



1 Keyes were represented by Patrick William Coyle. Defendants John and Sandy Tom (the "Toms")  
2 were represented by Mark L. Mosley and Brian Gearing of Mosley & Gearing LLP.

3 The Administrator proceeded to trial on a complaint alleging a single cause of action for  
4 declaratory relief, praying for an order determining the rights of the parties as to the sale of 1326-  
5 1328 25<sup>th</sup> Avenue in San Francisco (the "Property"). In their answers, all of the defendants also  
6 asked the Court to grant a declaration of the parties' rights and interests in the Property. No cross-  
7 complaints were filed.

8 Trial commenced on October 5, 2004. After opening statements of all parties, the Toms  
9 moved orally for nonsuit pursuant to Code of Civil Procedure section 581c. On October 7, 2004 the  
0 Court granted the Toms' motion in part and issued an order quieting title to the Property in the  
1 Administrator by declaring invalid two liens defendants Carolyn Daley and Ron Daley had recorded  
2 against the Property. The Court entered the written order on October 12, 2004.

3 Trial proceeded on the unresolved issue: whether the Court should confirm the sale to the  
4 Toms. Witnesses were sworn and testified and exhibits were offered and accepted into evidence.  
5 On October 15, plaintiff concluded his case in chief and rested and the Toms moved for judgment  
6 pursuant to Code of Civil Procedure section 631.8 as to the remaining issues. The Toms supported  
7 this motion with a written brief that they had lodged with the Court and served by hand upon all  
8 other parties the prior day, October 14, 2004, giving the parties ample time to prepare and oppose the  
9 motion. The Court received written memoranda in opposition to the motion from counsel for the  
0 Administrator and from counsel for defendants Pamela Keyes and Phillip Daley. The Court heard  
1 oral argument on the motion and took the motion under submission.

2 On October 18, 2004, the Court granted the Toms' motion and ordered that judgment be  
3 entered in their favor, and against all other parties, on the remaining issue. In reaching this ruling,  
4 the court has exercised its discretion to consider all the evidence received in the plaintiff's case in  
5 chief, including defensive matter. (See *People v. Mobile Oil Corporation* (1983) 143 Cal.App.3d  
6 261, 270-272.) The Court's order confirmed the sale of the Property to the Toms pursuant to the  
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1 terms and conditions of the written contract that is in evidence as Plaintiff's Exhibit 7. This decision  
2 was based on the following factual findings and legal conclusions.

3 1. The Court notes that it is adjudicating a single cause of action for declaratory relief  
4 seeking a declaration as to the parties' rights to and interests in the Property. As such, the Court has  
5 ample jurisdiction to provide complete relief to the parties. (See *American Enterprise, Inc. v. Van*  
6 *Winkle* (1952) 39 Cal.2d 210, 219 ["In an action for declaratory relief, the proper function of the  
7 court is to make a full and complete declaration, disposing of all questions of rights, status or other  
8 legal relations encountered in construing the instrument before it"]; *Lord v. Garland* (1946) 27  
9 Cal.2d 840 ["If a controversy exists as in this proceeding and a complaining party is entitled to some  
0 relief a trial court may not refuse to declare the rights of the parties concerning the controversy"];  
1 *Mackay v. Whitaker* (1953) 116 Cal.App.2d 504, 509-510 ["[I]f in an action for declaratory relief  
2 other problems arise, the court can and will consider these problems even though had the case simply  
3 involved those problems a different type of pleading would be required"].) Although it may be  
4 within the Probate Division's exclusive jurisdiction to conduct a confirmation hearing on the sale of  
5 real property, it is well within this Court's concurrent jurisdiction to adjudicate rights in real  
6 property, determine the enforceability of contracts, determine the timeliness and merit of a motion or  
7 request to reopen a concluded confirmation hearing, and confirm a sale based on the existing record  
8 of a hearing held in the Probate Division. (See Probate Code §§ 850 *et seq.*; California Practice  
9 Guide, Probate §§ 3:50-3:60 (Rutter Group 2004).)

10 2. The Court finds that on or about January 20, 1997, the Toms made a written offer to  
11 purchase the Property, on a form prepared for and supplied to the Toms' agent by the Administrator,  
12 and tendered to the Administrator their check for \$45,678.90 to pay the ten percent deposit called for  
13 by paragraph 2 of the Administrator's form offer. (Plaintiff's Exhibit 7.) The following day, January  
14 21, 1997, the Administrator accepted the Toms' offer by signing a written acceptance, and  
15 negotiating the Toms' deposit check. (Plaintiff's Exhibit 7.) Then, on January 28, 2004, the  
16 Administrator filed a verified return of sale with the Probate Division seeking an order confirming  
17 sale. (Plaintiff's Exhibit 11.) The Court concludes that these acts gave rise to a binding contract

1 (“Contract”) obligating the Administrator to sell, and the Toms to purchase, the Property. (See  
2 *Estate of Klauenberg* (1973) 32 Cal.App.3d 1067, 1070.) The terms of the Contract are set forth in  
3 the Offer for Purchase of Real Property and Acceptance by Administrator included in Plaintiff’s  
4 Exhibit 7.

5 3. The Court also finds that at all times thereafter, both the Administrator and the Toms  
6 behaved as though they believed the Contract to be binding upon them. This evidence includes not  
7 only the extensive correspondence between the parties but also the Administrator’s two petitions for  
8 instructions filed with the Probate Division (Plaintiff’s Exhibits 25 and 29) asking the Court to  
9 consider the option of vacating the sale. The Court also concludes it to be implausible that the  
10 Administrator would have filed this lawsuit had he thought he was free to refund the Toms’ deposit  
11 and sell the Property to someone else.

12 4. On February 19, 1997, in San Francisco Superior Court Case Number 262684 (the  
13 “Probate Action”), the Probate Division of this Court held a hearing to confirm the sale of the  
14 Property to the Toms, the Honorable Raymond J. Arata presiding. Upon the Tom’s request and the  
15 parties’ stipulation, the Court has taken judicial notice of the transcript of that proceeding (Plaintiff’s  
16 Exhibit 16.) Judge Arata orally confirmed the sale to the Toms but never signed the written order,  
17 and at the end of the hearing the proceedings were concluded. Although no direct evidence has been  
18 introduced as to why Judge Arata did not sign the written order, the Court infers that he considered  
19 the effect of the two bogus liens (predicated upon the invalid gift notices) on the Administrator’s  
20 ability to convey legal title to 100% of the Property to the Toms, as stated in the Administrator’s  
21 January 28, 1997 Report of Sale and Petition for Order Confirming Sale of Real Property.  
22 (Plaintiff’s Exhibit 11.) Specifically, the invalid liens created a cloud on title and prevented the  
23 Court from confirming the sale of Property as it was originally presented to the Court: as a sale of a  
24 100% interest in the Property.

25 5. The Court finds that the two liens that defendants Ron Daley and Carolyn Daley  
26 recorded on the Property were predicated upon two gift notices, signed by the decedent Gertrude C.  
27 Daley, purporting to grant a \$10,000 interest in the Property to both Ron Daley and Carolyn Daley.

1 The Court has taken judicial notice (at the Toms' request and pursuant to stipulation of the other  
2 parties) of a February 28, 1996 Minute Order entered in the Probate Action ruling that these gift  
3 notices were invalid. The Court finds further that this Minute Order was immediately appealable.  
4 (See Code Civ. Proc. § 904.1 ["[a]n appeal...may be taken from any of the following: (10) From an  
5 order made appealable by the provisions of the Probate Code or the Family Code"]; Prob. Code §§  
6 1300(k) [making immediately appealable any order "[a]djudging the merits of a claim made under  
7 Part 19 (commencing with Section 850) of Division 2"]; 850(2)(B) [providing for orders, upon the  
8 petition of "any interested person," to determine the validity of any "contract in writing to convey  
9 real property...upon or after his or her death"]; 1303(f) [making immediately appealable any order  
0 "[d]etermining heirship, succession, entitlement, or the persons to whom distribution should be  
1 made"].) When the Probate Court enters an immediately appealable order, the time in which to  
2 appeal it starts to run upon entry, and the court of appeal is without jurisdiction to hear any appeal  
3 filed after the time in which to do so has expired. (See *Steve J. v. Superior Court* (1995) 35  
4 Cal.App.4th 798, 811.) Although defendant Ron Daley alleged that the parties to the Probate Action  
5 entered into a stipulation to treat the February 28, 1996 Minute Order as something other than final  
6 in order to toll the running of the deadline for filing an appeal, such a stipulation, even if it exists,  
7 would be ineffective to preserve the right to appeal. (*In re Hanley's Estate* (1943) 23 Cal.2d 120,  
8 123 ["nor can jurisdiction be conferred upon the appellate court by the consent or stipulation of the  
9 parties, estoppel, or waiver"].) Thus, the Court concludes that the liens are invalid and the time in  
0 which to appeal the order invalidating them has expired. On that basis, the Court issued its October  
1 12, 2004 Order granting in part the Toms' nonsuit motion and quieting title to the Property in the  
2 Administrator.

3 6. The Court finds that both Ron Daley and Carolyn Daley recorded the liens on the  
4 Property with knowledge that the Probate Division had invalidated the gift notices, and that they  
5 performed this act for the purpose of clouding title to the Property and thereby interfering with the  
6 sale of the Property to the Toms. This was a wrongful act that precludes them from relying on any  
7 equitable theories (such as laches, estoppel, or waiver) to avoid enforcement of the Contract. (See  
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1 *Meadows v. Lee* (1985) 175 Cal.App.3d 475, 484 & fn. 2 [third party to contract objecting to  
2 enforceability faces “an extremely heavy burden” and court will uphold contract in the absence of  
3 joinder in the objection by at least one of the contracting parties].)

4 7. The Court finds that the Contract includes a term (in paragraph 3(f)) requiring “court  
5 confirmation” of the sale to the Toms before title can be transferred and escrow can close. The  
6 Administrator took the position at argument of the Toms’ Motion for Judgment that Judge Arata’s  
7 oral statement at the February 19, 1997 hearing that he was confirming the sale to the Toms  
8 constituted the “court confirmation” contemplated by this paragraph, and that his own failure to  
9 transfer title within thirty days thereafter breached the Contract, causing the statute of limitations to  
0 begin to run on any enforcement action by the Toms. This argument is inconsistent with the position  
1 taken by the Administrator in his trial brief, where he set out authority for why an oral confirmation  
2 without a written order is ineffective. The Court also finds that the Administrator’s behavior before  
3 any dispute arose was inconsistent with this interpretation. The parties to the Contract behaved at all  
4 times as though the “court confirmation” contemplated under paragraph 3(f) required the entry of a  
5 written order confirming the sale, not an oral statement by the judge. Such an interpretation is  
6 consistent with the law because a probate sale cannot be confirmed upon an oral order, but instead  
7 requires a written order. (See Prob. Code § 1048 [“orders shall be either entered at length in the  
8 minute book of the court or signed by the judge and filed”]; Code Civ. Pro § 1003 [“Every direction  
9 of a court or judge, made or entered in writing, and not included in a judgment, is denominated an  
0 order...”; *Simmons v. Superior Court* (1959) 52 Cal.2d 373 [an order becomes effective only when  
1 signed and filed”]; *Miller v. Stein* (1956) 145 Cal.App.2d 381 [same]); see also *Estate of Sampo*  
2 (1985) 171 Cal.App.3d 767, 773 [reason for requiring a written order is because “an order  
3 confirming such a sale [must] be definite and complete in itself, as otherwise it could not be recorded  
4 in the office of the county recorder”].) Based on the plain language of the Contract and the relevant  
5 extrinsic evidence, including the behavior of the parties, the Court construes paragraph 3(f) of the  
6 Contract as establishing a condition precedent, the satisfaction of which requires entry of a written  
7 order confirming the sale, not an oral statement to that effect by the Probate Court. The Court  
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concludes that the Contract remains executory and that the 30 day deadline for closing escrow set in paragraph 3(f) has not passed and will not begin to run until a written order confirming the sale has been entered.

8. The Court finds that at all times after the February 19, 1997 confirmation hearing and prior to the filing of this lawsuit, the Administrator communicated with the Toms in a manner calculated to reassure the Toms that he (the Administrator) was taking appropriate legal action to quiet the title to the Property so that he could obtain a written order confirming the sale and thereby complete the transaction. The Court also finds that the Toms relied on these communications from the Administrator and that, under the circumstances, it was reasonable for them to have done so. Based on these findings, the Court concludes that even if the statute of limitations did begin to run on the Toms' right to enforce the Contract, the Administrator is estopped by his statements and his actions from asserting that defense.

9. The Court finds further, in the alternative, that the Administrator waived any right to assert the statute of limitations, laches, or any other defense against the enforcement of the Contract by failing to allege such a defense in his complaint. The Court also finds that the Administrator further waived his right to assert the statute of limitations by stating in his answer to the Toms' Special Interrogatory Number One that he was not asserting that defense in this lawsuit.

10. The Court concludes further that, under *Estate of Schorr v. Mon Har Enterprises* (1981) 122 Cal.App.3d 775, this Court should not permit the Administrator to avoid his obligations under the Contract merely because the Property has appreciated in value and the Administrator can now sell it to someone else at a higher price. The evidence established that the present value of the Property either is \$950,000 to \$975,000 (Plaintiff's Exhibit 42) or \$1,100,000 (the Toms' Exhibit B).

11. The Court also finds that the delay in obtaining court confirmation did not prejudice the Administrator or the Estate because the Property was earning between \$2,190 and \$3,780 per month in rental income from February 19, 1997 through the present. The Court concludes that this fact prevents the Administrator from asserting the equitable defense of laches against enforcement of the Contract. (See *People ex rel. Dept. Pub. Wks. v. Bosio* (1975) 47 Cal.App.3d 495, 523 ["It is not

1 so much a question of the lapse of time as it is to determine whether prejudice has resulted. If the  
2 delay has caused no material change *in status quo, ante*, i.e., no detriment suffered by the party  
3 pleading the laches, his plea is in vain”].

4 12. The proper procedure for reopening a confirmation hearing on the sale of probate  
5 property is to bring a motion under Code of Civil Procedure section 473. No party brought such a  
6 motion to reopen the February 19, 1997 hearing, and the deadline for bringing such a motion passed  
7 six months after the hearing concluded. (Code Civ. Proc. § 473(b).) The Court finds further that no  
8 party has presented evidence sufficient to establish grounds for reopening the hearing. The Court  
9 concludes that the confirmation hearing on the sale of the Property to the Toms should not be  
0 reopened.

1 13. The Court has considered the record of the February 19, 1997 confirmation hearing.  
2 At the hearing, Ron Daley tried to make an oral credit overbid for the Property, apparently contingent  
3 upon his prevailing against certain claims being asserted against him. The Administrator never  
4 advised the Court that the overbid was acceptable to him. (See Probate Code § 10311(d) [the court  
5 may not consider a credit overbid unless personal representative informs the court that the overbid is  
6 acceptable to the estate].) The Court finds that upon this record, the sale of the Property to the Toms  
7 pursuant to the Contract is confirmed, pursuant to Probate Code section 10308.

8 14. Confirmation of the sale to the Toms at the price agreed upon in the 1997 contract  
9 effectively confers upon the Toms the benefit of the appreciation in value of the property from the  
0 purchase price set forth in the 1997 contract to the present day value. The Court declines to award  
1 the additional benefit of the interest on the Toms’ deposit, since, had the deposit been used toward  
2 the purchase price in 1997, it would have assisted the Toms in acquiring additional equity interest in  
3 appreciation value, but would not also have earned interest in an interest-bearing account. Placement  
4 in an interest-bearing account by the Administrator was secured in an effort to conditionally  
5 compensate the Toms in the event that the sale of the property was not confirmed.

6 15. There being no claim by the Toms for the rent from the 25<sup>th</sup> Avenue property from  
7 February 19, 1997 to the present, such rent shall be retained by the estate.





**SUPERIOR COURT OF CALIFORNIA  
County of San Francisco**

ESTATE OF GERTRUDE DAILEY, Deceased,  
GREGORY P. O'KEEFFE, Administrator,

Plaintiff(s)

vs.

RONALD DALEY, et. al.,

Defendant(s)

Case Number: 418359

**CERTIFICATE OF MAILING**  
(CCP 1013a (4))

I, Barbara Hing, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On January 12, 2005 I served the attached **STATEMENT OF DECISION and JUDGMENT** by placing a copy thereof in a sealed envelope, addressed as follows:

**DANIEL A. CONRAD**  
Law Offices of Daniel A. Conrad  
1255 Post Street, Suite 640  
San Francisco, CA 94109

**MARK L. MOSLEY/BRIAN GEARINGER**  
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San Francisco, CA 94109-7837

**RONALD DALEY**  
127 San Juan Avenue  
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**PATRICK WILLIAM COYLE**  
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Santa Rosa, CA 95404

and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: January 12, 2005

GORDON PARK-LI, Clerk

By: 

Barbara Hing, Deputy Clerk