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Please note:

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If you have questions or comments, please contact Jim Schenkel at 415-553-4000, or email info@quojure.com.

Attorneys for Defendant
GEORGIA GREEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF GRANITE, UNLIMITED JURISDICTION

JOHN GREEN,
Plaintiff,

vs.

GEORGIA GREEN and DOES 1
through 100,
Defendants.

Case No. 456789

DEFENDANT GEORGIA GREEN’S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
PLAINTIFF JOHN GREEN’S MOTION
TO CONSOLIDATE CASES AND FOR
PRELIMINARY INJUNCTION
[Code Civ. Proc. §§ 526, 1048(a)]

_____ /

Date:
Time:
Dept.
Complaint filed:
Trial Date: None Set
Discovery Cut-Off: None Set

In this dispute between two siblings, plaintiff John Green seeks to consolidate defendant Georgia Green’s¹ unlawful detainer action against him with this action against her. He claims a right to an “equal and fifty percent share of the proceeds from the sale of their property,” and for a preliminary injunction preventing unlawful detainer action trial and the property’s sale. His motions must be denied. John has not met his burden as a moving party to present evidence supporting the relief he seeks, or even to present a

¹Because plaintiff and defendant have the same last name, they will be referred to by their first names for purposes of clarity. No disrespect is intended.

1 coherent argument. And John is not claiming a right to stop the sale of the property based
2 on his alleged one-half ownership interest; rather he is merely claiming that he will be
3 deprived of his right to the sale's proceeds. Therefore, preventing the sale will not benefit
4 him, and allowing it to go forward pending resolution of the issue of his right to the
5 proceeds cannot harm him.

6
7 **FACTS**

8 Georgia holds record title to residential real property located at 16 Main Street,
9 Coconut Grove, California. John, her brother, lives on the property as her tenant.
10 Georgia is in the process of selling the property; the sale is in escrow, which has not
11 closed solely because of John's actions in claiming some sort of ownership interest in the
12 property, the nature of which is none too clear. In order to deliver the property vacant,
13 Georgia notified John that he had to move. When John refused, she sued him for
14 unlawful detainer: "Georgia Green v. John Green," Granite County Super. Court No.
15 654321, which is scheduled for trial on February __, 2__.

16 John then filed the present action. In his complaint, to which Georgia has
17 demurred,² John alleges various causes of action, which all boil down to a claim that he
18 has some vague ownership interest in the property that gives him the right to share in the
19 proceeds of the pending (or any other) sale of the property. In one cause of action in his
20 verified complaint, John asserts ownership through a deed (which he does not attach to
21 the complaint and is unable to produce) from some unnamed person that was recorded at
22 some unknown page of the records of Granite County, and that apparently does not
23 include the property's legal description. In his present motion for a preliminary
24 injunction, he does *not* allege any interest in the property under this mysterious deed, but
25 simply relies on some purported agreement with Georgia that he would have an interest in

26 _____
27 ²The hearing on the demurrer is currently scheduled for March __, 2__.

1 the property that would give him the right to receive 50% of the proceeds when the
2 property is sold. Declaration of John Green in Support of Motion ¶¶ 7-8.

3
4 **ARGUMENT**

5 **1. John has not shown that common issues of law and fact justify**
6 **consolidating the unlawful detainer action with this action.**

7 Code of Civil Procedure § 1048(a) provides that the court may consolidate actions
8 “involving a common question of law and fact.” But John has not met his burden of
9 showing such common issues. Rather, he vaguely alleges that

10 the primary issues to be tried in the two actions are identical as they involve
11 the same claims of possession and rights of ownership as evidenced in the
12 Complaints and Answers and Responsive Pleadings of all Actions herein
13 sought to be consolidated.

14 Declaration of Joseph Jones in Support of Motion ¶ 3.

15 But neither Jones nor John is able to state clearly what those issues are.

16 Moreover, it is clear that John is not really claiming the right to continue in
17 possession. Rather, he is claiming a right to share in the proceeds of the property’s sale,
18 and of course it cannot be sold if he is still living on it. Nowhere does he claim that his
19 agreement with Georgia allowed him to continue to live on the property. Rather, he
20 merely claims that he has lived on the property from the time Georgia bought it and took
21 title to it (Green Declaration ¶ 2); that he and Georgia orally agreed that they each would
22 own a one-half interest in the property (¶ 3); that he paid certain sums in reliance on that
23 agreement (¶¶ 4, 5); and that Georgia has “arranged for a sale of the property that did not
24 allow [him] to receive [his] *fifty per cent (50%) share of the proceeds from the sale*” (¶ 6,
25 emphasis added). Moreover, since John clearly admits that Georgia has the sole legal title
26 to the property (¶ 2), the issue of legal title is not in play.

1 Thus, no issue in John’s action affects Georgia’s action for unlawful detainer. The
2 motion for consolidation should be denied.

3
4 **2. John is not entitled to a preliminary injunction barring sale of the**
5 **property.**

6 In deciding whether to issue a preliminary injunction, the court must weigh the
7 likelihood that John will ultimately prevail on the merits with the relative interim harm to
8 the parties from the issuance or nonissuance of the injunction. *Butts v. State* (1992) 4
9 Cal.4th 668, 677-678. A trial court may not grant a preliminary injunction, regardless of
10 the balance of interim harm, unless there is some possibility that the plaintiff would
11 ultimately prevail on the merits of the claim. *Id.* at 678. Because plaintiff here has no
12 possibility of ultimately prevailing on the claim, this court cannot grant a preliminary
13 injunction.

14 John has not established that he will suffer any harm by allowing the sale of the
15 property to go forward. He does not aver any right to continue in possession, and indeed
16 states clearly that there is no landlord-tenant relationship between himself and Georgia.
17 Green Declaration ¶ 8. Rather, he is contending that his agreement with Georgia allows
18 him to recover 50% of the proceeds from the property’s sale. *Id.*, ¶¶ 7, 8. It is mystifying
19 how allowing Georgia to proceed with the pending sale can harm John, since the court
20 can render a money judgment against her if it finds that there is such an agreement.
21 Indeed, one could argue that the longer the sale is postponed, the longer the wait before
22 can receive the proceeds of that sale. He is therefore harmed more by delaying the sale
23 than by its going forward.

24 In considering whether to issue a preliminary injunction, the court must also
25 consider the harm to Georgia if the injunction issues. *Butts, supra*, 4 Cal.4th at 678.
26 Here, since the property is in escrow, issuing the injunction will postpone the closing and
27

1 could allow the buyer to walk away. Thus, the harm to Georgia is great, while John can
2 suffer no harm.

3 But even if the harm to John outweighed the harm to Georgia, the court cannot
4 issue a preliminary injunction if there is no chance that John can recover on his claim.
5 *Ibid.* John *cannot* prevail on his quiet-title cause of action because his claim to title (as
6 opposed to an ownership interest giving him the right to share in the sale proceeds) rests
7 solely on an alleged deed he received from a mysterious stranger at some unknown time
8 in 2____, and that is recorded, but plaintiff knows not where. ¶¶ 20-21. Nowhere in the
9 complaint (or for that matter in his supporting declaration) does plaintiff set forth the
10 property’s legal description, although he says that he “will amend the Complaint to allege
11 the legal description when it is ascertained.” ¶ 20. This will not do. Section 761.020(a)
12 requires that “[i]n the case of real property, the description [of the property in the
13 complaint] *shall* include both its legal description and its street address or common
14 designation, if any.” (Emphasis added.) Moreover, John has never produced this alleged
15 deed, and does not rely on it now. He has no evidence to support his claim to title, and he
16 cannot prevail on that claim.

17 Since the balance of the harms favors Georgia, and John cannot prevail on his
18 quiet title action, the court should deny John’s request that it enjoin the sale of the
19 property pending trial.

20
21 **3. The court should not enjoin the unlawful detainer action.**

22 Code of Civil Procedure § 526(b)(1) provides that a court cannot grant an
23 injunction “to stay a judicial proceeding pending at the commencement of the action in
24 which the injunction is demanded, unless the restraint is necessary to prevent a
25 multiplicity of actions.” Here, since the issues in the two actions are not common, there is
26 no such multiplicity. In this action, the only issue is whether there is an agreement giving
27

1 John a right to the proceeds of a sale; in the unlawful detainer action, the only issue is
2 whether Georgia may regain possession to make way for the sale in escrow. Moreover,
3 an unlawful detainer action in which possession is at issue is entitled to a statutory
4 priority over all other actions. Code Civ. Proc. § 1179a. To enjoin the action would
5 violate that priority.

6
7 **CONCLUSION**

8 John has not shown any reason to consolidate the unlawful detainer action with
9 this action, or to postpone trial on it. Moreover, he has not shown any reason why the
10 court should enjoin the property's sale, half of the proceeds of which he claims under an
11 alleged agreement with Georgia. Therefore the court should deny the motion to
12 consolidate, and should refuse to enjoin the sale of the property and the trial in the
13 unlawful detainer action.

14
15 Dated:

Respectfully submitted,

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18 _____
19 Attorneys for Defendant
20 GEORGIA GREEN
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