

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LARRY TYRONE BRANTLEY, SR., ELLEN BRANTLEY,)	Case No. 07-6139 SC
)	
Plaintiffs,)	ORDER GRANTING IN PART AND
v.)	DENYING IN PART MOTION FOR
)	SUMMARY ADJUDICATION AGAINST
)	<u>ACADEMY ESCROW</u>
GARRETT BOYD, MODO REALTY, INC.,)	
PRAVEEN CHANDRA, ACADEMY ESCROW,)	
SCHWARTZ & FENSTER, P.C., and)	
DOES 1-10,)	
)	
Defendants.)	
_____)	
)	
AND RELATED CROSS-ACTIONS)	
)	
_____)	

I. INTRODUCTION

Defendants and Cross-Complainants Praveen Chandra and Schwartz & Fenster, P.C. ("Chandra") move the Court for summary judgment or summary adjudication in favor of Chandra on the causes of action in his First Amended Cross-Complaint against Cross-Defendant Academy Escrow. Docket No. 107 ("Motion"). Academy Escrow filed an Opposition and Chandra submitted a Reply. Docket Nos. 118, 120. Upon consideration of all the papers submitted, the Court concludes that the matter is appropriate for decision without oral argument. The Motion is GRANTED IN PART and DENIED IN PART.

1 **II. BACKGROUND**

2 **A. Procedural Background**

3 On December 4, 2007, Chandra removed this case from the
4 Alameda County Superior Court. Docket No. 1 ("Notice of Removal").
5 Larry Brantley and Ellen Brantley ("the Brantleys") sued various
6 parties, including Chandra, after an attempt was made to foreclose
7 on their home due to failure to repay a \$180,000 loan. See Notice
8 of Removal, Ex. A ("Compl."). Chandra was the lender. Chandra
9 Decl. ¶¶ 10-13.¹ Chandra filed a Cross-Complaint against various
10 parties, including the escrow holder, Academy Escrow. Docket No. 7
11 ("Cross-Compl."). The Court granted Chandra leave to file an
12 Amended Cross-Complaint, which was filed on June 30, 2009. Docket
13 Nos. 103, 104 ("First Am. Cross-Compl.").

14 **B. Factual Background**

15 On April 4, 2007, Garrett Boyd ("Boyd") emailed Sergei
16 Klyazmin ("Klyazmin"), a real estate broker, about obtaining a
17 loan. Traum Decl. Ex. 1(a) ("Klyazmin Jan. 22, 2009 Dep.") at 38:4-
18 8, 87:11-88:3, Ex. 12(b) ("Apr. 4, 2007 Email").² Klyazmin was the
19 broker and owner of Modo Realty, Inc. ("Modo"), and Royal Crown
20 Mortgage ("Royal Crown"). Klyazmin Jan. 22, 2009 Dep. at 44:23-
21 45:5; Traum Decl. Ex. 12(c) ("Klyazmin Email"). Klyazmin forwarded
22 Boyd's email to his employee, Jessica Skiff ("Skiff"), a licensed
23 real estate agent. Traum Decl. Ex. 2 ("Skiff Dep.") at 148:21-
24 149:2; Klyazmin Email.

25
26 _____
27 ¹ Praveen Chandra filed a declaration in support of the Motion.
Docket No. 107.

28 ² Sheryl Traum, attorney at the law firm Chapman & Intrieri, LLP,
filed a declaration in support of the Motion. Docket No. 108.

1 Skiff was under the impression that Boyd "needed some money to
2 buy a home. His aunt and uncle [the Brantleys] were willing to put
3 up their house and the borrower is going to repay this amount
4 within a certain amount of days." Skiff Dep. at 108:17-20. In
5 fact, Boyd was not related to the Brantleys. Traum Decl. Ex. 5
6 ("Larry Brantley Dep.") at 52:24-53:7, Ex. 6 ("Ellen Brantley
7 Dep.") at 38:13-16. Boyd was a friend of the Brantleys' niece.
8 Larry Brantley Dep. at 52:1-15. Boyd was telling people that he
9 was related to the Brantleys "[s]o that they would feel a little
10 more comfortable about lending to me." Traum Decl. Ex. 7 ("Traum
11 Excerpts from Boyd Dep.") at 223:14-20. Boyd wanted the Brantleys
12 to borrow \$180,000 using their home as security, so that he could
13 use the money to acquire another property. Davenport Decl.³ Ex. A
14 ("Davenport Excerpts from Boyd Dep.") at 85:3-6, 94:12-15. Boyd
15 never acquired that other property. Id. at 90:8-22.

16 On April 5, 2007, Skiff contacted Chandra about whether he was
17 interested in providing a short-term loan in the amount of \$180,000
18 in exchange for an interest fee or money loan fee of \$30,000.
19 Skiff Dep. at 91:4-10; Chandra Decl. ¶ 2. The fee was eventually
20 reduced to \$25,000. Chandra Decl. ¶ 9. The loan was to be made to
21 the Brantleys, who agreed to repay the loan on or before July 1,
22 2007, and the loan was secured by their real property located at
23 3120 San Andreas, Union City, California. See Traum Decl. Ex. 9(f)
24 ("Note Secured by Deed of Trust"), Ex. 9(g) ("Deed of Trust"). Boyd
25 was not a party to the loan. See id.

26
27
28 ³ Scott Wm. Davenport, an attorney at the law firm of Manning and
Marder, submitted a declaration in support of Academy Escrow's
Opposition. Docket No. 119.

1 Skiff contacted Academy Escrow about being the escrow agent
2 for the loan. Skiff Dep. at 106:14-107:14; Traum Decl. Ex. 3
3 ("Lyon Dep.") at 68:18-21.⁴ The escrow number assigned to the
4 Brantley transaction was 020615-AL. Traum Decl. Ex. 4 ("Nguyen
5 Dep.") at 81:16-22. Academy Escrow prepared the Refinance Escrow
6 Instructions, and the Additional Escrow Conditions and
7 Instructions, dated April 24, 2007, which were initialed and signed
8 by Larry Brantley and Ellen Brantley. Lyon Dep. at 203:21-204:11;
9 Traum Decl. Ex. 9(d) ("Escrow Instructions").

10 Under Additional Escrow Conditions and Instructions, it
11 states:

12 2. All funds received in this escrow shall be deposited
13 with a State or National bank with other funds. Make
14 disbursements by your check All documents and
15 funds due the respective parties herein are to be mailed
16 to the addresses set out below their respective
17 signatures, unless otherwise instructed. . . .

18 3. Your duties hereunder shall be limited to the
19 safekeeping of such money and documents received by you
20 as escrow holder, and for the disposition of the same in
21 accordance with the written instructions accepted by you
22 in this escrow. . . .

23 7. NO NOTICE, DEMAND OR CHANGE OF INSTRUCTIONS SHALL BE
24 OF ANY EFFECT IN THIS ESCROW UNLESS GIVEN IN WRITING BY
25 ALL PARTIES AFFECTED THEREBY.

26 Id. at 2 (block capitals in original). At the end of the
27 Escrow Instructions, Larry and Ellen Brantley signed as the
28 borrowers, and the borrowers' address is listed as 3120 San
29 Andreas Drive, Union City, CA 94587. Id. at 3.

30 Academy Escrow prepared the Note. Lyon Dep. at 203:21-
31 204:11. It is dated April 26, 2007, and signed by Larry and

32 _____
33 ⁴ Angelique Lyon worked for Academy Escrow and her deposition was
34 taken in April 2009. See Traum Decl. Ex. 3.

1 Ellen Brantley, who promised to pay Chandra \$180,000 with a
2 one-time-only interest payment of \$25,000 on or before July 1,
3 2007. See Note Secured by Deed of Trust.

4 Academy Escrow prepared the Deed of Trust. Lyon Dep. at
5 203:21-204:11. The Deed of Trust identifies the Brantleys as
6 the Trustor, Academy Escrow as the Trustee, and Chandra as the
7 Beneficiary. See Deed of Trust. It states that the Trustor
8 irrevocably grants, transfers, and assigns to Trustee, with
9 power of sale, the property known as 3120 San Andreas Drive,
10 Union City, CA 94587. Id.

11 On May 3, 2007, Ann Nguygen ("Nguyen"), an Academy Escrow
12 employee, emailed the wiring instructions to Chandra. Nguygen
13 Dep. at 124:21-126:10; Traum Decl. Ex. 14 ("Nguygen May 3,
14 2007 Email"). The wiring instructions instructed Chandra to
15 wire the funds to Bank of the West. Nguygen May 3, 2007 Email
16 at 2. Chandra wired the funds for this escrow, and received
17 confirmation. Nguygen Dep. at 127:7-17; Lyon Dep. at 95:7-9;
18 Traum Decl. Ex. 9(h) ("Funds Wired In"), Ex. 9(j) ("Incoming
19 Wire Report").

20 According to Boyd, he, Ellen Brantley, and Lyon of
21 Academy Escrow had a telephone conversation shortly before the
22 funds were transferred out of escrow. Davenport Excerpts from
23 Boyd Dep. at 116:19-117:1; 117:8-118:6. According to Boyd, he
24 instructed Lyon of Academy Escrow to wire the \$180,000 into
25 his account, and Ellen Brantley did not say the money was not
26 supposed to be wired into Boyd's account. Id. at 292:4-16.

27 On May 4, 2007, after deducting fees, Academy Escrow
28 wired \$174,157 to Garrett Boyd's bank account. Lyon Dep. at

1 224:19-225:16; Traum Decl. Ex. 9(m) ("Detail Report May 4,
2 2007"), Ex. 9(n) ("Wire Detail Report"). Lyon, of Academy
3 Escrow, had received verbal instructions from Boyd to wire the
4 funds to his account, and was always under the impression that
5 the money was going to Boyd. Lyon Dep. at 85:3-6, 217:12-21,
6 224:12-14, 240:24-25. A receipt entitled "Funds Wired Out,"
7 states that the funds were wired to "Larry Brantley and Ellen
8 Brantley C/O GARRETT BOYD." Traum Decl. Ex. 9(l) ("Funds Wired
9 Out").

10 The loan came due on July 1, 2007. See Note Secured by
11 Deed of Trust. The Brantleys refused to repay the loan
12 claiming they never received the loan funds. Larry Brantley
13 Dep. at 102:4-11; Ellen Brantley Dep. at 89:6-11. The
14 Brantleys filed suit in Alameda County Superior Court after an
15 attempt was made to foreclose on their property. See Compl.
16

17 **III. LEGAL STANDARD**

18 "The standards and procedures for granting partial
19 summary judgment, also known as summary adjudication, are the
20 same as those for summary judgment." Mora v. Chem-Tronics,
21 Inc., 16 F. Supp. 2d 1192, 1200 (S.D. Cal. 1998). Entry of
22 summary judgment is proper "if the pleadings, the discovery
23 and disclosure materials on file, and any affidavits show that
24 there is no genuine issue as to any material fact and that the
25 movant is entitled to judgment as a matter of law." Fed. R.
26 Civ. P. 56(c). The movant bears the initial burden of
27 demonstrating the absence of a genuine issue of fact. See
28 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). To

1 survive a motion for summary judgment, the responding party
2 must present competent evidence that creates a genuine issue
3 of material fact. See Anderson v. Liberty Lobby, Inc., 477
4 U.S. 242, 248-52 (1986). "The evidence of the nonmovant is to
5 be believed, and all justifiable inferences are to be drawn in
6 his favor." Id. at 255.

7

8 **IV. DISCUSSION**

9 **A. Chandra's Fourth, Sixth, and Seventh Causes of**
10 **Action**

11 Chandra contends he is entitled to summary adjudication
12 regarding his fourth, sixth, and seventh causes of action.
13 Mot. at 17. Chandra's fourth cause of action is for general
14 negligence, the sixth cause of action is for statutory
15 violations/negligence per se, and the seventh cause of action
16 is for professional negligence. First Am. Cross-Compl. ¶¶ 33-
17 38, 45-51, 52-56.

18 With regard to Chandra's cause of action for negligence
19 per se, California law creates a rebuttable presumption of
20 failure to exercise due care if a person violates a statute,
21 the violation proximately causes an injury, the injury is of
22 the type the statute is designed to prevent, and the injured
23 party is a type of person the statute was meant to protect.
24 Cal. Evid. Code § 669(a); see Newhall Land and Farming Co. v.
25 Super. Ct., 19 Cal. App. 4th 334, 347 (Ct. App. 1993); see
26 also Short v. State Comp. Ins. Fund, 52 Cal. App. 3d 104, 110
27 (Ct. App. 1975).

28

1 Chandra alleges that Academy Escrow violated California
2 Financial Code section 17414, which regulates escrow agents,
3 and which provides, in part, that:

4 (a) It is a violation for any person subject to this
5 division or any director, stockholder, trustee, officer,
6 agent, or employee of any such person to do any of the
7 following:

8 (1) Knowingly or recklessly disburse or cause the
9 disbursement of escrow funds otherwise than in accordance
10 with escrow instructions, or knowingly or recklessly to
11 direct, participate in, or aid or abet in a material way,
12 any activity which constitutes theft or fraud in
13 connection with any escrow transaction.

14 (2) Knowingly or recklessly make or cause to be made
15 any misstatement or omission to state a material fact,
16 orally or in writing, in escrow books, accounts, files,
17 reports, exhibits, statements, or any other document
18 pertaining to an escrow or escrow affairs.

19 Cal. Fin. Code § 17414(a). Chandra contends that Academy
20 Escrow knowingly disbursed the escrow funds otherwise than in
21 accordance with the escrow instructions. Mot. at 17.

22 Here, there can be no dispute that Larry and Ellen
23 Brantley were the borrowers of the money loaned by Chandra.
24 See Escrow Instructions; Traum Decl. Ex. 9(e) ("Amended Escrow
25 Instructions"); Note Secured by Deed of Trust. The escrow
26 instructions provide that all "funds due the respective
27 parties herein are to be mailed to the addresses set out below
28 their respective signatures, unless otherwise instructed."
29 Escrow Instructions at 2. The same document identifies Larry
30 Brantley and Ellen Brantley as the borrowers, and it provides
31 their mailing address. Id. at 3.

32 Academy Escrow did not follow this instruction, but
33 instead wired the funds into Boyd's bank account. Klyazmin
34 Apr. 8, 2009 Dep. at 56:21-57:5; Lyon Dep. at 224:19-225:16;

1 Detail Report May 4, 2007; Wire Detail Report. Academy Escrow
2 did so knowingly because their software would have
3 automatically entered the Brantleys as the recipients of the
4 escrow funds, but someone at Academy Escrow manually entered
5 Boyd as the recipient. Lyon Dep. at 216:13-217:21.
6 Academy Escrow suggests that it was otherwise instructed
7 because Boyd told them to wire the funds into his bank
8 account. Opp'n at 9-10. According to Boyd, Ellen Brantley
9 was on the line when Boyd told Angie Lyon to wire the funds to
10 him and Ellen Brantley did not object. See Davenport Excerpts
11 from Boyd Dep. at 292:4-16. Even if this claim is true, the
12 instructions provide, in block capitals, that "NO NOTICE,
13 DEMAND OR CHANGE OF INSTRUCTIONS SHALL BE OF ANY EFFECT IN
14 THIS ESCROW UNLESS GIVEN IN WRITING BY ALL PARTIES AFFECTED
15 THEREBY." Escrow Instructions at 2. Neither Chandra, the
16 lender, nor the Brantleys, the borrowers, instructed Academy
17 Escrow to wire the funds into Boyd's account. Chandra Decl.
18 ¶ 13; Lyon Dep. at 94:4-95:21, 220:24-221:1. Nor did any of
19 them do so in writing. Therefore, the Court finds that
20 Academy Escrow violated California Financial Code section
21 17414(a)(1).

22 In response, Academy Escrow contends that it was
23 reasonable for Academy Escrow to assume that Boyd was the
24 Brantley's agent. Opp'n at 8-10. This contention does
25 nothing to rebut the Court's presumption that Academy Escrow
26 failed to use reasonable care. Even assuming, for the sake of
27 argument, that Boyd was the Brantley's agent, the escrow
28 instructions clearly state that any changes must be in

1 writing. See Escrow Instructions at 2. An escrow holder must
2 comply strictly with the instructions. Amen v. Merced County
3 Title Co., 58 Cal. 2d 528, 531-32 (1962). Boyd's request to
4 have the instructions wired to him was not in writing. See
5 Lyon Dep. at 85:3-6. Hence, even if Boyd was the Brantleys'
6 agent, then Academy Escrow still knowingly disbursed the
7 escrow funds otherwise than in accordance with the
8 instructions. By doing so, Academy Escrow violated California
9 Financial Code section 17414(a)(1).

10 It is also clear that Academy Escrow's violation of the
11 statute injured Chandra. When Chandra sought to have his loan
12 repaid from the borrowers, they were unable to do so, because
13 the loan funds had never been sent to them. Larry Brantley
14 Dep. at 102:4-11; Ellen Brantley Dep. at 89:6-11. The statute
15 regulating escrow agents is designed to prevent this type of
16 situation, and the statute clearly requires escrow agents to
17 strictly comply with the escrow instructions in order to
18 prevent harm to borrowers and lenders. Pursuant to California
19 Evidence Code Section 669(a), the Court therefore presumes
20 that Academy Escrow failed to exercise reasonable care and is
21 liable for negligence per se.

22 Academy Escrow points out that escrow instructions do not
23 always have to be in writing. Opp'n at 7. However, the cases
24 Academy Escrow cites in support of that proposition hurt,
25 rather than help, its case. In Kirk Corporation v. First
26 American Title Company, the court noted that escrow
27 instructions can be oral. 220 Cal. App. 785, 807 (Ct. App.
28 1990). However, in that case, the court also noted that in

1 the event of a conflict or apparent error in instructions, the
2 escrow holder is obliged to take corrective steps before
3 obeying questionable instructions. Id. Here, prior to
4 disbursing the funds to Boyd's bank account, Academy Escrow
5 did not check with the lender or the borrowers to see if they
6 authorized Boyd to receive the escrow funds. Lyon Dep. at 94:
7 13-17.

8 Academy Escrow relies on Claussen v. First America Title
9 Guaranty Company, 186 Cal. App. 3d 429 (Ct. App. 1986). In
10 that case, the Court determined that an oral inquiry
11 concerning whether a down payment had been received in escrow
12 did not constitute an escrow instruction. Id. at 437.
13 Similarly here, Boyd's oral instruction should not have been
14 followed, particularly since it conflicted with the written
15 instructions, and the instructions required any change to be
16 provided by the parties in writing.

17 Academy Escrow cites to other cases in support of the
18 general proposition that escrow instructions can be oral as
19 well as written. Opp'n at 7; Whiteman v. Leonard Realty Co.,
20 189 Cal. App. 2d 373, 376 (Ct. App. 1961); Zang v.
21 Northwestern Title Co., 135 Cal. App. 3d 159, 167-68 (Ct. App.
22 1982); Kelly v. Steinberg, 148 Cal. App. 2d 211, 217 (Ct. App.
23 1957); Kern v. Henry, 138 Cal. App. 46, 52 (Ct. App. 1934).
24 However, in this case, the instructions clearly provided that
25 any changes to the instructions had to be given in writing by
26 all the parties affected thereby. See Escrow Instructions at
27 2. Academy Escrow failed to comply with this instruction.
28 Therefore, the Court GRANTS summary adjudication in favor of

1 Chandra and against Academy Escrow on Chandra's sixth cause of
2 action for negligence per se and his fourth cause of action
3 for negligence.⁵

4 **B. Chandra's Twelfth Cause of Action for Breach of**
5 **Contract**

6 Chandra moves for summary adjudication on his twelfth
7 cause of action for breach of contract. Mot. at 18. If the
8 escrow instructions are in writing and the escrow holder
9 accepts them or if the escrow holder prepares the
10 instructions, offers to perform them, and the buyer and seller
11 accept the offer, an action for failure to comply with the
12 instructions is on a written contract. Amen v. Merced County
13 Title Co., 58 Cal. 2d 528, 532 (1962). If the escrow holder
14 violates the instructions, then liability attaches for breach
15 of contract. Garton v. Title Ins. & Trust Co., 106 Cal. App.
16 3d 365, 381 (Ct. App. 1980).

17 Here, Academy Escrow failed to follow its own
18 instructions, which required the money in escrow to be
19 disbursed to the borrowers. Instead, Academy Escrow deposited
20 the money in escrow into Boyd's bank account. See Part IV(A),
21 supra. Academy Escrow prepared the instructions, see Lyon

22 ⁵ While proof of a statutory violation creates a presumption
23 of negligence, Chandra has not cited any authority showing
24 that violation of a statute creates a presumption of
25 professional negligence. A professional has a duty to use
26 such skill, prudence, and diligence as other members of his
27 profession commonly possess and exercise. See Coscia v.
28 McKenna & Cuneo, 25 Cal. 4th 1194, 1199 (2001); Barragan v.
Lopez, 156 Cal. App. 4th 997, 1004 (Ct. App. 2007). Chandra's
brief contains no discussion of that standard and no
discussion of how and whether it applies to escrow agents.
The Court DENIES the motion for summary adjudication on the
seventh cause of action for professional negligence.

1 Dep. at 101:3-5, and there is nothing ambiguous about the
2 terms of this contract. The instructions state that escrow
3 funds were to be mailed to the borrowers' address. See Escrow
4 Instructions at 2. There is no dispute that Academy Escrow
5 failed to comply with this clear instruction. Therefore the
6 Court finds that Academy Escrow is liable to the lender for
7 breach of contract. The Court GRANTS Chandra's motion for
8 summary adjudication on his twelfth cause of action for breach
9 of contract.

10 C. **Chandra's Thirteenth Cause of Action for Breach of**
11 **Fiduciary Duty**

12 Chandra moves for summary adjudication on his thirteenth
13 cause of action for breach of fiduciary duty. Mot. at 19.
14 Escrow holders owe fiduciary duties to the parties to the
15 escrow, including the duty to strictly comply with the escrow
16 instructions. Kangarlou v. Progressive Title Co., Inc., 128
17 Cal. App. 4th 1174, 1179 (Ct. App. 2005). Here, there is no
18 genuine issue that Academy Escrow failed to comply with the
19 escrow instructions. See Part IV(A), supra. Chandra is
20 entitled to summary adjudication in his favor and against
21 Academy Escrow on his thirteenth cause of action for breach of
22 fiduciary duty.

23 D. **Chandra's Fifth Cause of Action for Fraud**

24 Chandra contends that Academy Escrow engaged in fraud.
25 Mot. at 21. Fraud is an intentional tort, the elements of
26 which are (1) misrepresentation; (2) knowledge of falsity; (3)
27 intent to defraud, i.e., to induce reliance; (4) justifiable
28 reliance; and (5) resulting damage. Cicone v. URS Corp., 183

1 Cal. App. 3d 194, 200 (Ct. App. 1986). Chandra's motion
2 contains no discussion of how or whether Academy Escrow
3 intended to defraud Chandra. The Court DENIES Chandra's
4 motion for summary adjudication on his fifth cause of action
5 for fraud.

6 **E. Chandra's Third Cause of Action**

7 Chandra's third cause of action seeks declaratory relief
8 in the form of a judicial determination that "Cross-Defendants
9 are obligated to partially or fully indemnify [Chandra] for
10 sums [Chandra] may expend in the defense of this matter and/or
11 may be compelled to pay to any party herein, including all
12 attorney's fees and costs incurred." First Am. Cross-Compl.
13 ¶¶ 30-32. Now, Chandra seeks summary judgment on his claim
14 for attorney's fees. Mot. at 21-23. As this "cause of
15 action" is ultimately a request for relief, in order to weigh
16 it the Court must look to the underlying claims. See, e.g.,
17 Weiner v. Klais and Co., Inc., 108 F.3d 86, 92 (6th Cir.1997)
18 ("With regard to Count IV, in which plaintiff seeks
19 declaratory relief, plaintiff has merely asserted a form of
20 relief, not a cause of action. Plaintiff is not entitled to
21 this relief in the absence of a viable claim."). The Court
22 has addressed Chandra's viable claims in other sections of
23 this Order, and the Court addresses Chandra's request for
24 attorney's fees below. The Court therefore DENIES Chandra's
25 motion for summary adjudication on the third cause of action.

26 **F. Chandra's Eighth Cause of Action for Conversion**

27 Chandra moves for summary adjudication on his eighth
28 cause of action for conversion. Mot. at 23. California

1 courts generally identify three elements required to establish
2 a cause of action for conversion: (1) the plaintiff's
3 ownership or right to possession of the property at the time
4 of the conversion; (2) the defendant's conversion by a
5 wrongful act or disposition of property rights; and (3)
6 damages. See e.g., PCO, Inc. v. Christensen, Miller, Fink,
7 Jacobs, Glaser, Weil & Shapiro, LLP, 150 Cal. App. 4th 384,
8 395 (Ct. App. 2007). Chandra alleges that Academy Escrow
9 exercised dominion over Chandra's funds and participated in
10 Boyd's theft of the loan funds. Mot. at 23. The Court finds
11 that there are genuine issues of material fact as to whether
12 Academy Escrow participated in Boyd's theft of the funds
13 because Boyd has not been found guilty of theft and the
14 evidence suggests Academy Escrow had no prior knowledge that
15 Boyd would spend the money. See Lyon Dep. at 96:5-99:16. The
16 Court DENIES Chandra's motion for summary adjudication on the
17 eighth cause of action for conversion against Academy Escrow.

18 **G. Chandra's Second Cause of Action**

19 Chandra's second cause of action states that "[i]f
20 Plaintiffs recover a judgment against [Chandra] and Cross-
21 Defendants . . . such judgment should be apportioned between
22 [Chandra] and the Cross-Defendants, and each of them, on
23 theories of relative fault, equitable indemnity, partial or
24 total indemnity." First Am. Cross-Compl. ¶ 29. Now Chandra
25 moves for summary judgment on the grounds that he is entitled
26 to apportionment of fault against Academy Escrow. Mot. at 23-
27 4. This motion is premature because the Plaintiffs have not
28 recovered a judgment against Chandra and the Cross-Defendants

1 in this action. The Court DENIES Chandra's request for
2 summary adjudication on the second cause of action.

3 **H. Superceding Cause**

4 Academy Escrow contends that Boyd's conduct is a
5 superseding cause of harm which precludes a grant of summary
6 adjudication. Id. at 12-13. The Court rejects this
7 contention. Here, Academy Escrow's failure to comply with the
8 escrow instructions makes Academy Escrow liable for
9 negligence, negligence per se, breach of contract, and breach
10 of fiduciary duty. Courts can find escrow holders liable even
11 though other parties may also be at fault. See Lee v. Escrow
12 Consultants, Inc., 210 Cal. App. 3d 915, 918-20, 923-24 (Ct.
13 App. 1989)(finding escrow holder can be liable for breach of
14 its duties where sellers misrepresented their property
15 interest to induce plaintiff to put money in escrow and where
16 escrow amendment authorizing release of funds bore forged
17 signature of plaintiff).

18 **I. Chandra's Damages**

19 Having found that Chandra is entitled to summary
20 adjudication against Academy Escrow on his claim for
21 negligence per se, negligence, breach of contract, and breach
22 of fiduciary duty, the Court finds that Academy Escrow is
23 liable for Chandra's losses. See Amen, 58 Cal. 2d at 532 ("if
24 the escrow holder acts negligently, 'it would ordinarily be
25 liable for any loss occasioned by its breach of duty.'"
26 (quoting Rianda v. San Benito Title Guar. Co., 35 Cal. 2d 170,
27 173 (1950))). The Court finds Academy Escrow is liable for
28 Chandra's loss of the \$180,000 that he wired in accordance

1 with the instructions provided by Academy Escrow. While
2 Chandra contends that Academy Escrow should also be held
3 liable for the \$25,000 interest fee, the Brantleys were
4 supposed to pay the interest fee, not Academy Escrow. See
5 Note Secured by Deed of Trust. In his Reply, Chandra contends
6 that:

7 ACADEMY is free to seek indemnity or reimbursement from
8 the others who may have contributed to this loss, but
9 CHANDRA should not be dragged through that litigation
10 simply because ACADEMY suspects it can show that other
11 parties might be found to have contributed to the loss.

12 Reply at 11.

13 The Court agrees. However, based on the other causes of
14 action, Chandra prays for forms of relief that go beyond
15 getting back his \$180,000, such as his request for punitive
16 damages. See id. at 30-31. At this time, therefore, the
17 Court will not enter a judgment in favor of Chandra and
18 against Academy Escrow.

19 However, if within the next thirty (30) days, Chandra and
20 Schwartz & Fenster P.C. move the Court for voluntary dismissal
21 of the other causes of action in the First Amended Cross-
22 Complaint, and if they move the Court for voluntary dismissal
23 of the fourth, sixth, twelfth, and thirteenth causes of action
24 against all parties other than Academy Escrow, and if the
25 motion for voluntary dismissal is granted, then the Court will
26 enter a judgment in favor of Cross-Complainant Chandra and
27 against Cross-Defendant Academy Escrow in the amount of
28 \$180,000. Otherwise, Chandra will have to wait until this
case is disposed of in its entirety before the Court will

1 enter a judgment. Once judgment is entered, Chandra will have
2 fourteen (14) days to file a motion for an award of pre-
3 judgment interest and attorney's fees.

4
5 **V. CONCLUSION**

6 For the reasons stated above, the Motion for Summary
7 Judgment or Summary Adjudication against Academy Escrow filed
8 by Defendants and Cross-Complainants Praveen Chandra and
9 Schwartz & Fenster, P.C. is GRANTED IN PART and DENIED IN
10 PART. The Motion is GRANTED in favor of Cross-Complainant
11 Praveen Chandra with respect to the fourth cause of action for
12 negligence, the sixth cause of action for negligence per se,
13 the twelfth cause of action for breach of contract, and the
14 thirteenth cause of action for breach of fiduciary duty
15 against Academy Escrow in the First Amended Cross-Complaint of
16 Praveen Chandra and Schwartz & Fenster, P.C. The Motion is
17 DENIED with respect to the first, second, third, fifth,
18 seventh, eighth, ninth, tenth, and eleventh causes of action
19 against Academy Escrow.

20
21 IT IS SO ORDERED.

22
23 Dated: November 19, 2009

24 
25 _____
26 UNITED STATES DISTRICT JUDGE
27
28