UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOANNA C SULLIVAN,

Plaintiff,

v.

STEPHEN A. FINN,

Defendant.

Case No. 16-cv-01948-WHO

ORDER GRANTING IN PART JOANNA SULLIVAN'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING STEPHEN FINN'S MOTION FOR SUMMARY JUDGMENT

Re: Dkt. Nos. 92, 97

INTRODUCTION

In this case plaintiff JoAnna Sullivan alleges that defendant Stephen Finn has breached a Stock Purchase Agreement ("SPA"), signed in 2011, through which Finn purchased Sullivan's majority shares and partnership in the Sullivan family's winery. As outlined in the SPA, in exchange for ownership of the winery Finn agreed to pay Sullivan $9,000 a month for the rest of her life (the "Annuity Obligation") and to pay an amount not to exceed $500,000 toward a life estate in a property of Sullivan's choice (the "Life Estate Obligation"), (collectively the "Payment Obligations"). Sullivan alleges that Finn has failed to comply with these obligations and brings four claims for relief: (1) breach of contract because Finn failed to pay Sullivan at least six of the monthly annuity payments required under the SPA; (2) declaratory and injunctive relief, seeking a declaration that Finn is required to pay Sullivan $9,000 a month for the rest of her life and an injunction compelling him to make such payments; (3) breach of contract because Finn failed to meet his Life Estate Obligation; and (4) elder abuse because Finn deprived Sullivan of money and property that Finn knew would likely be harmful to Sullivan.

The parties have filed cross-motions for summary judgment. Finn seeks summary judgment on all four of Sullivan's claims, arguing that he was not required to perform the Payment

Obligations under the SPA because Sullivan made various misrepresentations about the condition of the winery that excused his performance. There is no legal support for his arguments, and his motion is DENIED.

Sullivan moves for summary judgment on her first three claims, arguing that there are no material facts in dispute to show that Finn was obligated to perform the Payment Obligations and that he has failed to do so. Although Finn argues that his ex-wife, Kelleen, agreed to satisfy his obligation to Sullivan (her mother), there is no evidence that Sullivan accepted Kelleen's full performance, which would be necessary under California Civil Code section 1473 to extinguish his obligation because it was allegedly being performed by a third party. Sullivan's motion for partial summary judgment is GRANTED with regard to liability. She also moves for summary judgment with regard to damages resulting from breach of the Annuity Obligation and Life Estate Obligation.[1] Sullivan's motion for partial summary judgment is GRANTED with regard to damages owed for breach of the Life Estate Obligation, as there are no facts in dispute as to it, but DENIED with regard to damages owed for breach of the Annuity Obligation because of disputed facts.

BACKGROUND

JoAnna Sullivan is Finn's former mother-in-law. Kelleen Decl. ¶2, (Dkt. No. 102). Finn married Sullivan's daughter, Kelleen Sullivan on June 18, 2011 and the couple divorced in October 2015. Prior to Finn and Kelleen's marriage Kelleen's family, the Sullivans, owned a family winery in Napa County, California that was organized into two entities, Sullivan Vineyards Corporation ("SVC") and Sullivan Vineyards Partnership ("SVP"). JoAnn Decl. ¶2 (Dkt. No. 101). In 2011, JoAnna was the majority shareholder of SVC and majority partner of SVP. *Id.* ¶3.

On August 12, 2011, Finn entered into the SPA with SVC, SVP, JoAnna, and the Sullivan Family Revocable Living Trust, according to which Finn became the majority shareholder of SVC and the majority partner of SVP. Finn Decl. Ex. A, ("SPA") (Dkt. No. 94-1). In exchange, the SPA provided that Finn was required to pay JoAnna as follows:

[1] She does not move for summary judgment on the elder abuse claim, asserting that a jury will be needed to assess the damages due on that claim.

> 1.2 Consideration for Interests. Subject to the terms and conditions of this Agreement and in consideration of the acquisition, sale, conveyance, assignment, transfer and delivery by Seller of the Interests to Buyer, and the execution and delivery of this Agreement by SVC, SVP and Seller to Buyer, Buyer shall deliver to Seller on the Closing Date the following aggregate purchase price (collectively, the "Purchase Price"):
>
> (a) Buyer Obligation to Make Annuity Payments. Buyer shall pay to Seller JoAnna Sullivan $9,000 within one week following the completion of her move from the house located at 1090 Galleron Road, St. Helena, CA 94754 (the "***Galleron Property***"), and $9,000 per month thereafter on the monthly anniversary of the first $9,000 payment for the remainder of her life (the "***Annuity***") . . .
>
> (b) Buyer Obligation with Respect to Residence; Establishment of Trust. On the third annual anniversary of JoAnna C. Sullivan completing her move from the Galleron Property, Buyer shall pay an amount not to exceed $500,000 towards a life interest in a personal residence of JoAnna C. Sullivan's choice. Such life interest in such residence shall be evidenced by a Trust Agreement (the ***"Trust Agreement"***). Buyer and JoAnna C. Sullivan hereby agree to enter into the Trust Agreement in connection with the purchase of such residence. Buyer and JoAnna C. Sullivan will pay all property taxes, insurance, maintenance, home owner association costs, and all other costs associated with such residence during her life time, and to the extent not paid, Buyer shall have the right to offset and deduct the amount of such payments from the Annuity payments.

SPA § 1.2.

In Section 2 of the SPA, JoAnna made a number of representations and warranties about the financial and operating condition of the winery. SPA § 2. These representations were supplemented and clarified by Schedule 2, which was incorporated into the SPA at its execution. Finn Decl. Ex. B (Dkt. No. 94-1).

Following the execution of the SPA, Finn began making the $9,000 monthly annuity payments to JoAnna. JoAnna Decl. ¶7. In the summer of 2014, JoAnna, her children, and Finn attempted to find a property that would suit JoAnna to satisfy the Life Estate Obligation. Eventually, JoAnna selected a property located at the Del Mesa Community in Carmel, with a purchase price of $558,000. *Id.* Because the purchase price exceeded $500,000, Finn, Kelleen, and JoAnna entered into an agreement, memorialized by a letter, regarding how the funds would be contributed to purchase the property. Warden Decl., Ex. C at 4 (Dkt. No. 118-3). The letter states that "Kelleen Finn agrees to add $10,000 cash to the purchase amount, making $510,000 of

the $557,000 purchase price, paid in full by Stephen and Kelleen Finn per the [SPA]." *Id.* It also states that JoAnna would contribute $16,710 in cash and the remaining $31, 290 "by allowing Stephen Finn to deduct $1,000 a month from [her] monthly annuity towards the remainder of the balance until paid in full." *Id.* Starting in November, 2014, Finn reduced his monthly annuity payments to JoAnna by $1,000, paying her $8,000 a month. JoAnna Decl. ¶23.

On October 22, 2014, Finn wrote Kelleen a check for $500,000. Kelleen Decl. Ex. C. In the memo line on the check Finn wrote "Prenup Agreement." *Id.* Under the marriage agreement between Finn and Kelleen, Finn was obligated to pay Kelleen $500,000 a year for the first ten years of their marriage. Kelleen Decl. Ex. A. Finn told Kelleen to purchase the Del Mesa property with these funds. Kelleen Decl. ¶16. Kelleen used these funds to purchase the Del Mesa property at the end of October, 2014 as her sole and separate property. Warden Decl., Ex. G. In connection with the purchase of the Del Mesa property, the title insurance company suggested that Kelleen use the following language to indicate that the property was being purchased to establish a life estate for her mother:

> An agreement exists between Kelleen Sullivan Finn, and JoAnna C. Sullivan, in which a Life Estate is to be established for JoAnna Sullivan. This letter confirms that at this time, Kelleen has entered into a purchase contract on the property, 157 Del Mesa, Carmel, CA 93921, which is being purchased to establish this life estate.

Warden Decl. Ex. J at 4. Kelleen executed a letter containing this language prior to closing. Warden Decl. Ex. K at 4.

Because she was not on the title to the property and received no life estate deed, following closing, JoAnna was concerned that she had not received a life estate in the Del Mesa property. JoAnna Decl. ¶12. To help address this issue, on April 10, 2015 Kelleen created a revocable trust that included the following language:

> As soon as practicable after my death, even if my husband survives me, if my mother, JoAnna Sullivan, survives me and is living at the time property becomes distributable under this Section and is then occupying the Carmel Property (defined below) as her primary residence, my Trustee shall set aside (i) any interest held or received by my trust at my death in the Carmel Property, including any improvements thereon, all insurance policies thereon and related claims under such policies, and free of all liens and encumbrances thereon, and (ii) the sum of fifty thousand dollars ($50,000) to be held in trust for the benefit of JoAnna Sullivan as

> described below. For all purposes of this agreement, references to the 'Carmel Property' means the residence located at 157 Del Mesa, Carmel, California 93921. Such trust shall be referred to as the Carmel Property Trust . . . If my mother predeceases me, this gift shall lapse and the Carmel Property shall be administered as part of my remaining trust property as provided in Article Seven.

Warden Decl. Ex. S.

In October 7, 2015, a Colorado court entered a divorce decree, ending Finn and Kelleen's marriage. Kelleen Decl. ¶24. Because the marriage agreement between Kelleen and Finn provided that Kelleen would acquire any interest in the Sullivan winery upon the dissolution of the couple's marriage, the Colorado court ordered that Finn's interests in the Sullivan winery be transferred to Kelleen. *Id.* Following the dissolution of marriage Finn stopped making annuity payments to JoAnna. JoAnna Decl. ¶16.

Because of her ongoing concern that she did not have a life estate in the Del Mesa property, and because Finn had stopped making annuity payments, in late 2015 JoAnna Sullivan hired an attorney to help her obtain a life estate deed memorializing a life estate in the Del Mesa property and enforce the Annuity Obligation. Warden Decl. Ex. F at 132:3-17. JoAnna filed a lawsuit against Finn in Monterey County Superior Court on December 2, 2015, to enforce the Payment Obligations under the SPA. Warden Decl. Ex. H. She voluntarily dismissed the case without prejudice on December 31, 2015. *Id.*

JoAnna never took possession of the Del Mesa property and Kelleen ultimately rented it out to another tenant. Warden Decl. Ex. F at 150:9-152:20. Kelleen sold the Del Mesa Property in October of 2016 for approximately $640,000. Warden Decl. Ex. I at 34:18-23. Following the sale, Kelleen paid JoAnna $19,500, which included the $17,000 JoAnna had paid for the property with her own cash, plus $2,500 in rental proceeds. Warden Decl. Ex. I at 122:22-123:16.

LEGAL STANDARD

Summary judgment on a claim or defense is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In order to prevail, a party moving for summary judgment must show the absence of a genuine issue of material fact with respect to an essential element of the non-moving party's claim, or to a defense on which the non-moving party will bear the burden of

persuasion at trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this showing, the burden then shifts to the party opposing summary judgment to identify "specific facts showing there is a genuine issue for trial." *Id.* The party opposing summary judgment must then present affirmative evidence from which a jury could return a verdict in that party's favor. *Anderson v. Liberty Lobby*, 477 U.S. 242, 257 (1986).

On summary judgment, the Court draws all reasonable factual inferences in favor of the non-movant. *Id.* at 255. In deciding a motion for summary judgment, "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Id.* However, conclusory and speculative testimony does not raise genuine issues of fact and is insufficient to defeat summary judgment. *See Thornhill Publ'g Co., Inc. v. GTE Corp.,* 594 F.2d 730, 738 (9th Cir. 1979).

DISCUSSION

Finn asserts that summary judgment on all of JoAnna's claims is appropriate because there is no material dispute that he was not required to perform the purchase obligations. Finn Mot. at 1 (Dkt. No. 92). He argues that JoAnna made multiple misrepresentations about the financial and operating condition of the winery, that these representations were conditions precedent to his performance, and that, because JoAnna failed to meet her obligation to make truthful representations, his duty to perform was never triggered. *Id.* at 10. He contends that even if Sullivan's representations and warranties were not conditions precedent, by making false representations and warranties she materially breached her obligations under the contract, thus excusing his performance. *Id.* at 11. Alternatively, he argues that if he was required to perform under the contract, he is entitled to summary judgment on JoAnna's life estate claim because he fully performed the Life Estate Obligation. *Id.*

None of Finn's arguments are convincing: JoAnna's representations and warranties were not conditions precedent to Finn's Payment Obligations, and there is no legal precedent for Finn's claim that JoAnna's alleged misrepresentations excused his obligation to perform. He has failed to demonstrate that he satisfied the Life Estate Obligation because the undisputed facts demonstrate that Kelleen, not Finn, purchased the Del Mesa property with her own separate funds,

and that JoAnna did not accept Kelleen's performance.

In contrast, JoAnna moves for summary judgment on her first three claims, asserting that there is no material dispute that Finn was obligated to perform the purchase obligations and that he failed to perform them. Sullivan Mot. at 14 (Dkt. No. 97). As discussed below, there is no material factual dispute that Finn was obligated to perform the Payment Obligations and that he has not satisfied these obligations.

I. WAS FINN OBLIGATED TO PERFORM THE PAYMENT OBLIGATIONS?

A. Were JoAnna's representations and warranties conditions precedent to Finn's performance?

Finn asserts that he was not obligated to perform the annuity and life estate terms because the truthfulness of JoAnna's representations and warranties in the SPA were conditions precedent to his Payment Obligations, several of her representations were false, and, as a result, his obligation to perform never arose. Finn Mot. at 10.

Under California law "a condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed." Cal. Civ. Code, § 1436. In forming a contract, parties may "expressly agree that a right or duty is conditional upon the occurrence or nonoccurrence of an act or event." *Platt Pacific, Inc. v. Andelson*, 6 Cal.4th 307, 313 (1993) (citing Cal. Civ. Code § 1434). "Thus, a condition precedent is either an act of a party that must be performed or an uncertain event that must happen before the contractual right accrues or the contractual duty arises." *Id.* "Most conditions precedent describe acts or events which must occur before a party is obligated to perform a promise made pursuant to an existing contract, a situation to be distinguished conceptually from a condition precedent to the formation or existence of the contract itself." *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1065 (N.D. Cal. 2005) (quoting *Oppenheimer & Co., Inc. v. Oppenheim, Appel, Dixon, & Co.*, 86 N.Y.2d 685, 690 (1995).

Conditions precedent are disfavored under California law and courts will not construe contract terms to create conditions precedent unless the language of the contract clearly requires such a construction. *See Helzel v. Superior Court*, 123 Cal.App.3d 652, 663 (Cal. Ct. App. 1981)

("As a general rule of contract construction conditions precedent are not favored and an agreement will be strictly construed against a party asserting that its provisions impose a condition precedent."); *Sosin v. Richardson*, 210 Cal.App.2d 258, 264 (Cal. Ct. App. 1962) ("Provisions of a contract will not be construed as conditions precedent in the absence of language plainly requiring such construction."); *Antonelle v. Kennedy & Shaw Lumber Co.*, 140 Cal. 309, 319 (1903) ("Courts are disinclined . . . to construe the stipulations of a contract as conditions precedent, unless compelled by the language of the contract plainly expressed."). Further, "[f]orfeitures, [] are not favored; hence a contract, and conditions in a contract, will if possible be construed to avoid forfeiture." *O'Morrow v. Borad*, 27 Cal.2d 794, 800 (1946).

The phrase " 'Subject to' is generally construed to impose a condition precedent" under California contract law. *Rubin v. Fuchs*, 1 Cal.3d 50, 54 (1969). As a result, Finn asserts that every single term and condition in the SPA is a condition precedent to his Payment Obligations because Section 1.2 of the SPA states that his Payment Obligations are "[s]ubject to the terms and conditions of this Agreement . . ." SPA § 1.2. Because JoAnna's representations and warranties in Section 2 and Schedule 2 are "terms" of the contract, Finn concludes that the truthfulness of these representations and warranties are conditions precedent to his obligations and any misrepresentation or misstatement of fact, regardless of materiality, excuses his performance.

Finn's argument is not convincing for several reasons. First, JoAnna's representations and warranties are not conditions precedent to Finn's performance obligation because to the extent these representations were acts or events, they occurred before the contract was formed. Although not made explicit by California law, a condition precedent is generally an act or event that occurs subsequent to the formation of a contract, not one that occurs contemporaneously. *See NGV Gaming*, 355 F. Supp. 2d at 1065 ("Most conditions precedent describe acts or events which must occur before a party is obligated to perform a promise made *pursuant to an existing contract, a situation to be distinguished conceptually from a condition precedent to the formation or existence of the contract itself*."). Section 1436 of the California code defines a condition precedent as "one which is to be performed before *some right dependent thereon* accrues, or *some act dependent thereon* is performed" implying that the act or event that constitutes the condition precedent must

occur after a contract has come into being, since there is already some established conditional right or obligation to act. Cal. Civ. Code § 1436. Although JoAnna's representations were arguably "acts" and the truth of these representations were arguably "events," these acts and events occurred either before or at the time the contract was formed. Construing these terms as conditions precedent to Finn's specific Payment Obligations is therefore contrary to the general purpose and definition of a condition precedent: to condition a particular contract right or obligation on a yet to be performed act or unknown event.

Second, construing JoAnna's representations and warranties as conditions precedent to Finn's Payment Obligations would lead to an absurd result--finding that despite the alleged misrepresentations, the parties reached a valid contract, but because of the same alleged misrepresentations, Finn's obligation to perform the Payment Obligations could never arise. Not only is this illogical, such a construction would work a significant forfeiture to JoAnna, since it would mean that at the time the contract was formed, JoAnna could never be entitled any benefit resulting from Finn's Payment Obligations as no act or event could transpire to trigger those obligations: after all, she could not go back in time and withdraw or amend any of the representations she made prior to execution or change the underlying factual conditions on which those representations were based. Finn functionally argues that JoAnna's alleged misrepresentations materially altered the terms of the contract at its formation – by eliminating Finn's Payment Obligations – but that she should still be bound by the rest of the SPA. California's policy of disfavoring forfeitures weighs heavily against adopting Finn's proposed construction. *O'Morrow*, 27 Cal.2d at 800.

Finally, despite using the phrase "subject to," Section 1.2 does not contain sufficient unambiguous language, plainly designating each and every term of the contract a condition precedent to Finn's Payment Obligations, to overcome California's strong disfavor for such terms. In cases where "subject to" has been held to impose a condition precedent, the phrase applied to narrow and specific terms of the contract. *See, e.g.*, *Rubin v. Fuchs*, 1 Cal.3d at 54 (concluding that the language "subject to the property being subdivided into ten . . . lots at the expense of the Seller" created a condition precedent.); *Matthews v. Starrit* 252 Cal.App.2d 884, 887 (Cal. Ct.

App. 1967) (the language "subject to . . . refusal of the purchase price . . . by Richfield" created a condition precedent); *Lawrence Block Co. v. Palston*, 123 Cal.App.2d 300, 310 (1954) (the language "Subject to Seller Securing a $60,000 First Deed of Trust" was a condition precedent). In contrast, here Section 1.2 states vaguely that "Subject to the terms and conditions of this Agreement" Finn is required to make the Payment Obligations. SPA § 1.2. Unlike the language in *Rubin*, *Matthews*, or *Lawrence*, Section 1.2 does not outline a specific act or event that must take place before Finn is obligated to perform but states generally that his Payment Obligations will be made "subject to the terms and conditions of this Agreement." This language does not plainly require the court to construe each and every term and condition of the contract as a condition precedent to Finn's performance.

Finn's proposed construction stretches the meaning of condition precedent, works a forfeiture against JoAnna, and is not clearly required by the language of the contract. Given the strong disfavor under California law for construing contract terms as conditions precedent, Finn's assertion, that each and every term of the contract is a condition precedent to his performance must fail.

B. Whether Sullivan's alleged misrepresentations excuse Finn's performance as a material breach

Finn next argues that, even if the truth of Sullivan's representations and warranties were not conditions precedent to his Payment Obligations, her alleged misrepresentations constitute a material breach of the contract that has not rendered the contract void but has discharged his own duty to perform the Payment Obligations. Finn Mot. at 11. Finn's argument is based on a confused hodgepodge of legal precedent that does not hold up to scrutiny. The cases Finn cites demonstrate that a material misrepresentation may allow an innocent party to rescind a contract. But they do not support Finn's position that Sullivan's alleged misrepresentations excuse his performance of the payment terms without requiring him to disavow the contract in full.

First Finn cites to *Consolidated World Investments, Inc. v. Lido Preferred Ltd.*, 9 Cal.App.4th 373, 380 (Cal. Ct. App. 1992) for the proposition that, "It is elementary a plaintiff suing for breach of contract must prove it has performed all conditions on its part or that is was

excused from performance." This case does not support Finn's position because Sullivan's representations and warranties were not obligations to act. Following the execution of the contract, Sullivan had no continuing obligation to perform except to transfer her interest in the winery to Finn. Finn also cites to *Brown v. Grimes*, 192 Cal.App.4th 265, 277-78 (Cal. Ct. App. 2011) for the proposition that "[w]hen a party's failure to perform a contractual obligation constitutes a material breach of the contract, the other party may be discharged from its duty to perform under the contract." But again, Finn has not identified a contractual obligation that Sullivan failed to perform; Finn's only allegations are that Sullivan made misrepresentations about the financial and operating conditions of the winery. Making a misrepresentation during the formation of the contract is not the same as failing to perform a contractual obligation. Neither *Consolidated World Investments* nor *Brown* applies to the facts of this case.

The two misrepresentation cases Finn cites indicate that material misrepresentations may allow an innocent party to rescind a contract, but do not support Finn's position that Sullivan's alleged misrepresentations excuse him from making the Payment Obligations while leaving the rest of the SPA in place. In *Wood v. Kalbaugh*, 39 Cal. App.3d 926, 930 (Cal. Ct. App. 1974), the California Court of Appeal explained that "[t]o justify the unilateral rescission of a contract on the ground of misrepresentation, it must be shown that the misrepresentation was of a material fact; ordinarily, a misrepresentation is of a material fact '. . . . if it would be likely to affect the conduct of a reasonable man with reference to the transaction in question.' " (quoting *Costello v. Roer*, 77 Cal.App.2d 174, 178 (Cal. Ct. App. 1946). In *French v. Merill Lynch, Pierce, Fenner & Smith, Inc.*, 784 F.2d 902, 904 (9th Cir. 1986), the Ninth Circuit considered whether an arbitration panel had erroneously concluded that a plaintiff was entitled to rescind certain stock trades and entitled to compensatory and consequential damages on the basis of material misrepresentations. It concluded that the panel's finding was supported by the record and met California's standard that a material misrepresentation be one that is "likely to affect the conduct of a reasonable man with reference to the transaction in question." *Id.* at 906-907.

Finn cites these cases to establish the standard for "material misrepresentation" but these cases undermine Finn's broader argument because they reveal that the remedy for material

misrepresentation is rescission, not Finn's proposed remedy that he is unilaterally excused from performance while the contract remains in place. In both *Woods* and *French*, a party sought to rescind the contract in full on the basis that there were misrepresentations material to the contract which rendered the agreement void ab initio. Neither case indicates that a material misrepresentation permits a non-breaching party to selectively fail to perform certain parts of the contract of his choosing. I can find no authority to support such a proposition.

There is no dispute that Finn has not attempted to rescind the contract, which under California law would require him to give notice of rescission and return all value received under the contract, and, which in the context of litigation, must be asserted as an affirmative defense. West's Ann.Cal.Civ. Code § 1691; *see also LA Sound USA, Inc. v. St. Paul Fire & Marine Ins. Co.*, 156 Cal.App.4th 1259, 1267 (Cal. Ct. App. 2007). He failed to provide any legal authority to support his defense or to otherwise demonstrate how Sullivan's alleged misrepresentations excused his performance of the Payment Obligations.

Finn's claims that the truth of Sullivan's representations and warranties were conditions precedent to his Payment Obligations or that Sullivan's alleged misrepresentations discharged his duty to perform are not supported by California law. I conclude there is no material dispute that Finn was required to perform the Payment Obligations under the SPA.

II. WHETHER FINN ACTUALLY PERFORMED HIS OBLIGATIONS

Since Finn was required to perform the Payment Obligations, I must determine whether he performed or breached these obligations.

A. Annuity

Finn does not attempt to argue that he has actually met the Annuity Obligation. The undisputed facts demonstrate that from November, 2014 – October, 2015 Finn paid JoAnna $8,000 per month instead of the $9,000 provided under the SPA and that after October, 2015, Finn stopped payments altogether. JoAnna Decl. ¶¶16, 23. Although there is a dispute as to whether Finn was justified in temporarily reducing his annuity payments to JoAnna by $1,000 under a separate loan agreement, there is no evidence or argument that Finn was entitled to stop payments altogether. Sullivan is entitled to summary judgment on her annuity claims.

B. Life Estate

Finn does not attempt to argue that he personally performed the Life Estate Obligation. He instead claims that the obligation has been extinguished because Kelleen fully performed the obligation on his behalf. Finn Reply at 10 (Dkt. No. 120). Under California Civil Code section 1473, "Full performance of an obligation, by the party whose duty it is to perform it, *or any other person on his behalf, and with his assent, if accepted by the creditor*, extinguishes it." Cal. Civ. Code. § 1473 (emphasis added). Finn argues that Kelleen performed the Life Estate Obligation on his behalf and at his direction and that JoAnna assented to this arrangement. Finn Reply at 10. He cites the following facts in support of this claim:

- On October 5, 2014 JoAnna sent a letter to Finn and Kelleen regarding purchasing the Del Mesa property in which she stated that "Kelleen Finn agrees to add $10,000 cash to the purchase amount, making $510,000 of the $557,000 purchase price, paid in full by Stephen and Kelleen Finn per the [SPA]." Warden Decl. Ex. C at 1. Finn asserts that this demonstrates JoAnna assented to Kelleen paying the $500,000 toward the purchase of the property in fulfillment of the SPA;

- In the same letter JoAnna agreed to contribute approximately $16,710 in cash of her own money and the remaining $31,290 to be paid by Finn, which JoAnna would pay back by having Finn reduce her monthly annuity payments by $1,000 per month until the loan was paid off. *Id.*;

- JoAnna was aware that Kelleen, not Finn, would hold title to the property. JoAnna Decl. ¶16;

- Kelleen executed a letter memorializing that she was purchasing the Del Mesa Property to provide JoAnna with a life estate in the property. Warden Decl. Ex. K at 4;

- Kelleen confirmed in writing to JoAnna multiple times that she had purchased the Del Mesa Property so that JoAnna could live there and that she had granted her a life estate. Warden Decl. Ex. D; Ex. E; Ex. G; and

- On December 31, 2015 JoAnna wrote Finn a letter and stated "I acknowledge that you have met the intent of item 1.2(b) [of the SPA] in regards to the purchase of a residence and that you no longer have any control over the establishment of a Trust." Warden Decl. Ex. F.

Finn asserts that this evidence demonstrates that Kelleen performed the Life Estate Obligation on his behalf and that JoAnna assented to Kelleen performing the obligation in Finn's place. But this is not what he is required to show under section 1473. Instead, he must show that

Kelleen performed on his behalf, that *he* assented to Kelleen performing the obligation, and that JoAnna *accepted* this performance. Cal. Civ. Code § 1473. While JoAnna may have assented to Kelleen performing in Finn's place, she clearly did not accept Kelleen's performance as she consistently maintained that she had not received a life estate, refused to move into the property, and brought multiple lawsuits in an attempt to resolve the issue. *See e.g.*, Warden Decl. Ex. D; Ex. E; Ex. F.

Finn's only arguable evidence that JoAnna accepted performance falls flat. His evidence that in the October 5, 2014 letter JoAnna assented to Kelleen paying the $500,000 is ambiguous and irrelevant to the issue of acceptance. Warden Decl. Ex. C at 1. In the letter JoAnna states that "Kelleen Finn agrees to add $10,000 cash to the purchase amount, making $510,000 of the $557,000 purchase price, paid in full by Stephen and Kelleen Finn per the [SPA]." *Id.* Finn argues that this indicates JoAnna assented to Kelleen paying the $500,000 provided for by the SPA. But this sentence could easily be read to mean that JoAnna believed Stephen would be paying $500,000 per the SPA and Kelleen would be paying $10,000 as memorialized by the letter. The fact that JoAnna says "per the SPA" undermines the idea that she intended to alter the terms of the SPA or to extend its obligations to Kelleen, and reinforces the idea that she continud to expert Finn to pay the $500,000. Similarly, the fact that she states "Stephen and Kelleen" will be paying indicates that she believed Stephen would pay at least some part of the $510,000 and is wholly inconsistent with Stephen's argument that JoAnna assented to Kelleen fronting the entire sum. Further, and most importantly, whether JoAnna assented to Kelleen paying for the house in Stephen's place before the house was actually purchased and before the Life Estate Obligation had arguably been performed does not demonstrate that JoAnna accepted Kelleen's performance, only that she possibly did not object to Kelleen attempting to perform the obligation on Finn's behalf. A party can only accept performance after performance has occurred. JoAnna's letter, dated weeks before the purchase of the Del Mesa property, cannot demonstrate JoAnna's acceptance of Kelleen's later alleged performance.

In addition, the December 31, 2015 letter does not indicate acceptance. In the letter, JoAnna tells Finn, "I acknowledge that you have met the intent of item 1.2(b) [of the SPA] in

regards to the purchase of a residence and that you no longer have any control over the establishment of a Trust." Warden Decl. Ex. F. JoAnna objects to the use of this letter as evidence, arguing that it was part of settlement negotiations and was based on JoAnna's mistaken belief, based on Finn's misrepresentations, that Finn, not Kelleen, had paid for the Del Mesa property. But the document fails to support Finn's position regardless because it is clear from the letter that, at the time, JoAnna did not think the Life Estate Obligation had been performed and had not accepted performance. By stating that Finn "no longer [had] any control over the establishment of a Trust," JoAnna indicated her belief that a Trust must, but had not been, established and that the Life Estate Obligation had not been fully performed. *Id.* Similarly, by dismissing her claims without prejudice, JoAnna indicated she did not believe the issues raised in her suit against Finn had been resolved. The letter makes clear that JoAnna had not accepted Kelleen's performance of the Life Estate Obligation.

In contrast to the lack of evidence demonstrating acceptance, there is conclusive evidence that JoAnna did not accept Kelleen's performance. After the Del Mesa property was purchased JoAnna never took possession of the property, never conceded that she had been granted a life estate in the property, and consistently demanded performance from Finn and Kelleen. Eventually, JoAnna hired an attorney because she believed she had not been granted a Life Estate in the property as provided for under the SPA. Warden Decl. Ex. T 18:12-18:18. JoAnna's attorney helped prepare a Life Estate Deed to "effectuate the Life Estate for JoAnna." *Id*. 18:12-19:6. JoAnna made various attempts to get Kelleen to sign the Life Estate Deed and refused to move onto the Del Mesa property or take possession until the issue was resolved. *See* Warden Decl. Ex. D. She clearly expressed her belief that she should be allowed to rent out the property and told Kelleen "my original agreement has no restrictions and so I need that clearly stated and in writing. Until then I cannot take possession of the property." *Id.* When she was not able to resolve this issue with Kelleen she brought a lawsuit against Finn, alleging that he had failed to perform the Life Estate Obligation because she had not been granted title to the Del Mesa property and was not permitted to rent it. Warden Decl. Ex. B. There is no dispute that JoAnna's concerns were never resolved, the life estate deed was never signed, and that she never took possession of

the property.

Finn's argument that Kelleen's performance extinguished his Life Estate Obligation fails because he has not presented any evidence to show that this performance was "accepted" by JoAnna. Because full performance of an obligation on behalf of the party with the duty to perform can only extinguish the obligation "if accepted by the creditor" this failure of proof is fatal to his claim that the Life Estate Obligation has been fulfilled. There is no material dispute that JoAnna did not accept Kelleen's performance of the Life Estate Obligation. Alternatively, Finn could have attempted to show that he fully performed the Life Estate Obligation himself. He has not attempted to do so and the undisputed evidence demonstrates that he did not.

Finn has failed to show that he satisfied his duty to perform the Life Estate Obligation. Sullivan is entitled to summary judgment on her life estate claim.

C. Elder Abuse Claim

Sullivan does not move for summary judgment on her elder abuse claim, but Finn does, arguing that because the elder abuse claim is derivative of Sullivan's breach of contract claims it must fail along with the contract claims. Finn Mot. at 12. Because I have concluded that Sullivan is entitled to summary judgment on her contract claims, Finn's derivative argument fails. Finn's motion for summary judgment is DENIED.

III. DAMAGES

Sullivan presents evidence from Dr. Barry Ben-Zion, a forensic economist, in support of her claims for damages. Ben-Zion Decl. (Dkt. No. 100); Supp. Ben-Zion Decl. (Dkt. No. 108). Finn moves to strike Ben-Zion's opinions as inadmissible for various reasons and presents competing damage evidence from his expert Richard Eichmann. Eichmann Decl. (Dkt. No. 116). I will address the evidence and objections in turn.[2]

A. Past Annuity Payment Damages

Ben-Zion opines that Sullivan is entitled to $199,134.15 in past damages on the Annuity

[2] The parties make numerous evidentiary objections to the various declarations, documents, and affidavits submitted in support of and in opposition to their Summary Judgment Motions. Unless addressed in this Order, these objections are OVERRULED AS MOOT as I did not rely on the relevant documents.

payments. Supp. Ben-Zion Decl. ¶10. To calculate this figure he first assumed that, per the SPA, Finn was obligated to pay JoAnna $9,000 per month every month and was not justified in reducing her payments by $1,000 as outlined in JoAnna's October 5, 2014 letter. Warden Decl. Ex. C at 1. On this assumption he then added up all the funds Finn had failed to pay, or would fail to pay Sullivan, through the trial date, plus a 10 percent simple interest. Supp. Ben-Zion Decl. ¶10, Ex. 1. In rebuttal, Finn's expert, Eichman, notes that, per the October 5, 2014 letter, JoAnna and Finn reached an agreement where Finn would pay $31,250 toward the purchase of the Del Mesa property and JoAnna would pay Finn back by allowing Finn to reduce her monthly annuity by $1,000 per month until the balance was paid off. Eichman Decl. ¶18 In reaching his calculation Eichman assumed that Finn was in fact entitled to reduce JoAnna's monthly Annuity as stated in the October 5, 2014 letter and thus excluded this $31,250 and associated interest from his past damages calculation. *Id.* Eichman opines that JoAnna's past damages total only $164,112. Eichman Decl. ¶19, Ex. A, Ex. 1.

This dispute between the experts hinges on whether the October 5, 2014 agreement is valid and enforceable, a fact question that has not been resolved. The evidence provided on this issue is not conclusive. The letter appears to evidence an agreement and is signed by JoAnna, in satisfaction of the Statute of Frauds. However, the agreement also makes clear that the purpose of the $31,250 loan is to increase the funds Finn will pay upfront toward the Del Mesa property so that JoAnna can obtain a life estate in the property in satisfaction of the Life Estate Obligation. Finn's breach of the Life Estate Obligation may impact the enforceability of the loan agreement, but the issue has not been fully fleshed out by the parties. I conclude that there is a material issue of fact regarding whether Finn was entitled to reduce JoAnna's monthly annuity payments per the October 5, 2014 letter and thus, a material dispute as to her past damages on the annuity claim. JoAnna's motion for summary judgment is DENIED with regard to the past annuity damages.

B. Future Annuity Payment Damages

Ben-Zion opines that Sullivan is entitled to $1,041,876 in future damages on the annuity claim. Supp. Ben-Zion Decl. ¶11. He explains that this is the actuarial present value of all future life payments due to JoAnna based on a $9,000 per month annuity and JoAnna being 79 years-old.

Id.

Finn argues that JoAnna is not entitled to future damages because, under California law, future damages cannot be recovered for breach of an installment contract if the contract does not contain an acceleration clause. *See Maudlin v. Pac. Decision Scis. Corp.*, 137 Cal.App.4th 1001, 1018 (Cal. Ct. App. 2006) (holding that a plaintiff suing for breach of an installment contract may "recover all payments that are owed through the time of trial, but must await default on the future installments before bringing an action for nonpayment"). Sullivan asserts that it is unfair to characterize the SPA as a simple installment contract because this "completely ignore[s] the underlying purpose of the agreement – JoAnna gave up her largest asset (at a discount) in exchange for the comfort of a guaranteed place to live and a guaranteed stream of income. It is that comfort, and that guarantee, that Finn has denied her." Sullivan Reply at 7 (Dkt. No. 121). The fact that JoAnna transferred her winery in exchange for "the comfort of a guaranteed place to live and a guaranteed stream of income" does not transform the terms of the SPA. JoAnna cites no precedent to support the idea that an installment contract should not be treated as such where the beneficiary of the installment payments is relying on those payments for comfort and peace of mind and California case law contradicts this assertion. *See Cobb v. Pac. Mut. Life Ins. Co. of Cal.*, 4 Cal.2d 565, 573 (1935) (upholding the validity of an installment contract that required an insurance company to pay monthly income to a permanently disabled and incapacitated man but holding that future damages were not available). Further, mere concern that the obligor will fail to make future payments is not sufficient to award anticipatory damages. *Id.* at 574 (noting that future breach of an installment contract was unlikely as "[t]he decision as to the validity of the contract has become final, and there is nothing left to be done but the payment of the indemnity as expressly provided by the parties thereto.").

Because the Annuity Obligation under the SPA is an installment contract, and the contract contains no acceleration clause, JoAnna has failed to show that she is entitled to future damages. JoAnna's motion summary judgment is DENIED with regard to her claim for $1,041,876 in future damages.

C. Life Estate Obligation Damages

Ben-Zion opines that JoAnna is entitled to $639,083 in damages for Finn's breach of the Life Estate Obligation. Supp. Ben-Zion Decl. ¶16. He explains that he reached this number by first assuming that JoAnna was entitled to $500,000 on September 1, 2014 toward a life interest in a personal residence of her choosing. *Id.* He then calculated interest on this sum at a rate of 10 percent simple from September 1, 2014 through the date of trial. *Id.* ¶17. Using this interest rate he calculated the total amount owed on the Life Estate Obligation, as of the date of trial, to be $639,083. *Id.*; Supp. Ben-Zion Decl. Ex. 3.

Finn objects to this opinion and argues that it is based on an improper assumption because "[t]he SPA does not provide that Plaintiff would receive a lump sum payment of $500,000 at any time, but rather that Plaintiff would receive a life estate in a property towards the purchase of which Finn would provide $500,000." Finn Objections at 3. Finn is correct that the SPA does not state that JoAnna would receive a lump sum of $500,000, but the SPA does support the conclusion that JoAnna was entitled to a life estate with a $500,000 value. The SPA provides that "[o]n the third annual anniversary of JoAnna C. Sullivan completing her move from the Galleron Property, Buyer shall pay an amount not to exceed $500,000 towards a life interest in a personal residence of JoAnna C. Sullivan's choice." SPA § 1.2. The SPA says that Finn shall pay no more than "$500,000 towards a life interest" in a property of Joanna Sullivan's choice, not that he must pay up to $500,000 for a property and grant her a life estate in that property. *Id.* Under the plain language of the SPA, JoAnna had the authority to identify any property of her liking, including properties where the market rate for a life interest for her would equal or exceed $500,000 in value, and Finn was obligated to pay up to $500,000 toward such a life interest. While JoAnna was not to receive a lump sum payment under the SPA, when calculating damages it is often necessary to translate non-monetary assets into lump sums. The SPA indicates that by September 1, 2014, (three years from the date JoAnna moved from the Galleron property), Finn was required to pay up to $500,000 toward a life interest in a property of JoAnna's choosing. Ben-Zion's assumption that JoAnna was therefore entitled to a property interest or lump sum of a $500,000 value on that date is well supported by the SPA.

Finn also objects to Ben-Zion's opinion as unreliable. Finn Objections at 4. He argues that Ben-Zion testified that the proper method for calculating the value of a life estate is to determine the rental value of the property in which the life estate is to be held, and subtract any expenses for which the person holding the life estate is responsible. Warden Decl. Ex. V 57:25-59:1, 64:18-65:5. He asserts that this is what Eichman did to calculate the value of a life interest in the Del Mesa property. *See* Eichman Decl. ¶29. Using this method, Eichman calculated JoAnna's damages on the Life Estate Obligation, through trial, to be $52,586.71. *Id.* ¶30.

Finn's objection and Eichman's calculation are not persuasive because there is no basis for Eichman's assumption that damages should be calculated by valuing a life interest in the Del Mesa property. Because Finn breached his obligation under the SPA and failed to perform the Life Estate Obligation, the Del Mesa property is legally irrelevant to calculating damages. Sullivan's damages must be calculated by looking to the SPA agreement, not by valuing a life interest in a property that Sullivan never accepted or took possession of and that has now been sold. Further, Eichman's calculation improperly limits the value of JoAnna's hypothetical life interest to its rental value prior to trial. A life interest does not accrue in installments – it is an estate, a real property interest that terminates upon the death of a designated individual and that is appraised by measuring the rental value of the property for the entire projected measuring life. Even if we could measure JoAnna's damages by calculating the value of a life estate in the Del Mesa property, Eichman's opinion does not do so.

Finn's objections to Ben-Zion's opinion with regard to the Life Estate damages are overruled. Eichman's opinion fails to properly calculate JoAnna's damages by reference to her contractual rights under the SPA and, though it purports to offer a valuation of a hypothetical life estate in the Del Mesa property, it fails to do so. Finn has failed to create a material issue of fact regarding JoAnna's damages on this issue. JoAnna is entitled to damages in the amount of $639,083 for the Life Estate claim.

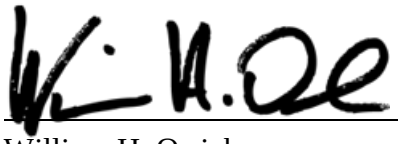
CONCLUSION

Sullivan's motion for partial summary judgment is GRANTED with regard to liability on her annuity claim and with regard to liability and damages on her life estate claim. It is DENIED

with regard to damages on her annuity claim. Sullivan will be awarded $639,083 in damages for the life estate claim. Finn's motion for summary judgment is DENIED in full.

IT IS SO ORDERED.

Dated: April 3, 2017



William H. Orrick
United States District Judge

United States District Court
Northern District of California