SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(Dept 16 is now hearing cases that were formerly in Dept 2)
Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 11-12-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.
The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:

(1) Court by calling (408) 808-6856 and
(2) Other side by phone or email that you plan to appear and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court will call the cases of those who appear in person first. If you appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. You must use the current link.

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. You may make an online reservation to reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Go to the Court's website at www.scscourt.org to make the reservation.

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV425776 Hearing: Demurrer	Trung Tran vs Linh Tran	See Tentative Ruling. Court will issue the final order.
LINE 2	24CV435217 Motion: Quash	Debasish Roy vs JP Morgan Chase Bank, N.A. et al	Off Calendar
LINE 3	24CV442527 Motion: Quash	Granite Rock Company vs NR Development, Inc. et al	Off Calendar. Dismissal review hearing will be set for March 7, 2025 at 10 am in Dept. 16.
LINE 4	20CV367345 Motion: Summary Judgment/Adjudication	Abraham Oseguera et al vs Maria Oseguera et al	Continued to 12/19/24
LINE 5	20CV367345 Motion: Summary Judgment/Adjudication	Abraham Oseguera et al vs Maria Oseguera et al	Continued to 12/19/24
LINE 6	22CV393874 Motion: Compel	Peter Ching vs Michelle Cheng	Notice appearing proper, the unopposed motion to compel responses to form interrogatories set one, special interrogatories, and requests for production of documents is GRANTED. Plaintiff and/or Plaintiff's counsel shall pay sanctions to Defendant in the amount of $610 (2 hours + filing fee) within 10 days of the final order. Defendant shall submit the final order within 10 days.

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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 7	22CV393874 Motion: Admissions Deemed Admitted	Peter Ching vs Michelle Cheng	Notice appearing proper, the unopposed motion to deem the requests for admissions admitted is GRANTED. Plaintiff and/or Plaintiff's counsel shall pay sanctions to Defendant in the amount of $610 (2 hours + filing fee) within 10 days of the final order. Defendant shall submit the final order within 10 days.
LINE 8	21CV389499 Hearing: OEX	Casas Riley Simonian LLP vs Rick Mirza et al	OFF CALENDAR
LINE 9	22CV400862 Motion: Leave to File	Philp Mai vs County of Santa Clara et al	This matter is now MOOT as the FAC has been filed and answered.
LINE 10	22CV406933 Hearing: to Amend Judgment	JPMorgan Chase Bank, N.A. vs Rodolfo Rivera	Notice appearing proper and good cause appearing, the unopposed motion to amend the judgment from $14,440.16 to $14,420.48 is GRANTED. Plaintiff shall submit the final order and judgment within 10 days.
LINE 11			
LINE 12			
LINE 13			
LINE 14			
LINE 15			
LINE 16			

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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 17			

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Calendar Line 1
Case Name: *Trung Tran v. Linh Tran, et al.*
Case No.: 23CV425776

I. Background

A. Factual

This action arises out of a dispute over the ownership of real property located on North Sunnyvale Avenue in Sunnyvale (the "Property"). (First Amended Complaint ("FAC"), ¶ 1.) Plaintiff Trung Tran ("Plaintiff") is the brother of Defendant Linh Tran ("Defendant"). (FAC, ¶ 2.) Their father died in 2016. (FAC, ¶ 2.) There is no dispute that Trinh Tran ("Trinh"), the sister of Plaintiff and Defendant, owns 50% of the Property (now along with her husband).[1] (FAC, ¶ 4.) Plaintiff contends he owns the remaining 50% interest in the Property, and Defendant asserts that he owns the same 50% interest. (FAC, ¶ 3.)

Sometime prior to 2006, Plaintiff purchased the Property. (FAC, ¶ 9.) On January 6, 2006, Plaintiff Trung agreed to a family transfer of the Property to his sister Trinh and brother, Defendant Linh, as joint tenants. (FAC, ¶ 10.) Plaintiff transferred the Property to Trinh and Defendant by Grant Deed. (FAC, ¶ 11, Exh. A – Grant Deed.) Plaintiff executed this property transfer pursuant to an oral agreement between himself on the one hand, and his two siblings on the other, and also reflected his full performance of the contract. (*Ibid.*) "[A]ll parties understood that neither [Defendant] nor [Trinh] then would be able to pay plaintiff the agreed price of $150,000 from each." (*Ibid.*) But also, "it was understood and *agreed by all* that the younger siblings would require and be afforded many years to repay plaintiff (although the younger sister did also take over payment of a $200,000 loan on the property at that time)." (*Ibid,* italics added.)

For cultural and family reasons, it was understood, and agreed by all siblings, via oral contract, and in the presence of their father, that Trinh and Defendant would have a reasonable time (then understood, expected, and agreed to be "many years") to each pay $150,000 to Plaintiff. (FAC, ¶¶ 12-13.) Over 14 years later, Trinh paid Plaintiff $150,000. (FAC, ¶ 13.) Defendant has not paid any of the $150,000. (FAC, ¶ 14.)

In approximately 2022, Defendant's wife began living in the Property with him. (FAC, ¶ 15.) In July 2023, Plaintiff rescinded the oral agreement and requested Defendant return the 50% ownership interest. (FAC, ¶ 16.) In August 2023, Defendant responded by email to Plaintiff, writing: "Hey see you [in] court ok?" (FAC, ¶ 17; see also Exh. B – Defendant's Email.)

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[1] Because individuals involved in this case share the same last name, the Court will refer to them by their first names. No disrespect is intended. (See *In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 551, fn. 2; see also *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

B. Procedural

On November 7, 2023, Plaintiff initiated this matter by filing a complaint against Defendant, asserting: (1) rescission; (2) breach of contract; (3) breach of implied-in-law contract; (4) constructive fraud; and (5) quiet title. Defendant filed a demurrer to the initial complaint on March 20, 2024. After the hearing on Defendant's demurrer, this Court issued a final order overruling the demurrer, in its entirety, on the ground of uncertainty, and sustained the demurrer as to all five causes of action on the ground of failure to state sufficient facts, with 10 days' leave to amend. (See Court Order, Case No. 23CV425776 entitled *Trung Tran vs. Linh Tran,* filed on May 31, 2024.)

On June 3, 2024, Plaintiff filed his operative pleading, the FAC, asserting the following causes of action: (1) restitution based on completed unilateral rescission; (2) breach of contract; (3) breach of implied-in-law contract; (4) constructive fraud; and (5) quiet title. On July 9, 2024, Defendant filed a demurrer challenging each cause of action of the FAC. Plaintiff opposes the demurrer.

II. Request for Judicial Notice

Plaintiff Trung requests judicial notice of the initial complaint, the operative FAC, and the Grant Deed attached as Exhibit A to the FAC. The requests are GRANTED. (Evid. Code, § 452, subd. (d) [the court may take judicial notice of court records].)

III. Merits of Demurrer

A. Legal Standard

As relevant here, Code of Civil Procedure section 431.10 states: "The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: [¶] … (e) The pleading does not state facts sufficient to constitute a cause of action..." A demurrer may be utilized by the party against whom a complaint has been filed to object to the legal sufficiency of the pleading as a whole, or to any cause of action stated therein, on one more of the grounds enumerated by the statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court in ruling on a demurrer treats "as admitted all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.) In ruling on a demurer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on a demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

A. Sufficiency of Facts

Defendant demurs to the FAC and each cause of action on the grounds that the pleading fails to state facts sufficient to constitute a cause of action. ((Defendant's Notice of Demurrer and Demurrer to Plaintiff's FAC; Memorandum of Points and Authorities in Support Thereof ("MPA.Dem."), pp. 1, 4-5.)

1. First Cause of Action: Restitution Based on Completed Unilateral Rescission

In the first cause of action, the FAC alleges that Plaintiff's transfer in 2006 of a 50% interest in the Property to Defendant is subject to "unilateral rescission." (FAC, ¶¶ 32-33.) Defendant contends that Plaintiff has not alleged "any new facts" in his FAC to sufficiently allege a contract to be rescinded, and makes "general conclusions" based on an email response from Defendant that simply states: "Hey see you [in] court ok?" (MPA.Dem., pp. 8-9; see also Exh. B – Defendant's Email.) Defendant also asserts that rescission is not a cause of action, but a remedy. (MPA.Dem., p. 9:17-18). In opposition, Plaintiff asserts that the first cause of action is properly alleged because the FAC includes the following additional facts: "(1) the contract and date of formation thereof, (2) the grounds for rescission, and (3) plaintiff's performance." (Plaintiff's Memorandum of Points and Authorities in Opposition to Demurrer to FAC ("Opp."), p. 3:17-20; see also FAC, ¶¶ 11-12.)

As Defendant points out "[r]escission is not a cause of action; it is a remedy." (*Nakash v. Superior Court* (1987) 196 Cal.App.3d 59, 70. citing Civ. Code, § 1689[2].) However, Plaintiff's first cause of action is a claim for restitution after completed unilateral rescission, and in any event, legal sufficiency of a claim is not determined by the label attached thereto. (*Quelimane Co., Inc. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38-39 ["[i]f the complaint states a cause of action under any theory, regardless of the title under which the factual basis for relief is stated, that aspect of the complaint is good against a

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[2] Civil Code section 1689 states:

> (a) A contract may be rescinded if all the parties thereto consent. [¶] (b) A party to a contract may rescind the contract in the following cases: [¶] (1) If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party. [¶] (2) If the consideration for the obligation of the rescinding party fails, in whole or in part, through the fault of the party as to whom he rescinds. [¶] (3) If the consideration for the obligation of the rescinding party becomes entirely void from any cause. [¶] (4) If the consideration for the obligation of the rescinding party, before it is rendered to him, fails in a material respect from any cause. [¶] (5) If the contract is unlawful for causes which do not appear in its terms or conditions, and the parties are not equally at fault. [¶] (6) If the public interest will be prejudiced by permitting the contract to stand. [¶] (7) Under the circumstances provided for in Sections 39, 1533, 1566, 1785, 1789, 1930 and 2314 of this code, Section 2470 of the Corporations Code, Sections 331, 338, 359, 447, 1904 and 2030 of the Insurance Code or any other statute providing for rescission.

demurrer"].) Thus, the Court will consider whether the first cause of action states a claim entitling Plaintiff to the remedy of rescission.

"The traditional equitable action to have the rescission of a contract adjudged was recognized in former *Civil Code* 3406." (4 Witkin, California Procedure (6th ed. 2023) Pleading § 549.) "The equitable action was abolished in 1961," and "the current remedy is a legal action for restitution based on a completed unilateral rescission." (*Ibid*.) "The following must be alleged in an action for restitution after completed unilateral rescission: (1) the contract or other contractual instrument; (2) the ground for rescission; (3) if the ground is breach of contract, plaintiff's own performance." (4 Witkin, California Procedure (6th ed. 2023) Pleading § 550; see also *Runyan v. Pacific Air Industries, Inc.* (1970) 2 Cal.3d 304 (*Runyan*).) As is relevant here, Civil Code section 1689, subdivision (b)(1) provides that a contract may be rescinded "[i]f the consent of the party rescinding, or of any party jointly contracting with him, was … obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party." (Civ. Code, § 1689, subd. (b)(1).) "Relief given in rescission cases—restitution and in some cases consequential damages—puts the rescinding party in the status quo ante, returning him to his economic position before he entered the contract." (*Runyan*, *supra*, 2 Cal.3d at p. 316, fn. 15.)

As noted in this Court's prior order, Plaintiff's FAC identifies an alleged agreement between the parties and Plaintiff's own performance. (See FAC, ¶¶ 10-12). But, unlike the initial complaint, here, the FAC additionally alleges the grounds for rescission, namely, that Defendant "misrepresented" his oral contract to pay for the Property and purportedly breached the contract via email. (FAC, ¶¶ 16-17, Exh. B – Defendant's Email.) Specifically, Plaintiff not only alleges six different grounds for rescission, but the allegations are now supported by the following ultimate facts:

(1) defendant misrepresented that he would pay for the subject property,
(2) defendant breached the contract by his email,
(3) defendant fraudulently concealed his intent not to pay, revealed only in his email,
(4) defendant's unconscionableness also became manifest when his email is seen in the light of the totality of the circumstances alleged in paragraphs 1-30,
(5) defendant's email reflects the obvious failure of legal consideration and resultant unjust enrichment of many hundreds of thousands of dollars as of today, with the property's appreciation, and
(6) defendant's email reflects his intent to deceive, and constructive fraud arising out of the special, familial relationships and/or fiduciary duty owed to plaintiff, such that the transfer of the 50% subject property interest to defendant is void or voidable, and therefore subject to plaintiffs unilateral recission.

(FAC, ¶ 33.)

In sum, Plaintiff alleges the subject oral agreement was fraudulently obtained by Defendant because he purportedly had no intention to pay $150,000 to Plaintiff as demonstrated by his email. (FAC, ¶¶ 11-12.) This Court must accept the allegations as true on

demurrer, however improbable they may be. "It is not the ordinary function of a demurrer to test the truth of the [ ] allegations [in the challenged pleading] or the accuracy with which [the plaintiff] describes the defendant's conduct. [ ] Thus, [ ] the facts alleged in the pleading are deemed to be true, however improbable they may be." (*Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 958 (*Align*), internal citations and quotations omitted.) Thus, Plaintiff alleges sufficient facts to support an action for restitution after completed unilateral rescission.

Accordingly, the demurrer to the first cause of action is OVERRULED.

2. Second Cause of Action: Breach of Contract

In the second cause of action, the FAC alleges Plaintiff and Defendant (and Plaintiff and his younger sister), "all agreed to and understood, mutually assented to," and entered into an oral agreement for the sale of the 50% interest in the Property, and "Defendant breached the agreement (albeit after Plaintiff rescinded the agreement in July, 2023)." (FAC, ¶¶ 35-37.) The FAC further alleges that Defendant (as well as plaintiff's younger sister) "would be able to live in the property and also have many years to repay plaintiff." (FAC, ¶ 35.) Defendant maintains, as he did in his prior demurrer, that Plaintiff does not allege the specific terms required, such as time of performance. (MPA.Dem., p. 10:8-14.) Additionally, Defendant argues that the cause of action is barred by the statute of limitations stating nearly identical reasons made in his prior demurrer. (MPA.Dem., pp. 12:23-28; 13:1-16.) Plaintiff asserts the statute of limitations has not run because the alleged contract was breached on August 2, 2023, and he filed the initial complaint approximately three months later. (Opp., pp. 2:14-16; 3:6-16; see also FAC, ¶¶ 16 [Plaintiff unilaterally rescinded the oral agreement…and requested that defendant return the 50% ownership interest"], 17, Exh. B – Defendant's Email.)

As noted in this Court's prior order, "[t]o prevail on a cause of action for breach of contract, the plaintiff must [allege] (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff. (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186; see also CACI, No. 303.) "The elements of a breach of oral contract claim are the same as those for breach of a written contract; its performance or excuse for nonperformance; breach, and damages." (*Stockton Mortgage, Inc. v. Tope* (2014) 233 Cal.App.4th 437, 453.) Mutual assent or consent is necessary for the formation of a contract. (Civ. Code, §§ 1550, 1565.) For a meeting of the minds to exist, the parties must agree on all material contract terms. (*Elyaoudayan v. Hoffman* (2003) 104 Cal.App.4th 1421, 1430.)

"Mutual consent necessary for the formation of a contract is determined under an objective standard applied to the outward manifestations or expressions of the parties, i.e., the reasonable meaning of their words and acts, and not their unexpressed intentions or understandings. Although "mutual consent" is a question of fact, whether a certain or undisputed state of facts establishes a contract is a question of law for the court." (*DeLeon v. Verizon Wireless, LLC* (2012) 207 Cal.App.4th 800, 813 [internal quotation marks and citations omitted].)

Here, the FAC alleges additional facts necessary to show the formation of an oral contract. Specifically, the FAC alleges facts demonstrating that there was an outward manifestation or expression of the parties to establish the necessary mutual consent to the material contract terms:

> "Pursuant *to the agreement of plaintiff*, on the one hand, and defendant, and their sister [Trinh], on the other, plaintiff transferred the [Property] to defendant and [Trinh] by recorded Grant Deed…all parties understood that neither [Defendant] nor [Trinh] then would be immediately able to pay plaintiff the agreed price of $150,000 from each. Instead it *was understood and agreed by all* that the younger siblings would be required[d] …to repay plaintiff"

(FAC, ¶ 11, italics added).

Notably, the FAC further alleges that the parties "all agreed to that oral contract in front of their father." (FAC, ¶ 12.) These assertions indicate an outward manifestation of this purported mutual understanding. In particular, the FAC includes additional facts establishing Defendant's assent to the alleged contract. The FAC also adequately alleges the material terms of the oral contract in paragraphs 11 and 12 of the FAC. Plaintiff also attaches the Grant Deed reflecting the "conveyance of the [Property] pursuant to the parties' oral agreement." (FAC, ¶ 11; see also Exh. A – Grant Deed) A party may allege the existence of a contract by pleading its legal effect. (*Construction Protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal.4th 189, 199.) "In order to plead a contract by its legal effect, plaintiff must 'allege the substance of its relevant terms.'" (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1489.) Plaintiff clearly alleges the relevant substantive terms of the oral contract:

> Because of the Vietnamese cultural traditions underlying the father's wishes, one aspect of the *legal consideration for that property transfer was that defendant and his sister would have a reasonable time (then understood and agreed to be many years) to each pay to plaintiff $ 150,000 for their respective and then newly acquired ownership interests in the subject property.*

(FAC, ¶ 12, italics added.)

The FAC specifically sets out Defendant's obligations under the contract and states that Defendant breached those terms by email when Plaintiff requested "defendant return the 50% ownership interest." (FAC, ¶¶ 14-17; Exh. B.) Plaintiff alleges that "despite the passage of eighteen + years now, defendant, Linh Tran, has never paid even one penny of the $150,000 he agreed to pay plaintiff so many years earlier." (FAC, ¶ 14.)

Thus, because the FAC alleges the mutual assent necessary for contract formation, and adequately alleges the material terms of the oral contract, it sufficiently alleges facts to state a cause of action for breach of contract. Having found that the FAC sufficiently alleges a contract, the Court will address whether this cause of action is barred by the statute of limitations.

a. Statute of Limitations

As noted above, Plaintiff alleges a breach of oral agreement on or about August 2, 2023. (FAC, ¶¶ 16-17; see also Opp., p. 3:6-16.) "A plaintiff must bring a claim within the limitations period after accrual of the cause of action. In other words, statutes of limitation do not begin to run until a cause of action accrues. Generally speaking, a cause of action accrues at the time when the cause of action is complete with all its elements." (*V.C. v. Los Angeles*

Unified School Dist. (2006) 139 Cal.App.4th 499, 509-510, internal citations and quotation marks omitted; see also *Menefee v. Ostawari* (1991) 228 Cal.App.3d 239, 246 ["[A] cause of action for breach of contract ordinarily accrues at the time of breach regardless of whether any substantial damage is apparent or ascertainable"].)

"'The defense of statute of limitations may be asserted by general demurrer if the complaint shows on its face that the statute bars the action.' [Citations.] There is an important qualification, however: 'In order for the bar of the statute of limitations to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows merely that the action may be barred.' [Citations.]'" (*E-Fab., Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315-1316.) Only if a court first determines that the claim is time-barred on its face because of the applicable statute of limitations, will it then consider when the cause of action accrued or was discovered. (*Id*., at 1316.)

According to Defendant, the statute of limitations for the breach of an oral agreement is two years. (See Code Civ. Proc., § 339(1).) The FAC alleges that an oral contract was formed on January 6, 2006, Defendant breached the agreement on August 2, 2023, when Defendant responded (via email) to Plaintiff's unilateral rescission of the subject oral contract, and Plaintiff's initial complaint was filed on November 7, 2023. (FAC, ¶¶ 10-11, 16-17, Exh. A – Grant Deed, Exh. B – Defendant's Email ["Hey see you [in] court ok?"].) Thus, according to Plaintiff, the cause of action accrued on August 2, 2023. Plaintiff concludes the claim for breach of contract is not time-barred because the initial complaint was filed "a little over three months" from the date of the alleged breach. This Court agrees.

Defendant contends his email "could be merely asserting that he has not breach[ed] any terms of any agreement and Plaintiff should not have unilaterally rescinded the oral agreement." (MPA.Dem., p. 13:10-16.) But, as noted above, Plaintiff has sufficiently alleged contrary facts in his FAC: "On August 2, 2023, defendant responded by email to plaintiff's rescission, and said simply – 'Hey see you [in] court ok?' – thereby repudiating and breaching the contract." (FAC, ¶ 17.) As discussed above, it is a fundamental rule of procedure that a demurrer "admits the truth of all material factual allegations in the complaint," and so the Court must accept as true Plaintiff's allegations of Defendant's breach, however improbable they may be. (*Align, supra,* 179 Cal.App.4th at p. 958.)

Accordingly, because Plaintiff alleges he did not discover the breach or suffer damages until August 2, 2023, Defendant's demurrer based on the statute of limitations is not sustainable.

The demurrer to the second cause of action is OVERRULED.

3. Third Cause of Action: Breach of Implied-in-Law Contract

In the third cause of action, the FAC alleges that Plaintiff is entitled to an equitable right of restitution, either in the form of return of the 50% ownership interest in the Property or damages of $750,000. (FAC, ¶¶ 40-43.) In demurring, Defendant similarly asserts that Plaintiff, by his own admission, never thought Defendant would pay any of the $150,000. (MPA.Dem., p. 10:16-28.) Additionally, Defendant argues there was no "unjust enrichment" because Plaintiff "should not have unilaterally rescinded the oral agreement." (*Ibid.*) Finally,

Defendant again concludes that Plaintiff's claim is barred by the two-year statute of limitations period. (MPA.Dem., pp. 12-13.)

"An implied contract is one, the existence and terms of which are manifested by conduct." (Civil Code, § 1621; see also *California Emergency Physicians Medical Group v. PacifiCare of California* (2003) 111 Cal.App.4th 1127, 1134 [an implied contract "consists of obligations arising from a mutual agreement and intent to promise where the agreement and promise have not been expressed in words. To plead a cause of action for implied contract, the facts from which the promise is implied must be alleged."], disapproved on another ground in *Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1014, fn. 10.) "An implied contract … must be founded upon an ascertained agreement of the parties to perform it…" (*Friedman v. Friedman* (1993) 20 Cal.App.4th 876, 887 (*Friedman*), internal quotation marks and citation omitted.) "Although an implied in fact contract may be inferred from the 'conduct, situation or mutual relation of the parties, the very heart of this kind of agreement is an intent to promise.' [Citation.]" (*Ibid.*)

While Defendant claims that Plaintiff never thought Defendant would pay, this is not what is alleged in the FAC. Plaintiff specifically contends that Defendant was to pay him $150,000, just not immediately. (FAC, ¶¶ 11, 16, and 17). And while Defendant argues he was not unjustly enriched because Plaintiff should not have rescinded the contract, Plaintiff has sufficiently alleged the opposite in his FAC. Specifically, Plaintiff contends he had to unilaterally rescind the contract because Defendant repudiated the contract via email and ultimately failed to pay Plaintiff. (FAC, ¶ 17.) Finally, as discussed above, the claim is not barred by the statute of limitations.

Accordingly, the demurrer to the third cause of action is OVERRULED.

4. Fourth Cause of Action: Constructive Fraud

In the fourth cause of action, the FAC alleges that if Defendant never intended to pay for the 50% ownership interest in the Property, he had a duty to disclose that intent before Plaintiff recorded the Grant Deed transferring the ownership interest to Defendant. (FAC, ¶¶ 45-47, Exh. A – Grant Deed, Exh. B – Defendant's Email.) Defendant again argues that Plaintiff never expected to be paid immediately, but "was rather afforded many years," and that the FAC alleges no facts to demonstrate any fraud. (MPA.Dem., p. 11:5-22.) Plaintiff does not directly address the demurrer to the fourth cause of action in his opposition, but instead, states that his fourth cause of action is properly pled by incorporating paragraphs 20 through 25 into the claim (Opp., p. 3:21-25), which states, in part:

(1) Parties had "…special relationship which existed when plaintiff transferred the subject property in 2006 to [Defendant] and younger sister." (FAC, ¶ 20; see also Exh. A – Grant Deed);

(2) On January 6, 2006, [Plaintiff] agreed to a family transfer of the subject property to his younger sister, Trinh Tran, and to his younger brother, [Defendant], as joint tenants. (FAC, ¶ 10; Exh. A.)

(3) Plaintiff "justifiably reposed his trust and confidence in [Defendant] that he would not attempt to defraud plaintiff out of plaintiff's ownership interest in

the subject property after defendant lived in it for many years, but then refused to pay for his 50% interest in the property." (FAC, ¶ 21);

(4) "…[D]efendant also owed plaintiff a fiduciary duty with respect to the transfer of ownership of a 50% ownership interest in the subject property to defendant — with no down payment or security required." (FAC, ¶ 22); and

(5) "[D]efendant finally made it clear in his August, 2023 email that he had never intended to pay for the subject property — after plaintiff had finally rescinded the agreement made seventeen+ years earlier at that time." (FAC, ¶¶ 24-25.)

A complaint must generally plead each element of a fraud cause of action with specificity. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) "Constructive fraud is unique species of fraud applicable only to a fiduciary or confidential relationship." (*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1131 [internal quotation marks and citation omitted].) The elements of constructive fraud are: (1) a fiduciary or confidential relationship; (2) nondisclosure (breach of fiduciary duty); (3) intent to deceive; and (4) reliance and resulting injury. (*Ibid.*) Whether conduct constitutes constructive fraud depends on the facts and circumstances of the case. (*Ibid.*)

Finally, Plaintiff is not required to plead facts showing an intent to deceive. (See Civ. Code, § 1573 ["Constructive fraud consists [of]: [¶] 1. …any breach of duty which, *without an actually fraudulent intent*, gains an advantage to the person in fault, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him; or, [¶] 2. …any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud."], italics added; see also *Michel v. Moore & Associates, Inc.* (2007) 156 Cal.App.4th 756, 762 ["A fiduciary's failure to share material information with the principal is constructive fraud, a term of art obviating actual fraudulent intent. … Appellants' negligent nondisclosure/constructive fraud theory relieved them of the burden of needing to prove respondent intended to defraud them, a much easier row to hoe than proving actual intent to defraud for fraudulent concealment."].)

Here, the FAC generally pleads all the required elements of a constructive fraud cause of action. Not only does it allege a special relationship, but it also alleges Defendant's "nondisclosure" and "intent to deceive," as highlighted *supra*, resulting in Plaintiff's financial loss. (FAC, ¶¶ 11, 17, 20-25, 33, 44, Exh. A.). Thus, the FAC includes additional facts of Defendant's conduct and with the required specificity needed for fraud claims.

Accordingly, the demurrer to the fourth cause of action is OVERRULED.

5. Fifth Cause of Action: Quiet Title

In the fifth cause of action, the FAC again alleges that the Grant Deed attached to the FAC does not reflect the parties' true ownership interest, and that Plaintiff seeks to quiet title in order to record a new deed. (FAC, ¶ 50, Exh. A – Grant Deed.) Defendant contends the FAC does not allege any other specific or new facts to constitute fraud on Defendant's part or a lack of intent to transfer ownership of Property, other than using "blanket statements of constructive

fraud." (MPA.Dem., p. 12:1-21.) In opposition, Plaintiff asserts that the fifth cause of action incorporates the "collective, total" allegations of the FAC and those allegations recite all the elements required for a quiet title cause of action. (Opp., p. 3:26-28.)

"To maintain an action to quiet title, a plaintiff's complaint must be verified and must include (1) a description of the property including both its legal description and its street address or common designation; (2) the title of plaintiff as to which determination is sought and the basis of the title; (3) the adverse claims to the title of the plaintiff against which a determination is sought; (4) the date as of which a determination is sought; and (5) a prayer for determination of plaintiff's title against the adverse claims." (Code Civ. Proc., § 761.020.).

As noted in this Court's prior order, the purpose of a quiet title action is to settle all conflicting claims to the property and to declare each interest or estate to which the parties are entitled. (See *Newman v. Cornelius* (1970) 3 Cal.App.3d 279, 284.) "Quieting title is the relief granted once a court determines that title belongs in plaintiff … [T]he plaintiff must show he has a substantive right to relief before he can be granted any relief at all." (*Leeper v. Beltrami* (1959) 53 Cal.2d 195, 216.)

Here, the Court has overruled the demurrer to Plaintiff's claims regarding his substantive right to relief. In this case, the judicially noticeable Grant Deed shows that Defendant has a legal interest in the Property. Plaintiff is essentially arguing that Defendant procured that interest by fraud. As noted above, in these circumstances, and at this stage of the proceedings, Plaintiff has adequately pled facts constituting the fraud. As a result, the FAC sufficiently states the basis of Plaintiff's claim to the title.

Accordingly, the demurrer to the fifth cause of action is OVERRULED.

IV. Conclusion

The demurrer is OVERRULED in its entirety. The Court will prepare the final order.

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