TENTATIVE RULINGS

DEPARTMENT W8

Judge Walter Schwarm

February 8, 2022

8	30-2021-01207553 Paradigm Sports Management, LLC v. Pacquiao	Plaintiff's (Paradigm Sports Management, LLC) Motion for Summary Adjudication (Motion), filed on 10-25-21 under ROA No. 181, is **DENIED**. The Notice of Motion for Summary Adjudication (Notice) was filed on 10-25-21 under ROA No. 180. Code of Civil Procedure section 437c, subdivision (p)(1), provides, "A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The defendant or cross-defendant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." Code of Civil Procedure section 437c, subdivision (f)(1), provides, in part, "A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has not merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim of damages, or an issue of duty." Code of Civil Procedure section 437c, subdivision (q), states, in part, "In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition to the motion."

		Aguilar v. Atlantic Richfield Co. (*Aguilar*) (2001) 25 Cal.4th 826, 850-851, states, "Second, and generally, the 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. Although not expressly, the 1992 and 1993 amendments impliedly provide in this regard for a burden of *production* as opposed to a burden of *persuasion*. A burden of production entails only the presentation of 'evidence.' (Evid. Code, § 110.) A burden of persuasion, however, entails the 'establish[ment]' through such evidence of a 'requisite degree of belief.' (*Id.*, § 115.) It would make little, if any, sense to allow for the shifting of a burden of persuasion. For if the moving party carries a burden of persuasion, the opposing party can do nothing other than concede. Further, although not expressly, the 1992 and 1993 amendments impliedly provide for a burden of production *to make a prima facie showing*. A prima facie showing is one that is sufficient to support the position of the party in question. [Citation.]" (Italics in *Aguilar*; Footnotes 13 and 14 omitted.) *Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 838 (*Binder*), states, "Although summary judgment might no longer be considered a 'disfavored' procedure, [citation], the rule continues that the moving party's evidence must be strictly construed, while the opposing party's evidence must be liberally construed." "On a summary judgment motion, the court must therefore consider what inferences favoring the opposing party a factfinder could reasonably draw from the evidence. While viewing the evidence in this manner, the court must bear in mind that its primary function is to identify issues rather than to determine issues. [Citation.]" (*Id.*, at p. 839.) *Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 756-757, provides, "The plaintiff can defeat a defense motion for summary judgment by showing either that the defense evidence itself permits conflicting inferences as to the existence of the specified fact, or by presenting additional evidence of its existence. [Citation.] The dispositive question in all cases is whether the evidence before the court, viewed as a whole, permits only a finding favorable to the defendant with respect to one or more necessary elements of the plaintiff's claims—that is, whether it negates an element of the claim 'as a matter of law.' [Citation.]" " 'The pleadings delimit the issues to be considered on a motion for summary judgment. [Citation.]' [Citation.] Thus, a 'defendant moving for summary judgment need address

		only the issues raised by the complaint; the plaintiff cannot bring up new, unpleaded issues in his or her opposing papers.' [Citation.] 'To create a triable issue of material fact, the opposition evidence must be directed to issues raised by the pleadings. [Citation.] If the opposing party's evidence would show some factual assertion, legal theory, defense or claim not yet pleaded, that party should seek leave to amend the pleadings before the hearing on the summary judgment motion. [Citations.]' [Citation.] '[T]he pleadings "delimit the scope of the issues" to be determined and "[t]he complaint measures the materiality of the facts tendered in a defendant's challenge to the plaintiff's cause of action." [Citation.] [Plaintiff's] separate statement of material facts is not a substitute for an amendment of the complaint. [Citation.]' [Citation.]" (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1253.) *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1854-1855 (*Lilienthal*) states, "In our judgment the clearly articulated legislative intent of section 437c, subdivision (f), is effectuated by applying the section in a manner which would provide for the determination on the merits of summary adjudication motions involving separate and distinct wrongful acts which are combined in the same cause of action. To rule otherwise would defeat the time and cost saving purposes of the amendment and allow a cause of action in its entirety to proceed to trial even where, as here, a separate and distinct alleged obligation or claim may be summarily defeated by summary adjudication. Accordingly, we hold that under subdivision (f) of section 437c, a party may present a motion for summary adjudication challenging a separate and distinct wrongful act even though combined with other wrongful acts alleged in the same cause of action." (Footnote 4 omitted) *Blue Mountain Enterprises, LLC. v. Owen*, (Jan. 10, 2022 as modified Jan. 19, 2022 A157054; (2022 WL 263398; This case appears to be published.) --- Cal.Rptr.3d---) at p. 6 (*Blue Mountain*), provides, "Owen first contends that Blue Mountain was not entitled to summary adjudication of its claim for breach of contract because its motion did not fully resolve the cause of action. Owen observes that Blue Mountain's claim was predicated on both the alleged breach of the customer nonsolicitation covenant as well as breach of the covenant against solicitation of Blue Mountain employees. Owen relies on Code of Civil Procedure section 437c, subdivision (f)(1), which provides that a summary adjudication motion may be granted 'only if it *completely disposes of a cause of action,* an affirmative defense, a claim for damages, or an issue of duty.' (Italics added.) [¶] A recognized exception to the statutory language above holds that where two or more separate and distinct wrongful acts are combined in the same cause of action in a complaint, a

		party may present a summary adjudication motion that pertains to some, but not all, of the separate and distinct wrongful acts. [Citation.] That is because each separate and distinct wrongful act is an invasion of a separate and distinct primary right, and each violation of a primary right is a separate and distinct 'cause of action' — regardless of how the claim is presented in the complaint. [Citation.] Thus, to the extent the FAC's first cause of action alleged separate and distinct contractual violations, Blue Mountain was entitled to present a motion for summary adjudication as to any alleged violation. [Citation.] [¶] We have no difficulty concluding that Blue Mountain's customer solicitation claim and employee solicitation claim involve two different primary rights: Blue Mountain's right to enjoy and preserve the customer goodwill it had acquired from Owen, and its right to be free from interference with its employment relationships. Both primary rights are contractual and were conferred by two different provisions in the Employee Agreement. The solicitation of Blue Mountain's customers thus invaded a different right and constituted a 'separate and distinct' wrongful act from the solicitation of Blue Mountain's employees. [Citation.] Though the breaches were pleaded together in a single cause of action, they involve allegations of separate and distinct wrongful acts and damages. Consequently, the trial court did not abuse its discretion in addressing the discrete customer solicitation claim by way of summary adjudication." **Issue No. 1—"[T]he branch of Paradigm's First Cause of Action for breach of contract seeking damages for the $3.3 million purse advance that Pacquiao admits he received and has retained." (Notice; 2:8-9.)** The Motion states, ". . . Paradigm is also seeking circumscribed summary adjudication with respect to its First Cause of Action for breach of contract, particularly, that branch of the claim which seeks damages for Pacquiao's retention of the $3.3 million purse advance.4 Nevertheless, because Paradigm is asking the Court to dispose of a distinct alleged wrong -- *i.e.*, Pacquiao's retention of the $3.3 million purse advance -- summary adjudication is available with respect to Paradigm's breach of contract claim insofar as it seeks recovery for the purse advance." (Motion; 9:7-12.) The Motion explains, "Paradigm's claim against Pacquiao for breach of contract based upon his retention of the $3.3 million purse advance is established by the undisputed evidence." (Motion; 10:10-11.) The Motion contends, ". . . the undisputed evidence shows that Pacquiao breached when he failed to repay the $3.3 million by August 1, 2021. Section 6 of the Supplemental Agreement sets forth the conditions under which Pacquiao was obligated to return any purse advance paid to him . . . Here, it is indisputable that the August 1, 2021 deadline has expired, and Pacquiao

		has not repaid the $3.3 million. That failure constitutes a clear breach of Section 6 of the Supplemental Agreement." (Motion; 12:8-19.) The Motion specifically moves for the summary adjudication based on Defendant's (Emanuel Dapidran Pacquiao) failure to repay $3.3 million by the 8-1-21 deadline. Defendant's Opposition to Plaintiff Paradigm Sports Management, LLC's Motion for Summary Adjudication (Opposition), filed on 1-25-22 under ROA No. 246, states, "In addition, the 'branch' of PSM's breach of contract cause of action it seeks summary adjudication on goes beyond mere improper claim splitting in that it was not even one of the theories of liability alleged in PSM's Complaint. . . . Simply put, the Court cannot order summary adjudication on a cause of action not yet pleaded, or on a cause of action that does not exist." (Opposition; 11:13-18.) The parties do not dispute that Plaintiff and Defendant entered into the following agreements: (1) On 2-8-20, Plaintiff and Defendant entered into the Partnership Contract. (Defendant's Separate Statement (DSS) filed on 1-25-22 under ROA No. 244, Fact No. 3; (10-22-21 Burstein Declaration filed on 10-29-21 under ROA No. 23 (Burstein Decl., ¶ 9 (Attar Decl., ¶ 14 and Exhibit 4.).); (2) On 10-11-20, Plaintiff and Defendant entered an Amended Partnership Agreement. (DSS Fact No. 6; (Burstein Decl., ¶ 9 (Attar Decl., ¶ 34 and Exhibit 13.).); and (3) On 10-23-20, Plaintiff and Defendant entered into a Supplemental Agreement. (DSS Fact No. 7; (Burstein Decl., ¶ 9 (Attar Decl., ¶ 34 and Exhibit 14.).) Section 6 of the Supplemental Agreement states in part, "Purse Advance: Paradigm shall transfer Four Million United States Dollars . . . to MP as an Advance ('Purse Advance.') Two Million U.S. Dollars . . . shall be received by **MP** and paid by Paradigm upon signing of this agreement. The balance of the Two Million U.S. Dollars . . . shall be paid by Paradigm to MP on or before November 6, 2020 . . . The second half of the Purse Advance constitutes a bonus and its non-provision, despite Paradigm's best efforts, shall not be considered a material breach of this Agreement. . . . [¶] In exchange for the Purse Advance, **MP** shall make repayments totaling Four Million United States Dollars ($4,000,000.00) in full or in part within five (5) days in case of: (1) **MP's** receipt of funds as either a signing bonus before his next professional boxing fight or fight purse following his next professional boxing fight, or (2) **MP's** receipt of funds from any business or source of income or employment earned through the efforts of Paradigm, or (3) August 1, 2021, or (4) **MP's** material breach resulting to the termination of this Agreement." (DSS Fact No. 7; (Burstein Decl., ¶ 9 (Attar Decl., ¶ 34 and Exhibit

		14); Underscore and emphasis in Supplemental Agreement.).) *Maxwell v. Dolezal* (2014) 231 Cal.App.4th 93, 97-98, "To establish a cause of action for breach of contract, the plaintiff must plead and prove (1) the existence of the contract, (2) the plaintiff's performance or excuse for nonperformance, (3) the defendant's breach, and (4) resulting damages to the plaintiff. [Citations.]" Plaintiff has provided evidence that there was contract between the parties (DSS Fact Nos. 3, 6, and 7), that Plaintiff performed by paying $3.3 million to Defendant as part of the Purse Advance (DSS Fact Nos. 12, 13, and 15), that Defendant breached the agreement by failing to repay the $3.3 million by 8-1-21 (DSS Fact Nos. 19 and 20, and that Plaintiff was harmed (DSS Fact Nos. 19 and 20.) Paragraph 64 of the Complaint, filed on 6-25-21 under ROA No. 2, pleads, "Pacquiao breached Section 6 of the Partnership Agreement, as amended by the Supplemental Agreement, by failing to reimburse the $3.3 million advance issued to him pursuant to the terms requiring that he return it within five days of, among other things, a material breach of the Partnership Agreement." Paragraph 60 of the Complaint describes Defendant's other alleged breaches of the agreements between the parties. Paragraph 66 of the Complaint requests ". . . actual damages in an amount to be determined at a hearing, but no less that $20 million . . . ." Paragraph 66 of the Complaint does not allocate a specific amount of damages to a specific alleged breach. Instead, paragraph 66 of the Compliant requests $20 million in damages for all of the alleged breaches by Defendant. Paragraph 64 of the Complaint does not allege a breach of Section 6 of the Supplemental Agreement based on Defendant's failure to repay the $3.3 million by 8-1-21. Paragraph 64 does not plead a breach based on the 8-1-21 repayment date. Consequently, the Complaint does not allege a separate and distinct wrongful act within the meaning of *Lililenthal* and *Blue Mountain* based on the 8-1-21 repayment date. As to the allegation of whether there was a material breach, the failure to repay is dependent upon whether Defendant breached the agreements. That is, Supplemental agreement requires repayment if there is a material breach of some other term. Since the Complaint does not plead a separate and distinct contractual violation as to the repayment of the $3.3 million Purse Advance, the *Lilienthal* and *Great Mountain* exception to Code of Civil Procedure section 437, subdivision (f)(1),

		does not apply. In other words, summary adjudication will not completely dispose of Plaintiff's breach of contract cause of action. Therefore, the court **DENIES** the Motion for Summary Adjudication as to Issue No. 1 for this reason. Further, the Motion asserts, "In all events, Pacquiao has unequivocally admitted in a pleading that he received, at a minimum, $3 million of the purse advance, which is deemed a judicial admission binding upon him." (Motion; 11:4-6.) Plaintiff relies on paragraph 53 of Defendant's Cross-Complaint, filed on 7-30-21 under ROA No. 112, which pleads, "On or about October 23, 2020, the USD $1.7 million in cash brought by PSM in September 2020 was officially relinquished to Pacquiao as the first installment of the USD $4 million advance from PSM. After that, Pacquiao received approximately P49 million Philippine Pesos, roughly equivalent to USD $1.3 million at the time of delivery. In total, PSM therefore transferred only the equivalent of USD $3 million to Pacquiao (USD $3.3 million less $300,000 paid to Pacquiao's business manager, Arnold Vegafria). To date, Pacquiao has not received the full USD $4 million promised to him by PSM in the Second PSM Agreement and the Supplement to Second PSM Agreement, even though he was to receive the full USD $4 million by November 6, 2020." (DSS Fact No. 18.) The Opposition responds, "Whether PSM's failure to furnish the required Purse Advance is deemed a material breach is not the issue. Rather, the issue is whether PSM performed its $4,000,000 payment obligations under the agreement to trigger Pacquiao's repayment obligations, because the obligations are expressly conditioned '**in exchange for the Purse Advance**,' defined as $4,000,0000. (Ex. A, at § 6) (emphasis added); see Civ. Code. § 1434 (obligations are conditional when they depend on the occurrence of an event). Because it is undisputed that Pacquiao did not receive the full $4,000,000 Purse Advance, PSM did not perform its obligations under Paragraph 6, and Pacquiao's obligations to 'make repayments ***totaling*** Four Million United States Dollars' was never triggered. (Ex. A, at § 6) (emphasis added). This alone requires the Court to deny PSM's Motion." (Opposition; 17:17:18-26 (Emphasis, italics, and underscore in Opposition.).) Here, Defendant has presented a viable interpretation of Section 6 which creates a triable issue of material facts as to whether Plaintiff performed under Section 6 of the Supplemental Agreement. Defendant's interpretation that Section 6 does not require repayment until Defendant receives the entire $4 million is a viable interpretation as to whether Plaintiff performed. Plaintiff conceded that Defendant has only received $3.3 million. (DSS Fact Nos. 15 and 16.) Also, Plaintiff has not provided evidence that it used

		its best efforts to provide the second half of the Purse Advance. Therefore, the court **DENIES** the Motion for Summary Adjudication as to Issue No. 1 because there is a triable issue of material fact as to Plaintiff's performance. Based on the above, the court **DENIES** the Motion for Summary Adjudication as to Issue No. 1. **Issue No. 2—"[O]n Paradigm's Third Cause of Action for unjust enrichment arising from Pacquiao's having kept the $3.3 million purse advance past August 1, 2021." (Notice; 2:10-11.)** *Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1370 (*Durell*), provides, " '[T]here is no cause of action in California for unjust enrichment.' [Citations.] Unjust enrichment is synonymous with restitution. [Citation.] [¶] 'There are several potential bases for a cause of action seeking restitution. For example, restitution may be awarded in lieu of breach of contract damages when the parties had an express contract, but it was procured by fraud or is unenforceable or ineffective for some reason. [Citations.] Alternatively, restitution may be awarded where the defendant obtained a benefit from the plaintiff by fraud, duress, conversion, or similar conduct. In such cases, the plaintiff may choose not to sue in tort, but instead to seek restitution on a quasi-contract theory. . . . [Citations.] In such cases, where appropriate, the law will imply a contract (or rather, a quasi-contract), without regard to the parties' intent, in order to avoid unjust enrichment.' [Citation.] [¶] 'Under the law of restitution, "[a]n individual is required to make restitution if he or she is unjustly enriched at the expense of another. [Citations.] A person is enriched if the person receives a benefit at another's expense. [Citation.]" [Citation.] However, "[t]he fact that one person benefits another is not, by itself, sufficient to require restitution. The person receiving the benefit is required to make restitution only if the circumstances are such that, as between the two individuals, it is *unjust* for the person to retain it. [Citation.]" ' [Citation.] As a matter of law, an unjust enrichment claim does not lie where the parties have an enforceable express contract. [Citation.] [¶] An unjust enrichment theory is inapplicable because Durell alleges the parties entered into express contracts." *Perdue v. Crocker National Bank* (1985) 38 Cal.3d 913, 922 (*Perdue*), states, "Plaintiff's third alleged cause of action is derivative; its charge of unjust enrichment depends upon a finding pursuant to some other cause of action that the NSF charges were invalid or excessive." "The elements of an unjust enrichment claim are the 'receipt of a benefit and [the] unjust retention of the benefit at the expense of another.' " (*Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1593).

		Here, Plaintiff alleges a breach of contract based on three express contracts. Paragraph 74 of the Complaint pleads, "In the alternative, Paradigm alleges that Pacquaio has been unjustly enriched." (Complaint ¶ 74.) The Complaint alleges that there are express contracts between the parties. Thus, it is premature to adjudicate the unjust enrichment claim until after the determination of Plaintiff's breach of contract claim. Also, unjust enrichment is an equitable remedy (*Ghirardo v. Antonioli* (1996) 14 Cal.4th 39, 50-51) based on the failure of the contract claim, and the breach of contract claim has not failed. Further, for the reasons states above as to Issue No. 1, there is a triable issue of material fact as to whether Defendant's retention of the $3.3 million is unjust. That is, Defendant has demonstrated a triable issue of material fact as to Plaintiff's performance. Therefore, the court **DENIES** the Motion for Summary Adjudication as to Issue No. 2. The court declines to rule on the objections contained in Defendant's Objections to Plaintiff's Evidence (filed on 1-25-22 under ROA No. 252) and Plaintiff's Objections to Evidence Submitted in Opposition to Plaintiff/Cross-Defendant Paradigm Sports Management, LLC's Motion for Summary Adjudication (filed on 2-3-22 under ROA No. 257) as immaterial to the court's ruling. (Code Civ. Proc., § 437c, subd. (q).) As to the documents Defendant conditionally filed under seal (ROA Nos. 248, 249, and 251), the court requests the parties to appear to schedule a hearing regarding whether these documents should remain sealed. In summary, the court **DENIES** Plaintiff's (Paradigm Sports Management, LLC) Motion for Summary Adjudication, filed on 10-25-21 under ROA Nos. 180 and 181. Defendant is to give notice.