

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

BUCK'S, INC., A NEBRASKA  
CORPORATION,

Plaintiff and  
Counterclaim  
Defendant,

vs.

QUIKTRIP CORPORATION, AN  
OKLAHOMA CORPORATION,

Defendant and  
Counterclaimant.

8:15-CV-340

ORDER

This matter is before the Court on its own motion, regarding issues submitted to the Court for disposition and post-trial motions (if any).

Pursuant to the parties' pleadings and the pretrial order, some of the parties' claims were to be decided by the Court, rather than the jury. *See filing 78 at 2.* The Court is uncertain to what extent the parties intend to pursue those claims in light of the trial proceedings and jury verdict. The Court is also uncertain whether the parties intend to file post-trial motions pursuant to Fed. R. Civ. P. 50 or Fed. R. Civ. P. 59 or, if so, whether they intend to do so after judgment is entered, or whether they would prefer motions relating to the jury's verdict to be addressed by the Court before entry of final judgment.

Accordingly, the parties may (but are not required to) file post-trial briefs in support of any claims tried to the Court on which they believe judgment in their favor is warranted. The parties are advised that any issues for the Court that are not asserted in a post-trial brief will be considered abandoned, and that in the absence of any post-trial motions or briefing, the Court will enter judgment on the jury verdict.


IT IS ORDERED:

1. Renewed Rule 50 motions and Rule 59 motions (if any) to be decided before entry of judgment shall be filed on or before February 24, 2017.

2. Post-trial briefs in support of the parties' remaining claims (which are not required) may be filed on or before February 24, 2017.
3. The parties may respond to one another's post-trial briefs (if any) on or before March 10, 2017.
4. In the absence of any timely post-trial motions or briefing, the Court may enter judgment on the jury's verdict without further notice.
5. The Clerk of the Court is directed to enter a case management deadline for February 24, 2017, with the following docket text: check for post-trial motions or briefing and entry of judgment.

Dated this 10th day of February, 2017.

BY THE COURT:

  
\_\_\_\_\_  
John M. Gerrard  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

|  |   |                      |
|--|---|----------------------|
| BUCK'S, INC., a Nebraska Corporation,          | ) |                      |
|  | ) |                      |
| Plaintiff,                                     | ) | 8:15CV340            |
|  | ) |                      |
| v.   | ) |                      |
|  | ) |                      |
| QUIKTRIP CORPORATION, an Oklahoma Corporation, | ) | MEMORANDUM AND ORDER |
|  | ) |                      |
| Defendant.                                     | ) |                      |
| _____  | ) |                      |

This matter is before the Court on the motion of QuikTrip Corporation ("defendant" or "QuikTrip") for summary judgment (Filing No. [18](#)) with regard to all claims brought by Buck's, Inc. ("plaintiff" or "Buck's"), as well as defendant's counterclaim to quiet title (*Id.*). This motion has been fully briefed, and both parties have filed exhibits in support of their arguments. See Filing Nos. 19-23. After review of the motion, briefs, submitted evidence, and relevant law, the Court finds as follows.

**I. Background**

The dispute between the parties arises out of the negotiation and sale of property located at 11105 Sapp Brothers Drive, Omaha, Nebraska ("property") (Filing No. [1-1](#) at 2-3). During the relevant negotiations time, the property was owned by Murray Fields Sapp, LLC ("seller") (*Id.* at 2). On June 25, 2014, defendant received notification that seller may be interested in selling the property (Filing No. [19](#) at 2). On June 26, 2014, defendant extended a verbal offer to seller for the purchase of

the property (*Id.*). During July, August, and September 2014, defendant and seller negotiated the sale of the property (*Id.*). Defendant asserts that the “[d]etails of the sale were finalized in November 2014, and a fully executed Contract for Purchase of Real Estate dated November 26, 2014 was provided by [defendant] to Seller.” *Id.* at 3. Plaintiff argues that the alleged November 26, 2014, agreement does not constitute a valid contract because the defendant rejected seller’s offer on December 1, 2014, via a counteroffer (Filing No. [21](#) at 1).

Plaintiff received information about the property in November of 2014, and asserts that plaintiff began negotiating with seller (Filing Nos. 19 at 3, and 21 at 4). Plaintiff was aware that others were interested in the property and were negotiating with seller (Filing No. [19](#) at 3). On December 5, 2014, plaintiff and seller agreed on a price for the property, but other material details were unresolved (*Id.*). Also on December 5, 2014, defendant signed an alleged contract for the sale of the property that seller signed on November 26, 2014 (Filing No. [20-4](#) at 10).

Throughout December 2014, plaintiff and seller continued to negotiate for the sale of the property (Filing Nos. 19 at 3 and 21 at 2). Defendant and seller also engaged in negotiations for what defendant asserts as amendments to the alleged contract (Filing No. [20-1](#) at 2). In December 2014, defendant filed a notice of equitable interest in the property (Filing No. [19](#) at 5). In January 2015, plaintiff continued

negotiations with seller for the sale of the property alleging that defendant's contract with seller was not valid (Filing No. [21](#) at 5). On January 27, 2015, seller filed a slander of title action against defendant in the District Court for Sarpy County, Nebraska (Filing No. [22-14](#)). On March 5, 2015, the slander of title action was dismissed with prejudice (Filing No. [20-18](#)).

On August 28, 2015, plaintiff filed the present action in the District Court for Sarpy County, Nebraska (Filing No. [1-1](#) at 1). On September 4, 2015, plaintiff filed a notice of *lis pendens* in Sarpy County, Nebraska, related to the present action (Filing No. [20-20](#)). On September 15, 2015, defendant filed the notice of removal to this Court (Filing No. [1](#)).

## **II. Standard of Review**

The Court must determine what law to apply to this case. "In a diversity action, [federal courts] apply state substantive law and federal procedural law." *Barkley, Inc. v. Gabriel Brothers, Inc.*, 829 F.3d 1030, 1033 (8th Cir. 2016) (citing *FutureFuel Chem. Co. v. Lonza, Inc.*, 756 F.3d 641, 646 (8th Cir. 2014)). Both parties agree the substantive law of Nebraska applies to this dispute. See Filing Nos. 19 at 6 and 21 at 8. Accordingly, the Court will apply Nebraska substantive law and federal procedural law.

A motion for summary judgment shall be granted by the Court "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A "material" fact is one

that "might affect the outcome of the suit under the governing law," and a genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). On a motion for summary judgment, facts must be viewed in the light most favorable to the nonmoving party only if there is a genuine dispute as to those facts. *Wood v. SatCom Marketing, LLC*, 705 F.3d 823, 828 (8th Cir. 2013). Summary judgment "is an extreme and treacherous remedy, and should not be entered unless the movant has established its right to a judgment with such clarity as to leave no room for controversy and unless the other party is not entitled to recover under any discernible circumstances." *Foster v. Johns-Manville Sales Corp.*, 787 F.2d 390, 392 (8th Cir. 1986) (internal citation and quotation omitted).

The moving party bears the burden to establish that no genuine issue of material fact exists. Fed. R. Civ. P. 56(a); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970). If the moving party does not meet its initial burden, summary judgment must be denied, even if no affidavits or other evidence have been submitted in opposition to the motion. *Adickes*, 398 U.S. at 159-60. After the moving party has met its burden, "the non-moving party may not rest on the allegations of his pleadings, but must set forth specific facts, by affidavit or other evidence, showing that a genuine issue of

material fact exists." *Singletary v. Missouri Dept. of Corrections*, 423 F.3d 886, 890 (8th Cir. 2005).

## II. Evidence

As an initial matter, the Court must determine what evidence cited by the parties it will rely upon for the purposes of ruling on this motion.

A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . ., admissions, interrogatory answers, or other materials; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact

Fed. R. Civ. P. 56(c)(1). "A party may object that the material fact cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). Rule 56 does not require the production of evidence "in a form that would be admissible at trial to avoid summary judgment." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

The Court may not consider inadmissible hearsay as evidence to defeat a motion for summary judgment. *Mays v. Rhodes*, 255 F.3d 644, 648 (8th Cir. 2001). Hearsay is an out of court statement offered for the truth of the matter asserted. Fed. R. Evid. 801(c). Exclusions and exceptions exist for

hearsay that permit admissibility of conceptual hearsay. See Fed. R. Evid. 801, 803, and 804. The Court will address each of the defendant's hearsay assertions to determine if the statements will be considered for the purpose of this motion.

Defendant asserts that the email correspondence between QuikTrip, its representatives, and seller constitute inadmissible hearsay (Filing No. [23](#) at 3). An opposing party's statement is not hearsay when offered against that party. Fed. R. Evid. 801(d)(2). The Court finds that the emails sent by Michael Talcott ("Talcott") and Jerry Huber ("Huber") on December 1, 2014 (Filing No. [22-5](#) at 1), constitute an opposing party's statements and are not hearsay. See Fed. R. Evid. 801(d)(2). However, the Court finds that the correspondence from seller to defendant is hearsay to the extent that it is offered for the truth of the matter asserted. In addition, to the extent that the letter from seller's counsel on January 9, 2015 (Filing No. [22-12](#) at 1), is offered for the truth of the matter asserted it will not be considered by the Court for the purposes of this motion.

Defendant also argues that the statements contained in Steven Buchanan's ("Buchanan") affidavit and deposition testimony regarding a conversation he had with seller and seller's attorney is inadmissible hearsay (Filing No. [23](#) at 2-3). Applying Rule 801(c), the Court finds that for the purpose of this motion, seller's statements to Buchanan are inadmissible hearsay to the extent that they are offered to prove the matter asserted.



Finally, defendant argues that seller's Sarpy County complaint ("state complaint") (Filing No. [22-14](#)) cannot be used as evidence in this case (Filing No. [23](#) at 4). Defendant bases its argument that the state complaint is inadmissible on the premise that it would be improper for the Court to take judicial notice of the complaint (*Id.* at 4-5). "The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). The facts contained within the state complaint have not been litigated or found to be true. Rather, the facts are allegations of the seller that can reasonably be questioned. Accordingly, the Court will not accept statements contained in the state complaint as true. However, the fact that the state complaint was filed and the assertions therein may be reviewed by the Court for non-hearsay purposes. See Fed. R. Evid. 801(c).

### **III. Tortious Interference Claim**

Defendant argues that it should be granted summary judgment because plaintiff's claim of tortious interference fails as a matter of law (Filing No. [19](#) at 6). In Nebraska,

To succeed on a claim for tortious interference with a business relationship or expectancy, a plaintiff must prove (1) the existence of a valid business relationship or expectancy, (2) knowledge by the interferer of the relationship or expectancy, (3) an unjustified intentional act of

interference on the part of the interferer, (4) proof that the interference caused the harm sustained, and (5) damage to the party whose relationship or expectancy was disrupted.

*Recio v. Evers*, 771 N.W.2d 121, 131 (Neb. 2009) (citing *Aon Consulting v. Midlands Fin. Benefits*, 748 N.W.2d 626, 644 (Neb. 2009)).

**A. Existence of Valid Business Relationship or Expectancy**

Defendant argues that plaintiff had no valid business relationship or expectancy (Filing No. [19](#) at 7). In support of this argument, defendant relies on the fact that plaintiff did not have a signed agreement and that seller was negotiating with other potential purchasers (*Id.*). Defendant asserts that admissible evidence does not support that plaintiff had a valid business relationship or expectancy (Filing No. [23](#) at 3-4).

This Court has noted that “Nebraska law has not fully developed [with regard to determinations of a valid business relationship].” *Infogroup, Inc. v. Database, LLC*, 95 F. Supp. 3d 1170, 1196 (D. Neb. 2015). However, this Court has recognized a valid business relationship if the plaintiff can prove “that there was a reasonable likelihood or probability of a business relationship.” *Infogroup*, 95 F. Supp. 3d at 1196; see also *McDonald Apiary, LLC v. Starrh Bees, Inc.*, No. 8:14-cv-351, 2015 WL 11108873, at \*3 (D. Neb. May 22, 2015); *West Plains, LLC v. Retzlaff Grain Co. Inc.*, No. 8:13-cv-47, 2016 WL 387165, at \*2 (D. Neb. May 9, 2016). Accordingly, the fact that defendant did not have a signed agreement with seller is not dispositive. A

rational finder of fact may still find plaintiff had a valid business relationship or expectancy if it is supported by admissible evidence.

After review of the entire record, the Court finds that a genuine issue of material fact exists with regard to whether or not plaintiff had a valid business relationship or expectancy. Plaintiff contends that Buck's would have reached an agreement with seller for the purchase of the property but for the defendant's filing of the notice of equitable interest (Filing No. [21](#) at 11-12). Buchanan provides in his affidavit, and the defendant concedes that on December 5, 2014, plaintiff and seller agreed on a price for the property. See Filing Nos. 22-1 at 1 and 19 at 3. In Buchanan's deposition, he continually refuted defendant's claims that the terms that were being negotiated were material, and asserted that but for the defendant's filing of the notice of equitable interest, Buck's and seller would have finalized the deal. See Filing No. [22-6](#), 7-11. In addition, the affidavit of Buck's consultant, Nichole Mallet, states that Buck's "would not have walked away from the deal over [the unresolved issues]." Filing No. [22-2](#) at 1. Finally, the fact that seller filed a slander of title action against defendant in state court provides support for Buchanan's contention that the notice of equitable title was an issue for seller. See Filing No. [22-14](#). Accordingly, viewing the evidence in the light most favorable to the nonmoving party, the Court finds a genuine issue

of material fact with regard to whether or not plaintiff had a valid business relationship or expectancy.

**B. Knowledge by the Interferer**

Defendant asserts that QuikTrip had no knowledge of any business relationship or expectancy before it signed the agreement to purchase the property (Filing No. [19](#) at 7). However, defendant does not direct the Court to anything in the record to show the absence of material fact. *See Celotex*, 477 U.S. at 323 (noting that a party seeking summary judgment bears the burden of identifying the portions of the record that show the absence of a genuine issue of material fact).

The record includes information that could lead a rational trier of fact to determine that defendant had knowledge of a business relationship or expectancy. The real estate project manager for defendant, Michael Talcott, provided a affidavit for the purposes of this motion (Filing No. [20-1](#)). Talcott states: "On or about December 5, 2014, QuikTrip learned that Buck's had wanted to purchase the property." Filing No. 20-1 at 2. Talcott further states that "In mid-December, the seller told QuikTrip that it was thinking about backing out of the Contract." *Id.* After receiving the information that Buck's wanted to purchase the property, and the contemplation of seller about backing out of the alleged agreement with QuikTrip, defendant filed the notice of equitable interest on December 29, 2014. *Id.* Talcott's statements provide the basis for a reasonable inference of defendant's knowledge. Accordingly, the

Court finds a genuine issue of material fact with regard to whether or not defendant had knowledge of any alleged business relationship or expectancy, precluding the grant of summary judgment.

**C. An Unjustified Intentional Act of Interference**

Defendant argues that plaintiff's claim fails, because the action taken by QuikTrip does not qualify as unjustified. See Filing No. [19](#) at 9-11. Defendant's principal argument to support the proposition that QuikTrip's actions were justified is couched in the "competitor's privilege" (Filing No. [19](#) at 9). Defendant argues that plaintiff's claim fails to satisfy the factors adopted by the Nebraska Supreme Court, because "valid business competition is not actionable under Nebraska law." *Id.*

The Nebraska Supreme Court has adopted seven factors from the Restatement of Torts to determine whether interference with a business relationship is improper:

- (1) the nature of the actor's conduct,
- (2) the actor's motive,
- (3) the interests of the other with which the actor's conduct interferes,
- (4) the interests sought to be advanced by the actor,
- (5) the social interests in protecting the freedom of action of the actor and the contractual interests of the other,
- (6) the proximity or remoteness of the actor's conduct to the interference, and
- (7) the relations between the parties.

*Aon*, 748 N.W.2d at 644 (citing *Macke v. Pierce*, 661 N.W.2d 313, 317-18 (Neb 2003)); Restatement (Second) of Torts § 767 (1979). The competitor's privilege adopted by the Nebraska Supreme Court from the Restatement of Torts provides that:

One is privileged purposely to cause a third person not to enter into or continue a business relation with a competitor of the actor if: (a) the relation concerns a matter involved in the competition between the actor and the competitor, and (b) the actor does not employ improper means, and (c) the actor does not intend thereby to create or continue an illegal restraint of competition, and (d) the actor's purpose is at least in part to advance his interest in his competition with the other.

*Lamar Co., LLC v. City of Fremont*, 771 N.W.2d 894, 906 (Neb. 2009); Restatement (Second) of Torts § 768 (1979). Ordinarily, instituting or threatening to institute litigation in bad faith constitutes wrongful action. See Restatement (Second) of Torts § 767 cmt. a (Am. Law Inst. 1979); Restatement (Second) of Torts § 768 cmt. e (Am. Law Inst. 1979). Conversely,

One who, by asserting in good faith a legally protected interest of his own or threatening in good faith to protect the interest by appropriate means, intentionally causes a third person not to . . . enter into a prospective contractual relation with another does not interfere improperly with the other's relation if the actor believes that his interest may otherwise be impaired or destroyed by the performance of the contract or transaction.

*Farmers Co-op. Elevator Co. v. Jelinek*, No. A-04-761, 2006 WL 223155, at \*8 (Neb. Ct. App. Jan. 31, 2006) (citing Restatement (Second) of Torts § 773 (1979)).

A genuine issue of material fact exists with regard to whether or not defendant can rely on the "competitor's privilege" and whether or not filing the notice of equitable interest was justified. The parties dispute whether or not defendant had a valid binding contract for the purchase of the property at the time the notice of equitable interest was filed. The determination of whether or not defendant had a valid binding contract is material to determine whether or not defendant's actions were justified.

On December 1, 2014, defendant's broker, Huber, emailed seller's broker stating there were changes in the agreement (Filing No. [22-5](#) at 1). This email also states that the agreement has not been signed, and "We are getting close!" *Id.* Also, on December 1, 2014, Talcott sent an email stating that his "Director wanted him to update the contract," and that changes had been made. *Id.* Finally, the fact that seller filed the slander of title action against defendant in state court provides support for the plaintiff's argument that defendant did not have a valid contract at the time the notice of equitable interest was filed. Accordingly, the Court finds a genuine issue of material fact related to whether or not the defendant's actions were justified, precluding granting summary judgment.

#### **D. Causation and Damages**

Defendant next argues that plaintiff's own actions caused Buck's damages (Filing no. [19](#) at 11). Defendant asserts that plaintiff's expenses were "part of the normal part of

securing property," and money expended by plaintiff was a result "Buck's own decision to move forward despite knowing that another party had a superior position." Filing No. [19](#) at 11-12.

Plaintiff asserts that but for defendant's filing of the notice of equitable interest, Buck's would have purchased the property from seller. Filing No. [21](#) at 16.

A genuine issue of material fact with regard to causation exists. A rational trier of fact could find that the damages Buck's sustained were the proximate cause of the defendant's actions. While seller's statements to Buchanan that it would sell the property to Buck's but for the notice of equitable interest is not admissible for the truth of the matter asserted, the Court can rely on this for the limited purpose of "effect on the listener." See Fed. R. Evid. 801(c); see also *United States v. Wright*, 739 F.3d 1160, 1170 (8th Cir. 2014) (holding that a statement offered for the purpose of showing the effect on the listener is not hearsay). In addition, seller's filing of the state complaint provides support for the proposition that seller believed there was an encumbrance on the property, limiting the alienability of the property.

Furthermore, a party may recover damages for "consequential losses for which the interference is the legal cause." *Omaha Min. Co., Inc. v. First Nat. Bank of Bellevue*, 415 N.W.2d 111, 114 (Neb. 1987) (citing Restatement (Second) of Torts § 774A (1979)). Plaintiff alleges damages for "lost profits from not being able to operate its travel plaza." Filing No. [21](#) at



16. The inability of the seller to convey marketable title to the property could lead to consequential loss for plaintiff. Viewing the evidence in the light most favorable to the nonmoving party, the Court finds a genuine issue of material fact with regard to causation and damages.

After review of the underlying facts in the light most favorable to the nonmoving party, the Court finds a genuine issue of material fact with each element of tortious interference. Accordingly, the motion for summary judgment on plaintiff's tortious interference claim will be denied.

#### **IV. Constructive Trust Claim**

Plaintiff claims that QuikTrip obtaining the property would cause defendant to be unjustly enriched from tortious conduct (Filing No. [1-1](#) at 3). Plaintiff further requests a constructive trust or a judgment for damages against defendant (*Id.*). Defendant argues that because plaintiff did not finalize material terms with seller, plaintiff does not have an equitable interest in the property upon which a constructive trust can be granted (Filing No. [19](#) at 13). Defendant argues that plaintiff did not have an equitable interest in the property because Buck's never "finalized material terms of any purchase agreement with [seller]." *Id.*

Under Nebraska law, "A constructive trust is a relationship, with respect to property, subjecting the person who holds title to the property to an equitable duty to convey it to another on the ground that his or her acquisition or retention of

the property would constitute unjust enrichment." *Manker v. Manker*, 644 N.W.2d 522, 533 (Neb. 2002). A plaintiff seeking a constructive trust

[m]ust prove by clear and convincing evidence that the individual holding the property obtained title to it by fraud, misrepresentation, or an abuse of an influential or confidential relationship and that under the circumstances, such individual should not, according to the rules of equity and good conscience, hold and enjoy the property so obtained.

*ProData computer Servs., Inc. v. Ponec*, 590 N.W.2d 176, 181 (Neb. 1999). "Each case involving the existence of a constructive trust is to be determined on the peculiar facts, circumstances, and conditions presented therein." *Kuhlman v. Cargile*, 262 N.W.2d 454, 459 (Neb. 1978).

The crux of the issue regarding the availability of a constructive trust is not as narrow as whether or not plaintiff obtained an equitable interest in the property, but rather whether defendant's conduct was of the nature that constitutes unjust enrichment. As described above, the Court finds genuine issues of material fact with regard to whether or not defendant's conduct constitutes tortious interference. The resolution of this factual dispute is determinative of whether or not the remedy of a constructive trust is available to the plaintiff. Accordingly, the motion for summary judgment with regard to the constructive trust will be denied.

## V. Quiet Title

Defendant seeks summary judgment on its counterclaim to quiet title (Filing No. [19](#) at 14). Defendant bases its argument for quieting title in QuikTrip in the statute for quieting title (Filing No. [19](#) at 14). However, on September 4, 2015, plaintiff filed notice of *lis pendens* in Sarpy County, Nebraska (Filing 20-20). A separate Nebraska statute governs the application and scope of *lis pendens*. The relevant Nebraska statute provides,

The court in which such action was commenced or any judge thereof may at any time thereafter on the application of any person aggrieved, on good cause shown, and on such notice as the court or judge may determine, order the notice [of *lis pendens*] to be canceled by the clerk or register of deeds of any county in which the notice may have been filed or recorded by filing a notice of release.

Neb. Rev. Stat. § 25-531. "The application of the *lis pendens* doctrine does not depend on the merits of the underlying action." *Kelliher v. Soundy*, 852 N.W.2d 718, 724 (Neb. 2014). "The purpose of the rule as to *lis pendens* is to prevent third persons, during the pendency of the litigation, from acquiring interests in the land which would preclude the court from granting the relief sought. *Kelliher*, 852 N.W.2d at 725 (internal citation and quotation omitted).

As described above, summary judgment with regard to plaintiff's tortious interference claim will be denied, leaving the dispute over the property unresolved. The purpose of the *lis*

*pendens* has not been served, nor has "good cause" been shown for cancellation. Accordingly, defendant's motion to quiet title will be denied.

IT IS ORDERED:

1) Defendant's motion for summary judgment with respect to plaintiff's tortious interference claim is denied.

2) Defendant's motion for summary judgment with respect to the plaintiff's constructive trust claim is denied.

3) Defendant's motion for summary judgment with respect to defendant's quiet title claim is denied.

DATED this 17th day of October, 2016.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court