1. **MAISEL v. BUSSELL, ET AL., 23CV1464**

Motion to Dismiss the First, Second, and Third C/A of Plaintiff's FAC

Before the court is defendant's motion to dismiss the First, Second, and Third causes of action in plaintiff's First Amended Complaint ("FAC") on the ground that plaintiff failed to timely file the FAC after the court sustained defendant's demurrer as to those causes of action.

1. Procedural Background

On August 24, 2023, plaintiff filed her original complaint, stating causes of action for: (1) breach of contract; (2) fraud; (3) fraudulent inducement; (4) unjust enrichment; (5) quiet title; and (6) partition. On November 27, 2023, defendant demurred. On February 23, 2024, the court received oral argument and took the matter under submission.

On March 5, 2024, the court issued its ruling on the demurrer. As to the First, Second, and Third causes of action, the court sustained the demurrer with leave to amend. The ruling was silent regarding plaintiff's deadline to file an amended complaint. As to the Fourth cause of action, the court sustained the demurrer without leave to amend. The court overruled the demurrer as to the Fifth and Sixth causes of action.

On March 6, 2024, the court served the ruling on the parties via mail. Pursuant to California Rules of Court, Rule 3.1320, subdivision (g) and Code of Civil Procedure section 1013, subdivision (a), the deadline to file an amended complaint was March 25, 2024.[1]

[1] California Rules of Court, Rule 3.1320, subdivision (g) provides, in relevant part, "[f]ollowing a ruling on a demurrer, unless otherwise ordered, leave to answer or amend within 10 days is deemed granted." Ordinarily, the deadline to file an amended complaint would have been March 18, 2024 (the tenth day, March 16, fell on a Saturday). However, pursuant to Code of Civil Procedure section 1013, subdivision (a), the deadline is extended five days because the ruling was served by mail. The fifth day, March 23, fell on another Saturday. Thus, the deadline to file an amended complaint was March 25, 2024.

On March 25, 2024, defendant granted plaintiff a one-time extension to file the amended complaint by March 29, 2024. Plaintiff, however, did not file her FAC until April 23, 2024.

In opposition to the instant motion, plaintiff's counsel submitted a declaration stating that: (1) she works from home, uses an offsite address for mail, and has her mail forwarded to her (Shofner Decl., ¶ 3); (2) she did not receive the March 5, 2024, ruling until March 25, 2024 (Shofner Decl., ¶ 4); (3) on March 28, 2024, she became severely ill, which illness worsened over Easter weekend (March 29 to 31); (4) she spent an entire day at urgent care on Easter Sunday and was ultimately diagnosed with pneumonia and a severe sinus infection (Shofner Decl., ¶ 6); and (5) despite some improvement in her health, she relapsed significantly around April 10, 2024 (Shofner Decl., ¶ 12).

On April 24, 2024, defendant filed an ex parte application to dismiss the action. Defendant withdrew said application on April 26, 2024.

On May 28, 2024, defendant filed the instant motion to dismiss.

2. Discussion

Pursuant to Code of Civil Procedure section 581, subdivision (f)(2),[2] defendant argues that the court should dismiss plaintiff's untimely FAC. The decision to dismiss an action under section 581, subdivision (f)(2) rests in the sound discretion of the trial court and a reviewing court will not disturb the ruling unless the trial court has abused its discretion. (*Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1054.)

The facts here are similar to those in *Brown v. Brown* (1959) 169 Cal.App.2d 54. *Brown* involved a demurrer which was sustained with ten days leave to amend. Plaintiffs filed their amended complaint nine months later. Forty-nine days after the amendment was filed, the defendants moved to dismiss the complaint pursuant to section 581,

[2] Further undesignated statutory references are to the Code of Civil Procedure.

subdivision 3[3] because the amendment had not been timely filed. The trial court granted the motion. On appeal, the court reversed and compared the situation to section 585 default proceedings, holding that: "[t]he plaintiff, by his inaction, loses the right to have a default and default judgment entered as a matter of course, but the defendant does not gain an absolute right to file a belated answer. … The answer, filed after the time has elapsed, may, in the court's discretion … be stricken out on motion of the plaintiff, and then the default may be entered." (*Brown v. Brown*, *supra*, 169 Cal.App.2d at p. 57.) This analogous reasoning squares section 581, subdivision (f)(2) with other pleading situations where "it is generally recognized that an untimely pleading is not a nullity, and it will serve to preclude the taking of default proceedings unless it is stricken. [Citations.]" (*A&B Metal Products v. MacArthur Properties, Inc.* (1970) 11 Cal.App.3d 642, 647.) "Accordingly, once the amended pleading is filed, the court must first grant a motion to strike the pleading before the action can be dismissed." (*Gitmed v. General Motors Corp.* (1994) 26 Cal.App.4th 824, 828 [footnote omitted].)

Applying the *Brown* rule to the matter at bar, the court concludes that the filing of the amended complaint prevents the court from entertaining the motion to dismiss. The proper procedure would have been for defendant to bring a motion to strike the amendment *before* moving to dismiss the complaint.

Based on the above, the motion to dismiss is denied.

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[3] This section was repealed and replaced with a new section similar in all material respects. Section 581, subdivision 3 provided: "An action may be dismissed in the following cases: [¶]…. [¶] 3. … after a demurrer to the complaint has been sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court, and either party moves for such dismissal." The new section 581, subdivision (f)(2) provides: "(f) The court may dismiss the complaint as to that defendant when: [¶]…. [¶] (2) Except where Section 597 [trial on defenses] applies, after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal."

TENTATIVE RULING # 1: THE MOTION TO DISMISS IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

2. FEDOR v. THE GRAND WALL, INC., SC20180239

Motion Contesting Application for Good-Faith Settlement

On the court's own motion, the matter is continued to July 12, 2024. The court apologizes to the parties for any inconvenience.

TENTATIVE RULING # 2: ON THE COURT'S OWN MOTION, MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, JULY 12, 2024, IN DEPARTMENT FOUR.

3. PIMOR, ET AL. v. VANHEE WOODWORKS, 23CV0578

Status of Bankruptcy Petition

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, JUNE 28, 2024, IN DEPARTMENT FOUR.

4. NAME CHANGE OF RODRIGUEZ, 24CV0519

OSC Re: Name Change

This matter was continued from May 10, 2024, because there was no proof of personal service as to the biological father.

Mother petitions to change her minor child's last name. The biological father has not joined in the petition. To date, there is still no proof of personal service as to the biological father. "[T]he petitioner shall cause, not less than 30 days prior to the hearing, to be served notice of the time and place of the hearing or a copy of the order to show cause on the other parent…." (Code Civ. Proc., § 1277, subd. (a)(4).)

Proof of publication was filed.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, JUNE 28, 2024, IN DEPARTMENT FOUR.

5. BAIRD v. LUX VACA LUXURY RENTALS, 23CV2063

Motion to Quash

Before the court is specially appearing defendant F&B, Inc.'s ("defendant") motion to quash plaintiff's service of the summons and complaint pursuant to Code of Civil Procedure section 418.10. Defendant also moves to dismiss the action for lack of jurisdiction and forum non-conveniens. Plaintiff filed an opposition. Defendant did not file a reply.

1. Background

This is a personal injury action arising from a slip and fall incident that allegedly occurred on January 21, 2022. Plaintiff filed his unverified complaint on November 27, 2023.

Defendant is a Nevada corporation and has its principal place of business in Gardnerville, Nevada. (Manchester Decl., ¶¶ 4, 6.) The proof of service for defendant indicates that, on January 27, 2024, at approximately 10:26 a.m., a process server left a copy of the summons and complaint with Ted O'Niell at 201 Manor Drive in Stateline, Nevada. That same day, the process server mailed a copy of the summons and complaint to defendant.

Defendant claims that the summons and complaint were left with a janitor in the building where defendant is located on a non-business day (Saturday). (Manchester Decl., ¶ 15.) Defendant also claims that the subject-incident occurred in Nevada.

2. Discussion

Defendant contends that (1) service was improper; (2) there is no general jurisdiction over defendant; (3) there is no specific jurisdiction over defendant; and (4) the matter should be dismissed due to forum non-conveniens.

"When a defendant challenges the court's personal jurisdiction on the ground of improper service of process the burden is on the plaintiff to prove … the facts requisite to an effective service." (*Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413 [internal

quotes omitted].) Plaintiff's opposition does not address the issue of service. Therefore, the court finds that plaintiff has not met its burden and the motion to quash is sustained on this ground.

Plaintiff's opposition instead focuses on the issue of whether defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate "traditional notions of fair play and substantial justice." (See *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.) If a defendant properly files a motion to quash service of summons for lack of personal jurisdiction, the plaintiff has the burden of establishing by a preponderance of the evidence the prima facie facts entitling the court to assume jurisdiction. (*Viaview, Inc. v. Retzlaff* (2016) 1 Cal.App.5th 198, 209–210.) A judge has jurisdiction to make an initial determination about the court's alleged lack of personal jurisdiction where, as here, it is challenged by a "specially appearing" defendant. (*Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1228.)

California's long-arm statute authorizes courts to exercise personal jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10; *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 268; *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444.) The statute " 'manifests an intent to exercise the broadest possible jurisdiction,' limited only by constitutional considerations of due process." (*Integral Development Corp. v. Weissenbach* (2002) 99 Cal.App.4th 576, 583, quoting *Sibley v. Superior Court* (1976) 16 Cal.3d 442, 445.) A state court's assertion of jurisdiction comports with due process requirements "if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate ' "traditional notions of fair play and substantial justice." ' " (*Vons*, *supra*, at p. 444, quoting *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.) The primary focus of that inquiry is "the defendant's relationship to the forum State." (*Bristol-Myers Squibb Co. v. Superior Court* (2017) 582 U.S. 255.)

Courts have recognized two types of personal jurisdiction: general and specific. (*Bristol-Myers*, *supra*, 582 U.S. at p. 262.) “A nonresident defendant may be subject to the general jurisdiction of the forum if his or her contacts in the forum state are ‘substantial ... continuous and systematic.’ ” (*Vons*, *supra*, 14 Cal.4th at p. 445, quoting *Perkins v. Benguet Mining Co.* (1952) 342 U.S. 437, 445.) “In such a case, ‘it is not necessary that the specific cause of action alleged be connected with the defendant's business relationship to the forum.’ ” (*Vons*, at p. 445, quoting *Cornelison v. Chaney* (1976) 16 Cal.3d 143, 147.) “A state court may exercise general jurisdiction only when a defendant is ‘essentially at home’ in the State.” (*Ford Motor Co. v. Montana Eighth Judicial Dist. Court* (2021) 592 U.S. 351.)

A defendant without such continuous contacts nevertheless may be subject to a court's specific jurisdiction if it “has purposefully availed [itself] of forum benefits [citation], and the ‘controversy is related to or “arises out of” a defendant's contacts with the forum’ ” (*Vons*, *supra*, 14 Cal.4th at p. 446, quoting *Helicopteros Nacionales de Colombia v. Hall* (1984) 466 U.S. 408, 414 (*Helicopteros*)), and “ ‘the assertion of personal jurisdiction would comport with “fair play and substantial justice.” ’ ” (*Vons*, at p. 447.) Specific jurisdiction is thus contingent on the “ ‘relationship among the defendant, the forum, and the litigation.’ ” (*Helicopteros* at p. 414.)

“ ‘The purposeful availment inquiry ... focuses on the defendant's intentionality. [Citation.] This prong is only satisfied when the defendant purposefully and voluntarily directs his activities toward the forum so that he should expect, by virtue of the benefit he receives, to be subject to the court's jurisdiction based on’ his contacts with the forum.” (*Pavlovich*, *supra*, 29 Cal.4th at p. 269, quoting *United States v. Swiss American Bank, Ltd.* (1st Cir. 2001) 274 F.3d 610, 623.) “Thus, the ‘ “purposeful availment” requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of “random,” “fortuitous,” or “attenuated” contacts [citations], or of the “unilateral

activity of another party or a third person." [Citations.]' " (*Pavlovich*, at p. 269, quoting *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 475.)

The second prong of the specific jurisdiction analysis inquires whether a plaintiff has established that its claims " 'arise out of or relate to defendant's contacts with the forum.' " (*Ford Motor Co.*, *supra*, 592 U.S. at p. 236, italics omitted.) "The first half of that standard asks about causation; but the back half, after the 'or,' contemplates that some relationships will support jurisdiction without a causal showing. That does not mean anything goes. In the sphere of specific jurisdiction, the phrase 'relate to' incorporates real limits, as it must to adequately protect defendants foreign to a forum." (*Ibid.*)

Plaintiff contends that defendant has consented to jurisdiction by (1) filing a federal lawsuit in the Eastern District of California in 2008; and (2) entering into a snow-removal contract with Heavenly Mountain Resort, part of which is located in California.[4] Additionally, plaintiff claims that defendant has sufficient minimum contacts with California where (1) defendant appears to have California employees; (2) defendant's owners (Charles and Charlena Manchester) have a California corporation (C. Manchester Enterprise); and (3) defendant's owners have a California contractor's license. Alternatively, plaintiff requests a continuance to allow plaintiff to conduct discovery on jurisdictional issues. A plaintiff ordinarily has a right to conduct discovery on the issue of jurisdiction to develop the facts necessary to sustain the plaintiff's burden of showing that "minimum contacts" exist between the defendant and California sufficient to justify imposing personal jurisdiction over the defendant. (*Mihlon v. Superior Court* (1988) 169 Cal.App.3d 703, 711.)

The court finds that plaintiff has not established that defendant (1) has conducted systematic and continuous business operations in California; or (2) purposefully availed

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[4] Defendant claims that its sole activity in California is incidental to a contract for snow removal from Heavenly Mountain Resort in Nevada, which includes the portion of the mountain on the California side. That contract is between defendant and Heavenly Valley, Limited Partnership, a Nevada limited partnership. (Manchester Decl., ¶ 11.)

itself of forum benefits. However, the court grants plaintiff's request for a continuance to conduct jurisdictional discovery. Any discovery must be limited to the issue of personal jurisdiction.

TENTATIVE RULING # 5: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, AUGUST 30, 2024, TO ALLOW PLAINTIFF TO CONDUCT DISCOVERY LIMITED TO THE ISSUE OF PERSONAL JURISDICTION.

6. HINES, AS TRUSTEE OF THE SEP HINES REVOCABLE LIVING TRUST v. JIANG, 23CV1101

Motion to be Relieved as Counsel

This matter was continued from May 24, 2024, because counsel's declaration did not satisfy California Rules of Court, Rule 3.1362. Where, as here, the notice of motion is served on the client by mail under Code of Civil Procedure section 1013, it must be accompanied by a declaration stating facts showing that either: (A) the service address is the current residence or business address of the client; or (B) the service address is the last known residence or business address of the client and the attorney has been unable to locate a more current address after making reasonable efforts to do so within 30 days before the filing of the motion to be relieved. (CRC 3.1362, subd. (d)(1)(A)–(B).)

On June 11, 2024, counsel submitted a declaration that states in relevant part: (1) counsel visited with plaintiff and her husband at her address on 1925 Marconi Way in South Lake Tahoe, California and has been invited to stay over as a guest "just recently" (Weinberger Decl., filed June 11, 2024, ¶ 5); (2) during counsel's representation of plaintiff, plaintiff acknowledged to counsel that she was in receipt of several letters that counsel sent to her at her South Lake Tahoe address (Weinberger Decl., filed June 11, 2024, ¶ 6); and (3) counsel has had several "recent" telephone conversations with Lloyd Aronoff, plaintiff's realtor for several years, who informed counsel that plaintiff is still at the same address and that plaintiff told Mr. Aronoff she had received counsel's correspondence to her, including his previous motion to withdraw from this case. (Weinberger Decl., filed June 11, 2024, ¶ 7.)

The court finds that counsel's declaration still fails to meet the requirement of California Rules of Court, Rule 3.1362 because it does not expressly state that counsel has been unable to locate a more current address after making reasonable efforts to do so *within 30 days* before the filing of the motion to be relieved. Also, counsel's statement that plaintiff told Mr. Aronoff she received counsel's correspondence is hearsay.

The matter is continued to August 9, 2024, for counsel to submit the required documents and information.

TENTATIVE RULING # 6: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, AUGUST 9, 2024, IN DEPARTMENT FOUR.

7. WILSON v. MUCCILLO, 23CV0451

(A) Motion for Summary Judgment

(B) Motion to Stay Proceedings

(C) Motion for Preliminary Injunction

<u>Motion for Summary Judgment</u>

Before the court is defendant Louis Muccillo's ("defendant") motion for summary judgment pursuant to Code of Civil Procedure section 437c. Defendant filed his motion on March 12, 2024. On March 15, 2024, the court granted plaintiff's motion for leave to file a First Amended Complaint ("FAC"). At that time, the court also granted defendant leave to supplement his motion for summary judgment. Plaintiff filed her FAC on March 18, 2024. On April 8, 2024, defendant supplemented his motion for summary judgment. On June 7, 2024, plaintiff filed an opposition. On June 14, 2024, defendant filed a reply.

1. Factual Background

Plaintiff and defendant began a non-marital relationship in December 2007. (Mot., Stmt. of Undisputed Material Facts ("UMF") No. 2.) Defendant is an Australian citizen. (UMF No. 1.) The parties resided together in Australia from approximately 2007 until October 2012, at which time, they separated for the first time. (UMF No. 9.) The parties dispute most other facts in this case.

Defendant claims that during the early part of the parties' relationship, defendant added plaintiff to the title of defendant's apartment in Tuncurry, Australia. (See UMF No. 8.) When the parties first separated in 2012, plaintiff agreed to remove her name from the Tuncurry apartment in exchange for $150,000. (UMF No. 10.)

In early 2013, the parties decided to reconcile their relationship. (UMF No. 13.) Defendant claims that the parties entered into a Binding Financial Agreement as a condition of reconciliation. (See UMF Nos. 14 & 17.) Plaintiff, on the other hand, claims

the parties never entered into a legally binding agreement. (See Pltf.'s Stmt. of Undisputed Material Facts, No. 17.)

Next, defendant claims that in Summer 2013, he decided to purchase a condominium in South Lake Tahoe, California (the "Property"). Plaintiff alleges that defendant had always expressed an interest in owning real property in the United States but defendant mistakenly believed that, as an Australian citizen, he did not have the necessary documentation to do so (i.e., Social Security Number, a foreign, non-citizen Individual Tax Identification Number ("ITIN"), or United States citizenship). (FAC, ¶ 7.)

On July 22, 2013, plaintiff added defendant to a Wells Fargo checking account that plaintiff allegedly maintained. (See UMF No. 28.) Defendant claims that plaintiff added him to the checking account to facilitate the purchase of the Property. (See UMF No. 29.) On July 19, 2013, defendant wired $90,960 to the checking account as part of the purchase price for the acquisition of the Property. (UMF No. 32.)

Plaintiff alleges that on August 9, 2013, she purchased the Property solely in her name using $189,000 from her personal bank account. (FAC, ¶ 6.) Defendant, however, claims that *he* acquired the Property in plaintiff's name under the parties' mutual understanding that, because defendant did not have legal status in the United States or a valid ITIN, he could not acquire title to the Property in his name. (See UMF No. 37.)

Plaintiff alleges that in May 2014, defendant placed constant pressure on her to transfer 50 percent of the Property to defendant so that he could legally gain a Social Security Number, ITIN, or citizenship in the United States to purchase real property. (FAC, ¶ 8.) Defendant allegedly promised plaintiff he would transfer the Property back to plaintiff if she complied. (FAC, ¶ 8.) On May 23, 2014, plaintiff did transfer 50 percent of the Property to defendant. (See FAC, First C/A, ¶ 5.)

Plaintiff alleges that, for unknown reasons, defendant did not get a Social Security Number, ITIN, or citizenship after the May 2014 transfer. (FAC, ¶ 9.)

On July 24, 2019, as a result of defendant's alleged coercion, plaintiff claims she transferred the remaining 50 percent of the Property to defendant. (FAC, ¶ 9.) As of August 20, 2019, title to the Property was vested solely in defendant's name. (UMF No. 48.)

At her deposition, plaintiff testified that, following the May 28, 2014, transfer, she expected defendant to re-convey the Property to her "[s]ome time in the period between 2014 and 2019." (Def.'s Ex. A 33:5–14.)

On March 9, 2022, defendant formally notified plaintiff that he wished to end the parties' relationship. (UMF No. 50.)

Plaintiff alleges that during a January 19, 2023, telephone conversation, defendant promised to transfer the Property back to plaintiff. (FAC, First C/A, ¶ 9, subd. (a).)

Plaintiff's FAC states causes of action for (1) breach of contract; (2) deed transfer fraud; (3) undue influence; (4) intentional infliction of emotional distress ("IIED"); and (5) promissory estoppel.

2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (h), defendant requests the court take judicial notice of the relevant grant deeds in this matter: (1) the grant deed recorded August 15, 2013; (2) the grant deed recorded May 28, 2014; and (3) the grant deed recorded August 20, 2019. The request is granted.

3. Standard of Review

A defendant moving for summary judgment bears the burden of persuasion that one or more elements of the cause of action at issue cannot be established, or that there is a complete defense to the cause of action. (*Aguilar v. Atl. Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving party bears the initial burden of making a prima facie showing of the nonexistence of a triable issue of material fact, and only if the moving party carries the initial burden does the burden shift to the opposing party to produce a prima facie showing of the existence of a triable issue of material fact. (*Ibid.*)

"The court focuses on issue finding; it does not resolve issues of fact. The court seeks to find contradictions in the evidence, or inferences reasonably deducible from the evidence, which raise a triable issue of material fact." (*Raven H. v. Gamette* (2007) 157 Cal.App.4th 1017, 1024.) The evidence of the moving party is strictly construed, and the evidence of the opposing party liberally construed. Doubts as to the propriety of granting the motion must be resolved in favor of the party opposing the motion. (*Stationers Corp. v. Dun & Bradstreet, Inc.* (1965) 62 Cal.2d 412, 417.)

4. Discussion

4.1. Personal Jurisdiction

In his recitation of the "Statement of Facts," defendant claims that "he does not have contacts with the state of California sufficient to establish general personal jurisdiction in California." (Mtn. at 3:4–6.)

California's long-arm statute authorizes courts to exercise personal jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10; *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 268; *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444.) The statute " 'manifests an intent to exercise the broadest possible jurisdiction,' limited only by constitutional considerations of due process." (*Integral Development Corp. v. Weissenbach* (2002) 99 Cal.App.4th 576, 583, quoting *Sibley v. Superior Court* (1976) 16 Cal.3d 442, 445.) A state court's assertion of jurisdiction comports with due process requirements "if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate ' "traditional notions of fair play and substantial justice." ' " (*Vons*, *supra*, at p. 444, quoting *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.) The primary focus of that inquiry is "the defendant's relationship to the forum State." (*Bristol-Myers Squibb Co. v. Superior Court* (2017) 582 U.S. 255.)

Even where such minimum contacts do not exist, a defendant may nevertheless consent to personal jurisdiction or otherwise waive objections to it by making a general

appearance. "A general appearance by a party is equivalent to personal service of summons on such party." (Code Civ. Proc., § 410.50, subd. (a).) " ' "A general appearance occurs when the defendant takes part in the action or in some manner recognizes the authority of the court to proceed." [Citation.] Such participation operates as consent to the court's exercise of jurisdiction in the proceeding. "Unlike jurisdiction of the subject-matter ... jurisdiction of the person may be conferred by consent of the person, manifested in various ways" including a "general appearance." [Citations.] By generally appearing, a defendant relinquishes all objections based on lack of personal jurisdiction or defective process or service of process.' " (*ViaView, Inc. v. Retzlaff* (2016) 1 Cal.App.5th 198, 210, quoting *In re Marriage of Obrecht* (2016) 245 Cal.App.4th 1, 7-8.)

"A defendant appears in an action when the defendant answers, demurs, files a notice of motion to strike, files a notice of motion to transfer pursuant to Section 396b, moves for reclassification pursuant to Section 403.040, gives the plaintiff written notice of appearance, or when an attorney gives notice of appearance for the defendant." (Code Civ. Proc., § 1014.)

Here, defendant made a general appearance when he filed an answer to plaintiff's complaint on June 1, 2023. Accordingly, defendant has consented to the court's exercise of jurisdiction in the proceeding.

4.2. First C/A for Breach of Contract

Defendant argues he is entitled to summary judgment on the First C/A for breach of contract where: (1) the claim is barred by the applicable statute of limitations; (2) the claim is barred by the statute of frauds; and (3) statements made during settlement negotiations are not admissible to prove liability.

4.2.1. <u>Statute of Limitations</u>

The statute of limitations on an action for breach of contract is two years for an oral contract. (Code Civ. Proc., § 339, subd. (1).) The cause of action accrues when the breach occurs. (*Spear v. Cal. State Auto. Ass'n* (1992) 2 Cal.4th 1035, 1040.) While resolution of

a statute of limitations issue is generally a question of fact, if the uncontradicted facts established through discovery are susceptible of only one legitimate inference, summary judgment is proper. (*Rosas v. BASF Corp.* (2015) 236 Cal.App.4th 1378, 1388.)

Plaintiff's FAC raises two theories for her breach of contract claim: (1) in May 2014, defendant promised he would transfer the Property back to plaintiff if she complied with transferring 50 percent of the Property to defendant (purportedly so that defendant could legally gain a Social Security Number, ITIN, or citizenship in the United States) (FAC, ¶ 8); and (2) in a telephone conversation on January 19, 2023, defendant promised to transfer the Property back to plaintiff. (FAC, First C/A, ¶ 9, subd. (a).)

Defendant argues that plaintiff's breach of contract claim related to defendant's alleged promise to return the Property back to plaintiff after the 2014 and 2019 deed transfers is time barred. (Mtn. at 11:15–16; Supp. Mtn. at 2:20–21.) Plaintiff testified in her deposition that, following the May 28, 2014, transfer of 50 percent of the Property to defendant, plaintiff "expected" defendant to re-convey the Property to her "[s]ome time in the period between 2014 and 2019."[5] (Def.'s Ex. A 33:5–14.) Thus, defendant argues, the breach occurred no later than the end of 2019. (Mtn. at 11:18–20.) However, the court is not convinced plaintiff's deposition testimony establishes that defendant's obligation under the alleged contract was due by the end of 2019. Instead, there appears to be a triable issue of material fact regarding the statute of limitations. Therefore, the motion for summary judgment is denied on this ground.

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[5] The relevant portion of plaintiff's deposition transcript reads:

> Q. Okay. So let's focus on the transfer of the property back to Louis. What was the nature of the promise he made to induce you to transfer the property back to him let's talk about just the 2014 transfer.
> A. We're talking about the 2014 transfer?
> Q. Yes.
> A. I - - I honestly thought he needed it for tax purposes.
> Q. Okay. When did you expect him to transfer the property back to you?
> A. Some time in the period between 2014 and 2019.

(Mtn., Ex. A at 33:1–11.)

4.2.2. Statute of Frauds

The statute of frauds requires any contract subject to its provisions to be memorialized in a writing subscribed by the party to be charged or by the party's agent. (Civ. Code, § 1624; *Secrest v. Security National Mortgage Loan Trust 2002-2* (2008) 167 Cal.App.4th 544, 552.) An agreement for the sale of real property or an interest in real property comes within the statute of frauds. (See Civ. Code, § 1624, subd. (a)(3); Code Civ. Proc., § 1971.)

Defendant claims that the statute of frauds bars enforcement of the alleged agreements (the May 2014 promise and the January 19, 2023, promise) where plaintiff does not allege that any such contract was memorialized in writing. (Mtn. at 12:6–9, 12:20–22.) The court agrees. The court also finds that plaintiff has not produced any evidence of a writing satisfying the statute of frauds. Therefore, the court grants defendant's motion as to the First C/A for breach of contract.

4.2.3. The January 19, 2023, Telephone Conversation

Defendant claims that, pursuant to Evidence Code section 1152, statements made during the January 19, 2023, phone call are not admissible to show liability. (Mtn. at 12:15–16, citing *Simandle v. Vista de Santa Barbara Assocs., LP*, (2009) 178 Cal.App.4th 1317, 1323; Evid. Code, § 1152, subd. (a).) However, defendant has not established that his telephone conversation with plaintiff was part of a settlement negotiation. Therefore, the motion is denied on this ground.

4.3. Second C/A for "Deed Transfer Fraud"

Defendant argues he is entitled to summary judgment on the Second C/A for "deed transfer fraud" where (1) the C/A is barred by the statute of limitations (Mtn. at 15:10–28); (2) the FAC fails to specifically allege a misrepresentation that plaintiff allegedly relied upon (Supp. Mtn. at 4:4–5); and (3) plaintiff has failed to produce any evidence of a misrepresentation she allegedly relied upon. (Mtn. at 14:14–15.)

4.3.1. Statute of Limitations

The statute of limitations for intentional deceit is three years. (Code Civ. Proc., § 338, subd. (d).) The claim accrues upon discovery of the facts constituting the deceit. (Code Civ. Proc., § 338, subd. (d); see *Moreno v. Sanchez* (2003) 106 Cal.App.4th 1415, 1423–1424.) Defendant argues that "[a]ny inquiry of [defendant] made at any time by [plaintiff] would have revealed that [defendant] did not agree that he had any obligation to convey the Property to [plaintiff]." (Mtn. at 15:24–26.) The court finds that this is not sufficient to establish a statute of limitations violation. The motion is denied on this ground.

4.3.2. Misrepresentation Element

The tort of fraud requires a misrepresentation, knowledge of falsity, intent to induce reliance, reliance, causation, and resulting damages. (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 990.) "In California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations.]" (*Lazar v. Superior Court* (1996) 12 cal.4th 631, 645.)

It is not entirely clear from plaintiff's FAC what misrepresentation(s) defendant allegedly made. It seems that the alleged misrepresentation is defendant's statement that, because he was not a United States citizen, he was unable to purchase property in the United States. Regardless, plaintiff has not provided any *evidence* of a misrepresentation that she relied upon. Therefore, the court grants the motion as to the Second C/A for fraud.

4.4. Third C/A for Undue Influence (Civ. Code, § 1575)

California law recognizes three different types of undue influence: (1) use of a confidential or fiduciary relationship to obtain an unfair advantage; (2) taking unfair advantage of another's weakness of mind; and (3) taking a grossly oppressive and unfair advantage of another's necessities or distress. (Civ. Code, § 1575.) A contract obtained through undue influence is voidable by the party who was unduly influenced. (Civ. Code,

§ 1689, subd. (b)(1).) Presumably, plaintiff claims that the parties' Binding Financial Agreement is voidable due to alleged undue influence.

In this case, there is no allegation of a fiduciary relationship between the parties. The second and third types of undue influence – taking advantage of another's weakness of mind or distress – apply where there is no confidential relationship between the parties. The definitive California case, *Odorizzi v. Bloom Sch. Dist.* (1966) 246 Cal.App.2d 123, 131, sets out two required elements for making a successful claim of undue influence under these theories: (1) undue susceptibility of the servient person; and (2) excessive pressure by the dominating person.

In determining whether the person was unduly susceptible, factors such as age, physical condition, or emotional anguish may be considered. (*Odorizzi*, *supra*, 246 Cal.App.2d at p. 131) These situations "usually involve[] elderly, sick, [or] senile persons." (*Ibid.*) The result is the "inability to act with unencumbered volition." (*Keithley v. Civ. Serv. Bod.* (1970) 11 Cal.App.3d 443, 451.)

Factors that may show the presence of excessive pressure include: (1) discussion of the transaction at an unusual or inappropriate time, (2) consummation of the transaction in an unusual place, (3) insistent demand that the business be finished at once, (4) extreme emphasis on untoward consequences of delay, (5) the use of multiple persuaders by the dominant side against a single servient party, (6) absence of third-party advisers to the servient party, (7) statements that there is no time to consult financial advisers or attorneys. (*Odorizzi*, *supra*, 246 Cal.App.2d at p. 133.)

Defendant argues that plaintiff has not alleged any cognizable facts supporting her undue influence claim or adduced any evidence in support thereof.

The FAC alleges, in relevant part:

> Plaintiff met Defendant in Iowa in 2007. Plaintiff was separated at the time and was in the middle of dividing the asset pool that was accumulated from her 14-year marriage. After several weeks of dating the Defendant, the Defendant asked Plaintiff if she would walk away from her divorce by giving her assets to her husband as he, the Defendant, promised to take care of Plaintiff for the rest of

> her life. Defendant went on to say, Plaintiff would never have to work again or ever worry about money. Because Defendant was in Iowa for a month, where he met Plaintiff, he was now ready to return to back [sic] to Australia, but wanted to be assured that Plaintiff would expedite resolving her divorce. Although Plaintiff would walk away from her share of assets totaling approximately $200,000.00 from her divorce, she made the decision to expedite her divorce and walk away as she relied on Defendant's promises and was intrigued by the thought of moving to Australia, where she could start over again. [¶] Plaintiff acted and expedited the division of her asset pool and transferred her share of their family home to her husband. Plaintiff walked away from the income of her ten coffee shops and transferred the income to her husband, while she kept one coffee shop and the property she owned. Plaintiff sold her coffee shop and the property to pay off her loans and deposited the balance in the business account. Approximately, two months after resolving her divorce, Plaintiff moved to Australia with $8,600.00 cash and had all her personal belongings shipped to Australia, including some silver and golds coins in a heavy plastic shipping container along with her clothes, office materials and computer supplies. Several months later, the remaining proceeds of approximately $9,500.00 from the sale of Plaintiff's coffee shop and property sale was wired to Defendant's Australian bank account. Although Defendant added Plaintiff to his Australian bank account, Plaintiff was compelled to spend all her money on groceries, dinners, and household items, before he added money to the joint account. Defendant would not allow Plaintiff to apply for her own credit card, her own cell phone, to get a job, own car or to spend any money from the joint account, unless he knew about it and approved of the spending. Moreover, in 2012 Plaintiff cashed in her inheritance bonds left to her by her father when he died in 2007 in the amount of $6,000.00. Plaintiff and Defendant were in the USA together when she cashed in the bonds, and she subsequently gave the cash to the Defendant at that time. Finally, Defendant was bothered by Plaintiff having her own 401k in the amount of $40,000.00 in the USA and insisted that Plaintiff spend that money on all the costs they incurred while visiting the USA over the years until the money in her 401k was depleted.
>
> (FAC, Third C/A, ¶¶ 2, 3.)

The court agrees with defendant that the FAC does not allege undue susceptibility of plaintiff or excessive pressure by defendant. First, plaintiff does not articulate how she was unduly influenced in the context of entering into the parties' Binding Financial Agreement. Moreover, plaintiff alleges that she made the decision to expedite her divorce because "she relied on Defendant's promises and was intrigued by the thought of moving to Australia, where she could start over again." (FAC, Third C/A, ¶ 2.) In any event, plaintiff has not produced any *evidence* of undue susceptibility on her part or excessive pressure by defendant. Accordingly, the court grants the motion for summary judgment as to the Third C/A for undue influence.

4.5. Fourth C/A for Intentional Infliction of Emotional Distress

To prevail on an intentional infliction of emotional distress ("IIED") claim, plaintiff must allege and prove: "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050 (internal quotes omitted); see *Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 896; *So v. Shin* (2013) 212 Cal.App.4th 652, 671.)

Defendant argues that plaintiff has not alleged, and there is no evidence of, "extreme and outrageous conduct" or "severe or extreme emotional distress." (Supp. Mtn. at 6:16–20.) The court agrees. The motion for summary judgment as to the Fourth C/A for IIED is granted.

4.6. Fifth C/A for Promissory Estoppel

Defendant claims that the Fifth C/A for promissory estoppel is barred by the statute of limitations. (Mtn. at 11:15–25.) The statute of limitations on a claim for promissory estoppel depends on the nature of the right sued upon, rather than the form of the action or the relief demanded. (*Day v. Greene* (1963) 59 Cal.2d 404, 411; *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism* (2016) 6 Cal.App.5th 1207, 1224 & fn. 5, aff'd (2018) 4 Cal.5th 637.) The statute of limitations for promissory estoppel on an oral promise is two years. (Code Civ. Proc., § 339, subd. (1); *Newport Harbor Ventures*, *supra*, 6 Cal.App.5th at p. 1224 & fn. 5.) Where the gravamen of the promissory estoppel claim is fraud, the statute of limitations is three years. (Code Civ. Proc., § 338, subd. (d).)

Similar to the First C/A for breach of contract, defendant argues that the statute of limitations was triggered at the end of 2019, when plaintiff testified she expected defendant to re-convey the Property to her. However, the court is not convinced plaintiff's deposition testimony establishes that defendant's obligation under the alleged

contract was due by the end of 2019. Instead, there appears to be a triable issue of material fact regarding the statute of limitations. Therefore, the motion for summary judgment is denied on this ground.

5. Conclusion

For the foregoing reasons, the court grants the motion for summary judgment as to the First, Second, Third, and Fourth causes of action. The court denies the motion as to the Fifth cause of action.

Motion to Stay Proceedings

On May 6, 2024, plaintiff filed a motion to stay the proceedings in this action pending final resolution of her case filed March 12, 2024, in Australia Federal Circuit Family Court under Case Number SYC1841/2024. It is the court's understanding that the Australian action concerns the enforceability of the parties' Binding Financial Agreement.

On June 7, 2024, defendant filed an opposition. Plaintiff did not file a reply.

Plaintiff's motion is made pursuant to Code of Civil Procedure section 128, subdivisions (a)(3),[6] (a)(5),[7] and (a)(8).[8] Plaintiff's motion also cites Code of Civil Procedure section 404.5 and California Rules of Court, Rule 3.515, subdivisions (a) and (b). However, those citations apply to complex cases being considered for coordination. That is not the case here.

Defendant contends the motion should be denied because plaintiff's claims in this action are independent of the parties' Binding Financial Agreement and the Australian

[6] Code of Civil Procedure section 128, subdivision (a)(3) provides, every court shall have the power "[t]o provide for the orderly conduct of proceedings before it, or its officers."
[7] Code of Civil Procedure section 128, subdivision (a)(5) provides, every court shall have the power "[t]o control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto."
[8] Code of Civil Procedure section 128, subdivision (a)(8) provides, in relevant part, every court shall have the power "[t]o amend and control its process and orders so as to make them conform to law and justice."

case has no bearing on this case whatsoever. (Opp. at 2:25–3:2.) The court agrees. Therefore, the motion to stay the proceedings is denied.

Motion for Preliminary Injunction

On December 18, 2023, plaintiff filed a motion for preliminary injunction ordering defendant and his attorneys to cease their efforts to evict plaintiff from the Property. The matter was continued multiple times. On April 29, 2024, defendant filed an opposition. On May 6, 2024, plaintiff filed a reply.

"As its name suggests, a preliminary injunction is an order that is sought by a plaintiff prior to a full adjudication of the merits of its claim. [Citation.]" (*White v. Davis* (2003) 30 Cal.4th 528, 554.) The purpose of such an order is to preserve the status quo pending a determination on the merits of the action. (*Id.* at p. 553; *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.)

If the threshold requirement of irreparable injury is established, then the court must examine two interrelated factors: (1) the likelihood that the moving party will ultimately prevail on the merits, and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction. (*Butt v. State of Cal.* (1992) 4 Cal.4th 668, 677–678.) It is settled law that a preliminary injunction may not issue unless the proponent shows they establish they have a reasonable probability of prevailing on the merits. (*Choice-in-Education League v. Los Angeles Unified School Dist.* (1993) 17 Cal.App.4th 415, 422.)

Plaintiff's FAC states causes of action for: (1) breach of contract; (2) deed transfer fraud; (3) undue influence; (4) intentional infliction of emotional distress; and (5) promissory estoppel. Plaintiff's motion does not directly analyze the likelihood that plaintiff will ultimately prevail on the merits. In fact, the court's tentative ruling on defendant's motion for summary judgment is to grant the motion as to the first four causes of action.

Because plaintiff has not established a reasonable probability of prevailing on the merits, the motion for preliminary injunction is denied.

TENTATIVE RULING # 7: THE MOTION FOR SUMMARY JUDGMENT IS GRANTED IN PART AND DENIED IN PART. THE MOTION IS GRANTED AS TO THE FIRST, SECOND, THIRD, AND FOURTH CAUSES OF ACTION. THE MOTION IS DENIED AS TO THE FIFTH CAUSE OF ACTION. THE MOTION TO STAY THE PROCEEDINGS IS DENIED. THE MOTION FOR PRELIMINARY INJUNCTION IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.