

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

BRUCE SONS, an individual,)	CIV F 08 - 0840 AWI TAG
)	
Plaintiff,)	MEMORANDUM OPINION
)	AND ORDER GRANTING IN
v.)	PART AND DENYING IN
)	PART DEFENDANT’S
JIM MCMANIS,)	MOTION FOR SUMMARY
)	JUDGMENT
Defendant.)	
)	Doc. # 49

This is an action in diversity for fraud and unjust enrichment by plaintiff Bruce Sons (“Plaintiff”) against defendant Jim McManus (“Defendant”). The action arises out of an alleged agreement between Plaintiff and Defendant to convey property owned by Plaintiff to Defendant to avoid imminent foreclosure. Pursuant to the alleged agreement, Defendant was to receive title to the property by quitclaim deed and was thereafter to use his assets to clear title to the property. Thereafter, Defendant was to reconvey approximately 2.5 acres of the 10-acre property to Plaintiff and to retain the remainder for himself. The property was ultimately sold by Defendant and no reconveyance took place. Plaintiff’s First Amended Complaint (“FAC”), filed on January 30, 2009, alleges four claims for relief that are untitled but generally track the elements of claims under California common law for breach of fiduciary duty, breach of contract, unjust enrichment, and fraud. Following the court’s decision on Defendant’s motion to dismiss, Plaintiff’s claims for fraud and unjust enrichment remain.

In the instant motion, Defendants move for summary judgment as to Plaintiff’s remaining

1 claims on the ground that the claims are barred by applicable statutes of limitations. For the
2 reasons that follow, the court will grant in part and deny in part Defendant's motion.

3 PROCEDURAL HISTORY

4 The complaint in this action was originally filed on June 13, 2008. Defendant filed a
5 motion to dismiss or, in the alternative, a motion for a more definite statement on October 15,
6 2008. On January 5, 2009, the court issued an order granting Defendant's motion to dismiss
7 Plaintiff's claims for fraud and for breach of fiduciary duty; both dismissals were with leave to
8 amend. The court's January 5 order dismissed Plaintiff's claim for fraud on the ground the claim
9 was not set forth with sufficient particularity in violation of Rule 9(b) of the Federal Rules of
10 Civil Procedure. Plaintiff filed the now-operative FAC on January 30, 2009. The FAC restated
11 the same four claims that were alleged in the original complaint with minor modifications.
12 Pursuant to an order by the Magistrate Judge for limited discovery and further briefing, the
13 parties submitted briefs and responses on the issues of amount in controversy, statute of
14 limitations, statute of frauds and *res judicata* effects of prior proceedings in small claims court.

15 On January 8, 2010, the court issued a memorandum opinion and order that construed the
16 parties' briefs as a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil
17 Procedure (the "January 8 Order"). The court's January 8 Order dismissed Plaintiff's contract
18 claim and claim for breach of fiduciary duty, both with prejudice. Defendant's brief did not
19 specifically address Plaintiff's fraud claim and the court did not find that Plaintiff's fraud claim
20 was subject to dismissal on any of the other grounds argued. The court found that Plaintiffs
21 claims were not barred by the amount in controversy and found that there was not sufficient
22 information that the court could consider to permit a decision on Defendant's contentions with
23 regard to statutes of limitations. After the court's January 8 Order, Plaintiff's claims for fraud
24 and unjust enrichment remain.

25 The instant motion for summary judgment was filed on June 30, 2010. Plaintiff's
26 opposition was filed on August 9, 2010, following a stipulated modification of the scheduling
27

1 order. Defendant's reply was filed on August 16, 2010.

2 **DEFENDANT'S PROFFERED UNDISPUTED MATERIAL FACTS**

3 The following summarizes in narrative form Defendant's proffered undisputed material
4 facts. Here, the "Property" refers to an approximately 10-acre parcel of land located in
5 Bakersfield, California. "Dwight" refers to Plaintiff's brother, Dwight Sons. "Vincent" refers to
6 Plaintiff's brother, Vincent Sons.

7 Plaintiff owned the Property which was in foreclosure and scheduled to be sold at a
8 trustee's sale on May 10, 1994. Plaintiff and his brother, Dwight, decided to seek the assistance
9 of Defendant with regard to the pending foreclosure on the Property before Dwight spoke to
10 Defendant about the Property. Dwight approached Defendant with a proposal to arrange the
11 transfer of the Property from Plaintiff to Defendant. The transfer was accomplished by quitclaim
12 deed. At the time the Parcel was transferred from Plaintiff to Defendant, the two had never met
13 or spoken directly to each other regarding the transfer, nor had they discussed any of the terms of
14 the transfer. Plaintiff contends [in the complaint] that (1) the Property was to be subdivided by
15 Defendant and (2) that Defendant would reconvey a 2.5-acre portion of the Property back to
16 Plaintiff. Plaintiff alleges [in the complaint] that Plaintiff agreed to reimburse Defendant for all
17 monies Defendant spent with regard to the property.¹ Plaintiff also contends that, after the
18 transfer of the Property to Defendant, both parties intended that Plaintiff should continue living at
19 the residence on the Property.²

20 Plaintiff and his former wife, Linda Sons, transferred the Property [by quitclaim deed] to

21
22 ¹ In its January 8 Order, the court noted the ambiguity in Defendant's allegation that Plaintiff had
23 agreed to reimburse Defendant for what has been variously termed "all monies spent" or "out of pocket expenses."
24 It remains ambiguous whether the parties intended that Defendant would be reimbursed for the money Defendant
25 spent on satisfying all claims against the property and/or taxes and monies spent on upkeep, fees and expenses. As
26 will be discussed below, it also remains ambiguous whether the parties intended the reimbursement of Defendant to
27 be a condition precedent to Defendant's alleged duty to subdivide the property.

28 ² The aggregate of the generally undisputed terms of the agreement between the parties, including
the transfer of the entire Property to Defendant, the satisfaction of encumbrances on the Property by Defendant, the
reconveyance of the 2.5-acre parcel, and the understanding that Plaintiff should continue his residence on the 2.5-
acre parcel will be referred to hereinafter as the "Deal."

1 Defendant and his wife on May 10, 1994. Plaintiff was arrested on July 11, 1994 for fatally
2 shooting a California Highway Patrolman on the same day. Plaintiff remained incarcerated until
3 he was released in 2006. Plaintiff never reimbursed Defendant for any monies spent with regard
4 to the Property.

5 On or about October 18, 1994, Defendant wrote a letter addressed to Dwight stating as
6 follows:

7 In response to your request for a proposal for the [Property], the following
8 offering will be in effect until January 18, 1995.

9 If a satisfactory response is not made by that date, the property will go on
10 the open market.

11 The selling price of the total Property is \$331,863.45. Debt service, taxes,
12 and insurance will be prorated from this date until the date of sale. Also, any
13 expenses incurred in maintaining the [P]roperty will be added to the selling price.

14 If water is not provided to the [P]roperty as previously agreed, the attorney
15 fees, costs of litigation, [illegible] or drilling a well will be added to the selling
16 price.

17 If a satisfactory settlement is not made by the January 18, 1995, date, then
18 any implied agreements will be null and void.

19 Doc. # 52 - 4 (hereinafter, the "Letter").

20 Defendant alleges the Letter was received by Dwight in 1994 and was received by
21 Vincent in 1994. Defendant alleges, and Plaintiff denies that Plaintiff believed as of September
22 13, 1995, that Defendant had not reconveyed any portion of the Property to Plaintiff. Defendant
23 also alleges that Dwight believed in 1994 that Defendant's Letter indicated that Defendant
24 intended to renege on the alleged Deal. Defendant stated [in his deposition] that it was evident
25 from Defendant's Letter that Defendant had changed his mind regarding the alleged Deal.

26 Once incarcerated, Plaintiff did not conduct any investigation regarding the status of the
27 Property or of the alleged Deal with Defendant, or of any potential claims regarding the transfer
28 of the Property to Defendant. Plaintiff did not attempt to contact Defendant regarding the
Property or any potential claims regarding the transfer of the Property to Defendant until after
Plaintiff's release from imprisonment in 2006. Although Plaintiff received many calls and visits
from Dwight during his incarceration, Plaintiff never spoke with Dwight regarding the Property
or any potential claims regarding the transfer of the Property to Defendant. Vincent held

1 Plaintiff's power of attorney during his incarceration. Using that power of attorney, Vincent filed
2 the Small Claims Complaint against Defendant and his wife, Barbara McManus, seeking removal
3 of Plaintiff's personal property from the Property. Plaintiff filed the complaint in this case on
4 June 13, 2008.

5 LEGAL STANDARD

6 Summary judgment is appropriate when it is demonstrated that there exists no genuine
7 issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.
8 Fed. R. Civ. P. 56(c); Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Poller v.
9 Columbia Broadcast System, 368 U.S. 464, 467 (1962); Jung v. FMC Corp., 755 F.2d 708, 710
10 (9th Cir. 1985); Loehr v. Ventura County Community College Dist., 743 F.2d 1310, 1313 (9th
11 Cir. 1984).

12 Under summary judgment practice, the moving party always bears the initial
13 responsibility of informing the district court of the basis for its motion, and
14 identifying those portions of "the pleadings, depositions, answers to
interrogatories, and admissions on file, together with the affidavits, if any," which
it believes demonstrate the absence of a genuine issue of material fact.
15 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Although the party moving for summary
16 judgment always has the initial responsibility of informing the court of the basis for its motion,
17 the nature of the responsibility varies "depending on whether the legal issues are ones on which
18 the movant or the non-movant would bear the burden of proof at trial." Cecala v. Newman, 532
19 F.Supp.2d 1118, 1132-1133 (D. Ariz. 2007). A party that does not have the ultimate burden of
20 persuasion at trial – usually but not always the defendant – "has both the initial burden of
21 production and the ultimate burden of persuasion on the motion for summary judgment." Nissan
22 Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc., 210 F.3d 1099, 1102 (9th Cir. 2000). "In
23 order to carry its burden of production, the moving party must either produce evidence negating
24 an essential element of the nonmoving party's claim or defense or show that the nonmoving party
25 does not have enough evidence of an essential element to carry its ultimate burden of persuasion
26 at trial." Id.

1 If the moving party meets its initial responsibility, the burden then shifts to the opposing
2 party to establish that a genuine issue as to any material fact actually does exist. Matsushita Elec.
3 Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986); First Nat'l Bank of Arizona v. Cities
4 Serv. Co., 391 U.S. 253, 288-89 (1968); Ruffin v. County of Los Angeles, 607 F.2d 1276, 1280
5 (9th Cir. 1979). In attempting to establish the existence of this factual dispute, the opposing
6 party may not rely upon the mere allegations or denials of its pleadings, but is required to tender
7 evidence of specific facts in the form of affidavits, and/or admissible discovery material, in
8 support of its contention that the dispute exists. Rule 56(e); Matsushita, 475 U.S. at 586 n.11;
9 First Nat'l Bank, 391 U.S. at 289; Strong v. France, 474 F.2d 747, 749 (9th Cir. 1973). The
10 opposing party must demonstrate that the fact in contention is material, i.e., a fact that might
11 affect the outcome of the suit under the governing law, Anderson v. Liberty Lobby, Inc., 477 U.S.
12 242, 248 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th
13 Cir. 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could
14 return a verdict for the nonmoving party, Anderson, 477 U.S. 248-49; Wool v. Tandem
15 Computers, Inc., 818 F.2d 1433, 1436 (9th Cir. 1987).

16 In the endeavor to establish the existence of a factual dispute, the opposing party need not
17 establish a material issue of fact conclusively in its favor. It is sufficient that “the claimed factual
18 dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at
19 trial.” First Nat'l Bank, 391 U.S. at 290; T.W. Elec. Serv., 809 F.2d at 631. Thus, the “purpose
20 of summary judgment is to ‘pierce the pleadings and to assess the proof in order to see whether
21 there is a genuine need for trial.’” Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)
22 advisory committee's note on 1963 amendments); International Union of Bricklayers v. Martin
23 Jaska, Inc., 752 F.2d 1401, 1405 (9th Cir. 1985).

24 In resolving the summary judgment motion, the court examines the pleadings,
25 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
26 any. Rule 56(c); Poller, 368 U.S. at 468; SEC v. Seaboard Corp., 677 F.2d 1301, 1305-06 (9th
27
28

1 Cir. 1982). The evidence of the opposing party is to be believed, Anderson, 477 U.S. at 255, and
2 all reasonable inferences that may be drawn from the facts placed before the court must be drawn
3 in favor of the opposing party, Matsushita, 475 U.S. at 587 (citing United States v. Diebold, Inc.,
4 369 U.S. 654, 655 (1962)(per curiam); Abramson v. University of Hawaii, 594 F.2d 202, 208
5 (9th Cir. 1979). Nevertheless, inferences are not drawn out of the air, and it is the opposing
6 party's obligation to produce a factual predicate from which the inference may be drawn.
7 Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d
8 898, 902 (9th Cir. 1987).

9 DISCUSSION

10 Defendant's motion for summary judgment is based entirely on Defendant's contention
11 that Plaintiff's remaining claims for relief for unjust enrichment and fraud are barred by the
12 three-year statute of limitations provided by section 338(d) of the California Code of Civil
13 Procedure. Since both parties agree that a three-year statute of limitations applies to Plaintiff's
14 claims, the remaining questions to be resolved are when the three year period began to run on
15 each of the claims, and whether intervening events tolled the running of the statute of limitations.

16 Under California law, the "discovery rule" controls the commencement of the running of
17 a statute of limitations. Clark v. Baxter Healthcare Corp., 83 Cal.App.4th 1048, 1055 (4th Dist.
18 2000).

19 "Under the discovery rule, *the statute of limitations begins to run when the*
20 *plaintiff suspects or should suspect that her injury was caused by wrongdoing,*
21 *that someone has done something wrong to her. As we said in Sanchez [v. South*
22 *hoover hospital*, 18 Cal.3d 93 (1976)] and reiterated in Guierrez [v. Mofid, 39
23 Cal.3d 892 (1985)] the limitations period begins once the plaintiff ' "has notice
24 *or information of circumstances to put a reasonable person on inquiry'"*
25 *[Citation.] A plaintiff need not be aware of the specific 'facts' necessary to*
26 *establish the claim; that is a process contemplated by pretrial discovery."*

27 Id. (quoting Jolly v. Eli Lilly & co., 44 Cal.3d 1103, 1110 - 1111(1988) (italics in original)).

28 [T]he plaintiff discovers the cause of action when he at least suspects a factual
basis, as opposed to a legal theory, for its elements, even if he lacks knowledge
thereof – when, simply put, he at least "suspects . . . that someone has done
something wrong" to him [citation], "wrong" being used, not in any technical
sense, but rather in accordance with its "lay understanding." [Citation.] He has

1 reason to discover the cause of action when he has reason at least to suspect a
2 factual basis for its elements. [Citation.]

3 Norgart v. Upjohn Co., 21 Cal 4th 383, 397-398 (1999).

4 From the foregoing it is apparent that the determination of events triggering the running
5 of a statute of limitations is intensely factual. “While resolution of the statute if limitations issue
6 is normally a question of fact, where the uncontradicted facts established through discovery are
7 susceptible of only one legitimate inference, summary judgment is proper. [Citation.]” Jolly, 44
8 Cal.3d at 1112. Pursuant to subsection 338(d) of the California Code of Civil Procedure, the
9 discovery rule applies to claims for fraud as well as to claims for unjust enrichment arising from
10 mistake. Id.; Fed. Deposit Ins. Corp. v. Dintino, 167 Cal.App.4th 333, 350 (4th Dist. 2008)
11 (“Dintino”). The court will separately consider whether each of Plaintiff’s remaining claims are
12 barred by the three-year statute of limitations.

13 **I. Unjust Enrichment**

14 The elements of a claim for unjust enrichment are (1) receipt of a benefit and (2) unjust
15 retention of the benefit at the expense of another. Lectrodryer v. Seoul Bank, 77 Cal.App.4th
16 723, 726 (2nd Dist. 2000). “A person is enriched if he receives a benefit at another’s expense.
17 [Citation.] The term ‘benefit’ ‘denotes any form of advantage.’ [Citation.] Thus, a benefit is
18 conferred not only when one adds to the property of another, but also when one saves the other
19 from expense or loss. Even when a person has received a benefit from another, he is required to
20 make restitution ‘only if the circumstances of its receipt or retention are such that, as between the
21 two persons, it is unjust for him to retain it.’ [Citation.]” Girrado v. Antonioli, 14 Cal.4th 39, 51
22 (1996). Unjust enrichment occurs when a party retains for itself the funds that should have been
23 made available to another. Lectrolryer, 77 Cal.App.4th at 726. Determining whether it is unjust
24 for a person to retain a benefit may involve policy considerations. First Nationwide Savings v.
25 Perry, 11 Cal.App.4th 1657, 1663 (6th Dist. 1992). Where policy considerations do not apply,
26 the “customary way of regarding a particular type of transaction” may provide insight into
27 whether a person has retained a benefit unjustly. Id.; Dromy Intern. Inv. Corp. v. Channel

1 Because Defendant was a grantee and not a trustee of Plaintiff's quitclaim deed, he
2 became enriched as to the 2.5-acre parcel as of the date of the grant; that is, on May 10, 1994. As
3 of that date, Defendant had the legal authority to use, encumber, or sell any or all of the Property,
4 including the 2.5-acre parcel, and pursuant to Dintino, Defendant was enriched as of that date.

5 As noted above, the essence of unjust enrichment is the unjust *retention* of a benefit at the
6 expense of another. Lectrodryer, 77 Cal.App.4th at 726. The question, then, is when did
7 Defendant's retention of the benefit of the 2.5-acre parcel become unjust? Unlike Plaintiff's
8 claim for promissory fraud, which alleges that Defendant lacked a *present* intent to reconvey the
9 2.5-acre parcel at the time the Deal was made, the claim for unjust enrichment alleges Defendant
10 unjustly retained the 2.5-acre parcel *or its value*. See FAC, Doc. # 24 at ¶ 20. Thus, the FAC
11 does not necessarily peg Defendant's unjust enrichment to the retention of the 2.5-acre parcel
12 itself. The Fac alleges, at least by implication, that unjust enrichment may be found in the
13 retention of the cash value of the property or in the retention of the 2.5-acre parcel.

14 As noted previously, the court looks first to policy considerations and then to the
15 "customary way of regarding a particular type of transaction" for guidance in the determination
16 of when the retention of a benefit becomes unjust. First Nationwide Savings, 11 Cal.App.4th at
17 1663; Dromy Intern. Inv. Corp., 2003 WL 550131 at *15. While there appears to be little in the
18 way of policy considerations to guide the court's decision, there is little doubt that the transaction
19 at issue here has the flavor, although not the legal force, of a contractual arrangement. As the
20 court has previously held, the Deal is unenforceable as a contract because it does not satisfy
21 California's statute of frauds. However, it is not disputed that under agreed terms of the Deal,
22 both Plaintiff and Defendant promised to perform and both received consideration. What
23 remains ambiguous, and is in all likelihood unresolvable, is whether performance by either
24 Plaintiff or Defendant of their part of the Deal was intended by the parties to be a condition
25 precedent to the obligation of the other party to perform.

26 Because each party was bound under the Deal to perform and because Plaintiff admittedly
27

1 did not perform his part of the Deal, the court cannot make the determination that Defendant's
2 failure to subdivide the 2.5-acre parcel and reconvey it to Plaintiff was either a "breach" of the
3 Deal or was in some other way unjust. Certainly in the immediate aftermath of Plaintiff's arrest
4 and conviction there is no basis for the court to conclude that Defendant, who had allegedly spent
5 in excess of \$300,000.00 to clear encumbrances to title to the Property, was unjust in retaining
6 possession to the entire Property to see whether or how Plaintiff intended to deal with his part of
7 the bargain.

8 Defendant contends that the October 18 Letter from Defendant to Dwight placed Plaintiff
9 at least on inquiry notice that Defendant had no intent to reconvey based on his communications
10 with Dwight and Vincent, both of whom knew of the contents of the Letter. The court rejects
11 Defendant's contention for two reasons. First, assuming Plaintiff was in receipt of the letter, the
12 letter itself does not set out a cause of action for unjust enrichment because it does not state an
13 intent to sell the property without any compensation to Plaintiff; it merely states that the Deal
14 (including Plaintiff's payment to Defendant and Defendant's reconveyance of the 2.5 acres)
15 would be considered null and void and that the property would be sold. Second, even if the
16 October 18 Letter could be construed as notice of an intent on the part of Defendant to sell the
17 whole of the Property and retain all the benefits of the sale for himself, the letter would not be
18 sufficient to serve as notice of present unjust enrichment. Defendant does not cite, and the court
19 cannot find any authority for the proposition that a claim for unjust enrichment may be said to
20 accrue upon evidence of the intent to unjustly retain a benefit in the future.

21 Although the October 18 Letter sets forth Defendant's offer to convey the Property back
22 to Plaintiff upon compensation for the money Defendant spent to clear title to the Property, there
23 is nothing in the facts of this case that suggest that the actual positions of the two parties changed
24 with respect to each other during the time that Property was retained by Defendant. It remained
25 the case during that time that Plaintiff owed Defendant for Defendant's expenses and Defendant
26 owed Plaintiff the reconveyance of the 2.5-acre parcel and neither party performed. If it cannot
27

1 be said that Defendant's possession (or retention) of the Property was unjust immediately
2 following Plaintiff's arrest and imprisonment, then there is nothing that can be said to mark the
3 moment in time where Defendant's continuing possession of the Property became unjust.

4 Nothing in the record before the court indicates any real change with respect to the
5 parties' relationship to each other until Defendant sold the Property to a third party. As of the
6 time of the sale of the Property by Defendant to a third party, the parties positions changed in that
7 there was no possibility that the 2.5-acre parcel was going to be reconveyed by Defendant to
8 Plaintiff and, to the extent that Defendant was unjustly enriched as a result of the sale price of the
9 Property, the portion of the proceeds that would have been unjust for Defendant to retain were
10 due to Plaintiff. The court therefore finds that the earliest possible date for the accrual of
11 Plaintiff's claim for unjust enrichment claim is the date of sale of the Property to a third party
12 coupled with the intent of Defendant to retain all proceeds from the sale of the Property.
13 Therefore, under California's notice rule, the statute of limitations began to run on Plaintiff's
14 unjust enrichment claim when Plaintiff had at least inquiry notice of the sale of the Property, not
15 when he had notice of Defendant's intent to not subdivide the Property.

16 While Defendant's October 18 Letter to Dwight is not sufficient to constitute inquiry
17 notice that Plaintiff had been wronged by Defendant's unjust enrichment, the Letter was
18 sufficient to put Plaintiff on notice that Defendant planned to sell the property if Defendant was
19 not paid for his out-of-pocket expenses. Because the October 18 letter was sufficient to give
20 notice of Defendant's intent to sell the Property in the immediate future, and because any
21 proceeds from the sale that were due Plaintiff were due immediately upon the sale, the court
22 finds that the statute of limitations began to run as to Plaintiff's claim of unjust enrichment at the
23 time of the sale of the Property to a third party absent any applicable tolling provisions.

24 As discussed more completely below, Plaintiff alleges that, notwithstanding his frequent
25 contact with Dwight and notwithstanding Dwight's admitted knowledge of the contents of the
26 October 18 Letter, Plaintiff had no actual notice of the contents of the October 18 Letter or of
27

1 Defendant's intent to sell the Property until Plaintiff's release in 2006. As noted, the standard of
2 the Discovery Rule is an objective, reasonable person standard. Jolly, 44 Cal.3d at 1110 - 1111.
3 As will be discussed more fully below, the court finds that Plaintiff's subjective ignorance is
4 unreasonable in light of Plaintiff's ongoing contact with Dwight during the term of his
5 incarceration and in light of Plaintiff's and Dwight's admitted knowledge of the situation. Aside
6 from the application of statutory tolling, the court finds that the 2-year statute of limitations
7 period began to run when the Property was sold by Defendant to a third-party buyer.

8 The court has examined the record before it and cannot find any reference to the date the
9 Property was actually sold to a third party, nor are facts presented that would indicate when
10 Plaintiff was on inquiry notice of the sale. Absent facts that clearly establish when the sale of the
11 property occurred and absent facts to determine when Plaintiff was on inquiry notice of the sale,
12 the court lacks information necessary to adequately analyze Defendant's motion for summary
13 judgment on Plaintiff's unjust enrichment claim. The court will stay decision on Defendant's
14 motion for summary judgment as to Plaintiff's claim for unjust enrichment. The parties will be
15 directed to submit information specifying the date of sale of the Property to a third party and to
16 submit any further argument concerning the date of accrual of Plaintiff's unjust enrichment
17 claim.

18 **II. Plaintiff's Claim for Fraud**

19 Plaintiff's claim for fraud is based on his allegation that at the time the Deal was struck,
20 Defendant had no *present* intent to subdivide the Property and reconvey 2.5 Acres to Plaintiff.
21 Thus, the gravamen of Plaintiff's claim for fraud is the failure to subdivide the Property and not
22 Defendant's retention of all proceeds from the sale of the Property. Under California's discovery
23 rule, Plaintiff's claim for fraud accrued at the time of the transfer of the Property in reliance on
24 Defendant's knowingly false promise to subdivide and reconvey; that is, in May of 1994. The
25 statute of limitations therefore began to run when Plaintiff had at least inquiry notice as to
26 Defendant's intent. See Security First Nat'l Bank v. Ross, 214 Cal.App.2d 424, 429 (4th Dist.

1 1963) (“Where the gist of an action is fraud, regardless of its form, the three year period provided
2 by § 338(4) of the Code of Civil Procedure applies, but does not commence to run until the
3 aggrieved party knows or should know of that fraud”). California courts ““have repeatedly
4 affirmed that mere ignorance, not induced by fraud, of the existence of the facts constituting a
5 cause of action on the part of a plaintiff does not prevent the running if the statute of limitations
6 [citations]; and that “mere ignorance of the facts, . . . without some valid excuse for the
7 ignorance was of no consequence.” [Citation.]” Hayward Union High School Dist. v. Madrid,
8 234 Cal.App.2d 100, 126 (1st Dist. 1965). The prevailing rule is that ““a failure to discover a
9 cause of action does not, as in the case of fraudulent concealment, suspend the running if the
10 statute of limitations.’ [Citation.]” Id.

11 The issue here is close. Plaintiff admits Defendant’s proffered undisputed material fact
12 #15, which state that Defendant “stated that it was evident from [Defendant’s] October 18, 1994,
13 letter that [Defendant] had changed his mind regarding the alleged [D]eal.” Doc. # 65-5 at 3.
14 The “change” in Defendant’s mind is clearly that he no longer intended to subdivide and
15 reconvey the 2.5-acre parcel back to Plaintiff, if he ever did have such intention. Defendant
16 states in the October 18 Letter that he will sell the Property for the stated price – presumably to
17 Dwight or Plaintiff – by the date set forth or, in the absence of any commitment by Dwight or
18 Plaintiff to purchase the Property, Defendant states he will offer the Property on the open market.
19 Given that Defendant’s intent to not reconvey the 2.5 acres back to Plaintiff is the linchpin of
20 Plaintiff’s fraud claim, the court finds that the contents of the October 18 Letter are sufficient to
21 give at least inquiry notice of the facts of Plaintiff’s claim for relief and therefore to start the
22 running of the limitations period. The question, then is when did Plaintiff know of the contents
23 of the October 18 Letter or when should he have known?

24 Plaintiff alleges he did not see the see the October 18 Letter or have any indication that
25 the parcel was not reconveyed until his release from prison in 2006. However, two factors
26 militate against the sufficiency of Plaintiff’s bare claim of ignorance to justify the conclusion
27

1 Plaintiff lacked at least inquiry notice. First, Plaintiff was imprisoned for a term of life without
2 the possibility of parole and had left Defendant with the burden of carrying the financial
3 liabilities of the Property, whether subdivided or not, into an indefinite future. It would be quite
4 unreasonable for Plaintiff to expect that such an arrangement would be carried forward
5 indefinitely without some alternative agreement. Second, Defendant took affirmative steps to
6 make his position known by committing his position to writing and delivering it to Dwight. As
7 Defendant points out, Dwight was the only person Defendant had contact with regarding the Deal
8 prior to the conveyance of the Property by quitclaim deed and so was the person Defendant
9 naturally relied upon to address his concerns.

10 The parties dispute whether Dwight was Plaintiff's ostensible agent for purposes of
11 negotiating the Deal. The court, however, does not find that the issue turns on the question of
12 agency. Rather, what is important is that it is undisputed that Dwight sought out Defendant to
13 offer him the Deal and acted as go-between in the communications leading up to the conveyance
14 of the Property from Plaintiff to Defendant. It is therefore clear that Defendant's delivery of the
15 October 13 Letter to Dwight should reasonably be expected to put both Dwight and Plaintiff on
16 notice that Defendant was not going to continue to carry the financial burdens of maintaining the
17 Property or any portion of it into an indefinite future and that attention to the Deal was therefore
18 required. It is also undisputed that Dwight was in receipt of the October 13 Letter as of 1994 and
19 that he visited and communicated with Plaintiff frequently and regularly over the term of
20 Plaintiff's incarceration. The question, then, is not whether Dwight's knowledge concerning the
21 contents of the October 13 Letter can be imputed to Plaintiff as a matter of law due to the
22 ostensible agency relationship between Dwight and Plaintiff; it is whether Plaintiff's claim of
23 ignorance regarding matters concerning the Property is reasonable in light of the situation he had
24 placed Defendant in and the information readily available to him were he to inquire.

25 The court concludes there was no concealment of the facts as to Plaintiff's fraud claim
26 nor was there any excuse for the ignorance Plaintiff now alleges given the circumstances and the
27

1 ready availability of information from Dwight. The court finds Plaintiff had at least inquiry
2 notice of the facts of his claim for fraud not later than 1995.

3 Plaintiff claims that he is entitled to both statutory and equitable tolling of the running of
4 the statute of limitations on his claims. Defendant does not dispute Plaintiff's contention that he
5 was entitled to a two-year tolling period pursuant to California Code of Civil Procedure section
6 352.1 because he was incarcerated during the period the statute of limitations was running.
7 However, even with the two-year tolling period, the limitations period ran on Plaintiff's fraud
8 claim not later than the end of 2000, eight years before the commencement of this action.
9 Plaintiff relies on Jones v. Blanas, 393 F.3d 918 (9th Cir. 2004) for the proposition that, in
10 addition to the term of tolling provided by section 352.1, equitable tolling should apply
11 independently to cover the period from 2000 until the filing of this action. Plaintiff's reliance on
12 Jones is unavailing.

13 While equitable tolling is independent of the literal wording of the Code of Civil
14 Procedure id. at 928, the Jones court applied equitable tolling in lieu of, not in addition to,
15 statutory tolling provided by section 352.1. The Jones court did this in order to avoid the
16 fundamental unfairness that would accrue if a prisoner serving a criminal sentence was to receive
17 the advantage of section 352.1 and a civil detainee housed under the same conditions would not.
18 Id. at 929. "California courts apply equitable tolling 'to prevent the unjust technical forfeiture of
19 causes of action, where the defendant would suffer no prejudice.' [Citation.] Application of
20 California's equitable tolling doctrine 'requires the balancing of the injustice to the plaintiff
21 occasioned by the bar of his claim against the effect upon the important public interest or policy
22 expressed by the . . . limitations statute.' [Citation.]"

23 Contrary to Plaintiff's contention that the application of equitable tolling to his fraud
24 claim would result in no prejudice, the court finds that Defendant, having taken reasonable steps
25 to inform Plaintiff of his intentions and having been left to extricate himself from a
26 disadvantageous position because of Plaintiff's inattention, is entitled to repose at least with
27

1 respect to any claims of fraud that were time barred at the latest eight years before this action
2 commenced. Plaintiff is not barred from his cause of action by a mere technicality or by
3 excusable oversight. The statute of limitations ran on Plaintiff's fraud claim at least eight years
4 before the instant action was filed. Nor is Plaintiff subject to fundamental injustice by being
5 time-barred as to his fraud claim. As Defendant points out in his reply brief, Plaintiff's
6 contentions with respect to Defendant's intentions during the period of Plaintiff's imprisonment
7 contradict his claim of fraud. Plaintiff alleges in his opposition that "what really occurred here is
8 that once Plaintiff was arrested, [D]efendant sat back, observed, and once a life sentence was
9 imposed, decided he could keep the property in question without abiding by his deal." Doc. # 56
10 at 2:21-23. Thus, Plaintiff negates his own claim that Defendant had no present intent to
11 reconvey the property at the time the Deal was struck.

12 The court concludes that Plaintiff's claim for fraud is time-barred. Plaintiff's remedy, if
13 any, lies in his claim for unjust enrichment.

14
15 THEREFORE, in accord with the foregoing discussion, Defendant's motion for summary
16 judgment as to Plaintiff's claim for unjust enrichment is STAYED. Defendant shall file and
17 serve a statement setting forth the date of sale of the Property by Defendant to a third-party buyer
18 not less than fifteen (15) days from the date of this order. Either party may submit further
19 argument as to the date of accrual of Plaintiff's claim for unjust enrichment. Such additional
20 argument shall be filed and served not later than fifteen (15) days from the date of service of this
21 order. Defendant's motion for summary judgment as to Plaintiff's claim for fraud is GRANTED.

22
23 IT IS SO ORDERED.

24 Dated: September 3, 2010

25 
26 CHIEF UNITED STATES DISTRICT JUDGE