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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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| BAHMAN HARIRI MOGHADAM,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>JEFFREY A. DUNHAM et al.,<br><br>Defendants and Respondents. | B271309<br><br>(Los Angeles County Super. Ct. No. BC564540) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Barbara M. Scheper, Judge. Affirmed.

Marvin Levy for Plaintiff and Appellant.

Freeman Mathis & Gary, Theodore C. Peters and Jennifer R. Weatherup for Defendants and Respondents.

## I. INTRODUCTION

Plaintiff Bahman Hariri Moghadam, individually, as general partner of 5425 S.M.B. Limited, and as trustee of 808 Ashland Living Trust dated 4/18/2006 (the Ashland Trust), and 5425 S.M.B. Limited, appeals from a summary judgment. Defendants on appeal are Jeffrey A. Dunham, Dunham Mortgage Funds, and Dunham Commercial Mortgage LP.[1] Plaintiff owed defendants money pursuant to a loan secured by two of plaintiff's real properties. Plaintiff defaulted on the loan. Ultimately, defendants made an offer to plaintiff that $450,000 be paid by a certain date in exchange for reconveyance of the trust deed to one of the real properties and forbearance of foreclosure on the other. Defendants were not paid by the deadline and commenced a trustee sale of the real properties.

Plaintiff filed a complaint against defendants for, inter alia, breach of contract by defendants' intentional refusal to produce certain documents as required by an escrow company for escrow to close and the funds to be disbursed. Defendants moved for summary judgment, arguing, inter alia, there was no contract because plaintiff never paid the requested money by the deadline. The trial court granted defendants' motion. We affirm.

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[1] Dunham Commercial Mortgage LP was allegedly doing business as D&A Semi-Annual Mortgage Fund III, L.P. (D&A) during the time in question. For ease of reference, we will refer to this defendant as D&A.

## II. BACKGROUND

A. *Factual Background*[2]

5425 S.M.B. Limited is a California limited partnership. In 2000, 5425 S.M.B. Limited purchased real property located at 5425 Santa Monica Boulevard in Los Angeles, California (the 5425 property). The 5425 property consisted of a mixed-use apartment and retail building with 30 apartment units and approximately 6,600 square feet of retail space. The Ashland Trust was created on April 18, 2006 by Bahman's brother George[3], with plaintiff as the trustee. On April 19, 2006, George quitclaimed to the Ashland Trust, two parcels of real property located in Santa Monica, California near Ashland Avenue and Lincoln Boulevard (the Ashland property).

Plaintiff as trustee of the Ashland Trust and 5425 S.M.B. Limited entered into a loan from D&A. The terms of the loan required 11 interest-only payments of $12,500 commencing on July 1, 2006 with a final balloon payment of the outstanding principal balance (estimated to be $1,262,500) due June 1, 2007. The promissory note on the loan was secured by trust deeds encumbering the 5425 property and the Ashland property. As part of the loan agreement, D&A was a first trustee of the

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[2] These facts are taken from the record before the trial court when it ruled on the summary judgment motion. The facts are undisputed unless otherwise noted.

[3] Several individuals share the same last name. For ease of reference, we will refer to them by their first name. No disrespect is intended.

Ashland property and had a second trust deed on the 5425 property.

On May 29, 2007, the parties entered into a written modification of the loan agreement extending the maturity date of the loan to December 1, 2007. On April 11, 2008, D&A recorded a notice of default because plaintiff failed to pay off the loan in time. The parties entered into several forbearance agreements to postpone foreclosure. D&A and plaintiff entered into a second modification of the loan, extending the maturity date to June 1, 2009. D&A and plaintiff entered into a dozen more forbearance agreements, which all expired before June 28, 2010, the date set for the foreclosure sale.

On June 8, 2010, 5425 S.M.B. Limited declared bankruptcy. On February 22 and 23, 2011, the bankruptcy court provided the first and second trust deed holders (Pacific Western Bank and D&A, respectively) relief from stay to foreclose on the 5425 property. The trustee sale was noticed for March 28, 2011. Plaintiff's various motions for relief were denied.

Plaintiff halted the foreclosure sale on the 5425 property by filing another bankruptcy proceeding on behalf of the Ashland Trust on March 28, 2011. Plaintiff had placed a trust deed on the 5425 property with the Ashland Trust as a beneficiary. This trust deed was not executed and recorded until March 25, 2011, when 5425 S.M.B. Limited was already in bankruptcy and had no legal authority to encumber the 5425 property without a prior order.[4]

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[4] The stay on foreclosure was eventually lifted on June 8, 2011. The bankruptcy court in the Ashland proceeding determined the bankruptcy filing was part of a scheme to delay, hinder, or defraud creditors. The foreclosure sale on the 5425

The parties again discussed possible forbearance of foreclosure. On March 23, 2011, counsel for D&A sent plaintiff's counsel an e-mail indicating D&A would continue the scheduled foreclosure sale of the 5425 property if plaintiff made a payment of $450,000 to D&A, with proof of such payment provided by March 25, 2011. Terms in the March 23, 2011 e-mail included no lawsuit being filed and a written agreement signed by the parties under terms satisfactory to D&A. D&A also proposed reconveying the trust deed on the Ashland property. On March 24, 2011, counsel for the parties discussed the proposal further. Eventually D&A's counsel sent the following terms to plaintiff's counsel via e-mail: D&A would receive a wire payment of $100,000 by March 25, 2011; D&A would receive the remaining $350,000 by wire payment on March 31, 2011; plaintiff agreed to the express conditions in the March 23, 2011 e-mail; and no state court action would be filed. D&A set a deadline of 4:00 p.m. on March 24, 2011 for plaintiff to accept. Plaintiff did not accept by that time, nor did they make any payments pursuant to the March 24, 2011 e-mail.

On March 31, 2011, plaintiff's counsel responded to the March 24, 2011 e-mail that George had agreed to the March 24 terms. Plaintiff's counsel further indicated that $40,000 had been put into escrow with Beverly Hills Escrow, $30,000 would be deposited on April 1, and $5,000 deposited on April 4. D&A's counsel notified plaintiff's counsel on April 1, 2011 that no

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property occurred on June 9, 2011, with D&A the successful credit purchaser.

agreement had been entered into between the parties to work out the loan.[5]

On May 5, 2011, plaintiff's counsel extended a formal written proposal to D&A. In exchange for $450,000, which plaintiff would deposit into escrow, D&A would reconvey the trust deed for the Ashland property. D&A had not responded to the offer as of May 10, 2011. On May 12, 2011, at a creditor's meeting related to the Ashland bankruptcy case, D&A's counsel informed plaintiff on the record that it would reconvey the trust deed for the Ashland property if plaintiff made a $450,000 payment by May 18, 2011. This was confirmed via e-mail by D&A's counsel on May 17, 2011: "The $450,000 has to be paid tomorrow and it has to come from a person other than a debtor in the Ashland Trust or 5425 SMB bankruptcies and not require an agreement of those bankrupt debtors with the people providing the money. . . . If the $450,000 is paid tomorrow, D&A will convey its TD [trust deed] on the Ashland [property] and I will prepare a forbearance agreement which incorporates the March 23 e[-]mail provisions below, which your clients will sign . . . . [¶] . . . [¶] . . . There is no deal if the $450k is not paid tomorrow, [May] 18."

Plaintiff did not make the $450,000 payment by May 18, 2011. Plaintiff admitted in their complaint, "As of May 17, 2011, $435,000 was already in escrow and $15,000 was wired to escrow [] three days later . . . ." In an e-mail dated May 24, 2011 from defendants' counsel, defendants asserted there had been no agreement. Defendants' counsel recounted the May 12, 2011 offer as follows: "I asked [plaintiff] whether he indeed had

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[5] Plaintiff appears to have waived his argument that the March 2011 offer was accepted.

$450,000 and wanted to pay it to D&A for a release of the Ashland trust deed and he said yes. I told him on the record that D&A would accept the $450,000 and release the Ashland trust deed if the $450,000 were paid on or before May 18, 2011 . . . [¶] . . . If your clients wanted to do a deal by May 18, it was their responsibility to figure out how to do it[.]"

On or about May 17, 2011, George received an e-mail from an employee at Beverly Hills Escrow which indicated that a party from the payoff party (D&A) called its office to confirm the amount in escrow. The escrow company requested the deed of reconveyance, the forbearance agreement, and other documents from defendants, but defendants did not produce the documents. George contacted Holly Lunde, a fund manager at D&A, and asked why the documents had not been provided. Lunde responded that D&A did not trust the escrow company to hold the documents until the funds were paid. The Ashland property was eventually sold in a foreclosure sale on March 1, 2012, with D&A the successful credit bid purchaser.

B. *Complaint and Summary Judgment Motion*

On November 21, 2014, plaintiff sued defendants Dunham, Lunde, Christopher Moore, Dunham Mortgage Funds, Dunham Commercial Mortgage LP, Asset Managers, Inc., and D&A.[6] Plaintiff alleged defendants breached the contract purportedly entered in March 2011, and confirmed in May 2011, to not

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[6] Dunham is a principal of D&A. Moore appeared in the action but does not appear as a respondent in this appeal. Lunde did not appear in this action and was dismissed without prejudice.

foreclose on the 5425 property and to reconvey the trust deed to the Ashland property if plaintiff paid $450,000 to defendants. Plaintiff contend he placed $450,000 into the escrow, but escrow could not close because defendants failed to provide the required documents to the escrow company. Plaintiff asserted promissory estoppel and detrimental reliance occurred as alleged in the breach of contract cause of action. Plaintiff also alleged a breach of the implied covenant of good faith and fair dealing (implied covenant breach) related to the contract. Finally, plaintiff alleged intentional interference with prospective economic advantage. Plaintiff alleged in early 2011, he was negotiating with a builder and the City of Santa Monica to sell the Ashland property for $5,000,000. Plaintiff alleged defendants knew of this business relationship and interfered by reneging on their promises and not reconveying the deed to the Ashland property.

On August 18, 2015, defendants moved for summary judgment. They asserted there was no contract in March 2011 because plaintiff failed to timely accept. As to the May 2011 negotiations, defendants asserted there was no breach regarding payment of $450,000 in exchange for release of the Ashland property from D&A's trust deed. Defendants contend plaintiff failed to pay $450,000 to them by the May 18, 2011 deadline. Defendants argued the promissory estoppel cause of action failed because there was no clear and unambiguous promise made and plaintiff's reliance was not reasonable. They argued the implied covenant breach cause of action failed because there was no valid contract. Finally, defendants argued the intentional interference with prospective economic advantage failed because the foreclosure sales were legal and not wrongful.

On December 3, 2015, following a hearing, the trial court granted summary judgment for defendants. The court found there was an agreement, based on plaintiff's counsel's May 5, 2011 e-mail to defendants and defendants' agreement on May 12, 2011 to reconvey the trust deed to the Ashland property only if defendants were paid $450,000 by May 18, 2011. The trial court further found plaintiff did not pay defendants $450,000 by May 18, 2011, based on his admission in the complaint. The trial court determined plaintiff failed to demonstrate a triable issue of fact for a breach of contract by failing to perform and having no excuse for his nonperformance. The trial court found there was no promissory estoppel because there was a contract and plaintiff failed to pay the requested $450,000 by May 18, 2011. The trial court found no triable issue for breach of the implied covenant because the evidence at most indicated defendants' conduct prevented the escrow from closing, but did not excuse plaintiff's failure to perform. Finally, the trial court found the intentional interference with prospective economic advantage cause of action failed because there was no wrongful conduct by defendants. Judgment was entered January 14, 2016.

Plaintiff moved for reconsideration on January 29, 2016 based on newly discovered evidence. On March 3, 2016, the trial court found it did not have jurisdiction to hear the motion because judgment had been entered. The court would have also denied the motion as untimely. The trial court also found plaintiff failed to set forth any new or different facts that could not have been presented in opposition to the summary judgment motion. This appeal followed.

## III. DISCUSSION

*A. Summary Judgment Standard of Review*

"[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. That is because of the general principle that a party who seeks a court's action in his favor bears the burden of persuasion thereon. [Citation.] There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof . . . . [¶] [T]he party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact . . . . A prima facie showing is one that is sufficient to support the position of the party in question. [Citation.] [Fns. omitted.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850-851.)

We review an order granting summary judgment de novo. (*Coral Construction, Inc. v. City and County of San Francisco* (2010) 50 Cal.4th 315, 336; *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65, 67-68.) The trial court's stated reasons for granting summary judgment are not binding because we review its ruling, not its rationale. (*Coral Construction, Inc. v. City and County of San Francisco, supra*, 50 Cal.4th at p. 336; *Continental*

*Ins. Co. v. Columbus Line, Inc.* (2003) 107 Cal.App.4th 1190, 1196.) In addition, a summary judgment motion is directed to the issues framed by the pleadings. (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1252; *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 673, disapproved on a different point in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 527, fn. 5.) These are the only issues a motion for summary judgment must address. (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1249-1250.)

*B. Breach of Contract*

"The essential elements of a claim of breach of contract . . . are the contract, plaintiff's performance or excuse of nonperformance, defendant's breach, and the resulting damages to plaintiff." (*San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 439.) Defendants contend there was no contract because there was no express acceptance by plaintiff or defendants.

Defendants have met their initial burden of production. Plaintiff's May 5, 2011 proposal was an offer, but it was not accepted. Though the trial court appeared to categorize defendants' May 12, 2011 response as an acceptance, that is not what occurred. Defendants' May 12, 2011 response is more properly understood as a counteroffer because it added material terms, such as a payment deadline of May 18, 2011 and requirements regarding the source of the $450,000. (See Civ. Code, § 1585 ["An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will conclude

the person accepting. A qualified acceptance is a new proposal."]; *Panagotacos v. Bank of America* (1998) 60 Cal.App.4th 851, 855-856 ["a qualified acceptance amounts to a new proposal or counteroffer"].) There is no evidence in the record that plaintiff accepted the May 12, 2011 offer, whether via a written or oral statement, or by performing as required. As noted, plaintiff admitted not giving the requested $450,000 to defendants by May 18, 2011. Defendants have met their initial burden of production by demonstrating there was no May 2011 contract. The burden shifts to plaintiff to demonstrate that there is a triable issue of material fact for his breach of contract cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).)

Regarding the May 2011 negotiations, plaintiff asserts that defendants caused the $450,000 to not be delivered by failing to provide the requested documents to the escrow company. However, plaintiff failed to submit evidence showing there was a contract between him and defendants. As noted, defendants' response on May 12, 2011 was not acceptance of plaintiff's May 5, 2011 offer; rather, it was a counteroffer. There is no evidence in the record that indicated plaintiff accepted this counteroffer. Assuming defendants agreed to payment via escrow, plaintiff may have had a viable argument if he had submitted $450,000 to the escrow by May 18, 2011. However, it is undisputed plaintiff did not make the required deposit to escrow by the May 18, 2011 deadline. Whether defendants failed to deliver the required documents to the escrow company was immaterial. Plaintiff fails to raise a triable issue of material fact as to the existence of a contract between him and defendants entered into in May 2011.[7]

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[7] Alternatively, even if there was a contract formed on May 12, 2011, plaintiff failed to perform and has demonstrated

*C. Promissory Estoppel*

"The elements of a promissory estoppel claim are '(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) [the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance.' [Citation.]" (*US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 901.) "Promissory estoppel is 'a doctrine which employs equitable principles to satisfy the requirement that consideration must be given in exchange for the promise sought to be enforced.' [Citation.]" (*Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2000) 23 Cal.4th 305, 310.)

Defendants argued, and the undisputed facts show, plaintiff failed to pay defendants $450,000 by May 18, 2011. Because plaintiff did not do what was requested, he cannot demonstrate reliance. "'Under such circumstances, the only reliance which can make the promisor's failure to perform actionable is the promisee's doing what was requested. If that reliance was detrimental, it would constitute consideration. If it was not detrimental, it would not constitute consideration; and

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no excuse for his nonperformance. (See Civ. Code, § 1511, subd. (1) [performance excused when such performance is prevented or delayed by the act of the creditor].) Defendants' failure to provide the requested documents to the escrow company would not have changed the outcome. Even if defendants had provided the requested documents, plaintiff did not put the full $450,000 into escrow until May 20, 2011. Plaintiff cites no evidence in the record indicating defendants prevented him from depositing the full $450,000 into escrow by May 18, 2011.

since detrimental reliance is an essential feature of promissory estoppel, that doctrine could not be invoked to make the promisor liable.' [Citation.]" (*Youngman v. Nevada Irrigation Dist.* (1969) 70 Cal.2d 240, 249-250.) Defendants have met their initial burden of production. Based on the undisputed facts, plaintiff did not pay defendants $450,000, whether via escrow or otherwise, by the stated deadline. There was thus no detrimental reliance by plaintiff. The burden shifts to plaintiff to demonstrate the existence of a triable issue of fact for this cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).)

Plaintiff fails to raise a triable issue of material fact for the promissory estoppel cause of action. He fails to show he gave 450,000 to defendants, whether by escrow or otherwise, by May 18, 2011. Because there was no detrimental reliance by plaintiff, his promissory estoppel cause of action fails as a matter of law.[8]

*D. Implied Covenant Breach*

To prevail on an implied covenant breach cause of action, plaintiff must demonstrate the following: he and defendants entered into a contract; he did all, or substantially all of the

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[8] Alternatively, if plaintiff and defendants did enter into a contract on May 12, 2011, plaintiff's promissory estoppel cause of action fails as a matter of law. "[A] plaintiff cannot state a claim for promissory estoppel when the promise was given in return for proper consideration. The claim instead must be pleaded as one for breach of the bargained-for contract." (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 275, disapproved on other grounds in *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 939, fn. 13.)

significant things he was required to do or was excused from doing them; all conditions required for defendants' performance had occurred or were excused; defendants unfairly interfered with plaintiff's right to receive the benefits of the contract; and plaintiff was harmed by defendants' conduct. (CACI No. 325; *Digerati Holdings, LLC v. Young Money Entertainment, LLC* (2011) 194 Cal.App.4th 873, 885.) "There is no obligation to deal fairly or in good faith absent an existing contract." (*Racine & Laramie, Ltd. v. Department of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1032.) An implied covenant breach is necessarily a breach of contract. (*Digerati Holdings, LLC v. Young Money Entertainment, LLC, supra*, 194 Cal.App.4th at p. 885.)

Defendants assert plaintiff never entered into a contract based on the May 5, 2011 offer. As noted, defendants are entitled to summary judgment on the breach of contract cause of action because there was no contract in May 2011. Plaintiff fails to show there was a contract between the parties based on the May 5, 2011 offer. Defendants have met their burden of production and plaintiff fails to raise a triable issue of material fact for the implied covenant breach cause of action.[9]

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[9] Alternatively, if there was a contract, there is no triable issue of fact demonstrating an implied covenant breach. An element of the cause of action for implied covenant breach is that plaintiff had to have performed his part under the contract. As noted, plaintiff admitted not paying $450,000 to defendants by May 18, 2011.

*E. Intentional Interference with Prospective Economic Advantage*

"To establish a prima facie case of intentional interference with prospective economic advantage, a plaintiff must demonstrate (1) an economic relationship between the plaintiff and a third party, with a probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of this relationship; (3) intentional and wrongful conduct on the part of the defendant, designed to interfere with or disrupt the relationship; (4) actual disruption or interference; and (5) economic harm to the plaintiff as a proximate result of the defendant's wrongful conduct. [Citation.]" (*Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 713.) "We consider an act independently wrongful 'if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.' [Citation.]" (*Ibid.*)

Defendants assert they committed no wrongful conduct because they were legally permitted to foreclose on the 5425 and Ashland properties. Defendants have met their initial burden of production. Based on the undisputed facts, defendants held trust deeds to both properties and could foreclose on them because plaintiff defaulted on the loan secured by those properties. The burden shifts to plaintiff to raise a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2).)

Plaintiff argues defendants prevented him from complying with the agreement to pay $450,000 to them for the trust deed to the Ashland property by not delivering the requested documents to the escrow company. However, plaintiff cannot overcome his admission that $450,000 was not paid to defendants by the required deadline of May 18, 2011, whether via escrow or

otherwise. As discussed above, defendants are entitled to summary judgment on plaintiff's breach of contract, implied covenant breach, and promissory estoppel causes of action. Plaintiff has failed to demonstrate a triable issue of fact indicating defendants committed an independent wrongful conduct.

*F. Motion for Reconsideration*

Plaintiff finally argues the trial court erred by denying his motion for reconsideration. Plaintiff contend he submitted new facts in his motion for reconsideration that could not have been produced in opposition to summary judgment. Plaintiff asserts these new facts would have raised a triable issue of material fact. Plaintiff also argues his motion is timely.

Plaintiff is incorrect as to the timeliness of his reconsideration motion. Once judgment has been entered, the trial court cannot entertain or decide a motion for reconsideration. (*Aguilar v. Atlantic Richfield Co., supra*, 25 Cal.4th at p. 859, fn. 29.)

A trial court has discretion to treat a motion for reconsideration as a motion for new trial. (*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 187, 192-193.) The grant or denial of a motion for new trial is reviewed for abuse of discretion. (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 832.)

Here, however, even if the trial court had treated the motion as one for a new trial, plaintiff failed to present evidence that was newly discovered which he could not produce with reasonable diligence. The extent of plaintiff's new evidence

consisted of e-mail exchanges between George and Lunde indicating: defendants had agreed to provide documents requested by the escrow company; defendants knew the loan would be paid via escrow; and defendants knew what documents were necessary in order to close escrow. Plaintiff also included an escrow flowchart, indicating which documents were needed to close escrow. As found by the trial court, plaintiff failed to demonstrate how his purportedly newly discovered evidence could not have been presented in opposition to the summary judgment motion.

We find no abuse of discretion. Plaintiff asserts he was unable to present these documents with his opposition to the summary judgment motion. Plaintiff's counsel declared he did not know of this evidence, particularly the e-mails, because they were contained in George's personal e-mails. Plaintiff's excuse is unpersuasive. The trial court could reasonably find the purportedly newly discovered evidence could have been obtained with reasonable diligence. (*In re Marriage of Liu* (1987) 197 Cal.App.3d 143, 153-154.) These documents were in the possession of George, who, though not a party, is trustor of the Ashland Trust and plaintiff's brother. Furthermore, plaintiff's additional evidence does not raise a triable issue as to whether there was a contract. As discussed above, plaintiff admitted he did not put $450,000 into the escrow by the deadline of May 18, 2011 and thus failed to demonstrate the existence of a contract.

Because we have resolved all the matters necessary on appeal, we need not discuss the parties' remaining arguments.

## IV. DISPOSITION

The judgment is affirmed. Defendants Jeffrey A. Dunham, Dunham Mortgage Funds, and Dunham Commercial Mortgage LP shall recover their appellate costs from plaintiff Bahman Hariri Moghadam.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

RAPHAEL, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.