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**THE DISTRICT COURT OF GUAM**

TY J. JACOT AND S.E.T. PACIFIC, INC.,

Plaintiffs,

v.

JAY D. MILLER, RITA S. MILLER,  
INDIVIDUALLY AND AS TRUSTEES OF THE  
JAY AND RITA MILLER TRUST, and JOHN  
DOES I-III,

Defendants.

CIVIL CASE NO. 16-00074

**ORDER RE: DEFENDANTS’ MOTION  
FOR SUMMARY JUDGMNET**

Before the court is Defendants’ Motion for Summary Judgment. ECF No. 98. Having considered Defendants’ Memorandum in support of that motion, Plaintiffs’ Opposition (ECF No. 99), Defendants’ Reply (ECF No. 103), and the parties’ arguments at the hearing on May 20, 2019,<sup>1</sup> this court hereby **GRANTS** summary judgment against S.E.T. Pacific, Inc., but **DENIES** summary judgment against Ty J. Jacot.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

In 2005, Plaintiff Ty J. Jacot (“Jacot”) and Defendants Jay and Rita Miller (“the Millers”) were the only shareholders and board members of Plaintiff company S.E.T. Pacific, Inc. (“SET”). Mot. at

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<sup>1</sup> As this court noted at the hearing on May 20, 2019, this court has not considered Plaintiffs’ untimely Supplemental Declaration, ECF No. 107.

1 5, ECF No. 98. That year, the SET Board voted to purchase a luxury condominium on Guam as an  
2 investment. *Id.* SET funded the purchase of the condominium and placed title in SET's name. *Id.* at 5-  
3 6.

4 The Millers lived in the condominium for several years thereafter. *Opp.* at 4, ECF No. 99.  
5 Upon agreement between Jacot and the Millers, SET paid for expenses associated with the property,  
6 including common fees and upkeep costs. *Id.* In 2010, the SET Board (Jacot and the Millers)  
7 unanimously voted to transfer title to the condominium from SET to the Jay and Rita Miller Trust.  
8 *Mot.* at 6, ECF No. 98.

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10 In 2016, Jacot discovered that the Millers had sold the condominium for approximately  
11 \$1,600,000—a profit of \$500,000 over the purchase price in 2005. *Opp.* at 5, ECF No. 99. Shortly  
12 after selling the condominium, the Millers left Guam without sharing the proceeds with Jacot. *Mot.* at  
13 6, ECF No. 98.

14 According to Jacot, when he and the Millers agreed to purchase the condominium in 2010,  
15 they had agreed that the gross proceeds from the future condominium sale would be split evenly three-  
16 ways between Jacot, Rita Miller, and Jay Miller. *Opp.* at 4, ECF No. 99. Jacot further alleges that the  
17 reason he voted in 2010 to transfer the condominium from SET to the Jay and Rita Miller Trust was  
18 because SET was involved in lawsuits at the time, and the transfer was intended to shield the  
19 condominium from those lawsuits. *Id.* According to Jacot, the parties reaffirmed their agreement that  
20 proceeds from a future sale of the condominium would be divided evenly between the three parties.  
21  
22 *Id.*



1 agreement to share the proceeds of the condominium sale. *Id.* Accordingly, this court sees no reason  
2 to consider Defendants’ straw man argument regarding stock ownership.

3 **B. Whether the Millers’ Promise Is Unenforceable for Lack of Consideration**

4 Defendants next argue that the Millers’ alleged promise to share proceeds with Jacot is  
5 unenforceable due to a lack of consideration. Mot. at 10, ECF No. 98. Jacot has asserted that the  
6 consideration he provided to Defendants was his “labor and services,” some of which were unpaid. *Id.*  
7 at 11. Defendants argue that Jacot’s labor (or promise to give free labor) was given to SET, not to the  
8 Millers, so it cannot constitute consideration for a promise from the Millers. *Id.* at 12.

9  
10 Under Guam law, “[a] sufficient cause or consideration” is essential to the existence of a legally  
11 enforceable contract. 18 G.C.A. § 85102. The problem with Defendants’ argument is that “[t]he  
12 performance or return promise may be given to the promisor or to some other person.” Restatement  
13 (Second) of Contracts § 71(4) (1981). In other words, “[i]t matters not from whom the consideration  
14 moves or to whom it goes. If it is bargained for and given in exchange for the promise, the promise is  
15 not gratuitous.” *Id.* Com. E. Thus, the fact that Jacot provided labor to SET as opposed to the Millers  
16 is irrelevant—the dispositive issue is whether he labored in exchange for the Millers’ promise to share  
17 proceeds in the condominium sale. That is a factual question which the parties dispute. Accordingly,  
18 the issue of consideration is not ripe for summary judgment.

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20 **C. Whether the Statute of Frauds Renders Plaintiffs’ Claims Unenforceable**

21 Defendants next argue that the alleged agreement between Jacot and the Millers to share  
22 proceeds is unenforceable under Guam’s Statute of Frauds, 18 G.C.A. § 86106, which requires  
23 contracts involving interests in real property to be in writing. Mot. at 13, ECF No. 98. This court  
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1 rejected this argument when it denied Defendants' Motion to Dismiss. *See* Order at 4-7, ECF No. 63.  
2 Defendants have failed to convince this court to reconsider that ruling. As this court held previously,  
3 to the extent that Jacot and the Millers formed a joint venture or partnership to share proceeds from  
4 the sale of the condominium, such an agreement would not be covered by the Statute of Frauds.

5 **D. Whether SET Is a Proper Party**

6 Lastly, Defendants assert that SET was not a party to the alleged agreement between Jacot and  
7 the Millers, so SET has no standing to enforce that agreement. Mot. at 14, ECF No. 98. Plaintiffs  
8 respond that transferring title to the condominium from SET to the Jay and Rita Miller Trust constitutes  
9 corporate waste. Opp. at 18, ECF No. 99. Defendants reply that corporate waste has not been alleged  
10 in this complaint, so Jacot's corporate waste arguments are irrelevant and improper. Reply at 8,  
11 ECF No. 103.  
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13 This court first notes that Jacot was a Member of the Board who, along with the Millers, voted  
14 to transfer the condominium to the Jay and Rita Miller Trust, without payment. Opp. at 4, ECF No.  
15 99. It is therefore odd, to say the least, for him to allege corporate waste, as he could potentially be  
16 just as liable as the Millers in such a lawsuit.  
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18 More importantly, however, as Defendants correctly note, this is not a corporate waste lawsuit.  
19 Rather, this is a suit for Conversion, Fraud, and Constructive Trust. Compl. at 11-13, ECF No. 1. Each  
20 of those causes of action relate to alleged misdeeds committed by the Millers at Jacot's expense.  
21 Should Jacot prevail in this lawsuit, he will receive one third of the proceedings of the condominium  
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1 sale proceeds and, potentially, punitive damages or attorney's fees.<sup>2</sup> SET, on the other hand, will  
2 receive nothing. The fact that SET stands nothing to gain from this lawsuit demonstrates that SET has  
3 no "personal stake in the outcome of the controversy," and, consequently, lacks standing. *Warth v.*  
4 *Seldin*, 422 U.S. 490, 498-99 (1975) (internal quotation marks omitted). Thus, summary judgment is  
5 **GRANTED** in Defendants' favor as to SET.

6 **III. CONCLUSION**

7 For the reasons stated herein, this court **HEREY ORDERS:**

- 8 1. Defendants' motion for summary judgment against Ty J. Jacot is **DENIED**.  
9 2. Defendants' motion for summary judgment against S.E.T. Pacific, Inc. is **GRANTED**.  
10 3. S.E.T. Pacific, Inc. is hereby **DISMISSED** from this lawsuit.  
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12 **SO ORDERED.**



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/s/ Frances M. Tydingco-Gatewood  
Chief Judge  
Dated: May 22, 2019

24 <sup>2</sup> This court presently takes no position on the likelihood of success on Plaintiffs' requests for punitive damages and attorney's fees.