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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

LA PROPERTIES INVESTMENT, INC.,

Plaintiff and Appellant,

v.

RAMIN SAGHIAN et al.,

Defendants and Respondents.

B246988

(Los Angeles County
Super. Ct. No. BC460993)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rolf M. Treu, Judge. Affirmed in part, reversed in part.

Vivoli Saccuzzo, Michael W. Vivoli and Jason P. Saccuzzo for Plaintiff and Appellant.

Law Offices of Ramin Azadegan, Ramin Azadegan and John L. Wollman for Defendants and Respondents.

INTRODUCTION

Plaintiff LA Properties Investment, Inc. (LA Properties) appeals from a judgment of dismissal entered after the trial court summarily adjudicated certain claims, then granted a motion for judgment on the pleadings as to the remaining claims, all stemming from two alleged transactions with Defendants Ramin Saghian and Hoshang Saghian¹ to purchase distressed promissory notes secured by real property in Los Angeles County. We affirm the judgment of dismissal with respect to the rescission claim and the interference with contract claim to the extent based on the Five Notes transaction, and reverse as to the remaining claims.

FACTS AND PROCEDURAL BACKGROUND

A. *The Complaint*

According to the operative first amended complaint, LA Properties is in the business of purchasing promissory notes secured by real property. The company focuses primarily on notes that are in default, which lenders are typically willing to sell for less than the note's face value in exchange for a significant cash payment. The complaint alleges that LA Properties and its principal, Rahim Golbari, have developed expertise in recognizing unrealized value in such notes, owing largely to Golbari's familiarity with real property values in Los Angeles County. After acquiring a defaulted note, LA Properties typically attempts to negotiate a profitable workout with the borrower; however, if a deal cannot be reached, the company is equipped to foreclose on the property securing the note.

The complaint arises from two such transactions, which the parties refer to as the "Santee Note" transaction and the "Five Notes" transaction.

1. *Santee Note Transaction*

In or about early 2010, LA Properties entered an agreement with Hanmi Bank to purchase a defaulted promissory note issued by Santee Investments Group, LLC (the

¹ For clarity, we refer to Ramin and Hoshang individually by their first names.

Santee Note). The Santee Note was secured by real property located on San Julian Street in Los Angeles County. Defendants, Ramin and Hoshang, were guarantors on the note.

After learning LA Properties was under contract to purchase the Santee Note, Ramin allegedly contacted LA Properties to discuss options to avoid foreclosure. Ramin explained that he and his father, Hoshang, had worked very hard to obtain the property securing the Santee Note, and had invested considerable sums improving the property. Ramin also disclosed that he and Hoshang had substantial liquid assets to invest in the purchase of other promissory notes, and suggested that if LA Properties allowed them to keep the property, he and Hoshang could be a valuable source of investment capital for LA Properties' future deals.

According to the complaint, LA Properties and Defendants ultimately reached an oral agreement concerning the Santee Note. Under its terms, LA Properties allegedly agreed to relinquish its contractual right to purchase the Santee Note, by assigning its right to a third party chosen by Defendants, in exchange for which Defendants promised to pay LA Properties \$52,000.

Additionally, Defendants allegedly agreed to enlist LA Properties to negotiate a further discount on behalf of their designated assignee, for which they agreed to pay LA Properties 50 percent of any cash savings it secured. Pursuant to the agreement, LA Properties negotiated and secured a \$70,000 discount from Hanmi Bank, conditioned on Defendants' designated assignee purchasing the Santee Note for all cash.

In accordance with the parties' agreement, the complaint alleges LA Properties assigned its purchase agreement for the Santee Note to a third party identified by Defendants. The assignee allegedly purchased the Santee Note for the price negotiated by LA Properties, thereby entitling LA Properties to a total of \$87,000 under the oral agreement (\$52,000 for the assignment, plus \$35,000 for the discounted purchase price). Despite LA Properties' performance, Defendants have not paid any portion of the amount owing under the alleged oral contract.

2. *The Five Notes Transaction*

On September 6, 2010, shortly after the close of escrow on the Santee Note Transaction, the complaint alleges Hoshang visited LA Properties to discuss other defaulted promissory notes the parties might purchase. The parties allegedly agreed to form a joint venture that would utilize LA Properties' talents and expertise on the one hand, and Defendants' capital on the other, to purchase distressed promissory notes and split the profits evenly.

After confirming his intention to form a joint venture, Hoshang allegedly asked LA Properties' principal, Golbari, whether he was currently working on any note acquisitions for which Defendants could act as a silent investment partner. Golbari offered general details about a deal he was negotiating on behalf of LA Properties, but requested assurances from Defendants that they had sufficient cash to finance the deal before disclosing specific details. That same day, Defendants had personal financial statements faxed to LA Properties, which confirmed they had over \$1.9 million in immediately available funds.

In alleged reliance on the joint venture and Defendants' assurances about their financial wherewithal, Golbari disclosed that LA Properties was currently negotiating a deal with Center Bank to purchase five promissory notes secured against four properties in downtown Los Angeles (the Five Notes). Golbari also disclosed the purchase price he believed the bank would accept and shared other confidential details about his negotiating strategy. Golbari advised Hoshang that the negotiations were highly confidential and that if any outside parties learned of the Five Notes, it would increase competition and drive up the price.

In breach of the joint venture, the complaint alleges Defendants circumvented LA Properties and directly negotiated with Center Bank without LA Properties' knowledge or consent. As a result, Defendants allegedly managed to out bid LA Properties, while still purchasing the Five Notes at a price substantially below their true value.

3. *Causes of Action*

The complaint asserts 10 causes of action based on the foregoing allegations. The first, sixth, eighth, ninth and tenth causes of action for fraud, conspiracy to defraud, fraudulent conveyance, interference with contract and interference with prospective economic advantage, allege elements related to both the Santee Note transaction and the Five Notes transaction. The third and fifth causes of action for breach of oral contract and rescission relate to only the Santee Note transaction, while the second, fourth and seventh causes of action for breach of fiduciary duty, breach of joint venture agreement and conspiracy to commit breaches of fiduciary duty relate to only the Five Notes transaction.

B. *Defendants' Motion for Summary Judgment*

Defendants moved for summary judgment, or in the alternative summary adjudication separately challenging each of the causes of action asserted with respect to the Santee Note and Five Notes transactions.

As for the Santee Note transaction, Defendants presented evidence showing that LA Properties did not “assign” its rights to purchase the Santee Note to a third party designated by Defendants. Rather, Defendants’ evidence showed that before closing escrow on the Santee Note purchase, Golbari, on behalf of LA Properties, signed a cancellation escrow instruction and received a full refund of LA Properties’ \$870,000 escrow deposit. Thereafter, Spring Management Company, Inc. (Spring), an entity owned by Mark Omid Bolour, a business acquaintance of Ramin, purchased the Santee Note in a financed deal with Hanmi Bank that did not include the \$70,000 discount that LA Properties purportedly secured pursuant to the parties’ alleged oral contract. Based on this evidence, Defendants argued LA Properties could not maintain any of the causes of action, whether premised on fraud or contract, asserted with respect to the Santee Note transaction.

Defendants likewise argued all of the claims based on the Five Notes transaction were deficient, because the evidence showed the parties never agreed to a joint venture,

and, in any event, LA Properties did not disclose any confidential information to Defendants that they did not already know.

With respect to the joint venture, Defendants argued the following passage from Golbari's deposition conclusively established that the parties merely had an "agreement to agree" on a joint venture, which was conditioned upon Defendants "putting up" the \$3 million required to finance the Five Notes transaction:

"Q: In that meeting, you did not talk about anything else about your joint venture; correct?

" [¶] . . . [¶]

"A: Like I just said, I explained that, 'If we are going joint venture, if you put up all the money, go 50/50, *but you have to get your money first, and then after that, profit is 50/50.*'

"Q: That's all you talked about?

"A: That's what I said. 'And then *if you can come up with the money, fine. If you are cannot*—if you are short of money, I bring in either investor or myself.' " (Boldface omitted, italics added.)

In his declaration in support of Defendants' summary judgment motion, Ramin testified that neither he nor Hoshang ever agreed to provide the requested \$3 million in financing and, at most, they had merely provided LA Properties with letters indicating they had \$1.9 million in cash at two banks. Ramin further testified that Defendants and Golbari never discussed forming an entity for the purported joint venture, they never discussed who would manage or control the business of the joint venture, and they never discussed how costs and losses would be allocated between Defendants and LA Properties. In view of this evidence, coupled with Golbari's deposition testimony, Defendants maintained LA Properties could not prove that a joint venture had ever been formed and, therefore, all claims predicated on the existence of a fiduciary relationship should be dismissed.

As for the alleged confidential information that LA Properties purportedly disclosed in furtherance of the joint venture, Defendants presented evidence showing that they already knew about the Five Notes before meeting with Golbari on September 6, 2010. Specifically, Ramin testified in his declaration that he learned of the Five Notes from Bolour in July 2010, after Bolour advised Ramin that he was considering purchasing five promissory notes from Center Bank secured by four deeds of trust on properties located in downtown Los Angeles. According to Ramin, Bolour was interested in Ramin's opinion about the value of the transaction and had sent Ramin a due diligence package that Bolour received from his broker. The due diligence package included the identities of the borrowers, the guarantors and the lender, copies of the promissory notes, deeds of trust, guarantees, other loan documents, and appraisals of the properties. Ramin also viewed the properties with Bolour. Based on what he saw in July 2010, Ramin testified that he had formed the opinion that \$11 million was a good price for the Five Notes. Ramin told Bolour that if Bolour was interested in doing the deal, Ramin would do it with him, or if Bolour decided he was not interested in purchasing the Five Notes, he should tell Ramin because Ramin was interested in purchasing the Five Notes himself.²

Ramin testified that he and Hoshang met with Golbari on September 7, 2010, after transmitting proof to LA Properties that Defendants had \$1.9 million cash on hand. At the meeting, Golbari told Defendants he was interested in investing their money in a transaction he was negotiating to purchase the Five Notes. Ramin said he told Golbari that Defendants already knew about the Five Notes through Bolour and that Bolour had consulted Ramin about Bolour's negotiations with Center Bank. According to Ramin, there was no further discussion with Golbari about using Defendants' money to finance the Five Notes transaction.

² A declaration submitted by Bolour in support of Defendants' summary judgment motion largely corroborated Ramin's declaration on these points.

Ramin testified that around the end of September 2010, he received a call from Robin Yi, the broker who had been dealing with Bolour in connection with Bolour's contemplated purchase of the Five Notes. Yi told Ramin that Bolour was no longer interested in purchasing the Five Notes and asked Ramin if he would be interested in doing the deal. Ramin told Yi he thought \$11 million was a fair price and asked Yi to present the number to Center Bank. After contacting Center Bank, Yi called Ramin back and told Ramin that Center Bank's bottom line selling price was \$11.5 million with a \$3.45 million down payment. Yi recommended that Ramin do the deal on those terms.

On October 1, 2010, Carmelina Property, LLC, an entity in which Ramin is a member, signed a purchase and sale agreement with Center Bank to purchase the Five Notes for \$11.5 million with a \$3.45 million down payment. Thereafter, according to Ramin's declaration, a newly formed limited liability company named Center Capital Group, LLC, in which Ramin is a member, purchased the Five Notes for \$11.5 million.

Based on the foregoing evidence, Defendants argued the information allegedly disclosed by LA Properties in furtherance of the joint venture was "not confidential, no unique strategy was discussed, and since Center Bank came up with the purchase price, no information received from [LA Properties] was used to purchase the [Five] Notes." Accordingly, Defendants argued LA Properties' fraud-based claims should be dismissed.

C. LA Properties' Opposition to Summary Judgment

In opposing Defendants' motion for summary judgment, LA Properties relied primarily upon the declaration of its principal, Golbari. With respect to the Santee Note, Golbari did not dispute that LA Properties had not formally assigned its purchase agreement with Hanmi Bank to Spring. Nevertheless, Golbari testified that, in reliance upon the oral agreement with Defendants, he negotiated with Hanmi Bank to secure its approval of a loan to facilitate Spring's purchase of the Santee Note, and negotiated an additional \$70,000 reduction of the purchase price for Spring. Following those negotiations, Golbari said, "Hanmi Bank suggested I cancel [LA Properties'] contract so that Spring could purchase [the Santee Note] instead." Golbari maintained that he signed the cancellation instruction to facilitate LA Properties' performance under the oral

agreement with Defendants. His declaration stated, “I would not have signed the cancellation instruction, effectively assigning to Spring [LA Properties’] contractual right to purchase the Santee Note, but for Defendants’ promise to pay me the sum of \$52,000, plus the \$35,000 representing the further cash discount I negotiated on Defendants’ and Spring’s behalf.”

As for the Five Notes transaction, Golbari testified in his declaration that Defendants had outwardly manifested their intention to form a joint venture, and he relied upon what he reasonably believed to be their joint venture when he disclosed his strategy for purchasing the Five Notes. Golbari testified that after escrow closed on Spring’s purchase of the Santee Note, Defendants approached him about doing other deals due to his “demonstrated experience in negotiating such note purchases.” According to Golbari, on September 6, 2010, Hoshang came to LA Properties’ offices to discuss other deals, at which time Hoshang informed Golbari that Defendants had “up to \$3.5 million to invest for the ‘right deal’ and that if such a deal were to be found, they would pay [LA Properties] one-half of the profits on any purchase earned after returning Defendants’ initial investment back to them.” At that point, Golbari informed Hoshang that he was currently negotiating the purchase of five promissory notes secured by four properties in Los Angeles County and that the deal could be very lucrative. He told Hoshang that the details of the negotiations were “highly confidential” and he “would not share [them] with anyone other than a partner in the deal.” Golbari added that he would need evidence of Defendants’ ability to “come up with the money, which would need to be around \$3 million.” According to Golbari, he received bank statements from Defendants the next day confirming they had over \$1.9 million in available cash on deposit. Golbari said he “relied upon these statements in believing Defendants could come up with the money.”

Golbari testified he met with Defendants the same day he received their proof of funds. He claimed that Defendants confirmed their intention to pursue the Five Note purchase as a joint venture, using Defendants’ financing and Golbari’s negotiation skills, and, in reliance on that confirmation and the financial statements Defendants provided, he disclosed the details of his negotiations with Center Bank. Contrary to Ramin’s account

of the meeting, Golbari testified that Defendants never indicated they had any familiarity with the subject bank or properties. However, according to Golbari, Hoshang did say he knew the borrower from their days in Iran, and Hoshang offered to contact the borrower to make a deal with him. Golbari told Hoshang to just “ ‘keep it quite’ ” so he could finish the deal, then they would talk to the borrower together. Golbari asked again for confirmation that Defendants had the money, to which Hoshang responded “ ‘Yeah, our money arrive. We have the money, no problem. And if you are short of money, we can get [Bolour] also involved.’ ” According to Golbari, Hoshang then suggested that Defendants could make an offer for less to make LA Properties’ offer look more attractive, but Golbari reiterated that Defendants should just allow him to finish the deal.

LA Properties argued Golbari’s declaration raised triable issues of fact as to whether the parties formed a joint venture to purchase the Five Notes, and as to whether Defendants fraudulently misled Golbari into believing they had a joint venture so Ramin’s company could exploit Golbari’s negotiation strategy to purchase the Five Notes. In either case, LA Properties argued it was irrelevant whether Defendants already knew details concerning the Five Notes, since it was Defendants’ misuse of Golbari’s confidential negotiation strategy to circumvent LA Properties that LA Properties claimed caused its alleged damages.

Finally, LA Properties argued Defendants mischaracterized Golbari’s deposition testimony to support their assertion that “putting up” \$3 million was a condition precedent to forming the joint venture. Addressing the testimony concerning Golbari’s statement to Defendants—“ ‘If we are going joint venture, if you put up all the money, go 50/50, *but you have to get your money first, and then after that, profit is 50/50’ ”* (italics added), LA Properties explained that the italicized statement simply meant that, if the parties pursued a profitable joint venture, Defendants would get their money back first, then the parties would split the profits equally. This, LA Properties argued, was consistent with Golbari’s declaration concerning his discussion with Hoshang, in which Hoshang stated Defendants “would pay [LA Properties] one-half of the profits on any purchase earned *after returning Defendants’ initial investment back to them.*” (Italics

added.) LA Properties maintained that none of Golbari's deposition testimony foreclosed a factual finding that the parties agreed to form a joint venture to profit from the Five Notes transaction.

D. *The Trial Court's Summary Adjudication Ruling*

The trial court granted Defendants summary adjudication on the claims for breach of fiduciary duty, breach of joint venture agreement, and conspiracy to commit breaches of fiduciary duty, all of which were based exclusively on the Five Notes transaction. The court also granted Defendants summary adjudication on the claims for rescission and breach of contract to the extent such claims were based on the alleged oral agreement to assign the Santee Note purchase agreement to Defendants' designated assignee, but denied summary adjudication to the extent the breach of contract claim was predicated on LA Properties' agreement to negotiate a discount on the Santee Note purchase price. Finally, the court granted Defendants summary adjudication as to the claims for fraud, conspiracy to defraud, fraudulent conveyance, interference with contract and interference with prospective economic advantage to the extent such claims were based on the Five Notes transaction, and denied summary adjudication to the extent such claims were based on the Santee Note transaction.

With respect to the claims exclusively based on the Santee Note transaction, the court concluded LA Properties could not maintain claims for breach of contract or rescission to the extent such claims were predicated on LA Properties' agreement to assign its purchase agreement to Defendants' designee, because it was undisputed that LA Properties did not execute a contractual assignment.³ However, the court denied summary adjudication with respect to the portion of the breach of contract claim predicated on LA Properties' alleged agreement to negotiate a discount on the Santee Note purchase price, concluding the lack of assignment was "immaterial" to that portion of the claim.

³ LA Properties' rescission claim sought to rescind its alleged assignment of the contractual right to purchase the Santee Note.

The court likewise held the absence of an assignment was “immaterial” to the fraud-based Santee Note claims. Because the complaint alleged that LA Properties was fraudulently induced to change its legal position with respect to its right to purchase the Santee Note, and Golbari’s declaration supported a finding that LA Properties cancelled its purchase agreement in reliance on Defendants’ promise to pay LA Properties \$52,000, the court concluded the evidence raised a triable issue of fact.

As for the Five Notes, the court concluded LA Properties could not maintain its breach of fiduciary duty or breach of joint venture agreement claims because the evidence conclusively established that the parties never agreed to form a joint venture. The court held Golbari’s declaration failed to raise a triable issue because it contradicted his deposition testimony concerning the \$3 million that Defendants purportedly needed to supply before the parties could move forward with the joint venture.

Concerning the fraud-based claims, the court acknowledged the existence of a joint venture was “immaterial,” since LA Properties alleged only that it was “fraudulently induced to disclose confidential information regarding the [Five] Notes.” However, the court found LA Properties could not establish detrimental reliance because it was “undisputed that Defendants were aware of details of the [Five] Notes prior to [Golbari’s] disclosure.”

The court also found LA Properties would be unable to establish recoverable damages. In the absence of a joint venture agreement, the court held, LA Properties’ damages for fraud were limited to its “out-of-pocket loss.” And, because it was undisputed that LA Properties never had a contract to purchase the Five Notes, the court concluded there was no out-of-pocket loss to recover.

Finally, the court concluded LA Properties could maintain its interference claims with respect to the Santee Note transaction, but not the Five Notes transaction, apparently reasoning that the lack of an agreement to purchase the Five Notes barred LA Properties from maintaining those claims.

E. *Defendants’ Motion for Judgment on the Pleadings as to the Remaining Santee Note Claims*

In advance of trial, Defendants brought a motion for judgment on the pleadings to dispose of LA Properties remaining claims related to the Santee Note transaction. Defendants’ motion argued the alleged promise to pay LA Properties \$52,000 constituted a broker contract affecting real property and, therefore, was subject to the statute of frauds. Because the complaint’s allegations admitted that the alleged promise was oral and had not been reduced to writing, Defendants argued the remaining claims should be dismissed under the statute of frauds.

After argument by counsel, the trial court granted Defendants’ motion. The court concluded Defendants’ alleged agreement to pay LA Properties for negotiating Spring’s purchase of the Santee Note was subject to the statute of frauds and, therefore, could be established only by a writing evidencing the agreement.

Having disposed of LA Properties’ remaining claims by its ruling on the motion for judgment on the pleading, the court entered a judgment of dismissal for Defendants.

DISCUSSION

A. *The Court Properly Granted Summary Adjudication on the Rescission Claim*

Civil Code section 1689 provides that a contract may be rescinded upon the consent of all parties thereto, or by a party to the contract upon certain grounds enumerated in the statute. Naturally, the irreducible minimum for any rescission claim under Civil Code section 1689 is the existence of a contract to be rescinded, to which the plaintiff is a party.

The complaint alleges that “LA Properties assigned its contractual rights in the Santee Note to an entity designated by [Defendants].” In its cause of action for rescission, LA Properties sought a “court-ordered rescission of its assignment of its contractual right to purchase the Santee Note.” However, the undisputed evidence established, contrary to the complaint’s allegations, that LA Properties did not execute a contractual assignment of its purchase agreement. Though LA Properties argues its

cancellation of the purchase agreement constituted an effective assignment, insofar as it paved the way for Spring to enter into a purchase agreement with Hanmi Bank, it is undisputed that LA Properties is not a party to that contract. The undisputed facts thus preclude LA Properties from seeking the rescission remedy articulated in the complaint. The trial court properly granted summary adjudication in favor of Defendants.

B. *The Summary Adjudication Order on the Breach of Contract Claim Was Improper Because the Order Does Not Dispose of the Entire Cause of Action*

Code of Civil Procedure section 437c, subdivision (f)(1) provides: “A motion for summary adjudication shall 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.) The current wording of the statute, with its mandate for complete disposition, reflects a legislative judgment to “narrow summary adjudication from its [former] broad focus on ‘issues’ (sometimes interpreted to mean only asserted ‘facts’) to a more limited focus on causes of action, affirmative defenses, claims for punitive damages, and claims that defendants did not owe plaintiffs a duty.” (*City of Emeryville v. Superior Court* (1991) 2 Cal.App.4th 21, 25.) As the Legislature explained in making the most significant changes to the summary adjudication provisions of the statute in 1990, “[i]t is . . . the intent of this legislation to stop the practice of adjudication of facts or adjudication of issues that do not completely dispose of a cause of action or a defense.” (Stats. 1990, ch. 1561, § 1, p. 7330; see also *Raghavan v. Boeing Co.* (2005) 133 Cal.App.4th 1120, 1135.)

In *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848 (*Lilienthal*), the Court of Appeal recognized that the Legislature’s principal purpose in so narrowing the statute was to “eliminate summary adjudication motions that would not reduce the costs and length of litigation.” (*Id.* at p. 1853.) The case involved a malpractice suit against a law firm that had represented the plaintiffs “at different times on two separate and distinct matters.” (*Id.* at p. 1850.) Despite the distinct nature of the two matters, the plaintiffs combined their claims with respect to each into the same causes of action, in an

apparent attempt to avoid the statute of limitations bar with respect to one of the matters. (*Id.* at pp. 1850-1851.) Observing that “the time and cost saving purposes of the [summary adjudication statute] amendment” would be undermined by allowing a cause of action in its entirety to proceed to trial where a separately alleged claim within that cause of action could be defeated by summary adjudication, the *Lilienthal* court held “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.” (*Id.* at pp. 1854-1855.)

In the instant case, the trial court properly applied the principle articulated in *Lilienthal* to separately adjudicate the fraud and interference claims based on the Santee Note transaction and those based on the Five Notes transaction, notwithstanding that LA Properties combined allegations related to these separate transactions in the same causes of action. As Defendants correctly observe, the Santee Note and Five Notes transactions “involved separate and distinct promissory notes, secured by entirely different real properties and executed at completely different times, under entirely different circumstances.” Separately adjudicating the claims distinctly based on one or the other transaction was wholly consistent with the time and cost saving purposes the Legislature sought to promote when it amended the summary adjudication statute. (See *Lilienthal*, *supra*, 12 Cal.App.4th at p. 1853.)

However, the same cannot be said for the court’s piecemeal adjudication of the breach of contract cause of action. Unlike the fraud and interference claims, the breach of contract cause of action solely concerns the Santee Note transaction, and whether LA Properties met its obligations under the parties’ alleged contract by negotiating with Hanmi Bank for the assignment and purchase price reduction of the Santee Note. In granting summary adjudication as to the assignment portion of the claim, but denying it as to the purchase price negotiation portion, the court failed to dispose of the entire cause of action as mandated by Code of Civil Procedure section 437c, subdivision (f)(1). And, because the claim involves the same alleged contract between LA Properties and Defendants, and the same alleged negotiations by LA Properties with Hanmi Bank,

allowing piecemeal adjudication of the claim would do little to “reduce the costs and length of litigation.” (*Lilienthal, supra*, 12 Cal.App.4th at p. 1853.) Insofar as the court’s summary adjudication order failed to dispose of the entire breach of contract cause of action, we cannot affirm the judgment of dismissal as to that claim.⁴

C. *The Statute of Frauds Does Not Bar the Remaining Santee Note Claims*

As discussed, the trial court determined that the absence of an assignment was “immaterial” to the fraud-based Santee Note claims, and denied summary adjudication on that basis. The court reasoned that LA Properties’ cancellation of its purchase agreement was sufficient to raise a factual issue as to whether Defendants fraudulently induced LA Properties to change its legal position by promising to pay it \$52,000. In the wake of the ruling, Defendants brought a motion for judgment on the pleadings, in which they argued the remaining Santee Note claims were barred by the statute of frauds because the alleged oral promise to pay LA Properties \$52,000 constituted a broker contract affecting real property. The trial court agreed with the contention and granted Defendants’ motion. We do not.

The trial court’s ruling is contrary to settled Supreme Court authority. In *Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18 (*Tenzer*), our Supreme Court considered whether the statute of frauds barred claims for breach of contract and fraud based on the defendant’s refusal to pay a real estate finder’s fee that it allegedly orally promised to the plaintiff. (*Id.* at pp. 23-24.) The Supreme Court concluded the alleged promise to pay a finder’s fee amounted to a real estate broker agreement, which was subject to the statute of frauds; however, because the plaintiff performed in alleged reliance on the defendant’s false promise, the statute did not bar the action. (*Id.* at pp. 27-29.) In so holding, the

⁴ The court’s ruling granting judgment on the pleadings as to the purchase price negotiation portion of the breach of contract claim suffers from the same defect—it does not dispose of the entire cause of action. We express no view as to whether Defendants can ultimately defeat this claim by combining the grounds raised in their summary adjudication motion and motion for judgment on the pleadings. Our conclusion here recognizes only that LA Properties must have fair notice and an opportunity to address those grounds in a procedurally proper motion before the claim can be dismissed.

high court disapproved of a series of cases that had held an action for fraud could not be maintained where the allegedly fraudulent promise would be unenforceable as a contract due to the statute of frauds. (*Id.* at p. 28.) The court reasoned that the approach taken by these cases was “inconsistent with the general rule ‘that the statute of frauds, having been enacted for the purpose of preventing fraud, [should] not be made the instrument of shielding, protecting or aiding the party who relies upon it in the perpetration of a fraud or in the consummation of a fraudulent scheme.’”⁵ (*Id.* at p. 30.)

Tenzer is controlling and compels reversal of the judgment dismissing LA Properties’ claims for fraud, conspiracy to commit fraud, and fraudulent conveyance with respect to the Santee Note transaction.⁶ As the trial court correctly recognized in denying summary adjudication of these claims, LA Properties’ allegations and evidence raise a triable issue as to whether it detrimentally relied on Defendants’ false promise to pay \$52,000 when it cancelled its purchase agreement for the Santee Note. Those allegations and evidence likewise remove these claims from the statute of frauds under *Tenzer*.

The same reasoning applies with respect to the interference claims stemming from the Santee Note transaction. Insofar as Defendants’ alleged false promise caused LA Properties to cancel its purchase agreement with Hanmi Bank, or otherwise interfered with LA Properties’ realization of the profits it anticipated from completing the Santee Note transaction, the statute of frauds is no legal impediment to LA Properties pursuing these claims.

⁵ The *Tenzer* court also concluded that, while the plaintiff’s breach of contract claim would “ordinarily be barred by the statute of frauds,” the alleged facts were sufficient to invoke the doctrine of estoppel insofar as the plaintiff claimed he detrimentally relied on the defendant’s oral promise in disclosing the name of the prospective purchaser. (*Tenzer, supra*, 39 Cal.3d at p. 27.)

⁶ We express no opinion on Defendants’ contentions that LA Properties cannot maintain an action for fraudulent conveyance because it is not Defendants’ creditor and cannot show Defendants transferred any assets with the intent to defraud. Defendants did not raise these contentions as grounds for their motion for judgment on the pleadings, and the trial court rejected these arguments in denying Defendants’ motion for summary adjudication.

D. *The Court Properly Granted Summary Adjudication on the Interference with Contract Claim to the Extent Based on the Five Notes Transaction*

To obtain relief on a claim for interference with contract, a plaintiff must establish “(1) a valid contract between plaintiff and a third party; (2) defendant’s knowledge of this contract; (3) defendant’s intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage.” (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.)

To the extent it is predicated on the Five Notes transaction, LA Properties’ claim for interference with contract fails on the first element. As the trial court correctly recognized in granting summary adjudication, LA Properties cannot obtain relief on this claim because it is undisputed that it never had a valid contract with Center Bank to purchase the Five Notes.

E. *Triable Issues Exist on the Remaining Five Notes Claims*

1. *The Joint Venture/Breach of Fiduciary Duty Claims*

In granting Defendants summary adjudication on the fiduciary duty claims, the trial court concluded that Golbari’s deposition testimony precluded a finding that the parties had formed a joint venture to profit from the acquisition of the Five Notes. We conclude the evidence, when viewed in the light most favorable to LA Properties as the party opposing summary judgment, raises a triable issue of fact.⁷

⁷ “On appeal after a motion for summary judgment has been granted, we review the record de novo, considering all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained.” (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.) We “ ‘consider all of the evidence’ and ‘all’ of the ‘inferences’ reasonably drawn therefrom [citation], and must view such evidence [citations] and such inferences [citations], in the light most favorable to the opposing party.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).)

“Although a partnership ordinarily involves a continuing business, whereas a joint venture is usually formed for a specific transaction or a single series of transactions, the incidents of both relationships are the same in all essential respects.” (*Bank of California v. Connolly* (1973) 36 Cal.App.3d 350, 364 (*Bank of California*)). The defining characteristic of a partnership or joint venture is the combination of two or more persons to jointly conduct business. (*Enea v. Superior Court* (2005) 132 Cal.App.4th 1559, 1564 (*Enea*); *Holmes v. Lerner* (1999) 74 Cal.App.4th 442, 457 [“parties who expressly agree to associate as co-owners with the intent to carry on a business for profit, have established a partnership”].) “[I]n forming such an arrangement the partners obligate themselves to share risks and benefits and to carry out the enterprise with the highest good faith toward one another—in short, with the loyalty and care of a fiduciary.” (*Enea*, at p. 1564.) “Partnership is a fiduciary relationship, and partners are held to the standards and duties of a trustee in their dealings with each other. ‘ “[I]n all proceedings connected with the conduct of the partnership every partner is bound to act in the highest good faith to his copartner and may not obtain any advantage over him in the partnership affairs by the slightest misrepresentation, concealment, threat or adverse pressure of any kind.’ [Citations.]” ’ ” (*BT-I v. Equitable Life Assurance Society* (1999) 75 Cal.App.4th 1406, 1410-1411, quoting *Leff v. Gunter* (1983) 33 Cal.3d 508, 514.)

Golbari’s declaration in opposition to Defendants’ motion for summary judgment evidences the essential elements of a joint venture to acquire the Five Notes and negotiate a profitable workout with the distressed borrower. According to Golbari, he discussed a joint venture with Defendants in which LA Properties would complete its negotiations with Center Bank to acquire the Five Notes, and Defendants would finance the venture, then Defendants and Golbari would approach the borrower, with whom Hoshang was

acquainted, to discuss terms for a workout.⁸ As for the risks and benefits of the venture, Golbari's declaration discloses that he and Hoshang discussed an arrangement where Defendants and LA Properties would share the profits from the venture equally "after returning Defendants' initial investment back to them." (See *April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 819 [an intention to share losses may be inferred from provision to share profits].)

Relying principally upon *Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, in which the court found no mutual assent to form a joint venture where the parties understood any deal was contingent upon securing third party investor financing (*id.* at p. 213), Defendants contend Golbari's deposition testimony likewise conclusively foreclosed a joint venture finding, because Golbari admitted his understanding that no joint venture would be formed unless Defendants produced at least \$3 million to finance it. As they did in their summary judgment papers, Defendants emphasize the following deposition testimony by Golbari to support this contention:

⁸ In his deposition testimony Golbari elaborated on his discussions with Defendants concerning their strategy for approaching the borrower after acquiring the Five Notes. This evidence concerning the parties' joint control over this aspect of the joint venture is critical, as it is settled that "[a]n essential element of a partnership or joint venture is the right of joint participation in the management and control of the business." (*Bank of California, supra*, 36 Cal.App.3d at p. 364, citing *Spier v. Lang* (1935) 4 Cal.2d 711, 716.) As the *Bank of California* court explained, "Absent such right, the mere fact that one party is to receive benefits in consideration of services rendered or for capital contribution does not, as a matter of law, make him a partner or joint venturer. [Citations.] An agreement by a landowner to share with another profits to be derived from the sale of land does not, without more, create a partnership or joint venture relationship." (*Bank of California*, at p. 364.)

“Q: In that meeting, you did not talk about anything else about your joint venture; correct?

“ [¶] . . . [¶]

“A: Like I just said, I explained that, ‘If we are going joint venture, if you put up all the money, go 50/50, *but you have to get your money first, and then after that, profit is 50/50.*’ ” (Boldface omitted, italics added.)

In view of this deposition testimony, and the undisputed fact that they never produced \$3 million to LA Properties, Defendants contend LA Properties cannot prove the existence of a joint venture. In granting Defendants summary adjudication on the fiduciary duty claims, the trial court agreed. Citing the same deposition testimony, the court found that LA Properties failed to provide “competent evidence” that the parties agreed to a joint venture, because Golbari’s declaration “contradict[ed] Golbari’s deposition testimony.”

The trouble with Defendants’ contention and the trial court’s finding is that Golbari’s deposition testimony is less than perfectly clear and, indeed, is susceptible of an interpretation more favorable to LA Properties than the one advanced by Defendants. While Defendants contend the testimony proves “putting up” \$3 million was a condition precedent to forming the joint venture, LA Properties offered the (at least) equally plausible interpretation that what Golbari actually meant was that Defendants first would be paid back whatever money they put in to finance the venture, then the parties would split the profits equally. Contrary to the court’s finding, that interpretation is consistent with the statement in Golbari’s declaration that LA Properties would share “one-half of the profits on any purchase earned after returning Defendants’ initial investment back to them.”

Reviewing Golbari's deposition testimony and the other evidence presented as we must, in the light most favorable to LA Properties as the party opposing summary judgment (*Aguilar, supra*, 25 Cal.4th at p. 843), we conclude the evidence created a triable issue as to whether the parties formed a joint venture. Accordingly, insofar as the trial court granted summary adjudication on the fiduciary duty claims (breach of fiduciary duty, breach of joint venture agreement and conspiracy to commit breaches of fiduciary duty) due to LA Properties' supposed inability to prove the existence of a joint venture, the judgment of dismissal as to those claims is reversed.

2. *The Fraud-based Claims*

In granting summary adjudication on the claims for fraud, conspiracy to defraud and fraudulent conveyance related to the Five Notes transaction, the court concluded Defendants' alleged promise to finance the deal was too vague and LA Properties could not establish detrimental reliance. The court also held the absence of a joint venture agreement meant LA Properties' recoverable damages were limited to out-of-pocket losses that it had not suffered. We conclude each of these elements is subject to disputed facts, insofar as triable issues exist concerning the formation of a joint venture to purchase and exploit the Five Notes for profit.

We have already discussed the evidence supporting the formation of a joint venture. This same evidence raises a triable issue concerning Defendants' promise to finance the Five Notes transaction, notwithstanding the ambiguities in Golbari's deposition testimony.

As for detrimental reliance, the trial court essentially found there was no detriment, because LA Properties did not disclose any confidential information to Defendants about the Five Notes that they did not already know. This finding takes too narrow a view of LA Properties' theory of harm. As alleged in the complaint and attested to in Golbari's declaration, in addition to details about the bank, the properties and the borrower on the Five Notes, Golbari also disclosed the purchase price he believed the bank would accept and shared confidential details about his negotiating strategy with Defendants in reliance on the alleged joint venture agreement. The complaint alleges

Defendants used this information, specifically the confidential details of Golbari's negotiation strategy, to circumvent LA Properties, directly negotiate with Center Bank, and ultimately out bid LA Properties, while still purchasing the Five Notes at a price substantially below their true value. Again, viewing the evidence in the light most favorable to LA Properties, we conclude the evidence is sufficient to raise a triable issue on this theory of detrimental reliance, notwithstanding the fact that Defendants were largely familiar with the details of the Five Notes before speaking with Golbari.

Finally, on the element of recoverable damages, the trial court concluded that in the absence of a fiduciary duty, LA Properties' recoverable damages were limited to its out-of-pocket loss. And, since it was undisputed that LA Properties never secured a contract to purchase the Five Notes, the trial court concluded it would be impossible for LA Properties to prove it suffered an out-of-pocket loss.

Setting aside whether Civil Code section 3343 applies in this case, where there was no sale of property between LA Properties and Defendants (see Civ. Code, § 3343 [setting measure of damages for "[o]ne defrauded in the purchase, sale or exchange of property"]), it is settled that a plaintiff is not limited to his or her out-of-pocket loss where the alleged fraud is committed by a fiduciary. (See *Salahutdin v. Valley of California, Inc.* (1994) 24 Cal.App.4th 555, 565 [listing cases recognizing an exception to the out-of-pocket loss rule where "a fiduciary relationship existed between parties"].) Because we conclude triable issues exist as to whether LA Properties and Defendants formed a joint venture to profit from the Five Notes transaction, it follows that triable issues exist as to whether LA Properties may recover its lost profits from its alleged fiduciaries. (See Civ. Code, § 3333 ["For the breach of an obligation not arising from contract, the measure of damages . . . is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not"].)

3. *Interference with Prospective Economic Advantage*

To establish a claim for interference with prospective economic advantage, a plaintiff must prove: “ ‘ “(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant’s knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant.” [Citations.]’ ” (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153 (*Korea Supply*)). The third element of the claim requires proof of conduct by the defendant that is “wrongful ‘by some measure beyond the fact of the interference itself.’ ” (*Della Penna v. Toyota Motor Sales, U.S.A.* (1995) 11 Cal.4th 376, 393.) “[A]n act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.” (*Korea Supply*, at p. 1159.)

In view of its findings that LA Properties could not establish a breach of fiduciary duty or fraud by Defendants with respect to the Five Notes transaction, the trial court presumably concluded LA Properties also would be unable to prove independently wrongful conduct as required to establish its claim for interference with prospective economic advantage. As we have concluded triable issues exist with respect to the fiduciary duty and fraud claims, it follows that the supposed lack of independently wrongful conduct is no longer a sound basis for the order summarily adjudicating the interference claim. Accordingly, the dismissal of this claim with respect to the Five Notes transaction is reversed.

DISPOSITION

The judgment is affirmed with respect to the dismissal of the rescission claim and the interference with contract claim to the extent based on the Five Notes transaction. The judgment is reversed in all other respects and the causes of action for interference with contract to the extent based on the Santee Note transaction, fraud, breach of fiduciary duty, breach of contract, breach of joint venture agreement, conspiracy to defraud, conspiracy to commit breaches of fiduciary duty, fraudulent conveyance, and interference with prospective economic advantage are remanded to the trial court for further proceedings. In the interest of justice, LA Properties is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

We concur:

EDMON, P. J.

ALDRICH, J.