

ORIGINAL

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13 Academy of Motion Picture Arts and Sciences

**FILED**  
Superior Court of California  
County of Los Angeles

REC'D  
JAN 04 2016  
FILING WINDOW

JAN 13 2016

Sherri R. Carter, Executive Officer/Clerk

By Armando Garcia Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11 CENTRAL DISTRICT

12 ACADEMY OF MOTION PICTURE ARTS  
13 AND SCIENCES, a California non-profit  
14 corporation.

15 Plaintiff.

16 vs.

17 BRIARBROOK AUCTIONS, LLC, a Rhode  
18 Island limited liability company. NATE D.  
19 SANDERS, INC., a California corporation.  
20 JOSEPH TUTALO, an individual, and DOES  
21 1 through 50, inclusive.

22 Defendants.

23 NATE D. SANDERS, INC., a California  
24 corporation,

25 Cross-Complainant.

26 vs.

27 ACADEMY OF MOTION PICTURE ARTS  
28 AND SCIENCES, a California non-profit  
corporation.

Cross-Defendant.

CASE NO. BC550383

Hon. Gail R. Feuer  
Dept. 78

~~(PROPOSED)~~ STIPULATED JUDGMENT

RECEIPT #: CCH524890041  
DATE PAID: 01/04/16 02:33  
PAYMENT: \$20.00  
RECEIVED:  
CHECK: \$20  
CASH: \$0  
CHANGE: \$0  
CARD: \$0

CIT/CASE: BC550383  
LEA/DEF#:

Case No. BC5503833  
[PROPOSED] STIPULATED JUDGMENT

1           WHEREAS Plaintiff the Academy of Motion Picture Arts and Sciences (“the Academy”)  
2 has brought this action against Defendants Briarbrook Auctions, LLC (“Briarbrook”), Joseph  
3 Tutalo (“Tutalo”), Nate D. Sanders, Inc. (“Sanders”), Nanci Thompson (“Thompson”), and DOES  
4 2-50 for breach of contract, intentional interference with contract, breach of equitable servitude,  
5 and declaratory relief;

6           WHEREAS in 1943, the Academy awarded to Joseph Wright an “Oscar” statuette for  
7 excellence in color art direction in connection for his work on a 1942 motion picture entitled *My*  
8 *Gal Sal* (the “Wright Oscar”);

9           WHEREAS Wright was a member of the Academy between 1933 and 1985;

10           WHEREAS Wright was bound by the Academy’s Bylaws (the “Bylaws”) in effect during  
11 the time he was a member of the Academy;

12           WHEREAS under the Bylaws in effect beginning in 1951, neither the recipients of Oscar  
13 statuettes nor their successors may sell an Oscar statuette without first offering it to the Academy  
14 (the “Right of First Refusal”);

15           WHEREAS Wright died in 1985;

16           WHEREAS Tutalo succeeded to the Wright Oscar;

17           WHEREAS on or about May 20, 2014, Tutalo entered into a consignment agreement with  
18 Briarbrook to auction the Wright Oscar;

19           WHEREAS on or about June 23, 2014, Briarbrook conducted an auction of the Wright  
20 Oscar and Sanders purchased it for \$79,200;

21           WHEREAS the Wright Oscar is subject to the Right of First Refusal in the Academy’s  
22 Bylaws;

23           WHEREAS the Right of First Refusal constitutes a valid equitable servitude in the Wright  
24 Oscar;

25           WHEREAS on March 11, 2015, Briarbrook filed a petition for relief under Chapter 7 of  
26 Title 11 of the United States Code in the United States Bankruptcy Court for the District of Rhode  
27 Island, case number 1:15-bk-10433;

28

1 WHEREAS on September 21, 2015, the Chapter 7 Trustee Lisa A. Geremia entered a  
2 Report of No Distribution;

3 WHEREAS, on December 2, 2015, the Bankruptcy Court entered an Order discharging the  
4 Chapter 7 Trustee and closing the bankruptcy case;

5 WHEREAS on July 13, 2015, the Court denied Sanders' motion for summary  
6 judgment/adjudication pursuant to the Minute Order and ruling attached hereto as **Exhibit 1**;

7 WHEREAS the Academy and Briarbrook have agreed to enter into a stipulated final  
8 judgment as to Briarbrook to resolve the Action on the terms set forth below;

9 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

10 1. The Academy's First Cause of Action for Breach of Contract and Second Cause of  
11 Action for Interference with Contract in the Academy's Second Amended Complaint are  
12 dismissed with prejudice, with both parties to bear their own attorneys' fees and costs.

13 2. Pursuant to the Academy's Third Cause of Action for Breach of Equitable  
14 Servitude, the Wright Oscar is subject to the Right of First Refusal as a valid equitable servitude,  
15 and Briarbrook and its agents and all persons acting in concert with them are permanently  
16 enjoined from directly or indirectly transferring, selling, assigning, pledging, encumbering,  
17 hypothecating, or in any way disposing of the Wright Oscar without first offering to sell it to the  
18 Academy for the sum of \$10.00.

19 3. Pursuant to the Academy's Fourth Cause of Action for Declaratory Relief, it is  
20 hereby judicially declared that (a) the Wright Oscar is subject to the Academy's Right of First  
21 Refusal as a valid equitable servitude; and (b) if the Wright Oscar is ever offered for sale or other  
22 disposition by Briarbrook or any of its agents, or any persons acting in concert with them, the  
23 Academy is entitled to purchase it for the sum of \$10.00.

24 *4.6* The Court shall retain jurisdiction pursuant to California Code of Civil Procedure  
25 Section 664.6 for the purpose of enforcing this Stipulated Judgment.

26 *5.A* Both parties shall bear their own costs and attorneys' fees.  
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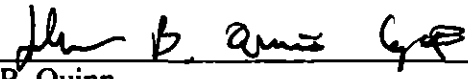
1 Respectfully submitted by counsel on behalf of the Academy and Briarbrook.

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AGREED:


DATED: December \_\_, 2015

THE ACADEMY OF MOTION PICTURE ARTS  
AND SCIENCES

By   
John B. Quinn  
General Counsel

DATED: December 17 2015

BRIARBROOK AUCTIONS, LLC


By   
Nanci Thompson  
Principal, Briarbrook Auctions LLC

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APPROVED AS TO FORM:

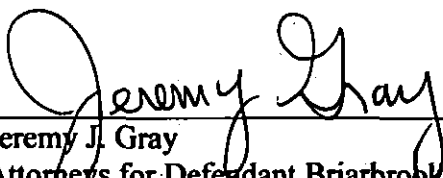
DATED: January 4 ~~December~~, 2015

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By   
\_\_\_\_\_  
Gary E. Gans  
Attorneys for Plaintiff Academy of Motion  
Picture Arts and Sciences

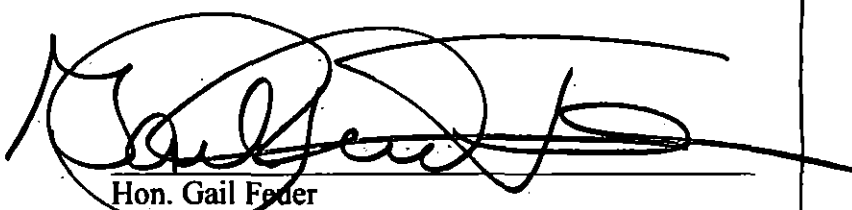
DATED: January 4 ~~December~~, 2015

ZUBER LAWLER & DEL DUCA, LLP

By   
\_\_\_\_\_  
Jeremy J. Gray  
Attorneys for Defendant Briarbrook Auctions,  
LLC

IT IS SO ORDERED. Plaintiff/Cross-Def. is directed to *renew*.

DATED: January 13 ~~December~~, 2016

  
\_\_\_\_\_  
Hon. Gail Feder  
Judge of the Superior Court

RECEIVED  
JAN 13 2016  
CLERK OF SUPERIOR COURT

EXHIBIT 1

EXHIBIT 1



# **EXHIBIT 1**

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

TE: 07/13/15

DEPT. 78

HONORABLE #6 S. JUSI, C.A.	JUDGE JUDGE PRO TEM Deputy Sheriff	A GARCIA NONE	DEPUTY CLERK ELECTRONIC RECORDING MONITOR Reporter
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08:30 am	BC550383	Plaintiff Counsel	WILL ROLLINS (X) AM
	ACADEMY OF MOTION PICTURE ARTS SCIENCES	Defendant Counsel	BRIAN M. GROSSMAN (X) AM BRANDON M. TESSER (X) AM
	VS BRIARBROOK AUCTION SERVICES LLC		

**NATURE OF PROCEEDINGS:**

- 1) MOTION OF DEFENDANT AND CROSS COMPLAINANT NATE D. SANDERS, INC., FOR SUMMARY JUDGMENT/SUMMARY ADJUDICATION;
- 2) DEMURRER BY DEFENDANT JOSEPH TUTALO, TO THE SECOND AMENDED COMPLAINT;
- 3) INFORMAL DISCOVERY CONFERENCE;

The Court's tentative ruling is provided to all counsel before the hearing is held.

The Order Appointing Court Approved Reporter as Official Reporter Pro Tempore is signed and filed this date.

The above-captioned matters are called for hearing.

Defendant, Joseph Tutalo's Demurrer to the second amended complaint is placed off-calendar as moot pursuant to the Court's ruling on the motion for good faith settlement issued on July 10, 2015.

Defendant/Cross-Complainant, Nate D. Sanders, Inc.'s motion for summary judgment/summary adjudication is argued.

After argument, the Court's tentative ruling becomes the final ruling of the Court as indicated below and

MINUTES ENTERED 07/13/15 COUNTY CLERK
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07/16/2015



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

TE: 07/13/15

DEPT. 78

RABLE GAIL RUDERMAN FEUER

JUDGE A GARCIA

DEPUTY CLERK

HONORABLE  
#6 S. JUSTI, C.A.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

08:30 am BC550383

Plaintiff

Counsel

WILL ROLLINS (X) AM

ACADEMY OF MOTION PICTURE ARTS  
SCIENCES  
VS  
BRIARBROOK AUCTION SERVICES LLC

Defendant

Counsel

BRIAN M. GROSSMAN (X) AM

BRANDON M. TESSER (X) AM

**NATURE OF PROCEEDINGS:**

as more fully reflected in the Order, which is signed and filed this date and incorporated herein by reference to the Court file.

Plaintiff, Academy of Motion Picture Arts and Sciences, request for judicial notice is GRANTED as to request Nos. 1 through 6 and 8 through 15. However, judicial notice is granted as to the existence of the documents, not as precedent for this Court. Request Number 7 is DENIED because no URL or web addresses are supplied to the Court to allow it to immediately or accurately determine the accuracy of the exhibits.

Defendant, Nate D. Sanders, Inc.'s motion for summary judgment is DENIED.

Defendant, Nate D. Sanders, Inc.'s motion for summary adjudication as to the second cause of action for Interference with Contract, the third cause of action for Breach of Equitable Servitude and the fourth cause of action for Declaratory Relief are DENIED.

Plaintiff is directed to give notice.

At 3:45 p.m., the informal discovery conference is held and completed.

Notice of the informal discovery conference is waived.

MINUTES ENTERED 07/13/15 COUNTY CLERK
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07/16/2015

Superior Court of California

County of Los Angeles

Department 78

ACADEMY OF MOTION PICTURE ARTS  
AND SCIENCES,  
Plaintiff,  
v.  
BRIARBROOK AUCTIONS, LLC, et al.,  
Defendants.

Case No.: BC550383  
Hearing Date: July 13, 2015  
**[TENTATIVE] RULING RE:**  
Defendant Nate D. Sanders, Inc.'s Motion for  
Summary Judgment/Adjudication.

Defendant Nate D. Sanders, Inc.'s Motion for Summary Judgment is DENIED.

**FACTUAL BACKGROUND**

The central question in this case is whether a 1951 change to the bylaws of the plaintiff Academy of Motion Picture Arts and Sciences ("Academy") granting Academy a right of first refusal to buy all Oscar statuettes for \$10 created an equitable servitude in pre-1951 Oscars.

In 1943, the Academy awarded to Joseph Wright ("Wright") an Oscar statuette for color art direction on a motion picture entitled My Gal Sal (the "Wright Oscar"). (Plaintiff's Separate Statement of Disputed and Undisputed Facts ("PUMF") Nos. 1, 2.) Wright was a member of the Academy from 1933 until 1985 when he passed away. (PUMF No. 1.)

Prior to 1951, the Academy's Bylaws did not include a provisions restricting the sale of an Oscar. (PUMF No. 3.)<sup>1</sup> In 1951, the Academy Bylaws — and all subsequent Bylaws — include Article VIII(1)(g) (the "Right of First Refusal"), which provides that:

Every award shall be conditioned upon the execution and delivery to the Academy by the recipient thereof of a receipt and agreement reading as follows:

"Gentlemen:

"I hereby acknowledge receipt from you of a replica of your copyrighted statuette, commonly known as the "Oscar," as an award for achievement in motion picture arts and sciences.... In consideration of your delivering said replica to me, I agree to comply with your rules and regulations respecting its use and not to sell or

<sup>1</sup> While Academy disputes this particular "Undisputed Material Fact" insofar as it is a legal conclusion affecting the 1951 Bylaws change, they do not dispute that no such restrictions on Oscar sales existed before 1951.

otherwise dispose of it, nor permit it to be sold or disposed of by operation of law, without first offering to sell it to you for the sum of \$10.00. You shall have thirty days after any such offer is made to you within which to accept it. This agreement shall be binding not only on me, but also on my heirs, legatees, executors, administrators, estate, successors and assigns. My legatees and heirs shall have the right to acquire said replica, if it becomes part of my estate, subject to this agreement."

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(Signature of Recipient)

"Any member of the Academy who has heretofore received any Academy trophy shall be bound by the foregoing receipt and agreement with the same force and effect as though he or she had executed and delivered the same in consideration of receiving such trophy."

(Horn Decl. ¶ 7, Exs. 1-3.)

In 1991, Joseph Tutalo ("Tutalo") acquired the Wright Oscar. There is a dispute as to how Tutalo acquired the Oscar. (PUMF No. 6.) While Tutalo states that he inherited the Wright Oscar from his uncle (Tutalo Decl. ¶ 2), there is a dispute as to whether he actually inherited it directly from Wright. (See PUMF 6; Rollins Decl. ¶ 10, Ex. 8.) It is undisputed that in May 2014, Tutalo entered into an agreement with Briarbrook Auctions, LLC ("Briarbrook"), pursuant to which Tutalo consigned the Wright Oscar to Briarbrook for sale at auction. (PUMF No. 8.)<sup>2</sup> Upon hearing of the auction, Academy notified Briarbrook that the Wright Oscar was subject to the Academy's right of first refusal. (Rollins Decl. ¶ 5, Ex. 4.) On June 23, 2014, plaintiff Nate D. Sanders, Inc. ("Sanders") bought the Wright Oscar for \$79,200.00. (PUMF No. 10.) Sanders was aware of Academy's position regarding the applicability of the right of first refusal to pre-1951 statuettes as early as May 18, 2000. (Rollins Decl. Ex. 1 [May 18, 2000 letter to Nate Sanders regarding Judy Garland Oscar awarded to 1939].) On July 10, 2014, Academy notified Sanders that the Wright Oscar was subject to its right of first refusal and requested that Sanders cease and desist from auctioning the statuette. (Rollins Decl. Ex. 5.)

### **PROCEDURAL HISTORY**

Academy filed its original complaint on July 1, 2014. Academy's Second Amended Complaint ("SAC") was filed on January 13, 2015, and alleges four causes of action:

1. Breach of Contract (against Tutalo only)
2. Interference with Contract (against all defendants)
3. Breach of Equitable Servitude (against all defendants)
4. Declaratory Relief (against all defendants)

Specifically, the SAC seeks, *inter alia*, declaratory relief that the Wright Oscar is subject to the Academy's right of first refusal and that the Academy is entitled to purchase it for \$10. (SAC

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<sup>2</sup> While Academy disputes the original and final minimum bid price, it does not dispute the timing or that the Oscar was consigned.

¶ 48.)

On May 28, 2015, Sanders filed its first amended cross-complaint for declaratory relief, seeking a judicial determination that the acquisition and sale of any pre-1951 Oscar statuette is not subject to any right of first refusal or other restriction on its sale or disposition. Sanders contends that the Academy's 1951 bylaw amendment cannot have retroactive effect upon Oscar statuettes previously awarded without any restrictions on transfer. Sanders did not name Tutalo in its cross-complaint as a cross-defendant.

On July 10, 2015, this court approved a settlement agreement between Academy and Tutalo for \$6,500, along with other terms, as a "good faith" settlement.

On April 24, 2015, Sanders brought this Motion for Summary Judgment, or in the alternate, Motion for Summary Adjudication regarding Academy's complaint. Academy filed its Opposition on June 26, 2015. Sanders filed his Reply on July 2, 2015.

### DISCUSSION

#### **I. Evidentiary Objections**

Academy makes nine objections to Sanders' evidence. The court has ruled on those objections by a separate order, as follows. Objection Numbers 1, 2 and 5 are SUSTAINED. Objections 3, 4 and 6-9 are OVERRULED.

#### **II. Requests for Judicial Notice**

Academy request the court take judicial notice of the following documents:

1. Injunction issued by the Superior Court in *Academy of Motion Picture Arts and Sciences v. Collector's Books Store, Inc.* No. C-713-463.
2. Judgment entered by the Superior Court in *Academy of Motion Picture Arts and Sciences v. Christie, Manson & Woods Int'l, Inc.* No. BC095240.
3. Judgment entered by the Superior Court in *Academy of Motion Picture Arts and Sciences v. Kim E. Boyer, et al.* No. BC376722.
4. Complaint filed by the Academy against Nate Sanders in *Academy of Motion Picture Arts and Sciences v. Nate Sanders, et al.*, No. BC230707.
5. Preliminary Injunction issued by the Superior Court in *Academy of Motion Picture Arts and Sciences v. Nate Sanders, et al.*, No. BC230707.
6. Judgment issued by the Superior Court in *Academy of Motion Picture Arts and Sciences v. Nate Sanders, et al.*, No. BC230707.
7. Articles published online and accessible throughout the state detailing Briarbrook Auctions, LLC's auction of the Wright Oscar.
8. Order entered by the superior Court in *Academy of Motion Picture Arts and Sciences v. Briarbrook Auctions, et al.*, No. BC550383, granting the Academy's Request for Judicial Notice in support of its Opposition to Defendant Joseph Tutalo's Demurrer to the Second Amended Complaint.
9. Death Certificate of Joseph Charles Wright, dated February 25, 1985, issued by the State of California, county of San Diego.
10. Business Entity Detail for Nate D. Sanders, Inc. from the California Secretary of State.
11. Articles of Incorporation for Nate. D. Sanders, Inc., filed with the California Secretary of State on August 23, 2006.

12. Case summary filed by the Academy in *Academy of Motion Picture Arts and Sciences v. Nate Sanders, et al.*, No BC230707.
13. Declaration of Joel Thvedt filed by the Academy in *Academy of Motion Picture Arts and Sciences v. Nate Sanders, et al.*, No BC230707.

The court may take judicial notice of "official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States," "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States," and "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code § 452, subs. (c), (d), and (h).)

Academy's request for judicial notice is GRANTED as to request Nos. 1–6 and 8–13. However, judicial notice is granted as to the existence of the documents, not as precedent for this court. Request No. 7 is DENIED because no URL or web addresses are supplied to the court to allow it to immediately or accurately determine the accuracy of the exhibits.

### III. Motion for Summary Judgment

#### Legal Standard

A party may move for summary judgment "if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code Civ. Proc. § 437c, subd. (a).) "[I]f all the evidence submitted, and all inferences reasonably deducible from the evidence and uncontradicted by other inferences or evidence, show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law," the moving party will be entitled to summary judgment. (*Adler v. Manor Healthcare Corp.* (1992) 7 Cal.App.4th 1110, 1119.) A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment. (Code Civ. Proc. § 437c, subd. (f)(2).)

The moving party bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact, and if the moving party makes this showing, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850; accord, Code Civ. Proc. § 437c, subd. (p)(2).)

The plaintiff may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, must set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense to the claim. (*Aguilar, supra*, 25 Cal.4th at 850.) To establish a triable issue of material fact, the party opposing the motion must produce substantial responsive evidence. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 166.)

There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof. (*Aguilar, supra*, 25 Cal.4th at p. 855.) An issue of fact becomes one of law and loses its "triable" character if the undisputed facts leave no room for a reasonable difference of opinion. (*Preach v. Monter Rainbow* (1993) 12 Cal.App.4th 1441, 1450.) Courts are to "liberally construe [the non-moving party's] evidentiary submissions and strictly scrutinize [the moving party's] own evidence, in order to resolve any evidentiary doubts

or ambiguities in plaintiffs favor. (*Johnson v. Am. Standard, Inc.* (2008) 43 Cal.4th 56, 64.)

### A. Third Cause of Action – Breach of Equitable Servitude

Sanders argues that the court must grant summary judgment because equitable servitudes, as a legal concept, do not exist in personal property. (MSJ at p. 8.) The court will examine the legal concept of the equitable servitude, its existence in relation to personal property, and then its application to the Wright Oscar.

#### 1. Equitable Servitudes Overview

The doctrine of equitable servitudes was first applied in 1848 by English courts sitting in equity as a way to enforce covenants concerning land which, for whatever reason, did not run with the land in law. (*Tulk v. Moxhay* (1848 Ch.) 41 Eng.Rep. 1143; see *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal.4th 345, 353.) California adopted equitable servitudes in *Werner v. Graham* (1919) 181 Cal. 174, 183, in which the Supreme Court described the doctrine and its requirements as:

[W]hen the owner of a subdivided tract conveys the various parcels in the tract by deeds containing appropriate language imposing restrictions on each parcel as part of a general plan of restrictions common to all the parcels and designed for their mutual benefit, mutual equitable servitudes are thereby created in favor of each parcel as against all others. The agreement between the grantor and each grantee in such a case as expressed in the instruments between them is both that the parcel conveyed shall be subject to restrictions in accordance with the plan for the benefit of all other parcels and also that all other parcels shall be subject to such restrictions for its benefit. In such a case, the mutual servitudes spring into existence as between the first parcel conveyed and the balance of the parcels at the time of the first conveyance. As each conveyance follows, the burden and the benefit of the mutual restrictions imposed by preceding conveyances as between the particular parcel conveyed and those previously conveyed pass as an incident of the ownership of the parcel, and similar restrictions are created by the conveyance as between the lot conveyed and the lots still retained by the original owner.

“[A] general plan of real estate development can give rise to mutual equitable servitudes only when [1] both the grantor and grantee intend that the land conveyed is to be restricted pursuant to a general plan, [2] that intent appears in the deed, [3] the parties' agreement shows that the parcel conveyed is subject to restrictions in accordance with the plan for the benefit of all the other parcels in the subdivision and such other parcels are subject to like restriction for its benefit, and [4] the dominant and servient tenements are adequately shown.” (*Greater Middleton Assn. v. Holmes Lumber Co.* (1990) 222 Cal.App.3d 980, 990; see also 8 Cal. Real Est. § 24:9 (3d ed.)) Equitable servitudes must also (4) be in writing, and in order to be enforceable against a grantee, the grantee must (5) have notice of the servitude. (*Taormina Theosophical Community, Inc. v. Silver* (1983) 140 Cal.App.3d 964, 972.)

The doctrine of equitable servitudes was later codified by the California legislature in the 1968 and 1969 amendments to Civil Code section 1468. (*Citizens for Covenant Compliance v. Anderson, supra*, 12 Cal.4th at p. 353; see 8 Cal. Real Est. § 24:8 (3d ed.)) Equitable servitudes were developed as a way to avoid “factual situations in which the strict application of the common law rule against creating a burden on the grantee's property that would run with the land

prevented the reasonable control of land use and development by private restrictions.” (8 Cal. Real Est. § 24:8 (3d ed.))

## 2. Equitable Servitudes on Personal Property

The court in *Nadell & Co. v. Grasso* (1959) 175 Cal.App.2d 420, 426 (“*Nadell*”) held that enforceable equitable servitudes on personal property or chattels may be created pursuant to an agreement. In *Nadell*, the plaintiff was a business which purchased goods that had been damaged in transit. (*Id.* at p. 423.) The business purchased a quantity of Kraft-branded fruit salad that, because they had been inadvertently frozen, had jars with lids that expanded over the top of the containers. When plaintiff purchased these jars, the seller conditioned the sale on an agreement that plaintiff would not permit the goods to enter retail outlets under the Kraft label. (*Id.*) Plaintiff then sold the jars to a third party pursuant to the same agreement; the fruit salad would need to be removed from the damaged jars and placed in other containers before sale, and all the lids and containers would be returned to plaintiff. (*Id.*) Defendant, a former employee of plaintiff who knew about the agreements regarding the jars, subsequently bought them from the third party and sold the goods in the damaged and Kraft-branded jars. (*Id.* at p. 424.)

The Court of Appeal began its analysis with an examination of the history of equitable servitudes. (*Nadell, supra*, 175 Cal.App.2d at pp. 426–427.) The court cited a law review article that suggested the existence of a “dominant tenement” as applied to restrictions on chattels. (*Id.* at p. 427.) The Court of Appeal then cited to several contemporary cases that upheld businesses’ attempts to maintain a standard price for their goods sold on the open market as a way of preserving their goodwill. (*Id.* at p. 427–428.) The court stated that “although not expressly so stating, each of the foregoing decisions . . . would seem to support [the] ‘dominant tenement’ approach to the problem.” (*Id.* at p. 428.)

The Court of Appeal next evaluated broad principals of equity that allow restraints on the use of particular personal property. (*Nadell, supra*, 175 Cal.App.2d at pp. 428–430.) For example, in one case, a defendant who had bought electrotype plates for printing a certain book was enjoined from selling the book at a price less than that prescribed by the assignor’s agreement with the owner of the copyright where the defendant had notice of the restrictive agreement. (*Id.* at p. 429, citing to *Murphy v. Christian Press Ass’n Pub. Co.* (1899) 56 N.Y.S. 597.) The Court of Appeal cited with approval to Judge Augustus Hand’s observation that “one who takes property with notice that it is to be used in a particular way receives it subject to something resembling an equitable servitude.” (*Nadell, supra*, 175 Cal.App.2d at p. 428, citing to *In re Waterson, Berlin & Snyder Co.* (2d Cir. 1931) 48 F.2d 704, 708.) The court in *Nadell* also cited with approval a Federal case enforcing an agreement not to sell a quantity of stale cigarettes in the United States, quoting the court’s holding that “a court of equity will enforce a restrictive covenant, if it is reasonable and made within proper limitations. There does not seem to me anything unreasonable in the reservations under consideration.” (*Id.* at p. 429, citing to *P. Lorillard Co. v. Weingarden* (8th Cir. 1922) 280 F. 238, 240.)

The Court of Appeal in *Nadell* held that, similar to equitable servitudes on land, a lack of privity with the parties who made the agreement to restrict does not render the restriction unenforceable. (*Nadell, supra*, 175 Cal.App.2d at p. 431.) The court held that equitable servitudes on chattel can be sustained on a theory that a producer of goods has a proprietary interest in the goodwill of his business. (*Id.*)

Sanders has failed to meet his burden to show that, as a matter of law, equitable servitudes do not

exist in personal property in California. Sanders urges this court to ignore *Nadell* because of its age, the lack of recent citations, and the statement by the District Court for the Central District of California that *Nadell* “does not appear to have ever been cited as good law.” (MSJ at p. 8; *Sebastian Intern. v. Russolillo* (C.D. Cal. 2000) 186 F.Supp.2d 1055, 1074.) Sanders does not cite to any case law binding on this court that specifically disapproves of or overturns *Nadell*, and neither is this court aware of any cases citing *Nadell* with approval or disapproval. As such, *Nadell* remains binding precedent on this court. *Nadell* itself noted that the facts before the court were “peculiar” and “perhaps unique.” (*Nadell, supra*, 175 Cal.App.2d at p. 431.) That it has been over fifty years since similar facts have arisen does not mean that *Nadell* is no longer good law.

Sanders argues that “the creation of equitable servitudes in personal property should be left to the Legislature, as is the case with equitable servitudes in real property.” (MSJ at p. 8.) This argument misunderstands the origin of equitable servitudes. As shown above, equitable servitudes were created by courts sitting in equity, not the Legislature. The Legislature has merely codified their existence in an effort to “make covenants that run with the land analytically closer to equitable servitudes.” (*Citizens for Covenant Compliance v. Anderson, supra*, 12 Cal.4th at p. 354.) The decision to codify this legal concept did not affect equitable servitudes, but rather transformed covenants that run with the land that are recognized at law to be more similar to equitable servitudes.

In California, the *Nadell* case recognized that enforceable equitable servitudes may be created with respect to personal property. Applying the elements of an equitable servitude in real property to chattel, equitable servitudes are enforceable where the following are met: (1) there is a written agreement; (2) about adequately described chattel; (3) that is subject to a restriction; (4) that is reasonable; and (5) of which a subsequent owner has notice.

In his Reply, Sanders argues that at issue in this case is “whether any equitable servitude in personal property should be recognized in the absence of an established procedure for putting the public on notice about them.” (Reply at p. 4.) This case, however, is far narrower. Equitable servitudes have already been recognized in California, and their enforceability is predicated on a party’s actual notice. Because it is undisputed that Sanders had actual notice of the Academy’s right of first refusal, we need not reach the hypothetical question of whether constructive notice exists in the context of an equitable servitude on chattel.

### 3. Application of the Doctrine of Equitable Servitudes to the Wright Oscar

The doctrine of equitable servitudes is applicable to the facts at hand. Similar to *Nadell*, the parties here (Academy and Wright) entered into a written agreement that specific chattel (the Wright Oscar) is subject to a restriction on its sale and use that is arguably reasonable, and that a subsequent owner (Sanders) took possession of the chattel with knowledge of that agreement. This situation is also analogous to the traditional application of equitable servitudes to real property. Like a subdivision where all the houses bear the same restrictive servitude, all Oscars are subject to the Academy’s right of first refusal. The Academy itself operates as the “dominant tenement” in this arrangement, benefiting by being able to control the flow of Oscars — in which

they have invested large sums of money to create goodwill — within the marketplace. (See Hudson Decl. ¶ 5.)

Having concluded that this case involves a set of facts to which the doctrine of equitable servitudes applies, the court will address each element of the doctrine.



### a. Written Agreement

The bylaws of voluntary associations and corporations are binding contracts. (*Berke v. Tri Realtors* (1989) 208 Cal.App.3d 463, 469.) “Any benefit conferred, or agreed to be conferred upon the promisor,” is “good consideration for a promise.” (Civ. Code § 1605.) “Consideration is not required to be adequate in the sense of equality in value but only need represent some legal detriment not otherwise incurred.” *City of San Marcos v. Loma San Marcos, LLC* (2015) 234 Cal.App.4th 1045, 1056.)

Sanders argues that the Academy’s bylaws cannot “eviscerate preexisting property rights.” (MSJ at pp. 6–8.) Sanders cites to Corporations Code section 212, subd (b) for the proposition that bylaws must not be “in conflict with law . . . .” Sanders then cites *Casady v. Modern Metal Spinning & Mfg. Co.* (1961) 188 Cal.App.2d 728, 733–734 and *Cobb v. Ironwood Country Club* (2015) 233 Cal.App.4th 960, 965–966 for the proposition that “no private corporation can repeal a by-law so as to impair rights which have been given and become vested by virtue of the by-law afterwards repealed . . . .”

In *Casady*, a wife obtained the right to her community property share of her former husband’s stock in a company. The stock was purchased by her husband and his business partners subject to a bylaw restriction that stocks may not be transferred without first offering them to the corporation and then the other shareholders for purchase. (*Casady, supra*, 188 Cal.App.2d at 729–730.) The corporation refused to allow the transfer of the shares from the husband to the wife because they were not offered the right to purchase them, and the wife filed a suit asking the court to compel the corporation to amend its bylaws to allow the transfer. (*Id.* at p. 731.) The court refused, reasoning that forcing the corporation to amend its bylaws to allow the transfer without offering the stocks to the corporation would, in essence, allow an amendment to a bylaw to apply retroactively, which is unreasonable as a matter of law. (*Id.* at p. 734.)

In *Cobb*, the organization sought to apply a change in its bylaws forcing arbitration of a former member’s claims retroactively, which the court held was in violation of his constitutional right to a jury trial. (*Cobb, supra*, 233 Cal.App.4th at pp. 967–968.)

Both *Casady* and *Cobb* are inapposite to the case at hand. It is undisputed that Academy gave Wright his Oscar before 1951. (PUMF No. 2.) As such, the Wright Oscar was freely alienable prior to the 1951 bylaws. It is also undisputed that Wright was a member of the Academy continuously from 1933 to 1985. (PUMF No. 1.) As a matter of law, Wright’s membership in the Academy after 1951 was contingent upon his acceptance of the bylaws, including the right of first refusal. In essence, Wright gave up his right to sell his pre-1951 Oscars in exchange for membership in the Academy.

Furthermore, the 1951 bylaw amendments by Academy were not applied retroactively to Wright; that is, any pre-1951 sale of the Oscar by Wright was not invalidated because of the new right of first refusal. Rather, Wright’s continued membership in the Academy was predicated on his agreement to the new right of first refusal in its bylaws. As of 1951, Wright was free to leave the Academy and sell his Oscar on the open market, but instead decided to retain his membership subject to the new bylaws.

Sanders has failed to meet its burden to show that, as a matter of law, the agreement between Wright and Academy that the Wright Oscar would be subject to a right of first refusal after 1951 was invalid. As Academy rightly points out, virtually all transactions secured by personal property encumber a party’s “pre-existing property rights.” (*Tahoe Nat’l Bank v. Phillips* (1971)

4 Cal.3d 11, 18.)

Sanders has failed to meet his burden of showing that Academy's claims for breach of equitable servitude fail as a matter of law because the 1951 amendments illegally interfered with Wright's preexisting property rights in his Oscar.

#### b. Adequately Described Chattel

The 1951 Bylaws state, in part: "Any member of the Academy who has heretofore received any Academy trophy shall be bound by the foregoing receipt and agreement with the same force and effect as though he or she had executed and delivered the same in consideration of receiving such trophy." (Horn Decl. ¶ 7.) As a member of the Academy who had previously received an Oscar, the 1951 amendment adequately described the Wright Oscar as the chattel subject to the right of first refusal.

#### c. Restriction and Reasonableness of Restriction

Neither party argues that the right of first refusal is not a restriction on the Wright Oscar. Sanders argues, however, that such a restriction violates Civil Code section 711, which states that "[c]onditions restraining alienation, when repugnant to the interest created, are void."

Civil Code section 711 "forbids only unreasonable restraints on alienation." (*Kendall v. Ernest Pestana, Inc.* (1985) 40 Cal.3d 488, 498.) In *Kendall*, the court held that a lease with a provision that the lessee may only assign the lease with the landlord's consent, but without a provision that consent will not be unreasonably withheld, was an unreasonable restraint on the alienation of a real property interest. (*Id.* at pp. 506-507.) The court reached this holding in part based on Civil Code section 711, and held that under that statute, "[r]easonableness is determined by comparing the justification for a particular restraint on alienation with the quantum of restraint actually imposed by it." (*Id.* at p. 498.) "Whether a condition is reasonable, i.e., necessary to protect a party's security in a given transaction, is a question of fact, one whose resolution must be based upon evidence directed to that issue." (*Superior Motels, Inc. v. Rinn Hotels, Inc.* 195 Cal.App.3d 1032, 1058-1060.)

However, because equitable servitudes sound in equity, courts have found that some restraints are unreasonable under Civil Code section 711 as a matter of law. In *Taormina Theosophical Community, Inc. v. Silver* (1983) 140 Cal.App.3d 964, 973, the court evaluated an equitable servitude restricting ownership of land to "Theosophists 50 years or older" to be unreasonable under Civ. Code section 711. The court reasoned that the quantum of restraint is great due to the desirability of land in Southern California, and that the justification of "the gathering together of like minded people" was insufficient to render the restraint reasonable.

Sanders has failed to meet his burden to show that Academy cannot prove its claim for breach of equitable servitude because the right of first refusal is an unreasonable restriction as a matter of law. Nate Sanders, owner of Sanders, testified that he removed a post-1951 Oscar from one of his auctions because "[w]e follow rules that would be upheld in a court of law." (Rollins Decl. Ex. 16, at p. 329:7-19.) By conceding that the post-1951 right of first refusal is valid, Sanders in essence concedes that the right of first refusal is not an unreasonable restriction.<sup>3</sup>

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<sup>3</sup> Notably, the only basis for holding the purchaser of a post-1951 Oscar bound to the provision of a right of first refusal is the same doctrine of equitable servitude.

Sanders has also failed to meet his burden to show that there is no triable issue of material fact as to the reasonableness of the right of first refusal.

The restraint on the sale of Oscars is undoubtedly significant. The right of first refusal granted to Academy to buy any Oscar for \$10 is functionally, as pointed out by Sanders, an absolute restraint on the commercial sale of Oscars. The bylaws, however, still allow "heirs, legatees, executors, administrators, estates, successors and assigned" to devise Oscars or to sell or otherwise dispose of them if they first offer them to the Academy. (Horn Decl. ¶ 7.)

Moreover, Sanders has failed to show that the restraint lacks any justification making it reasonable. Sanders describes Academy's justifications as pled in the SAC as: (1) "copies of the statuette are not, and have never been, distributed to the general public;" (2) "the Academy has always intended that the 'Oscar' not be treated as an article of trade;" and (3) the right of first refusal is necessary "[t]o maintain the award's incalculable value and uniqueness." (MSJ at p. 10; SAC 3:10-19.) Sander's sole evidence negating these arguments is that Sanders has auctioned over 30 Oscars between December 2011 and September 2013 without objection from Academy. (Yntema Decl. ¶ 2, 6.) Academy rightly points out, however, that previous violations of the Academy's rights is not evidence that the right of first refusal is unreasonable. In addition, Sanders has not made a showing that the Academy know about all 30 sales.

Further, in its Opposition, Academy has put forth evidence of its justification for the right of first refusal. Dawn Hudson, Chief Operating Officer of the Academy, states in her declaration that "[t]he Academy has never intended the Oscar statuette to be treated as an article of trade," that "[a] sale would diminish the value of the Academy's Award of Merit, signified by the Oscar statuette," and that "[t]he award . . . [is] diminished by distribution of the statuette through commercial efforts rather than in recognition of creative effort." (Hudson Decl. ¶¶ 1, 4, 19.) These valid business and artistic reasons cannot be said to be, as a matter of law, insufficient to justify the restraint on the commercial sale of Oscars imposed by the right of first refusal.

#### **d. Notice**

It is undisputed that Sanders had actual notice of the Academy's claim of a right of first refusal in the Wright Oscar. (Rollins Decl. Ex. 1.)

Because Sanders has not met its burden to show that Academy's claim that the Wright Oscar is subject to an equitable servitude fails as a matter of law, Sander's Motion for Summary Adjudication of Academy's third cause of action for Breach of Equitable Servitude is DENIED.

### **B. Second Cause of Action – Interference with Contract**

The elements of an action for tortious interference with a contract are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. (*Hahn v. Diaz-Barba* (2011) 194 Cal.App.4th 1177, 1196.)

#### **1. Existence of a Valid Contract**

Sanders argues that its purchase of the Wright Oscar from Tutalo could not have interfered with any contract. First, he argues that the only contract in question is the agreement to the Academy's bylaws between Academy and Wright. Next, Sanders argues that Academy alleges that the purchase of the Wright Oscar from Tutalo interfered with the bylaws, but that Tutalo has

never been a member of the Academy. (MSJ at p. 12; PUMF No. 7.) Sanders also argues that an equitable servitude is not a contract. (MSJ at p. 13, citing to *Treo @ Kettner Homeowners Ass'n v. Superior Court* (2008) 166 Cal.App.4th 1055, 1066–1067.)

Sanders meets its initial burden on summary judgment by showing that there was no contract between Academy and Tutalo. While there was a contract between Academy and Wright, Wright died in 1985. (PUMF No. 1.) It is undisputed that Tutalo was not a member of the Academy, and therefore generally not subject to its bylaws as a matter of contract. (PUMF No. 7.) Therefore, Sanders has shown that there was no valid contract between Academy and Tutalo with which Sanders could interfere.

Relying on *Walgren v. Dolan* (1990) 226 Cal.App.3d 572, 579, Academy argues that Tutalo is bound by the contract between Academy and Wright as a successor. (Opposition at p. 8.) Academy submits evidence that the right of first refusal is binding on Wright's "heirs, legatees, executors, administrators, estate, successors and assigns." (Horn Decl. ¶ 7.) Academy then submits evidence that Tutalo inherited the statuette directly from his Wright, who was his uncle. (Rollins Decl. ¶ 10, Ex. 8.) Sanders alleges that Tutalo inherited the Wright Oscar from his uncle, but his uncle was gifted the Oscar from Wright. (See PUMF No. 6; Tutalo Decl. ¶ 2.)

In *Walgren*, plaintiffs entered into a contract to purchase property with the beneficiary of a trust. When the beneficiary died before the consummation of the sale, the trustees of the trust argued that the trust had title to the property, not the beneficiary, and refused to honor the contract between plaintiffs and beneficiary. (*Walgren, supra*, 226 Cal.App.3d at p. 574–575.) The Court of Appeal held that the contract between plaintiffs and deceased beneficiary was binding on the trust, stating "[t]he enforceability of contracts in general (other than those for personal services) survives the death of a contracting party," and that "[w]hen a vendor dies before conveyance, an action for specific performance may be maintained against his heirs and devisees." (*Walgren, supra*, 226 Cal.App.3d at p. 579.)

Academy has met its burden on summary judgment by submitting evidence that Tutalo was a successor to the contract between Academy and Wright. While, as shown above, there was an equitable servitude on the Wright Oscar itself, Tutalo is a direct successor to the Wright Oscar as described in the bylaws. Whether Tutalo inherited the Oscar directly from Wright or from his uncle who was gifted the Oscar from Wright, a straight line of succession, unbroken by commercial transactions, can be traced from Wright to Tutalo. Sanders' conduct therefore could have interfered with that contract.

## 2. Interference with the Contract

Sanders argues that he could not have interfered with the contract between Academy and Tutalo because he was merely the highest bidder at an auction, and had Sanders not bid, the Oscar would have been sold to the next highest bidder. (MSJ at pp. 14–15.) Additionally, Sanders argues that Tutalo consigned the Wright Oscar to Briarbrook with the understanding that it would be sold to the highest bidder. (MSJ at p. 14; PUMF Nos. 8–9.)<sup>4</sup>

Sanders fails to meet his burden of showing that he did not, as a matter of law, interfere with the contract between Tutalo and Academy regarding the right of first refusal. Sanders cites *Dryden v.*

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<sup>4</sup> While Academy disputes the exact starting bid for the Wright Oscar, they do not dispute that Briarbrook agreed to sell it to the highest bidder.

*Tri-Valley Growers* (1977) 65 Cal.App.3d 990 for the proposition that a plaintiff must demonstrate that "the contract would otherwise have been performed, and that it was breached and abandoned by reason of the defendant's wrongful act and that such act was the moving cause thereof." (*Id.* at pp. 997-998.) However, as Academy rightly points out, this cause of action is based on an "interference" with a contract, not the inducement of a breach. (SAC ¶¶ 34-40.)

A claim for interference with a contract is distinct from a claim of inducing a breach of contract, in that it only requires proof of interference. (*Pac. Gas & Elec. Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1129.) There is a separate CACI jury instruction for the tort of interference with contract, which has as elements that the defendant's conduct "prevented performance or made performance more expensive or difficult" and that defendant "intended to disrupt the performance of this contract [or] knew that disruption of performance was certain or substantially certain to occur." (CACI 2201.)

Sanders has failed to show that there is no triable issue of material fact regarding his interference with the contract. Sanders was aware of the right of first refusal, but still purchased the Wright Oscar without offering to sell the Oscar to Academy. (PUMF Nos. 2, Rollins Decl. Exs. 1, 5.) Sanders therefore intentionally, or at least knowingly, prevented performance of the contract between Tutalo and Academy by purchasing the Oscar without it being offered to Academy. That Sanders happened to be the highest bidder, and there were other parties who were willing to interfere with the contract, is irrelevant. Summary Adjudication of Academy's second cause of action for Interference with Contract is DENIED.

#### **C. Fourth Cause of Action – Declaratory Relief**

Academy seeks declaratory relief that the Wright Oscar is subject to the Academy's right of first refusal and that the Academy is entitled to purchase it for \$10. (SAC ¶ 48.) To the extent that Sanders seeks summary adjudication of this issue based on his arguments to the second and third causes of action, summary adjudication as to the fourth cause of action for declaratory relief is DENIED.

Dated: July 10, 2015

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Hon. Gail Ruderman Feuer  
Judge of the Superior Court

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of  
3 eighteen years and not a party to the within action; my business address is 865 South Figueroa  
Street, 10th Floor, Los Angeles, California 90017-2543.

4 On January 4, 2016, I served true copies of the following document(s) described as  
5 **[PROPOSED] STIPULATED JUDGMENT** on the interested parties in this action as follows:

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18 **BY MAIL:** I am "readily familiar" with the practices of Quinn Emanuel Urquhart &  
19 Sullivan, LLP for collecting and processing correspondence for mailing with the United States  
20 Postal Service. Under that practice, it would be deposited with the United States Postal Service  
21 that same day in the ordinary course of business. I enclosed the foregoing in sealed envelope(s)  
addressed as shown above, and such envelope(s) were placed for collection and mailing with  
postage thereon fully prepaid at Los Angeles, California, on that same day following ordinary  
business practices.

22 I declare under penalty of perjury under the laws of the State of California that the  
23 foregoing is true and correct.

24 Executed on January 4, 2016, at Los Angeles, California.

25   
26 Abigail Valenzuela