Litigation Due Diligence Analysis

Larsen v. Saidi

By

TP

October 10, 2024

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# SUMMARY

Ms. Garcia is in a dispute with her former romantic partner and business associate, Mr. Y. Saidi (a.k.a. “Ron Cohen”), related to their shared diesel diagnostic software business, Electronics 4 U, LLC, based in Los Angeles County. The two began working together around 2020, building a highly lucrative business marketing refurbished electronics and software to truckers, allegedly generating $3–4 million per year. While Ms. Garcia managed hardware, logistics, and all digital marketing (which accounted for the vast majority of the business’s profits and growth), Mr. Saidi handled uploading (allegedly stolen) software. Initially promised a 50% share, Ms. Garcia never received compensation and was ultimately locked out of the residence they shared following her rejection of a marriage proposal on November 26, 2024. Mr. Saidi retained her personal property and dogs, and continues to use her identity for financial and business dealings, including potentially fraudulent filings. The business is now implicated in IP theft, tax evasion, and money laundering. Ms. Garcia has filed for a restraining order and seeks civil and equitable remedies.Ms. Garcia desires (i) recovery of her personal property and dogs; (ii) injunctive relief preventing Mr. Saidi from using her name or SSN in business/tax filings; (iii) financial compensation for unpaid labor and lost profits as a de facto partner or employee; (iv) prejudgment remedies (e.g., writ of attachment, lis pendens) to secure her share of assets; (v) protection from potential civil or criminal liability due to her association with potentially illegal business practices; (vi) confidential settlement to preserve privacy and safety.Ms. Garcia’s potential valid claims/defenses include (i) breach of oral contract (she was promised 50% partnership interest and was never compensated), (ii) unjust enrichment (she generated substantial value for the business without compensation); (iii) conversion (Mr. Saidi unlawfully retained her personal property, including pets); (iv) fraudulent transfer (assets hidden in real estate, family trusts, and third-party accounts; (v) constructive trust (to recover assets held in Mr. Saidi’s name that were acquired through their joint efforts; (vi) breach of fiduciary duty (based on implied partnership or agency relationship); (vii) labor/employment claims (including unpaid wages, expenses, and mileage); (viii) injunctive relief (to prevent further harm (e.g., misuse of identity, threats); (ix) qui tam/whistleblower (potential federal claims regarding fraudulent business practices (though risky); and (x) restraining order and ccw revocation (based on documented threats and violence). Regarding strengths and weaknesses of each claim: 1) for breach of contract, there was a verbal promise and extensive work performed, and the consistent with conduct, but there was a lack of written agreement and Mr. Saidi may claim she was just helping as a partner; 2) for unjust enrichment, Ms. Garcia can show her labor and marketing directly led to profits but the business was likely illegal, thus courts may decline equitable relief if unclean hands; 3) for conversion, there is strong evidence on pets and belongings, should be easily provable but must prove ownership and wrongful possession; 4) for fraudulent transfer, there has been a pattern of hiding money/assets via relatives and real estate and this will require forensic accounting and tracing funds; 5) for collective trust, there is an equitable remedy for unjust benefit from shared work but it may fail if business is deemed illegal, it will be up to the court’s discretion; (6) for breach of fiduciary duty, partner-like behavior and split of roles supports inference but the relation is disrupted and if the court sees her as an employee, duty may not apply; (7) for labor and employment, mileage, full time work, daily operation prove labor; but less than lucrative recovery than partnership theory and may undermine other claims; (8) for qui tam could trigger government action and whistleblower reward but may expose her to criminal liability and the evidentiary burden is high; and (9) for restraining order/CCW, there is substantial evidence of stalking, threats, weapons that requires follow-through with law enforcement and declarations.

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# PARTIES/SIGNIFICANT FIGURES

|  |  |
| --- | --- |
| **Name of Party / Significant Figure** | **Significance to Underlying Matter/Dispute** |
| Diane Garcia (“Client”)  DELETE THIS NOTE: If we represent more than one individual/entity, then list all our Clients here—one on each line. Then, make sure to alter the defined “Client” to say: **“(collectively, ‘Client’”)**. The point is to keep “Client” *singular* no matter how many people/entities we represent. If there’s a need to refer to different Clients in the “Statement of Facts/Evidentiary Support” section below, you can put a shortcut (“\*\*\*”) after each individual Client, but still collectively define all of them as “Client.” | N/A |
| Yaron Saidi (Saidi) | Breaching Party/Bad Actor |

The table above may be amended from time to time to reflect revisions to Client’s narrative and/or new information that may become available in the future.

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# STATEMENT OF FACTS / EVIDENTIARY SUPPORT

|  |  |  |
| --- | --- | --- |
| **Date / NA** | **Fact** | **Evidence Supporting That Fact** |
| \* | This section should contain a comprehensive and objective statement of the relevant facts of the case, as well as any relevant dates. When possible, cite to evidence already in our possession that support the facts referenced. | \* |
| 4/19/19 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.  Client closed escrow on the property. | Client Timeline |
| 6/10/19 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.  Client notified HOA of sprinkler leak into Client’s unit. | Email from Client to Mgmt. Co. |
| N/A | REMEMBER TO DELETE ANY EXCESS ROWS IN THE TABLE BY DRAGGING YOUR MOUSE OVER THE ROWS TO BE DELETED AND THEN PRESSING **BACKSPACE** and then pressing **DELETE ENTIRE ROW**. | \*\* |
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This table may be amended from time to time as new information/evidence comes in. To the extent that such new information necessitates any significant revisions to Client’s litigation strategy, where applicable, the Firm will work with Client to develop a new strategy.

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# NOTABLE PROVISIONS OF ONE OR MORE OPERATIVE AGREEMENTS

|  |  |
| --- | --- |
| **Document Name**  **Article / Section No.** | **Text of the Selected Article/Sections No.**  **(if none, put “N/A”; delete rows that you didn’t use; maintain formatting)** |
| CC&Rs  Article IX, Section 6.01 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA. |
| Purchase Agreement  Section 8.4 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA. |
| N/A | REMEMBER TO DELETE ANY EXCESS ROWS IN THE TABLE. IF YOU DON’T KNOW HOW TO DO THAT, ASK MBK. |
| \* |  |
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| \* | \*\* |
| \* | \*\* |

The table may or may not contain all the significant provisions of the document(s) at issue. It is simply a place to include one or more provisions of one or more operative agreement/document that we believe could play a role in some aspect of Client’s case (e.g., binding arbitration, attorneys’ fees, and choice of law provisions). The provisions contained in the table, therefore, should neither be viewed as an exhaustive list of key provisions/evidence, nor be used as a measure of what provisions of the operative documents might strengthen (or weaken) Client’s case.

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# ADDITIONAL INFORMATION/CLARIFICATION NEEDED FROM CLIENT

The Firm should follow up with Client regarding the following items/issues:

— Was there a written agreement (any written communications (texts, emails) referencing ownership, compensation or business partnership)?

— Was Ms. Garcia ever formally listed as an owner or officer of Electronics 4 U, LLC and how does this reconcile with her statement that she wanted to stay off paperwork?

— What Ms. Garcia ever paid a salary of issued a w-2/1099 for labor? Or is all compensation tied only to LLC revenue or personal account transactions?

— Can we get access to the financial statements, sales statements, and tax statements from Shopify through Client’s sister or through other means?

This section of the LADD may be amended from time to time as new information becomes known.

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# ADDITIONAL DOCUMENTS NEEDED FROM CLIENT

The Firm needs to ask Client for the following documents:

— Financial documents including records from Shopify, Paypal, Banking Statements, Tax returns (personal and llc), 1099s issued in her name

— Any 1099s filed under Ms. Garcia’s name

— any documents showing Mr. Saidi’s alleged tax fraud and underreporting, e.g., evidence of income diversion, shell transactions, or gold purchases

— Any documentation (write transfers, deeds, bank statements) to trace or support claims that funds/assets are hidden in real estate and/or the fidelity account.

This section of the LADD may be amended from time to time if Client locates additional documents, or if a third party produces additional documents.

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# THIRD-PARTY DOCUMENTS/INFORMATION KNOWN TO EXIST

At this time, Client is unaware of any documents or information that can only be obtained from a third party. This, however, may change as new information comes to light, in which case the LADD may be amended to reflect such new information.

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# POTENTIAL CAUSES OF ACTION & THE STRENGTHS/WEAKNESSES OF EACH

## Breach of Contract

Elements—Breach of Contract

— “The essential elements of a claim of breach of contract, whether express or implied, are the contract, plaintiff’s performance or excuse for non-performance, defendant’s breach, and the resulting damages to plaintiff.” (*Darbun Enterprises Inc. v. San Fernando Community Hosp.* (2015) 239 Cal.App.4th 399, 409; *San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 439.)

Remedies—

— Compensatory (money) damages are available for all expected harm caused by the breach. (Civ. Code, § 3300.) In other words, damages must be reasonably foreseeable. (Civ. Code, § 3300; *Erlich v. Menezes* (1999) 21 Cal.4th 543.)

— Emotional distress damages are generally *not* available *unless* the breach caused bodily harm or a serious emotional disturbance was a particularly likely result. (*Erlich v. Menezesm, supra,* 21 Cal.4th at 558; *Plotnik v. Meihous* (2012) 208 Cal.App.4th 1950 [breach of settlement agreement by hitting dog with baseball bat].)

— Specific performance is an available remedy for breach if the non-breaching party desires to affirm the contract. (Civ. Code, § 1680; *Kassir v. Zahabi* (2008) 164 Cal.App.4th 1352.)

— Rescission (accompanied by restitution) is available in certain circumstances. (Civ. Code, § 1692.) Mutual rescission is available if all parties consent. (Civ. Code, § 1689(a).) Unilateral rescission is available by statute for mistake, fraud, duress, undue influence, failure of or void consideration, or if the contract is unlawful or against public policy. (Civ. Code, § 1689(b).)

— As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

— For breach of verbal contracts, the statute of limitations is two years. (Code Civ. Proc., § 339.)

— For breach of *most* written contracts, the statute of limitations is four years. (Code Civ. Proc., § 337.)

— For breach of *negotiable instruments* (e.g., promissory notes), the statute of limitations is six years. (Comm. Code, § 3118.)

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *breach of contract*. If one or more provisions of the CC&Rs is/are relevant, you should cite to that/those provision(s) here (no need to quote or provide a snip).

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Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the *strengths* of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the *weaknesses*, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## Breach of Fiduciary Duty

Elements—Breach of Fiduciary Duty

— The elements of a claim for breach of fiduciary duty are: (i) the existence of a fiduciary relationship; (ii) its breach; and (iii) damage proximately caused by that breach. (*Tribeca Companies, LLC v. First American Title, Ins.* (2015) 239 Cal.App.4th 1088.)

— Associations owe a fiduciary duty to their members. (*Raven’s Cove Townhomes, Inc. v. Knuppe Development Co.* (1981) 114 Cal.App.3d 783; *Cohen v. Kite Hill Community Assn.* (1983) 142 Cal.App.3d 642.)

— Directors of an association are fiduciaries and are thus required to exercise due care and undivided loyalty for the interests of the association. (*Francis T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 513; *Mueller v. Macban* (1976) 62 Cal.App.3d 258, 274.)

— HOAs have an affirmative duty to enforce the restrictions in their governing documents. (*Ekstrom v. Marquesa at Monarch Beach Homeowners Assn.* (2008) 168 Cal.App.4th 1111.)

— Among its acts, directors may not make decisions for the association that benefit their own interests at the expense of the association and the entire membership. (*Raven’s Cove Townhomes, Inc. v. Kruppe Development Co.* (1981) 114 Cal.App.3d 783, 799.) This is typically referred to as “self-dealing.”

Remedies—

— If the breach of fiduciary duty results in a breach of CC&Rs, then compensatory (money) damages and injunctive relief may be available.

— If the breach results in damage to property, available compensatory damages are the cost to remedy defects and for loss of use during the period of injury. (*Raven’s Cove Townhomes Inc. v. Knuppe Development Co.* (1981) 114 Cal.App.3d 783, 802.)

— Civil Code § 3333: “For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.”

— Equitable remedies such as constructive trust, rescission, and restitution are available when the defendant has been unjustly enriched by the breach. (*Miester v. Mensinger* (2014) 230 Cal.App.4th 381.)

— Punitive damages may be available if the breach constitutes constructive fraud. (Civ. Code., § 3294; *Hobbs v. Bateman Eichler, Hill Richards Inc.* (1985) 164 Cal.App.3d 174.)

— As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

— A claim for breaching a fiduciary duty must be brought within four years of the breach. (Code Civ. Proc., § 343; *William L. Lyon & Assoc, Inc. v. Sup. Ct.* (2012) 204 Cal.App.4th 1294, 1312.) If the breach of fiduciary duty stems from the defendant’s fraud (even if pleaded as breach of fiduciary duty), which has a statute of limitations of only three years, the claim must be brought within *three* years. (Code Civ. Proc., § 338; *Professional Collection Consultants v. Lujan* (2018) 23 Cal.App.5th 685, 691.)

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *breach of fiduciary duty*. If one or more provisions of the CC&Rs is/are relevant, you should cite to that/those provision(s) here (no need to quote or provide a snip).

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Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the *strengths* of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the *weaknesses*, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## Civil Stalking

Elements—Civil Stalking

— To prove a cause of action for civil stalking, a plaintiff must prove that: (i) the defendant either engaged in a pattern of conduct with the intent to follow, alarm, or harass the plaintiff, or the defendant violated a restraining order issued subject to Code of Civ. Proc., § 527.6; and (ii) as a result of defendant’s conduct, the plaintiff either reasonably feared for his or her safety (or the safety of an immediate family member and/or any person who regularly resides in the plaintiff’s household within the preceding six months), or the plaintiff reasonably suffered “substantial emotional distress.” (Civ. Code, §1708.7; *In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1510.)

• The law makes it clear that “substantial emotional distress” does not mean the same thing as it does in, for example, an intentional infliction of emotional distress claim, because under the civil stalking statute, demonstrating “severe emotional distress” does not require a showing of physical manifestations of emotional distress. Instead, “it requires the evaluation of the totality of the circumstances to determine whether the defendant reasonably caused the plaintiff substantial fear, anxiety, or emotional torment.” (Civ. Code, § 1708.7(b)(7).)

Remedies—

— Economic damages (e.g., general and special damages) are available. (Civ. Code, § 1708.7(c).)

— Punitive damages are also available upon a clear and convincing showing of oppression, fraud, or malice. (Civ. Code, § 3294; Civ. Code, § 1708.7(c).)

— Equitable relief (including injunctive relief) may also be available. (Civ. Code, § 1708.7(d).)

Applicable Statute of Limitations—

— Although there is no case law on the subject, it appears that the three-year statute of limitations for obligations created by statute applies to civil stalking cases. (Code Civ. Proc., § 338(a).)

• The date the statute begins to run may be complicated issue since, by definition, stalking includes a pattern of conduct. (See Civ. Code, § 1708.7(a)(1).) There is no case authority on point, but secondary sources suggest that the “continuing violation” doctrine applies. Under the continuing violation doctrine, a series of acts that continue over time are viewed as a single continuous act. (See *Pugliese v. Superior Court* (2007) 146 Cal.App.4th 1444.) The trigger date for the statute of limitations under the “continuing violation” doctrine is the date that the continuing acts cease or the date of the last injury to the plaintiff. (*Id.* at 1452.)

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *civil stalking*. If one or more provisions of the CC&Rs is/are relevant (e.g., nuisance), you should cite to that/those provision(s) here (no need to quote or provide a snip).

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Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the *strengths* of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the *weaknesses*, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## Conversion

Elements—Conversion

— To prevail on a claim for conversion, plaintiff must prove (i) his or her ownership/right to possess of the at-issue *personal property*; (ii) defendant’s wrongful exercise of control over that property; and (iii) damages. (*Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208.)

— Conversion is a strict liability tort. (*Welco Electronics, Inc. v. Mora, supra,* 223 Cal.App.4th at 208.)

— Money can only be converted if the money that was taken is a specific sum capable of identification. (*Welco Electronics, Inc. v. Mora, supra,* 223 Cal.App.4th at p. 216.)

• For example, attorneys’ fees and costs have rightfully supported a conversion claim (*Murphy v. Am. Gen. Life Ins. Co.* (C.D. 2015) 74 F.Supp.3d 1267, 1280), as have: (i) settlement proceeds (*Gilman v. Dalby* (2009) 176 Cal.App.4th 606, 616); and (ii) funds sitting in bank accounts. (*Fong v. East West Bank* (2018) 19 Cal.App.5th 224, 231-33.)

— Defendant’s good faith, motive, or lack of knowledge in converting the personal property is irrelevant. (*Los Angeles Fed. Credit Union v. Madatyan* (2012) 209 Cal.App.4th 1383, 1388.)

— Conversion vs. trespass to chattels. Conversion arises from the complete dispossession of the *personal* *property*, while trespass to chattels deals with a lesser degree of interference. Note that neither tort is appropriate in the context of *real propert*y.

Remedies—

— Plaintiff is entitled to (i) the value of the property at the time of conversion, with interest from the date of conversion; and (ii) a fair compensation for the time and money expended pursuing the property. (*Virtanen v. O’Connell* (2006) 140 Cal.App.4th 688, 708; Civ. Code, § 3336.)

• If the property had special value to plaintiff, that value may be recovered if defendant knew the value in advance or was a willful wrongdoer. (Civ. Code, § 3355.)

— Emotional distress damages are available. (*Plotnik v. Meihaus* (2012) 208 Cal.App.4th 1590, 1605-07.)

— Attorneys’ fees incurred in seeking the recovery of the property are not recoverable. (*In re Martinez* (Bankr. N.D.Cal. 2019) 610 B.R. 290, 305.)

— Punitive damages may be available if the plaintiff shows that the defendant acted oppressively, fraudulently, or maliciously. (Civ. Code, § 3294.)

— If a plaintiff’s pet is converted, as appears to be the case in this matter, and during the conversion the pet is injured, then that plaintiff may recover the reasonable and necessary costs of treating the pet’s injuries (Civ. Code, § 3333), as well as punitive damages if that plaintiff can prove that the injury to his or her pet was caused willfully or as a result of gross negligence. (Civ. Code, § 3340.)

Applicable Statute of Limitations

— A claim for conversion must be brought within three years of the taking. (Code Civ. Proc., § 338(c).) The statute of limitations period begins running even if the owner was unaware of the conversion. (*Naftzger v. American Numismatic Society* (1996) 42 Cal.App.4th 421, 429; *Murphy v. Am. Gen. Life Ins. Co., supra,* 74 F.Supp.3d at 1280.) In other words, the “discovery” rule does not apply to conversion claims.

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *conversion*.

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Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the strengths of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the weaknesses, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## Unjust Enrichment

Elements—Unjust Enrichment (Quantum Meruit)

— Unjust Enrichment is technically not a cause of action or a remedy; it is a general principle that is synonymous with restitution. (*Rutherford Holdings LLC v. Plaza Del Ray* (2014) 223 Cal.App.4th 221, 231.) Restitution through unjust enrichment requires (i) the receipt of a benefit and (ii) unjust retention of that benefit at the expense of another. (*Prakashpalan v. Engstom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1132.)

• 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. (*McBride v. Boughton* (2004) 123 Cal.App.4th 379, 388.)

Remedies—

— Plaintiff is entitled to the return of the thing taken or withheld or its monetary equivalent. (*Federal Deposit Insurance Corp. v. Dintino* (2008) 167 Cal.App.4th 333, 346.)

Applicable Statute of Limitations

— The statute of limitations depends upon the underlying wrong. For example, in a case of unjust enrichment resulting from mistake or fraud, the three-year statute of limitations applies. (Code Civ. Proc., § 338(d); *Federal Deposit Insurance Corp. v. Dintino, supra*, 167 Cal.App.4th at 347.)

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *unjust enrichment*.

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Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the strengths of this particular cause of action given the evidence at our disposal.

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## Fraudulent Transfer (Uniform Fraudulent Transfer Act—Civil Code, § 3439 et seq.)

Elements— Uniform Fraudulent Transfer Act (UFTA)

— There are two types of fraudulent transfers—those made with the express intent to defraud a creditor and those made while the debtor is insolvent (otherwise known as *constructive fraud(ulent) intent*). With the former, the intent of the debtor is directly relevant, while with the latter intent is irrelevant, and the transfer may be deemed constructively fraudulent regardless of the debtor’s actual intent. (Civ. Code, §§3439.04 and 3439.05, respectively.)

• To prove a claim for fraudulent transfer where the express intent of the debtor is to defraud the creditor (i.e., transfer done with *actual intent*), a plaintiff must prove that a transfer was made (or an obligation was incurred) (i) with an actual intent to hinder, delay, or defraud a creditor, or (ii) without receiving a reasonably equivalent value in exchange *and* the debtor was *either* (a) engaged in (or about to be engaged in) a business/transaction where the debtor’s assets were unreasonably small in relation to the business/transaction, or (b) intended to incur (or reasonably should’ve believed he or she would incur) debts beyond his or her ability to pay as they became due. (Civ. Code, § 3439.04.) Under this statute, it doesn’t matter whether the creditor’s claim existed before or after the transfer. (*Ibid*.)

→ A transfer will be deemed to have been made with the intent to hinder, delay, or defraud creditors when there is a specific intent to avoid a specific liability.

→ The intent at the time of the transfer is the primary consideration in such transfers. This “actual intent test” requires there to be a connection between the debtor and the creditor at the time of a transfer. So, if for example, a debtor transfers an asset at a time he or she has *no* creditors (or isn’t in the midst of a situation, such a lawsuit, where someone might become a creditor), the debtor will not have had the actual intent to hinder, delay, or defraud the creditor at the time of the transfer.

→ Because proving actual intent is often impossible (How often does one have an audio/video of the debtor discussing his or her actual intent?), courts have developed several *“badges of fraud*” which, while not conclusive, are considered by courts as circumstantial evidence of fraud. The more common “badges of fraud” include things like: (i) becoming insolvent as a result of a transfer (see below); (ii) lack of (or inadequate) consideration; (iii) transfers between family members or other “insiders”; (iv) the debtor’s retention or possession of (or continued right to benefit from) transferred property; (v) the existence of the threat of (or actual) litigation; (vi) the existence or cumulative effect of a series of transactions after the debtor’s financial troubles started; (vii) the secrecy of the transaction; or (viii) a deviation from the normal course of business. The presence of one or more of these “badges of fraud” will shift the burden of proof from the plaintiff/creditor to the defendant/debtor. (Legislative Committee comment to Civ. Code, § 3439.04; See Civ. Code, § 3439.04(b); *Filip v. Bucurenciu* (2005) 129 Cal.App.4th 825, 834; *Annod Corp. v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1298.)

• To prove a claim for fraudulent transfer where the debtor did not have an actual intent to hinder, delay, or defraud a creditor, a plaintiff must prove that (i) the plaintiff’s (i.e., creditor’s) claim arose *before* the transfer/obligation at issue, (ii) that the debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer/obligation, and (iii) that the debtor was either insolvent at the time of the transfer, or that the transfer itself caused the debtor’s insolvency. (Civ. Code, §3439.05.)

— A transfer of property by a debtor will be treated as a “transfer” for fraudulent transfer purposes only if the transfer puts beyond the creditor’s reach property that the creditor would otherwise be able seize to satisfy the debt. (*Mehrtash v. ATA Mehrtash* (2001) 93 Cal.App.4th 75 [the transfer of real property subject to encumbrances (i.e., existing liens or applicable exemptions) large enough to eliminate a property’s equity did *not* constitute a fraudulent transfer because the creditor couldn’t show how she was injured by the transfer]; *Fidelity National Title Ins. Co. v. Schroeder* (2009) 179 Cal.App.4th 834.) In other words, a transfer cannot be deemed “fraudulent” under the UFTA if it doesn’t diminish what a creditor may receive.

— The term “transfer” doesn’t just apply to transfers on their face. That term also applies to other events, such as: (i) inaction; (ii) a waiver of a defense; (iii) the termination of a lease; (iv) an extension of a loan; (v) a withdrawal of cash from an account; (vi) making a tax election; (vii) granting a security interest in a property; (viii) conversion of non-exempt assets into exempt assets; and/or (ix) rental of a property for less than its fair market value. Likewise, clerical actions (e.g., retitling a property to correct title), transfers required by law (e.g., transfer of assets ordered family court judge), or transfers by someone other than the debtor do not constitute voidable transfers.

— A debtor choosing to pay one creditor instead of another does not constitute a fraudulent transfer. (See Civ. Code, §3432.)

Remedies—

— Plaintiff is entitled to set aside the fraudulent conveyance and recover the asset(s) in question. (Civ. Code, §§ 3439.04 and 3439.05.)

— Plaintiff may be entitled to punitive damages if defendant acted intentionally and fraudulently, maliciously, or oppressively. (Civ. Code, § 3294.)

— Keep in mind that there are fraudulent transfers that leave a plaintiff with no recourse even if the plaintiff establishes actual intent to hinder, defraud, or delay. For example, transfers into ERISA qualified retirement plans *cannot* be voided even if fraud is proven. In that example, the federal ERISA statute trumps California’s fraudulent transfer laws, and thus the UFTA would simply not apply.

Applicable Statute of Limitations—

— A claim for fraudulent transfer with intent to hinder, delay, or defraud must be brought within four years after the transfer is made, or if later, then within one year after the transfer/obligation was (or could’ve reasonably) been discovered by the plaintiff/creditor. (Civ. Code, § 3439.09(a).)

— A claim for fraudulent transfer where equivalent value was not received in the transfer must be brought within four years after the transfer is made. (Civ. Code, § 3439.09(b).)

— “Notwithstanding any other provision of law, a cause of action under this chapter with respect to a transfer or obligation is extinguished if no action is brought or levy made within seven years after the transfer was made or the obligation was incurred.” (Civ. Code, § 3439.09(c).) In other words, seven years is the ceiling regardless of what 3439.09(a) says.

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *fraudulent transfer*. If one or more provisions of a contract is relevant, you should cite to such provision(s) here. *No need to quote or provide a snip from any other document.* Referring to the page/section/paragraph of the contract is sufficient.

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Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the *strengths* of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the *weaknesses*, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## Constructive Trust

Elements—Constructive Trust

— Provide the elements AND statutory/case law of this cause of action.

— If you want, add snippets from other cases (see the examples above for ideas). Make sure to maintain the proper formatting and margins established in this document.

— If you have more than one cause of action to add, then cut and paste this one FIRST (before replacing the green highlights) as many times as there are causes of action to add. That way, you’ll be sure to keep everything consistent and standardized.

Remedies—

— What are the available remedies.

— As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

— What is the statute of limitations for this claim?

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *constructive trust*. If one or more provisions of the CC&Rs is/are relevant, you should cite to that/those provision(s) here (no need to quote or provide a snip).

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Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

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# STRATEGIC CONSIDERATIONS

## Statute of Limitations

This section is *not* intended to address whether or not the statute of limitations has run on a particular cause of action that might have otherwise been relevant under the facts. Those specifics can be found in reference to each of the potential causes of action discussed above. This section of the LADD is intended only to highlight the earliest statute of limitations of a claim that remains available to Client.

If Client wants to file a lawsuit containing the applicable the causes of action discussed above, the action must be filed on or before **November 28, 2026** (the *earliest* of the applicable non-expired statutes of limitations deadlines given the desired causes of action).

## Jurisdiction

### Arbitration

Since Client did not execute any contract containing a binding arbitration provision, Client may file the lawsuit in the superior court of Los Angeles County.

### Venue

Los Angeles County is the correct venue for this lawsuit.

## Standing

Based upon the information/evidence that Client has provided thus far, Client has standing to pursue every cause of action described above against each of the intended defendants (excluding DOES, of course).

## Anti-SLAPP Analysis

Anti-SLAPP Overview—

— Strategic Lawsuits Against Public Participation (“SLAPP”) are lawsuits designed to hinder or prevent parties (typically the defendant) from engaging in constitutionally protected activities (e.g., petitioning or free speech). For example, development companies have used SLAPP suits to harass environmental groups standing in the way of large development/construction projects. These companies would file lawsuits against the environmentalists for the express purpose of tying up the smaller (and not as well-funded) environmental groups’ financial resources, effectively preventing them from having their “day in court.” In response, the Legislature passed the anti-SLAPP statute, which was codified in Code of Civil Procedure section 425.16. This statute allows the defending party to file a special motion to strike (called an anti-SLAPP motion) to have the court determine whether the lawsuit can proceed or should instead be thrown out as a meritless attack on the defendant’s acts made in furtherance of his or her right “to petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.” (Code Civ. Proc., § 425.16(b)(1).)

— The granting of an anti-SLAPP motion can have *severe* consequences, not the least of which is the dismissal of the at-issue claim(s)—or even the entire complaint—depending on the circumstances. In addition, a defendant who prevails on an anti-SLAPP motion *must* be awarded his or her attorneys’ fees and costs, which, given the complexity of anti-SLAPP motions, is typically quite significant. (Code Civ. Proc., § 425.16(c)(1).)

Anti-SLAPP Statute’s Application in HOA-Related Cases—

— SLAPP suits can, and have, arisen in lawsuits by and against HOAs and HOA members. For example, a member might file a lawsuit against a director or committee member to pressure that person to change a critical vote regarding some issue or another. To prevent that type of abuse, and to discourage members from naming individual board members as defendants in litigation, courts have determined that the protections offered under the anti-SLAPP statute apply to various issues that arise in the HOA arena. (*Colyear v. Rolling Hills Community Assn. of Rancho Palos Verdes* (2017) 9 Cal.App.5th 119, 130-36 [tree trimming dispute between adjacent homeowners that involved covenants to all lots in the community satisfied the definition of “public interest”]; *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 476-77 [newsletter published to 3,000 residents of an HOA was a “public forum” even if access to the newsletter was selective and limited]; *Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456; *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1409-10 [letters from attorney to management company and the HOA’s board regarding nuisance caused by an HOA member].)

— Obviously, however, not all HOA-related disputes are covered by the anti-SLAPP statute. (*Talega Maintenance Corp. v. Standard Pac. Corp.* (2014) 225 Cal.App.4th 722, 732 [holding that HOA proceedings must have a strong connection to governmental proceedings to qualify as “official proceedings”]; but see *Lee v. Silveira* (2016) 6 Cal.App.5th 527, 540-46 [holding that HOAs “functioned similar to a quasi-governmental body” to constitute a “public forum”].)

Anti-SLAPP Test—

— The courts use a two-prong test to determine if a claim is protected under the anti-SLAPP statute. First, the defendant must prove that the at-issue claim arises from a constitutionally protected activity. (*Ruiz v. Harbor View Community Assn., supra,* 134 Cal.App.4th at 1466; Code Civ. Proc., § 425.16(b)(1).) If the defendant satisfies his or her burden, the burden shifts to the plaintiff to show that there is a probability that he or she will prevail on the merits of the at-issue claim. (*Ibid*.; *Equilon Enterprises v. Consumer Cause Inc.* (2002) 29 Cal.4th 53, 67; Code Civ. Proc., § 425.16(b)(1).)

— With regard to the first prong, there are four categories that the anti-SLAPP statute is intended to protect:

• Any statement (written or oral) or document generated in connection with (or as part of):

→ Any official proceedings authorized by law—e.g., legislative, executive, or judicial proceedings. (Code Civ. Proc., § 425.16(e)(1).)

→ Any issue under consideration or review by a legislative, executive, or judicial body. (Code Civ. Proc., § 425.16(e)(2).)

• Any statement (written or oral) or document made in a place open to the public (or in a public forum) and made in connection with an issue of public interest. (Code Civ. Proc., § 425.16(e)(3).)

• Any other conduct made in furtherance of the exercise of a constitutional right of petition or free speech and made in connection with an issue of public interest. (Code Civ. Proc., § 425.16(e)(4).)

Application/Analysis/Conclusion—

— Based upon the applicable facts and claims, an anti-SLAPP motion is unlikely because none of the conduct complained of arises from constitutionally protected activities.

## Pre-Filing Requirements (e.g., Notice or Mediation Requirements)

The facts of this case do not trigger any pre-filing requirements.

## Attorneys’ Fees and Costs

The prevailing party is entitled to attorneys’ fees and costs under Civil Code Section 1717; Business and Professions Code Section 17200; Cal. Penal Code Section 496(c); Family code Section 6344.

If new information comes to light that affects Client’s right to attorneys’ fees and costs, Client will be notified.

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# FINAL THOUGHTS / ISSUES / CONCERNS / COMMENTS

Clarification is needed regarding the extent of Ms. Garcia’s knowledge of, and involvement in, the alleged illegal activities related to the business operations with Mr. Saidi. A key question is whether she knew from the outset that the diesel diagnostic software they were distributing was stolen intellectual property. Additional concern centers on whether she actively participated in circumventing federal IRS reporting thresholds—particularly through the use of split payments, money orders, and structuring transactions to avoid detection. If law enforcement or regulatory agencies initiate an investigation, what documentary, testimonial, or electronic evidence (e.g., emails, account ownership, 1099 filings in her name) could potentially implicate her? To mitigate exposure, it will be crucial to evaluate whether she can credibly assert defenses such as duress, manipulation, or a limited role in the criminal elements of the business, particularly in light of her assertions that she wanted her name kept off the LLC due to concerns about legality.To support her restraining order and a potential request for revocation of Mr. Saidi’s firearm privileges (e.g., CCW license), documentation of his threats, stalking, or abuse is essential. This includes videos (such as alleged footage of him surveilling her home), threatening messages, or police reports. Ms. Garcia should also confirm whether she possesses or can obtain medical records, photos, or prior police documentation evidencing abuse—either by Mr. Saidi or his family members. Such records are not only relevant for civil harassment claims but may be important to substantiate her credibility and establish a pattern of coercive conduct.Clarification is also needed regarding the specific items of real and personal property that Ms. Garcia seeks to recover. Has a detailed inventory of her claimed assets been created or documented (e.g., electronics, business equipment, furnishings)? Additionally, with respect to the two dogs she alleges Mr. Saidi is withholding, any veterinary records, adoption papers, or receipts bearing her name would be critical to establish legal ownership and support a potential claim for conversion or injunctive relief.Ms. Garcia will need to adopt a consistent legal theory of the case—whether she was a partner, an employee, or a victim of exploitation. Mixed or contradictory narratives could undermine her credibility and weaken potential claims. She must also determine whether her objective is limited to civil recovery (e.g., damages, asset recovery) or whether she intends to pursue criminal referrals, such as a Qui Tam whistleblower claim. These strategic choices may conflict or increase her own exposure, depending on the scope and findings of any government inquiry. The role of Mr. Steven Schwartz also requires clarification: is he formally retained as a litigation consultant or attorney, or is he merely an informal advisor? Finally, if the litigation expands to third parties, it is important to confirm whether any documentary evidence exists tying Mr. Golban to the alleged laundering or check-diversion scheme—particularly if civil RICO or conspiracy claims are considered.

This section of the LADD might be amended from time to time to reflect new information, strategies, or concerns that arise during the course of the litigation.

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