

**FILED**  
Superior Court of California  
County of Los Angeles

05/27/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By:           K. Malbyer           Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES - WEST DISTRICT

DIAMOND CAPITAL ADVISORS, LLC, a  
California limited liability company, and  
DIAMOND STRATEGIC ADVISERS, LLC, a  
California limited liability company,

Plaintiffs,

vs.

WAYNE PLATT, an individual, LISA PLATT,  
an individual; and DOES 1 THROUGH 10,

Defendants.

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WAYNE PLATT, an individual,

Cross-Complainant,

vs.

DIAMOND CAPITAL ADVISORS, LLC, a  
California limited liability company, and  
DIAMOND STRATEGIC ADVISERS, LLC, a  
California limited liability company, and ROES  
1-100, inclusive ,

Cross-Defendants.

Case No.: 20SMCV01611

**[PROPOSED] STATEMENT OF  
DESCISION**

Honorable Mark Young, Judge Presiding

Trial: April 18-19, 2022

Dept: M

**I. STATEMENT OF THE CASE**

Plaintiffs and Cross-Defendants Diamond Capital Advisors, LLC (“Diamond Capital”) and Diamond Strategic Advisers, LLC (“Diamond Strategic” or the “House”) (collectively referred to as the “Plaintiffs”) filed a complaint on October 27, 2020 for Breach of Promissory Notes against Defendants and Cross-Complainants Wayne Platt (“Platt”) and Lisa Platt (collectively referred to as the

1 “Defendants”) . Defendants filed a cross-complaint against Plaintiffs for (1) Breach of Contract, (2)  
2 Breach of Duty of Good Faith and Fair Dealing, (3) Fraud in the Inducement, and (4) Declaratory Relief.

3 **II. STATEMENT OF FACTS**

4 **A. Wayne Platt and Plaintiffs Oral Employment Agreement**

5 On or about January 15, 2017, Platt entered into oral contracts with each of the Plaintiffs. Platt  
6 agreed that he would provide transaction-related services for Diamond Capital and valuation-related  
7 services for Diamond Strategic. For the valuation-related services, Platt was compensated as follows:  
8 for all revenue Diamond Strategic received that was attributable to Platt and his efforts, Diamond  
9 Strategic would pay Platt 80% (the “Diamond Strategic 2017 Oral Agreement”), and the House would  
10 receive 20%.<sup>1</sup> On or about January 1, 2018, Diamond Strategic and Platt modified the revenue he would  
11 receive under the Diamond Strategic Oral 2017 Agreement as follows: Platt would receive 70%, instead  
12 of 80% of the revenue attributed to him on valuation services and the House would receive 30% instead  
13 of 20%.

14 **B. Plaintiffs and Defendants Enter Into Promissory Notes**

15 Plaintiffs and Defendants (collectively the “Parties”) executed two promissory notes at issue in  
16 this case. Effective as of January 1, 2018, the Parties executed a Note for Advanced Sums payable by  
17 Platt and his wife, Lisa Platt, to Defendants in the sum of \$32,901.90 with interest at the rate of 10% per  
18 annum (the “Advanced Sums Note”). Exhibit 1. In lieu of a maturity date, the Advanced Sums Note was  
19 to be paid off based on capturing a percentage of revenue that Platt generated for Plaintiffs as a Managing  
20 Director, which was an independent contractor position. On March 12, 2020, Plaintiffs and Platt, on  
21 behalf of Defendants, executed an addendum to the Advanced Sums Note whereby \$15,000 was  
22 advanced to Defendants, increasing the principal due under the Advanced Sums Note (the “Addendum”).  
23 Exhibit 2. Platt continued to borrow money from Plaintiff from time to time, which increased the balance  
24 due under the Advance Sums Note. Furthermore, the balance on the Advanced Sums note was reduced,  
25 from time to time, pursuant to the provisions in paragraph 1 of Exhibit 1. The amount owed on the  
26

27 <sup>1</sup> The Parties had no dispute as to compensation Platt would receive for transaction-related services. The  
28 only relevance to those services were that they served for consideration for entering into the promissory  
notes discussed below.

1 Advance Sums Note, with interest as of March 31, 2022, is set forth on the attached Exhibit 1. See  
2 Exhibit 40.

3 On January 1, 2018, the Parties executed a Promissory Note under which \$13,500 had to be paid  
4 in a single installment before March 31, 2020 (the “Lump Sum Note”). Exhibit 3. In both Notes,  
5 Defendants agreed that Plaintiffs could secure their interest by recording a Deed of Trust against  
6 Defendants’ home at 205 N. Tigertail Road, Los Angeles, California 90049, (the “Tigertail Home”) and  
7 that the sale or transfer of the Tigertail Home would constitute default and an acceleration of all principal  
8 and outstanding interest. Under the both Notes, Defendants agreed to pay all of Plaintiff’s reasonable  
9 attorney’s fees incurred in documenting the note and, in litigation, for the prevailing party’s attorney’s  
10 fees and costs.

11 On March 4, 2020, Defendants’ transferred the Tigertail Home to a third party pursuant to a non-  
12 judicial foreclosure. Therefore, Defendants breached both the Advanced Sums Note and the Lump Sum  
13 Note.

14 On or about October 1, 2020, Platt left his post as an independent contractor for Plaintiffs.  
15 Defendants failed to make any payments on the Notes, notwithstanding the entire amount of the Notes,  
16 plus all accrued interest owed to Plaintiffs from January 1, 2018 to date. On the due date of March 31,  
17 2020, Platt failed to satisfy the principal amount of \$13,500, and all accrued interest thereto, and therefore  
18 he breached the Lump Sum Note.

19 **III. COURT’S DISCUSSION AND TENTATIVE RULING**

20 **A. Plaintiff’s Complaint for Breach of Promissory Notes**

21 The Court finds that the Parties entered into written Promissory Notes, Plaintiffs performed their  
22 obligations, and Defendants defaulted on the Notes in the following two ways: (1) Defendants failed to  
23 satisfy the sums due and payable and (2) Defendants sold their home that was collateral for the loan in  
24 violation of the Notes. On the Advanced Sums Note, the Court finds in favor of Plaintiffs and against  
25 both Defendants. As to the Lump Sum Note, the Court finds in favor of Plaintiffs against Defendant  
26 Wayne Platt only. The Court awards Plaintiffs \$68,805.84, inclusive of principal and interest as of March  
27 31, 2022, against Platt and Lisa Platt for Breach of the Advanced Sums Note. The Court awards Plaintiffs  
28 \$19,237.50, inclusive of principal and interest as of March 31, 2022, against Platt only for Breach of the

1 Lump Sum Note. The Court awards per diem additional interest until judgment is entered as follows: On  
2 the Advanced Sums Note, per diem interest is \$13.20, and on the Lump Sum Note, per diem interest is  
3 \$3.75.

4 As to Platt's defense of economic duress, the Court concludes there was no wrongful conduct and  
5 that the case law makes clear there must be more than a breach of contract or threat of a breach of contract  
6 itself to qualify as wrongful conduct. See Judicial Council of California Civil Jury Instruction 333; See,  
7 e.g., Tarpv v. Cty. of San Diego, 110 Cal. App. 4th 267, 277 (2003). The Court also finds there was a  
8 reasonable alternative and that alternative was for Platt to change jobs. The Court finds that there was  
9 no proper opinion testimony presented at trial regarding the harmful effects of changing jobs within this  
10 particular line of work and the asserted deleterious effects on Platt's business contacts, clients and  
11 potential clients. Further, the Court finds the e-mail messages and text messages support the reduction  
12 in Platt's compensation change from 80% to 70%. See, Exhibits 6, 13, 17, 18, 21 and 27 at page 2. Those  
13 Exhibits reflected the Parties new negotiated agreement in 2018 and how revenue from that additional  
14 work would be applied to paying down the debt.

15 As to Plaintiff's Complaint, the Court finds Plaintiff to be the prevailing party and Plaintiffs shall  
16 apply for those attorney's fees by post-judgment motion.

17 **B. Defendants' Cross-Complaint**

18 As to Platt's Cross-Complaint, the Court finds that Platt failed to meet his burden of proof with  
19 respect to his first two causes of action for Breach of Contract and Beach of Duty of Good Faith and Fair  
20 Dealing <sup>2</sup> The Court first addressed the duration of the Oral Contract. There was no testimony or  
21 evidence presented to the Court on the length of the term of the Diamond Strategic 2017 Oral Agreement.  
22 The Court finds that if the term of the employment contract was over one year, the Statute of Frauds  
23 would apply and the Oral Contract would have to be put in writing. See, Cal. Civ. Code §1624(a)(1).  
24 Therefore, the Court finds the Oral Contract was for one year or less. Any modifications that occurred in  
25 2018 would have been past the one year date and thus the Court finds that the parties entered into a new  
26 oral contract with the new 70%/30% split of revenue for valuation receipts of revenue.

27  
28 <sup>2</sup> Platt withdrew his third and fourth causes of action for Fraud in the Inducement and Declaratory Relief.

1 With respect to the material terms of the contract, the Court finds by inference that there are  
2 additional material terms inferred in the Diamond Strategic 2017 Oral Agreement. One of those terms is  
3 that Platt was required to bring in between \$500,000 and \$750,000 in revenue a year as consideration for  
4 the 80%/20% split. But, Platt only brought in at ~\$300,000 in the first year and ~\$388,000 in the second  
5 year. The Court notes that Platt did testify that there were no other material terms of the 2017 Diamond  
6 Strategic Oral Agreement other than the 80%/ 20% split. The Court finds that the length of the contract  
7 was not a material term. The Court infers a material term with respect to the amount of income that Platt  
8 promised to generate. The Court finds that there was a change of circumstances. Platt brought in less  
9 money so Plaintiffs made a decision to offer Platt a different percentage of revenue split for 2018 based  
10 upon that material change. The Court further noted that Michael Cohen's testimony regarding changes  
11 in agreements made to other independent contractors at Diamond Capital and Diamond Strategic did not  
12 single out a change in compensation for Platt, and in fact, showed that Diamond Capital and Diamond  
13 Strategic were not making a sufficient profit.

14 **IV. JUDGMENT AND CONCLUSION**

15 For the aforementioned reasons, the Court finds the following:

- 16 1) Plaintiffs are the prevailing parties and are entitled to move for attorney's fees by post  
17 trial motion;
- 18 2) Plaintiffs are awarded \$68,805.84, inclusive of principal and 10% prejudgment interest  
19 through March 31, 2022, against Wayne Platt and Lisa Platt for Breach of the Advanced Sums Note;
- 20 3) Plaintiffs are awarded \$19,237.50, inclusive of principal and 10% prejudgment interest  
21 through March 31, 2022, against Wayne Platt for Breach of the Lump Sum Note;
- 22 4) Plaintiffs are awarded additional prejudgment interest on the Advanced Sums Note at  
23 the per diem rate of \$13.20 from April 1, 2022 until the entry of judgment;
- 24 5) Plaintiffs are awarded additional prejudgment interest at the per diem rate of \$3.75 on  
25 the Lump Sums Note from April 1, 2022 until the entry of judgment; and
- 26 6) Plaintiffs shall recover their costs against Defendants.

27 Date: 05/27/2022

  
\_\_\_\_\_  
Hon. Mark Young, Judge  
Los Angeles Superior Court

**PROOF OF SERVICE**

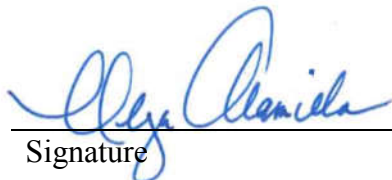
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 1875 Century Park East, Suite 2100, Los Angeles, California 90067-2574.

On the date below, I served  the original  a true copy of the within document(s), described as **[PROPOSED] STATEMENT OF DESCISION**, on all interested parties in this action.

<input type="checkbox"/>	<p><b>(BY MAIL)</b> by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at 1875 Century Park East, Suite 2100, Los Angeles, California in the ordinary course of business. I am aware on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.</p>		
<input type="checkbox"/>	<p><b>(BY FEDEX)</b> I enclosed the documents in an envelope or package provided by FedEx and addressed to the person[s] on the attached service list. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.</p>		
<input type="checkbox"/>	<p><b>(BY FACSIMILE)</b> I sent such document from facsimile machine on the above date, to the facsimile number to the attention of the individual set forth below. I certify that said transmission was completed and that all pages were received and that a report was generated by the facsimile machine which confirms said transmission and receipt.</p>		
<input checked="" type="checkbox"/>	<p><b>(VIA ELECTRONIC MAIL)</b> by transmitting via electronic mail a true copy of the above listed document(s) to the email addresses set forth below on this date.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width: 60%; padding: 5px; vertical-align: top;"> <p><b>Robert L. Hill</b>  <b>LAW OFFICES OF ROBERT L. HILL, APC</b>  <b>5055 Avenida Encinas, Suite 100</b>  <b>Carlsbad, CA 92008</b>  <b>Cell: (619) 455-0592</b>  <b>Office (760) 448-4425 / Fax (866) 579-5802</b>  <b>Email: <a href="mailto:RHill@rlhfir.com">RHill@rlhfir.com</a></b>  <b><a href="http://www.RLHfirm.com">www.RLHfirm.com</a></b></p> </td> <td style="width: 40%; padding: 5px; vertical-align: top;"> <p><b>Attorneys for Defendants/Cross-Complainant Wayne Platt and Defendant Lisa Platt</b></p> </td> </tr> </table>	<p><b>Robert L. Hill</b>  <b>LAW OFFICES OF ROBERT L. HILL, APC</b>  <b>5055 Avenida Encinas, Suite 100</b>  <b>Carlsbad, CA 92008</b>  <b>Cell: (619) 455-0592</b>  <b>Office (760) 448-4425 / Fax (866) 579-5802</b>  <b>Email: <a href="mailto:RHill@rlhfir.com">RHill@rlhfir.com</a></b>  <b><a href="http://www.RLHfirm.com">www.RLHfirm.com</a></b></p>	<p><b>Attorneys for Defendants/Cross-Complainant Wayne Platt and Defendant Lisa Platt</b></p>
<p><b>Robert L. Hill</b>  <b>LAW OFFICES OF ROBERT L. HILL, APC</b>  <b>5055 Avenida Encinas, Suite 100</b>  <b>Carlsbad, CA 92008</b>  <b>Cell: (619) 455-0592</b>  <b>Office (760) 448-4425 / Fax (866) 579-5802</b>  <b>Email: <a href="mailto:RHill@rlhfir.com">RHill@rlhfir.com</a></b>  <b><a href="http://www.RLHfirm.com">www.RLHfirm.com</a></b></p>	<p><b>Attorneys for Defendants/Cross-Complainant Wayne Platt and Defendant Lisa Platt</b></p>		
<input checked="" type="checkbox"/>	<p><b>(STATE)</b> I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on <b>May 10, 2022</b>, at Los Angeles, California.</p>		

Olga Alamillo  
\_\_\_\_\_  
(Type or Print Name)

  
\_\_\_\_\_  
Signature

LURIE, ZEPEDA, SCHMALZ, HOGAN & MARTIN  
1875 Century Park East, Suite 2100  
Los Angeles, California 90067-2574