



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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ORDER

KAREN NANCY DALY STANWAY VS. STEVEN A. BROWN ET AL

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN THE COUNTY OF SAN FRANCISCO

KAREN NANCY DALY STANWAY,
individually and as TRUSTEE OF THE
KAZADE TRUST, dated November 30,
2014,

Plaintiff,

v.

STEVEN A. BROWN;

BFRF, LLC, a California limited liability
corporation;

BETTER PROPERTY MANAGEMENT, a
company registered to do business in
California; and

DOES 1 – 25,

Defendants.

Case No. CGC-16-552180

**[PROPOSED] ORDER DENYING
PLAINTIFF KAREN NANCY DALY
STANWAY'S MOTION FOR SUMMARY
JUDGMENT AND GRANTING
SUMMARY ADJUDICATION AS TO
THE FIRST, THIRD, AND FIFTH
CAUSES OF ACTION, AND DENYING
SUMMARY ADJUDICATION AS TO
THE SECOND AND FOURTH CAUSES
OF ACTION**

Date: August 21, 2017
Time: 9:30 a.m.
Department: 302
Judge: Hon. Suzanne Bolanos

Complaint filed: May 23, 2016
Trial Date: September 5, 2017

Reservation No.: 05190821-08

FILED
Superior Court of California
County of San Francisco

SEP - 5 2017

CLERK OF THE COURT

BY: *Karen Lee*
Deputy Clerk

1 On August 21, 2017, the motion for summary judgement or, in the alternative, summary
2 adjudication, of Plaintiff Karen Stanway, individually and as trustee of the Kazade Trust, dated
3 November 30, 2014 (collectively "Plaintiff" or "Karen Stanway"), as to her Complaint and every
4 cause of action asserted therein, came on regularly for hearing before this Court. After
5 considering the papers submitted by the parties, the pleadings in this case, as well as all argument
6 and other evidence properly submitted to the Court, this Court issues the following order:

7 Plaintiff Karen Stanway's motion for summary judgment is denied and the alternative
8 motion for summary adjudication is granted as to the first, third, and fifth causes of action, and
9 denied as to the second and fourth causes of action. Preliminarily, the motion has been timely
10 filed pursuant to Code of Civil Procedure § 437c(a)(2). Ms. Stanway failed to meet her summary
11 judgment burden of showing there are no triable issues of material fact as to all five causes of
12 action alleged in her complaint.

13 *As to the first cause of action*, Ms. Stanway met her initial burden of showing the
14 existence of a contract; Ms. Stanway's performance of all material terms, *i.e.*, paying the two
15 sums of \$100,000.00; and Defendant's breach in failing to timely repay the amounts and
16 damages. That is supported by undisputed material facts 15-19. Defendants have not raised a
17 triable issue as they do not dispute the existence and terms of the notes or that they failed to
18 repay the amount due per the terms of the notes. Designating a place of repayment is not a
19 material term or condition of the contract preventing adjudication of this claim. Therefore, the
20 motion for summary adjudication is granted as to the first cause of action.

21 *As to the second cause of action for breach of fiduciary duty*, Ms. Stanway failed to
22 satisfy her initial burden. She failed to show that Defendants owe her a fiduciary duty. Ms.
23 Stanway appears to argue that she and Defendant Steven Brown were business partners, but fails
24 to include facts in her separate statement establishing the purported partnership. The facts and
25 evidence submitted merely show a lender-borrower relationship. Ms. Stanway has also failed to
26 show the existence of a fiduciary duty based on the trust and confidence she reposed in

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**[PROPOSED] ORDER DENYING MSJ AND GRANTING SUMM. ADJ. IN PART, AND
DENYING SUMM. ADJ. IN PART; Case No. CGC-16-552180**

1 Defendants. The debt is not a trust and there is not a fiduciary duty relation between debtor and
2 creditor as such.

3 *As to the third and fifth causes of action for negligent misrepresentation and fraud, Ms.*
4 *Stanway has met her initial burden by showing Mr. Brown's representations that loaned money*
5 *would be used in real estate deals was made with the intent to induce Ms. Stanway's reliance on*
6 *this fact; Ms. Stanway did in fact rely on this representation in lending Defendants \$200,000.00;*
7 *and the representation was false when it was made. This is supported by undisputed material*
8 *facts 25-31 (as to the negligent misrepresentation cause of action) and 38-44 (as to the fraud*
9 *cause of action). Defendants have not raised a triable issue related to the third and fifth causes of*
10 *action. Therefore, the motion for summary adjudication is granted as to the third and fifth causes*
11 *of action.*

12 *As to the fourth cause of action for negligence, Ms. Stanway's motion for summary*
13 *adjudication is denied as Ms. Stanway failed to meet her initial burden.*

14 Based on the foregoing, Ms. Stanway's motion for summary judgment is denied as is her
15 motion for summary adjudication of the second cause of action for breach of fiduciary duty and
16 fourth cause of action for negligence. Ms. Stanway's motion for summary adjudication of the
17 first cause of action for breach of contract, third cause of action for negligent misrepresentation,
18 and fifth cause of action for fraud are all granted, entitling Ms. Stanway to \$200,000.00 plus
19 interest at the rate of 10% per annum as set forth in the January 22, 2015 and November 3, 2014
20 Straight Notes, from Defendants.

21 **IT IS SO ORDERED.**

22 Dated: August 30 2017

23 **APPROVED AS TO FORM:**

24 DATED: August 29, 2017

25 
HON. SUZANNE BOLANOS
JUDGE OF THE SUPERIOR COURT

26 °GOLDMAN LAW FIRM

27 By: 
Kevin P. Kelly
Attorneys for Defendants

28 **[PROPOSED] ORDER DENYING MSJ AND GRANTING SUMM. ADJ. IN PART, AND
DENYING SUMM. ADJ. IN PART; Case No. CGC-16-552180**