

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Barbara Scheper

1 ANDREW J. THOMAS, ESQ. (SBN 128232)
2 MARCIA Z. GORDON, ESQ. (SBN 141375)
3 GORDON KEMPER LLP
4 645 W. 9th Street, Suite 213
5 Los Angeles, CA 90015
6 Telephone: (213) 452-8280
7 E-Mail: andrew.thomas@gordonkemper.com
8 marcia.gordon@gordonkemper.com

9 Attorneys for Plaintiff CARL H. WESTCOTT

10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

12 CARL H. WESTCOTT, an individual,

) **CASE NO.**

) **20STCV29664**

13 Plaintiff,

) **COMPLAINT**

14 v.

-) 1. Rescission of Contract and Instruments
) 2. Cancellation of Contract and Instruments
) 3. Declaratory Relief

15 BERNIE GUDVI, an individual; and DOES 1-25,
16 inclusive,

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

SUMMARY OF ACTION

1. This is an action to declare a contract dated July 14, 2020 for the sale of the 80-year-old Plaintiff's home void or voidable on the grounds that he lacked the mental capacity to understand the nature and probable consequences of the contract.

2. In addition to Plaintiff's frailty from advanced age and poor health from Huntington's Disease, Plaintiff had a major six-hour surgery less than a week before the proposed contract to sell his home was presented to him on July 14, 2020. Prior to the delivery of the proposed written contract, Plaintiff had not granted any real estate broker a listing to market his home sale. In contrast, the elderly Plaintiff had just recently purchased and moved into his home a mere two months earlier. When Plaintiff entered into the contract, he was under the influence of several intoxicating pain-killing opiates that his physicians instructed him to take when he was discharged from the hospital a few days earlier. The multiple opiate medications, which were a synthetic form of morphine, disoriented and intoxicated Plaintiff, depriving him of reason and understanding with respect to the terms and consequences of the contract, and seriously impaired Plaintiff's mental faculties to the point he was of unsound mind and not competent to give his free, voluntary, or intelligent consent to the contract. The contract that Plaintiff signed to sell his home is therefore void or voidable.

3. Concurrent with or shortly after he was presented with the proposed written contract to sell his home, the elderly Plaintiff was also presented with and signed a listing agreement to sell his home, a disclosure that the brokerage firm would be acting as the dual agent for Plaintiff and the buyer, a commission compensation agreement for the brokerage firm's commission, and a variety of other standard California Association of Realtors forms commonly used in residential real property sales, all which are also void or voidable based on Plaintiff's incapacity at the times he signed them.

THE PARTIES

4. Plaintiff CARL H. WESTCOTT ("**Mr. Westcott**") is an individual who resides in the City and County of Santa Barbara, California.

5. Defendant BERNIE GUDVI ("**Mr. Gudvi**"), is an individual who resides in and has his principal place of business in the City and County of Los Angeles, California.

1 **DOE AND AGENCY ALLEGATIONS**

2 **6.** Plaintiff is ignorant of the true names and capacities of the Defendants sued as DOES 1-
3 25, inclusive, and therefore sues them by those fictitious names. Plaintiff will amend this pleading to
4 allege their true names and capacities when ascertained. Plaintiff is informed and believes that each
5 fictitiously named Defendant is legally responsible in some manner for the harm alleged in this pleading.

6 **7.** Plaintiff is informed and believes that one or more Defendants was the agent and/or
7 employee of one or more of the other Defendants, and in doing the things alleged acted in the scope of
8 his, her or its authority as an agent and/or employee, or with prior permission or subsequent ratification
9 of one or more of the other Defendants.

10 **JURISDICTION AND VENUE**

11 **8.** This Court has subject matter jurisdiction because this action involves claims for equitable
12 relief.

13 **9.** Venue in Los Angeles County is proper because Defendant Mr. Gudvi resides and his
14 principal place of business is in Los Angeles County and because the residential sale contract at stake in
15 this lawsuit was entered into in the City and County of Los Angeles. Venue in this Court’s Central
16 District at the Stanley Mosk Courthouse is proper pursuant to the optional filing provisions of Los
17 Angeles County Superior Court Local Rule 2.3(a)(1)(B).

18 **GENERAL ALLEGATIONS**

19 **10.** Plaintiff Mr. Westcott is the record owner of fee simple title to his primary residence, a
20 single-family house in the City of Santa Barbara, California. During his life, Mr. Westcott has been an
21 accomplished businessperson who lived in Texas. He is now 80 years old, has Huntington’s Disease,
22 and on May 29, 2020 purchased his home in Santa Barbara to live in as his primary residence for the rest
23 of his life.

24 **11.** On July 11, 2020, Mr. Westcott was discharged from the hospital after he had a major
25 back surgery that lasted approximately six hours. While in the hospital, Mr. Westcott was given a variety
26 of medications, including the anesthesia for his surgery and pain-killing opiates that he was given several
27 times a day.

28 **12.** Upon discharge from the hospital, Mr. Westcott was prescribed at least two opiates in pill
form that he was to continue taking for pain, and which he took as prescribed several times each day.

1 **13.** At all times alleged in this Complaint pertaining to the alleged formation of the subject
2 contract, Mr. Westcott was intoxicated by such opiates. The combination of his age, frailty from his
3 back condition and recent surgery, and the opiates he was taking several times a day rendered Mr.
4 Westcott of unsound mind within the meaning of Probate Code § 811.

5 **14.** On or about July 14, 2020 when the real estate brokerage firm that was representing the
6 buyer, Defendant Mr. Gudvi, presented Mr. Westcott with the written offer embodied in a proposed
7 California Residential Purchase Agreement and Joint Escrow Instructions, dated July 14, 2020, which
8 offered Mr. Westcott more money than he had recently paid on May 29, 2020 to purchase his home, Mr.
9 Westcott was of unsound mind and unable to understand the nature and probable consequences of the
10 proposed contract in that he lacked the requisite level of alertness and attention, orientation to situation,
11 ability to concentrate, ability to process information, ability to reason using abstract concepts, ability to
12 carry out actions in one’s own rational self-interest, and/or the ability to reason logically sufficient to
13 understand and appreciate the consequences of his recent discussions with real estate agents, or the terms
14 or consequences of entering into the proposed contract to sell his new home.

15 **15.** Mr. Westcott was also of unsound mind within the meaning of Probate Code § 811 and
16 unable to understand the nature and probable consequences of his actions in that he lacked the requisite
17 level alertness and attention, orientation to situation, ability to concentrate, ability to process information,
18 ability to reason using abstract concepts, ability to carry out actions in one’s own rational self-interest, or
19 the ability to reason logically sufficient to understand and appreciate the consequences of his actions
20 when, on July 15, 2020 at approximately 7:00 p.m. at night, he signed a document prepared by the
21 brokerage firm called Counter Offer No. 1 to California Residential Purchase Agreement and Joint
22 Escrow Instructions, dated July 14, 2020, which was subsequently accepted and signed by Mr. Gudvi on
23 July 18, 2020 in the City and County of Los Angeles, thus forming the contract at stake in this lawsuit
24 (the “**Residential Sale Agreement**”) in the City and County of Los Angeles.

25 **16.** Mr. Westcott was also of unsound mind on July 15, 2020, when he signed other standard
26 California Association of Realtor forms given to him by the brokerage firm. Those forms included, but
27 were not limited to: a Single Party Compensation Agreement, dated July 15, 2020, and agreement to pay
28 a commission to: the real estate brokerage firm that presented the offer; a Disclosure Regarding Real
Estate Agency Relationship, dated July 15, 2020; and a Confirmation of Real Estate Agency

1 Relationships, dated July 15, 2020, stating the brokerage firm, Berkshire Hathaway Home Services,
2 California Properties (“**Berkshire Hathaway**”), that presented the offer would be acting as a dual agent
3 for the buyer and seller, and various other standard forms used in residential real estate sales (collectively
4 called the “**Standard Real Estate Forms**”).

5 **17.** Beginning on July 22, 2020, Mr. Westcott started to feel mentally clear again. He realized
6 that during and after his hospitalization for major surgery, he had not been himself due to the combination
7 of his age, frailty, Huntington’s Disease, the six-hour surgery, and especially the intoxicating effects of
8 the opiate pain killers he had been taking several times each day. He realized that when he entered into
9 the Residential Sale Agreement, the opiates had deprived him of the mental faculty to understand or
10 comprehend the significance of the discussions he had been having concerning the sale of his home and
11 the consequences of the Residential Sale Agreement. At approximately 11:30 a.m. on July 22, 2020,
12 Mr. Westcott sent an email to Berkshire Hathaway, in its capacity as the dual agent for seller and buyer,
13 that he did not want to sell his home. Mr. Westcott described how he had been under the influence of
14 pain medication since the six-hour surgery he underwent just a few days before he entered into the
15 Residential Sale Agreement and apologized for the situation.

16 **18.** Hours later on July 22, 2020, Mr. Westcott was given a letter from the couple to whom
17 Mr. Gudvi intended to assign his right to buy Mr. Westcott’s home. They wrote how much they liked
18 the home and wanted to purchase it as their new home.

19 **19.** The next day, July 23, 2020, Mr. Westcott replied that he had read the letter, gave it his
20 deepest consideration, but that he is in the final few years of his life and he cannot sell his home.

21 **20.** On July 24, 2020, Mr. Westcott received a letter from a lawyer. The letter stated, in sum
22 and substance, that the lawyer represented not only Mr. Gudvi, but also Mr. Orlando Bloom and Ms.
23 Katheryn Hudson (professionally known as Katy Perry) on whose behalf Mr. Gudvi had always been
24 acting. The letter advised Mr. Westcott that his clients Mr. Bloom and Ms. Hudson are not willing to
25 walk away from purchasing Mr. Westcott’s home and he is obligated to complete the sale.

26 **21.** In the days after the July 24, 2020 letter, the situation was not resolved, and has evolved
27 into a dispute that requires adjudication. Mr. Westcott seeks the aid of this Court to extinguish the
28 Residential Sale Agreement, and each of the Standard Real Estate Forms. Mr. Westcott intends, as he
did when he was of sound mind before his surgery, to live in his home for the rest of his life. It does not

1 matter to Mr. Westcott that the Mr. Bloom and Ms. Hudson are willing to pay him almost \$3 million
2 more than Mr. Westcott paid to purchase his home just a few months ago.

3 **22.** To the extent Plaintiff learns through discovery or otherwise that Mr. Bloom and/or Ms.
4 Hudson claim they have rights to purchase Mr. Westcott's home even if this action against Mr. Gudvi is
5 decided in favor of Mr. Westcott, or that they own any legal, beneficial, or equitable right title, or interest
6 in or to in or to Mr. Westcott's legal title to his home, such that their presence in this action is necessary
7 for the Court to afford complete relief, Mr. Westcott will seek leave of court to amend this pleading to
8 name them as defendants.

9 **23.** The Residential Sale Agreement contains an attorneys' fee clause entitling the prevailing
10 party to recover his attorneys' fees and costs. One or more of the Standard Real Estate Forms also contain
11 such a clause.

12 **FIRST CAUSE OF ACTION**

13 **(For Rescission Based on Incapacity to Contract Against Mr. Gudvi and DOES 1-25)**

14 **24.** Plaintiff incorporates by reference into this cause of action every preceding paragraph.

15 **25.** The essential terms of the Residential Sale Agreement were that Mr. Westcott agreed to
16 sell, and Mr. Gudvi agreed to purchase, fee simple title Mr. Westcott's home located in Santa Barbara,
17 California (residential address omitted for privacy) for the amount of \$15,000,000.00, payable all cash
18 without any loan contingency, at the close of escrow within 45 days after July 18, 2020, with Mr. Gudvi
19 obligated to deliver to Berkshire Hathaway a check in the amount of \$450,000, representing the buyer's
20 initial deposit, at the time when Berkshire Hathaway, as the dual agent for seller and buyer, presented
21 Mr. Gudvi's written offer to purchase (*i.e.*, the Residential Sale Agreement as it existed on July 14,
22 2020 when it was signed by only Mr. Gudvi). Mr. Westcott is pleading the essential terms of the
23 Residential Sale Agreement in lieu of attaching it as an exhibit.

24 **26.** Subdivision (b)(7) of Section 1689 permits a party to rescind a contract under
25 circumstances when the party seeking rescission was of unsound mind at the time when the party entered
26 into the contract.

27 **27.** Mr. Westcott was of unsound mind when he entered into the Residential Sale Agreement.
28 He was also of unsound mind when he signed the Standard Real Estate Forms.

1 **28.** Since Mr. Westcott was of unsound mind, Mr. Westcott was legally incapable of
2 contracting pursuant to, among other California laws, Civil Code § 1556. As such, the Residential Sale
3 Agreement and/or the Standard Real Estate Forms are void or voidable.

4 **29.** On approximately July 22, 2020, at 11:19 a.m., Mr. Westcott gave notice of rescission of
5 the Residential Sale Agreement by delivering an email to Mr. Gudvi’s real estate agent, Ms. Jenny Easter
6 of Berkshire Hathaway, that stated:

7 *“Dear Ms. Easter,*

8 *Please forward to Mr. Berni Gudvi.*

9 *Dear Mr. Gudvi,*

10 *I’ve decided to not sell my home. I apologize for any inconvenience this may cause you. I’m 80*
11 *years old and had major surgery that lasted 6 hours—6 days prior to signing the contract. I was*
12 *under the influence of heavy pain medication. Again, I apologize for any inconvenience this may*
13 *cause you.”*

14 **30.** Mr. Westcott is excused from offering to restore any monetary consideration to Mr. Gudvi.
15 This is because Mr. Gudvi has never complied with his material obligation under the Residential Sale
16 Agreement to deliver his check for \$450,000, representing buyer’s initial deposit towards payment of the
17 purchase price, to Berkshire Hathaway, for Berkshire Hathaway to hold and to deposit in escrow within
18 three days after the Residential Sale Agreement was formed on July 18, 2020. Neither Mr. Gudvi, nor
19 anyone he is acting as an agent for, has paid or given Mr. Westcott any other consideration such that
20 offering to restore consideration in this pleading would be an idle act.

21 **31.** As a proximate result of the foregoing, the Residential Sale Agreement is subject to the
22 remedy of extinguishment by rescission pursuant to Sections 1688 and 1689(b)(7) of the Civil Code. Mr.
23 Westcott requests that this Court grant such remedy in his favor.

24 **32.** Plaintiff is informed and believes that Defendants Does 1-25, inclusive, are each in some way
25 responsible for the conduct and harm alleged in this cause of action.

26 **SECOND CAUSE OF ACTION**

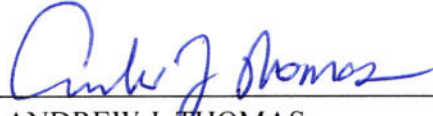
27 **(Cancellation against Defendant Mr. Gudvi and DOES 1-25)**

28 **33.** Plaintiff realleges and incorporates by reference into this cause of action all the allegations
in every preceding paragraph of this Complaint.

- 1 2. For a decree that the Standard Real Estate Forms are void and extinguished by rescission,
2 or alternatively cancelled;
- 3 3. For any attorneys' fees allowable by contract or statute;
- 4 4. For costs of suit; and
- 5 5. For such other relief as this court deems proper.

6
7 DATED: August 5, 2020

GORDON KEMPER LLP

8 By: 
9 ANDREW J. THOMAS
10 Attorneys for Plaintiff CARL H. WESTCOTT