PARTIES/ATTORNEYS

Plaintiff	Heidi De Mayo	Daniel Knight
Defendant	Alfred Oseguera	Adrian Andrade

TENTATIVE RULING

For the reasons stated below, the application for writ of attachment is denied. In particular, the court cannot grant a writ of attachment based on a cause of action for an implied contract that has not been alleged, and even if it could, plaintiff has not demonstrated the calculation of a fixed and readily ascertainable sum with competent evidence. Nor, considering the relative merits of the positions of the respective parties, has the probable validity of the claim been established. There are contested theories of ownership of the property, as well as competing declarations on factual issues. Resolution at this early stage is inappropriate.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)

This is an action for partition and damages. As is relevant for this motion, plaintiff Heidi De Mayo alleges that in June 2020, she owned property at 1148 Pino Solo Drive in Santa Maria without encumbrance. On August 6, 2020, to fund improvements to the property, plaintiff executed a grant deed conveying 1% interest in the Property to Oseguera, who took a loan secured by a deed of trust in the Property signed by both plaintiff and Oseguera, with the intention that on completion of the project, Oseguera would take a loan to buy plaintiff's 99 % interest in the Property and pay her the appreciation plus any remaining costs that De Mayo had carried to that point. On December 14, 2020, a deed of trust encumbering the Property in favor of Flagstar Bank in the principal sum of $450,000.00 was recorded. The studio on the property was rented and Oseguera began renting the 3-bedroom house and collecting rents thereon. De Mayo and Oseguera allegedly agreed that all rents would be used to pay the note secured by Flagstar.

On July 27, 2021, Oseguera executed a promissory note in favor of plaintiff in the amount of $76,942.02. On March 14, 2022, Oseguera agreed to pay plaintiff

$20,000 by March 28, 2022, in settlement of a claim that Oseguera damaged De Mayo's property.

In May of 2023, Oseguera stopped making payments on the loan from Flagstar Bank, converting the rent generated by the property to his own use. On December 22, 2023, Flagstar initiated a nonjudicial foreclosure on the Property.[1]

On March 19, 2025, De Mayo filed her second amended complaint (hereinafter "SAC") against Oseguera for partition, among other causes of action. She alleges that as the owner of 99% of the Property, she will incur the greater share of the costs of partition and is presumably exposed to the greater share of costs associated with foreclosure, should it be completed.

Oseguera cross-complained, alleging that he and De Mayo were in a business partnership in which De Mayo would finance properties and Oseguera would undertake reconstruction/repairs to ready the property for resale. In June 2020, De Mayo and Oseguera selected property located at 1148 Pinot Solo in Santa Maria with the intention that De Mayo would purchase the property for Oseguera to reside in with his daughters. Oseguera would have a one percent (1%) interest, and De Mayo would have ninety-nine (99%) per cent interest in the Property while Oseguera performed all repairs and needed construction. De Mayo would then sell her 99% interest to Oseguera for $395,000, plus reimbursement of $20,000 advanced for renovations upon the close of his purchase. Oseguera alleges that he paid DeMayo the sum of $440,000 but that De Mayo refuses to convey her 99% interest to Oseguera.

On July 28, 2025, De Mayo filed an application for right to attach the rental proceeds collected by Oseguera "since May 2023 which are $162,000 and for those amounts received in rental income until this matter is adjudicated." The court denied that application without prejudice on September 24, 2025. On December 31, 2025, De Mayo renewed her application, seeking to attach $187,600 based on rental income generated by leasing Subject Property to third parties.

Right to Attach Order

Attachment is an ancillary or provisional remedy to aid in the collection of a money demand or seizure of property in advance of trial and judgment. California Attachment Law (Code Civ. Proc. § 482.010. et seq.) is purely statutory and is strictly construed, i.e., unless specifically provided for by the attachment law, no attachment procedure may be ordered by the court. (*Kemp Bros. Construction v.*

[1] In a related action, *Flagstar Bank v. De Mayo* (24CV05188), Flagstar alleges there was a scrivener's error in the deed of trust and requests reformation. This presumably has prevented nonjudicial foreclosure to be completed.

Titan Electric Corp. (2007) 146 Cal.App.4th 1474, 1476; *Nakasone v. Randall* (1982) 129 Cal.App.3d 757, 761.)

Attachment may issue only if the claim sued upon is:

- a claim for money based upon a contract, express or implied;
- of a "fixed or readily ascertainable amount no less than $500;"
- that is either unsecured or secured by personal property; and
- which is a commercial claim.

(Code Civ. Proc. § 483.010.)[2]

At the hearing, plaintiff as the moving party must show the claim is one on which attachment may issue; the probable validity of the claim; that attachment is not sought for any other purpose other than to secure recovery on the claim; and the amount is greater than zero. (Code Civ. Proc. § 484.090.) A claim has "probable validity" where it is more likely than not that the plaintiff will obtain a judgment against the defendant on the claim. (Code Civ. Proc. § 481.190.) Finally, a writ of attachment cannot issue until plaintiff files an undertaking in an amount for wrongful attachment. (Code Civ. Proc. §§ 484.090(b); 489.210.)

1. De Mayo's Claim of Implied Contract Has Not Been Alleged, Meaning the Court Cannot Find That This is the Type of Claim on Which Attachment May be Sought

The statute authorizes attachments on a "claim for money based upon a contract, express or implied." (§483.010, subd. (a).) The operative pleading is the second amended complaint, which alleges the following causes of action against Oseguera: partition and injunction (first cause of action); breach of contract based on the promissory notes (second cause of action); fraudulent concealment (sixth cause of action); disgorgement of profits (seventh cause of action); and ouster (eighth cause of action).[3]

Notably, the only causes of action asserting a breach of contract alleges breaches of the promissory note in the amount of $76,942.02 and the promissory note in the amount of $20,000.00, both of which were between De Mayo and

[2] De Mayo identifies section 485.220 as the statutory authority for issuance of attachment. That statute is situated in Chapter 5, which governs ex parte procedures for obtaining a writ of attachment. As this application was made on noticed motion, section 485.220 does not apply. The court thus need not examine whether "plaintiff will suffer great or irreparable injury," as is required by section 485.220.

[3] The 3rd and 5th causes of action were effectively dismissed when the court sustained the lender's demurrer without leave to amend. (See 6/11/2025 MO.)

Oseguera. (See SAC, 2nd Cause of Action.) No other contractual breaches are alleged against Oseguera.[4]

Nevertheless, De Mayo asserts that the breach consists of Oseguera's nonpayment of the note secured by Flagstar:

> "Here, Plaintiff pleads breach of contract against Defendant Oseguera based on his nonpayment of the promissory note against Subject Property with the rental funds Plaintiff seeks to attach. The implied contract being the regular and continued payment of said promissory note he took out with the rental income that would otherwise mostly go to plaintiff as 99% owner of Subject Property, this amount is the $187,600 calculated by Defendant starting on May of 2023 with a monthly rental income, that has not been realized to Plaintiff as either a payment to the note or payment [to] her, of $6,700 monthly."

(Memo of Points and Authorities, p. 4, ll. 9-12.)

As there is no breach of this implied contract alleged in the second amended complaint, De Mayo has failed to show a claim on which attachment may be sought.[5]

2. No Fixed and Readily Ascertainable Amount

Even if De Mayo's theory of implied contract had been alleged, she cannot satisfy this element. The damages sought need not be liquidated but must be measurable "by reference to the contract itself." (*Kemp, supra*, at p. 1481, fn. 5.) That is, the contract sued upon must itself furnish a standard by which the amount due may be clearly ascertained and there must exist a basis upon which damages can be determined by proof. (*CIT Group/Equipment Financing, Inc. v. Super DV, Inc.* (2004) 115 Cal.App.4th 537, 540.) In other words, the contract must establish the standard by which the calculation can be made. Assuming the contract established that standard—e.g., the promissory note was to be paid by the rental

---

[4] The court notes that the SAC includes the following allegation: "Thereafter on or about September 2020 the studio in the subject property was rented, in December 2020, Defendant Oseguera began renting Subject Property 3-bedroom house and collecting rents thereon and only after a year of fumbled construction the ADU. Despite the agreement to use the rents to pay the note secured by the Flagstar Bank FSB deed of trust, Defendant Oseguera converted some or all of the rents for his own use." (SAC, ¶ 27.) This allegation did not, however, result in a cause of action for breach of implied contract.

[5] This deficiency was noted in the court's ruling. (See 9/24/25 MO—"To the extent De Mayo asserts she and Oseguera entered into a contract in which he agreed to pay the Flagstar mortgage with the rental income generated by the property, no such claim has been alleged.")

income generated by the property—competent evidence of that amount must be submitted.

De Mayo asserts: "I am *informed and know to the best of my knowledge* that the rental income from all three units collected are *approximately* $6,700 per month. Since Defendant Oseguera has been withholding collected rent from the property, the total accumulated rental income since May 2023 are *approximately* $187,600 using the figure of $6,700 per month." (De Mayo Decl., ¶ 6 [emphasis added].)

As demonstrated by her express equivocation, De Mayo's statements are speculative and cannot be relied upon as proof by which damages can be determined. Attachment applications must be supported by declarations containing evidentiary fact that are within the declarant's personal knowledge. (See *Pos-A-Traction, Inc. v. Kelly-Springfield Tire Co.* (CD CA 2000) 112 F.Supp.2d 1178, 1182—"declarant must show actual, personal knowledge of the relevant facts, rather than the ultimate facts commonly found in pleadings.") Although matters may be set forth on information and belief (where authorized), the declarant must state the nature and reliability of the information (§ 482.040), which has not occurred here. Even if the court found this evidence to be sufficient to establish the amount, it does not account for the alleged ownership interests of the parties.

Thus, even assuming the theory of implied contract had been sufficiently alleged to establish the standard by which the damages could be calculated, the evidence falls short. This element cannot be established.

3. Court Cannot Find Probable Validity of Claim Based on this Record

Even if De Mayo had alleged the described implied contract, she must show the probable validity of her claim. Probable validity means that "more likely than not" the plaintiff will obtain a judgment on that claim. (§ 481.190.) In determining the probable validity of a claim where the defendant makes an appearance, the court must consider the relative merits of the positions of the respective parties and make a determination of the probable outcome of the litigation. (Law Revision Commission Comment to Code of Civil Procedure section 481.190; *Loeb & Loeb v. Beverly Glen Music, Inc.* (1985) 166 Cal.App.3d 1110, 1120.) The court does not determine whether the claim is actually valid; that determination will be made at trial and is not affected by the decision on the application for the order. (§484.050, subd. (b).)

Thus, here, the pleadings of both parties must be considered. Plaintiff's theory (assuming it was pled) is that Oseguera took out a note secured by the property and that he has failed to pay on that note with the rental income generated from property, as promised to her. De Mayo supports this theory with a

declaration that: "The contract that is alleged consisted of an express agreement between Defendant and I that the subject property would be renovated, added to, and then sold or the house occupied and the rental income from that holding be split in proportion to ownership at that time. To date, there has been no rental income given to me and the property is now in a pending foreclosure process." (De Mayo Decl., ¶ 9.) She also states that Oseguera has been collecting and withholding rent from the property since May 2023, and based on an assumed rental rate of $6,700/month, that amounts to $187,600. (De Mayo Decl., ¶¶ 5-6.)

However, Oseguera has alleged he entered into a written agreement with De Mayo to sell and transfer her 99% interest in the subject property upon receipt of $415,000 from him, and that he, in fact, paid De Mayo $415,000. He asserts that she is in breach of their agreement by failing to transfer and convey her 99% interest him. (Cross-Complaint, ¶30.) In support, Oseguera declares that he paid over $440,000 to her and provided various services for which he has yet to be paid. (Oseguera Decl., ¶ 5.)

Based on this record, and considering the relative merits of the positions of the respective parties, the court cannot determine (even if the implied contract was sufficiently alleged in the complaint, and even if the amount due can be discerned from the face of the implied contract) that De Mayo will be the probable victor in this litigation. There are contested theories of ownership of the property, as well as competing declarations on factual issues. Resolution at this early stage is inappropriate.