold and the equity turned over to the children of BARBARA J. RUSSELL, namely: KELLY LOUISE RUSSELL, DARNEN LEROY RUSSELL, and BRYAN KEITH RUSSELL, who shall survive her, in equal shares.

It is further agreed that BARBARA J. RUSSELL shall continue to pay an amount equal to the prior mortgage payments as long as she resides in the home.

DATED: Oct 20, 1977.

Barbara J. Russell
BARBARA J. RUSSELL

Michael G. Galloway
MICHAEL G. GALLOWAY
Yvonne Galloway

LEGAL DESCRIPTION

Situate in the City of Salinas, County of Monterey, State of California, described as follows:

Lot 3 in Block 16, as shown on the map entitled, "TRACT NO. 267, UNIT NO. 6 SANTA LUCIA VILLAGE ADDITION NO. 2", filed May 11, 1955, in the Office of the County Recorder of the County of Monterey, State of California, and now on file in said Office in Map Book Six, Cities and Towns, at Page 52.

UNITS ARE NOT TO BE USED

CHAPARRAL STREET

SONORA WAY

PACHECO ST

SALLAS CITY SCHOOL DIST.

ELWOOD ST

SANTA LUCIA VILLAGE AREA

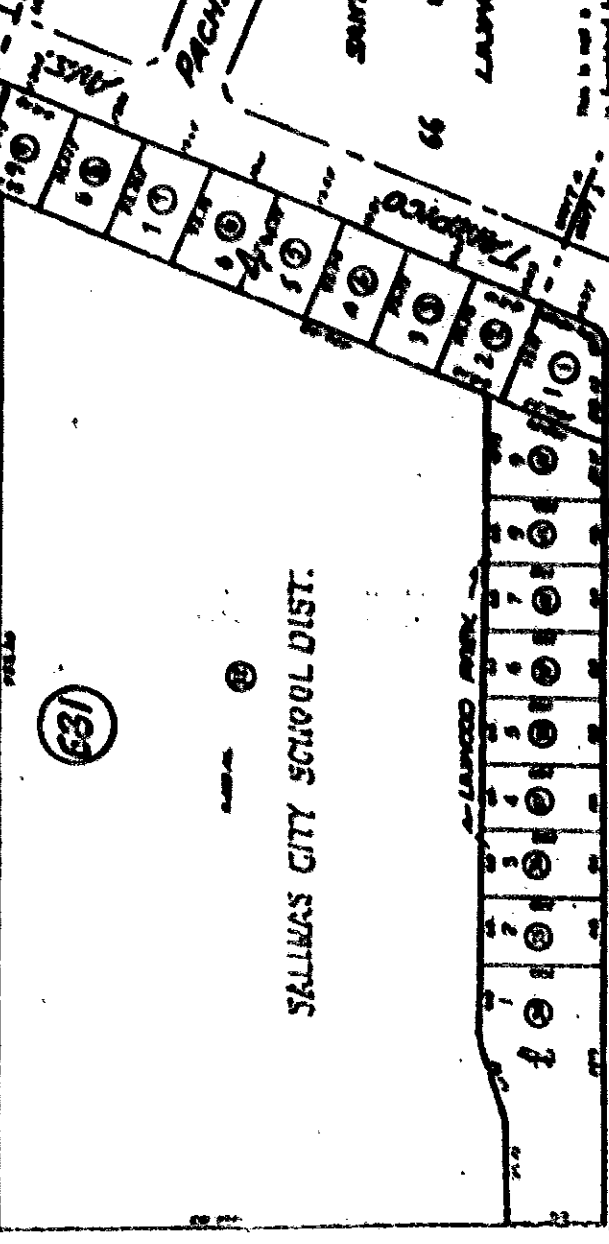
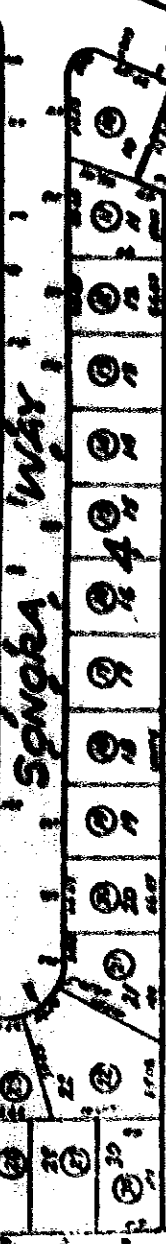
UNIT 3 - BLDG. 6
UNIT 4 - BLDG. 6
UNIT 5 - BLDG. 4/5/6

LAWOOD PARK 7E-670

192

This is not a survey of the land but is furnished for reference purposes only. The liability is assumed by the company as to accuracy of the above herein.

The American Title Company of Monterey County



DRIVE

LINWOOD

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44

FILED OR INDEXED NO.
RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO

Name: INVESTOR'S SERVICE COMPANY
Address: 2235 GRANT ROAD
City: LOS ALTOS, CALIF., 94022
State:
Zip:

RECORDED APRIL 21, 1983
RECORDER'S FILE NO. G 16876
OFFICIAL RECORDS MONTEREY COUNTY, CALIFORNIA

SPACE ABOVE THIS LINE FOR RECORDER'S USE

BENEFICIARY LOAN NO. 12545 TRUSTEE'S SALE NO. _____

Notice of Default and Election to Sell Under Deed of Trust
IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within three months from the date this notice of default was recorded.

This amount is \$ 594.26 as of April 7th, 1983 and will increase (Date)

until your account becomes current. You may not have to pay the entire unpaid portion of your account; even though full payment was demanded, but you must pay the amount stated above.

After THREE MONTHS FROM THE DATE OF RECORDATION OF THIS DOCUMENT (which date of recordation appears hereon), UNLESS THE OBLIGATION BEING FORECLOSED UPON PERMITS A LONGER PERIOD, YOU HAVE ONLY THE LEGAL RIGHT TO STOP THE FORECLOSURE BY PAYING THE ENTIRE AMOUNT DEMANDED BY YOUR CREDITOR.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

STANLEY P. WEDDING/C/O
INVESTOR'S SERVICE COMPANY OF CALIFORNIA INC., a California corporation

(Name of beneficiary or mortgagee)

2235 GRANT ROAD, LOS ALTOS, CALIFORNIA 94022

(408) 730-2720

(Mailing Address)

(Telephone No.)

If you have any questions, you should contact a lawyer or the government agency which may have insured your loan.

Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.**

NOTICE IS HEREBY GIVEN: That a breach of, and default in, the obligations secured by

that certain Deed of Trust executed by MICHAEL G. GALLOWAY AND LORRAINE GALLOWAY,
husband and wife, as joint tenants

recorded on 8/10/81 in Book/Reel 1498 Page/Image 850
of Official Records in the office of the Recorder of Monterey County,

California, has occurred in that payment has not been made of: Failure to pay monthly installments of principal and interest due March 1, 1983, and all subsequent installments together with late charges, failure to pay installments of principal and interest to the holders of a prior deed of trust, and/or certain other sums, including real property taxes due and delinquent, with interest thereon expended under the above deed of trust, and/or to pay the balance of principal and interest which became due and payable by virtue of the maturity of the promissory note secured by the above deed of trust.

that by reason thereof, the present beneficiary under such Deed of Trust has deposited with said duly appointed Trustee, such Deed of Trust and all documents evidencing obligations secured thereby, and the undersigned does hereby declare all sums secured thereby immediately due and payable and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

INVESTOR'S SERVICE COMPANY OF CALIFORNIA INC.

[Signature] TRUSTEE

dated April 7th, 1983

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(VERIFICATION — 41A, 20113 C. C. P.)

STATE OF CALIFORNIA
COUNTY OF MONTEREY

} ss

I am the Plaintiff

in the above entitled action or proceeding, I have read the foregoing First Amended Complaint for Imposition of Constructive Trust and Declaratory Relief

and know the contents thereof, and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I certify (or declare), under penalty of perjury,* that the foregoing is true and correct.

Executed on July 5, 1981 at Salinas California
(date) (place)

Barbara Russell
Signature

JUL 5 2 55 PM 1983

1 I declare that:

2 I am (~~an individual~~/employed in) the county of MONTEREY MONTEREY California.
(COUNTY WHERE MAILING OCCURRED)

3 I am over the age of eighteen years and not a party of the within entitled cause; my (business address) 130 W. Gabilan Street - P.O. Box 602, Salinas, CA 93902

4 130 W. Gabilan Street - P.O. Box 602, Salinas, CA 93902

5 On July 5, 1983 (DATE), I served the attached Notice of Motion to Amend Complaints & Authorities in Support of Motion for Leave to File Amended Complaint, Application for Order Shortening Time; Declaration of Joseph F. Sullivan; Memorandum on the Defendant's attorney of Points & Authorities; Order Shortening Time

6 Points & Authorities in Support of Motion for Leave to File Amended Complaint, Application for Order Shortening Time; Declaration of Joseph F. Sullivan; Memorandum on the Defendant's attorney of Points & Authorities; Order Shortening Time

7 of Points & Authorities; Order Shortening Time

8 in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Salinas, California addressed as follows:

9
10 Law Offices of
11 Behrens & Hanley
12 A Law Corporation
13 615 Civic Center Drive West
14 Suite 210
15 Santa Ana, CA 92701

23 I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on
24 July 5, 1983 (DATE) at Salinas (PLACE), California.

25
26 JEANNE L. GLASS (TYPE OR PRINT NAME) Jeanne L. Glass (SIGNATURE)