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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MICHAEL CASSELL, Plaintiff and Appellant, v. STEPHANIA ARMANI, Defendant and Respondent.	B280000 (Los Angeles County Super. Ct. No.SS028514)

APPEAL from an order of the Superior Court of Los Angeles County, Nancy L. Newman, Judge. Affirmed.

Law Office of Ami Meyers for Plaintiff and Appellant.

Stephania Armani, in pro. per., for Defendant and Respondent.

Real estate broker Michael Cassell entered into a listing agreement granting him the exclusive right to sell a residential property. The agreement, which included an arbitration clause, identified Cassell as the broker and Robert Armani as the seller; those names appear on the respective signature lines.

When a dispute concerning the agreement arose, Cassell filed a petition to compel arbitration. He named Stephania Armani, not Robert, as the respondent. Cassell asserted in an accompanying declaration that Stephania signed the agreement using the name of the property's titleholder, her son, Robert, and represented to Cassell that she had the authority to list the property for sale.

The clerk entered default against Stephania but the court declined to enter a default judgment. It directed Cassell to file a motion to compel arbitration, which he did. The court subsequently denied the motion without prejudice after finding that Cassell failed to carry his burden of showing Stephania was a party to the arbitration agreement. Cassell appeals, and we affirm. The agreement does not contain Stephania's name or signature, and the court reasonably concluded that the extrinsic evidence Cassell submitted did not establish by a preponderance of the evidence that Stephania signed the agreement on her own behalf.

BACKGROUND

In his petition to compel arbitration, Cassell alleged that he and Stephania entered into a written listing agreement on August 20, 2015.[1] He supported this allegation with an

[1] Cassell contends here, as he did below, that the allegations of his petition must be deemed admitted in light of Stephania's failure to respond to the petition and the entry of

accompanying declaration, in which he stated, "I signed a Listing Agreement with Respondent Stephania Armani to sell her home . . ., a copy of which is attached as Exhibit A." The form agreement granted Cassell the exclusive right to sell a Los Angeles condominium, and to list the unit at $815,000 until November 20, 2015. The agreement further provided that the seller—identified therein as Robert Armani—was obligated to pay Cassell a commission of five percent of the listing price ($40,750) if certain events occurred.

The agreement included a provision entitled "Dispute Resolution." In addition to a mediation clause requiring the parties to mediate "any dispute or claim . . . regarding the obligation to pay compensation under this Agreement, before resorting to arbitration or court action," it included the following arbitration provision:

"Seller and Broker agree that any dispute or claim in Law or equity arising between them regarding the obligation to pay compensation under this Agreement, which is not settled through mediation, shall be decided by neutral, binding arbitration. The

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default. (See Code Civ. Proc., § 1290; *Devlin v. Kearny Mesa AMC/Jeep/Renault Inc.* (1984) 155 Cal.App.3d 381, 385-386 (*Devlin*).) Stephania, who appears here in propria persona, asserts in her brief that she was not properly served with the petition; if that were true, the petition's allegations would not be so admitted. (See Code Civ. Proc., § 1290.) Stephania did not raise this issue below and does not support her assertions regarding service with any evidence or record citations. We therefore accept Cassell's allegations as true for purposes of this appeal. We note, however, that "[t]he admission of factual allegations does not require courts to grant an unopposed petition." (*Taheri Law Group, A.P.C. v. Sorokurs* (2009) 176 Cal.App.4th 956, 962.)

arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the parties mutually agree to a different arbitrator. The parties shall have the right to discovery in accordance with Code of Civil Procedure § 1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 19C. [¶] 'NOTICE: BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.' [¶] 'WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES"

PROVISION TO NEUTRAL ARBITRATION.'"[2]

The arbitration provision was electronically initialed by seller "RA" and broker "MC." The entire agreement had a signature line for the seller, over which the name Robert Armani was electronically signed. The email address listed for the seller, Robert, began "stephania.armani"; Cassell's declaration attributed all emails sent from that account to Stephania. Aside from the email address, the agreement did not include Stephania's name or initials. The agreement contained a checkbox to indicate whether it was "being signed for a Seller by an individual acting in a representative capacity" rather than signed by an individual on his or her own behalf. The box was left unchecked. Cassell signed the agreement as broker.

The agreement contained an integration clause, which provided, "All prior discussions, negotiations and agreements between the parties are superseded by this Agreement, which constitutes the entire contract and a complete and exclusive expression of their agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement." Cassell nevertheless asserted in his declaration that Stephania "informed me that although title is held under the name of her son Robert Armani, she in fact owns the Unit. Multiple phone calls and emails to and from her confirmed our understanding that she had the authority to authorize my listing the Unit for sale; Respondent [Stephania] has never claimed that she did not sign the contract."

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[2] The capitalized language is that required by Code of Civil Procedure, section 1298, subdivision (c). All further statutory references are to the Code of Civil Procedure unless otherwise specified.

Cassell's declaration further stated that Stephania "projected to me an understanding that the Listing Agreement bound her and me to our respective duties; I shared that understanding." Cassell attached several emails in support of this assertion. The emails, sent to his email account from the "stephania.armani" email account identified in the listing agreement in the days following its execution, addressed topics including provision of the unit's key to Cassell, the listing description and photographs, and the type of advertising permitted by the homeowner's association. An August 30, 2015 email thanked Cassell for "tolerating that heat and being outside for couple of hours" during an open house.[3] The emails included closing salutations of "Thanks, Stephania" and "Best, Stephania." None of these or any other email in the record mentioned the name Robert.

On September 2, 2015, the "stephania.armani" email account sent the following email to Cassell: "Hello Michael, [¶] There are changes in my life that requires me to keep the condo for the moment. I appreciate if you could please remove the house from market and send me the cancellation contract immediately. [¶] Thanks, Stephania." Cassell responded the following morning, stating "I have withdrawn the listing from the MLS and curtailed marketing. [¶] Best [¶] Michael." The "stephania.armani" account replied and again requested a "cancellation contact." Later that same day, two additional requests to cancel the contract were sent to Cassell from the "stephania.armani" email address. These requests were signed "Stephania."

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[3] All errors in this and the other quoted emails appear in the originals.

Cassell alleged that he "refused to simply cancel a valid and binding contract," and that Stephania "became increasingly hostile and uncivil" as a result. Indeed, subsequent emails from the "stephania.armani" email account denigrated Cassell's performance and abilities as a real estate broker and threatened to report him to the "Board of realtors" and take legal action against him. One of the emails, which was unsigned, stated, "I am notifying you in writing that my contract with you is cancelled effective yesterday September 3rd." Another unsigned email asserted, "By the way, you lied to me about your job, after I signed the contract with you, at my open house, you told me that your main job is running/managing facilities like mine. Obviously that is the reason that you are not in networking society of the realtors and you have no capability, ability, and knowledge of how to market and sell a home. I really should say, you are an incompetent, disgraceful and lair person I ever met."

At 9:04 a.m. on November 26, 2015, Cassell's attorney, Ami Meyers, sent an email to "Ms. Armani" at the "stephania.armani" email address. The email had three attachments: a copy of the listing agreement, a proposed settlement agreement, and a demand letter. The demand letter—dated November 19, 2015 and addressed to Stephania Armani at the formerly listed condo—asserted that Cassell was entitled to his full commission of $40,750 under the listing agreement but would be willing to accept $5,000, payable by cashier's check by 9:00 a.m. on November 27, 2015. It also demanded mediation and stated an intent to pursue "all available legal remedies" if the offer were not accepted.

The "stephania.armani" email account sent an unsigned response to Meyers within the hour: "Amy, hahaaa. Is that April

fool? You must be out of your mind . . . As far as I am concerned, I don't owe you or your client a dime. He is incompetent and I cancelled the contract after 10 days as soon as I saw his incompetency. Have he ever been able to sell any places at all? I did a lots of investigation on his background and nothing shiny come out. Did he tell you whole story? Do not bother me again or you will be sorry. By the way, happy thanksgiving . . . You must have so many clients that even Thanksgiving day are working . . . Hahaaaa" An hour later, Meyers replied, "Your flippant response constitutes a rejection of my client's offer. We will proceed accordingly." The unsigned response from the "stephania.armani" account later that evening was "Go to hell . . ." On November 30, 2015, Meyers sent another email rescinding Cassell's settlement offer and demanding mediation.

On December 2, 2015, Meyers sent an email to the "stephania.armani" account demanding arbitration and proposing the names of two possible arbitrators. The following unsigned reply was sent later that day: "A fraud claim against you and your client has been filed with the LA D.A. as well as California Board of Realtors which they review impostors actions like you and your client." On December 7, 2015, Meyers responded and stated an intention to file a petition to compel arbitration. An unsigned email from the "stephania.armani" account followed: "As per below email, I requested in writing for cancellation on September 2nd. As your client did not agree with the cancellation, the entire time the house was on the listing market. He did not bring a buyer at all. The listing has expired on November 20; so, subsequently the contract has been cancelled. I don't have any obligation toward you or your client. You are

harassing me with constant emails and phone calls. I work for living and since Thanksgiving I can not work and I may loose my job due to your constant harassment. Be advise that I filed with different agencies against you and your client. . . ." Meyers responded by disputing the harassment allegations and asserting, "I am not the one who has been doing the harassing."

Cassell filed his petition to compel arbitration on December 21, 2015. On March 3, 2016, he filed a proof of service of summons and petition asserting that Stephania was served by substituted service on February 18, 2016 at a business address. Cassell filed a request for entry of default on March 10, 2016; the request was rejected as premature. Cassell's subsequent request for entry of default was rejected due to an incomplete proof of service. The clerk accepted Cassell's third request for entry of default on April 6, 2016.

On June 6, 2016, the court held a "status conference re: default." There is no transcript of the hearing; the minute order states in pertinent part, "Status conference re: default is held. Counsel is directed to proceed by way of motion to compel arbitration rather than default judgment as no civil complaint has been filed." Cassell filed the requested motion, identical in substance to his initial petition, on August 3, 2016.

The court issued a tentative ruling denying the motion. It explained that, under controlling case law, it was required to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." The court further stated that Cassell as petitioner bore the burden of proving the existence of an arbitration agreement by a preponderance of the evidence. It then considered the evidence Cassell submitted: "In support of this motion, Petitioner submits evidence that an arbitration

agreement exists. (Cassell Decl., 1, Ex. A, 19) However, the signature line of the agreement indicates that the parties to this agreement were 'Robert Armani' and Michael Cassell. (Cassell Decl, 1, Ex. A) Petitioner's declaration suggests that although the name on the contract is Robert Armani, Respondent's son, Respondent has never claimed she did not sign the agreement. (Cassell Decl., 1) Based on this evidence, the court is not persuaded that Respondent did in fact agree to arbitrate these claims. As it does not appear that Respondent is a party to this agreement, the court is without authority to compel her to arbitrate her claims." The court's tentative also questioned the existence of an arbitrable controversy between Cassell and Stephania.

Cassell and his counsel Meyers appeared at the hearing on the motion; Stephania did not. Meyers argued that the post-agreement emails between Cassell, Meyers, and the "stephania.armani" account "indicate that she's the one who signed the contract." The court responded, "I don't see a signed contract, though. If I saw a signed contract, that might make a difference, but I didn't see by her [*sic*]. I did not see her signing the contract." Meyers reiterated that Stephania "signed the contract by signing 'Robert Armani,' because if she signed anything, it would not have gone through because the contract would have read one name, and the title would have reflected another name. And that would have made it impossible to market." Meyers likened the situation to "sign[ing] the contract under a pseudonym," and argued that a contracting party should not be "exempt from all liability" because he or she signed under a pseudonym. The court informed Meyers it was "not making any finding in that regard." It maintained that the post-

agreement emails and phone calls and Cassell's testimony thereto were "not enough for me to compel the matter to arbitration against her" absent Stephania's signature on the contract, because "I need to be assured that she signed it in her name and agreed to arbitration, and that is not present in this situation."

The court told Meyers that "the signature issue is the big point on this," and the alternative basis for denying the motion cited in the tentative—the lack of an arbitrable controversy—was "just a side issue." Meyers argued that there was a controversy, a breach of contract, which occurred when Stephania informed Cassell he could no longer sell the property. The court responded, "Then perhaps it is a breach of contract case, but with respect to the arbitration, I'm not going to grant the petition to compel arbitration, okay?"[4]

The court adopted its tentative ruling as final and recorded the matter as completed. Cassell timely appealed.
(§ 1294, subd. (a); see *Mercury Insurance Group v. Superior Court* (1998) 19 Cal.4th 332, 349.)

DISCUSSION

I. *Stephania may appear, but is subject to the Rules of Appellate Procedure*

Stephania filed a brief in propria persona in response to this appeal. Citing *Devlin*, *supra*, 155 Cal.App.3d at pp. 385-386, Cassell asserts in his reply brief that Stephania "cannot appear

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[4] The court also remarked that it was "interesting" that the clerk entered default in the matter and further commented, "I can't have a default on a petition to compel arbitration." However, the court did not take any action to set aside or vacate the default.

in this Court to contest—nor to support—any ruling of the lower court" because she "has stayed in default for well over a year and has not cross-appealed the entry of default." We are not persuaded.

Cassell is correct that the general rule in civil actions is that "[t]he entry of a default terminates a defendant's right to take any further affirmative steps . . . until either its default is set aside or a default judgment is entered." (*Devlin*, *supra*, 155 Cal.App.3d at p. 385.) However, this is a special proceeding, not a civil action. (See §§ 22, 23.) The Code of Civil Procedure has four Parts, which are further subdivided into Titles, Chapters, and Sections: Part I, "Of Courts of Justice" (§§ 33-286); Part II, "Of Civil Actions" (§§ 307-1062.20); Part III, "Of Special Proceedings of a Civil Nature" (§§ 1063-1822.60); and Part IV, "Miscellaneous Provisions" (§§ 1855-2107). The provisions governing arbitration, which begin at section 1280, are squarely within the special proceedings Part of the Code; those governing defaults and default judgments, which begin at section 585, are within the Part governing civil actions. Cassell has not cited any authority suggesting that the ordinary default rules contained in Part II of the Code governing civil actions apply in this particular type of special proceeding. No statutory provision in the Title of the Code governing arbitration (Title 9 of Part III) suggests this is the case; this is in contrast to the Title governing writs (Title 1 of Part III), which expressly specifies that "the provisions of Part II of this Code are applicable to and constitute the rules of practice in the proceedings mentioned in this title." (§ 1109.) Instead, section 1290 specifies the consequence to a properly served respondent who does not duly serve and file a response to a petition to compel arbitration: the allegations of the petition are deemed admitted. (§ 1290.) As noted above, we apply that

consequence here.

We also apply the rules of appellate procedure, which apply equally to litigants who, like Stephania, appear in propria persona. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) Rule 8.204(a)(1)(C) requires an appellate brief to "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Cal. Rules of Court, rule 8.204(a)(1)(C).) Stephania's brief does not comply with this rule. It lacks any citation to the record, and it contains numerous factual assertions that have no basis in the record. We may decline to consider passages of briefs that do not comply with Rule 8.204(a)(1)(C), and exercise that option here. (*Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 60.) We consider the Discussion section of Stephania's brief, despite its lack of citations, to the extent it refers to and addresses the statutes and case law relied upon in Cassell's briefing.

II. *Standard of Review*

"There is no uniform standard of review for evaluating an order denying a motion to compel arbitration." (*Robertson v. Health Net California, Inc.* (2005) 132 Cal.App.4th 1419, 1425.) If the trial court denied the motion based on a decision of fact, we apply the substantial evidence standard of review. (*Ibid.*) Under the substantial evidence standard, we affirm the order of the trial court if it is supported by substantial evidence in the record—evidence which is reasonable, credible, and of solid value. (*Vita Planning and Landscape Architecture, Inc. v. HKS Architects, Inc.* (2015) 240 Cal.App.4th 763, 772 (*Vita*).) If the trial court's denial rested on a question of law, however, we apply a de novo standard of review. (*Robertson v. Health Net California, Inc.*, *supra*, 132 Cal.App.4th at p. 1425.)

The trial court here denied the motion to compel arbitration because it was "not persuaded" by the listing agreement and Cassell's declaration that Stephania agreed to arbitrate. Cassell contends this was a legal determination subject to de novo review. He emphasizes that his evidence was undisputed due to Stephania's absence from the proceedings, and further asserts that the trial court "made a legal determination that the signature on the agreement did not count." We disagree.

As we discuss more fully below, the threshold question before the court was whether Cassell and Stephania had an agreement to arbitrate. That is a factual question that the trial court resolved on a factual basis. ""'[W]hether a certain or undisputed state of facts establishes a contract is one of law for the court. . . . On the other hand, where the existence . . . of a contract or the terms thereof is the point in issue, and the evidence is conflicting or admits of more than one inference, it is for the . . . trier of the facts to determine whether the contract did in fact exist . . . [.]' [Citations.]'" [Citations.] 'Mutual assent or consent is necessary to the formation of a contract' and '[m]utual assent is a question of fact.' [Citation.]" (*Vita*, *supra*, 240 Cal.App.4th at pp. 771-772; see also *Toal v. Tardif* (2009) 178 Cal.App.4th 1208, 1219 ["our Supreme Court has clearly stated that a court, before granting a petition to compel arbitration, *must* determine the factual issue of 'the existence or validity of the arbitration agreement'"]; *Engalla v. Permanente Medical Group* (1997) 15 Cal.4th 951, 972 ["the trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination"].)

Although Cassell was the only party to submit evidence, and accordingly asserts that the evidence was "undisputed," the evidence before the trial court was inconsistent on its face. The

written listing agreement identified Robert as the seller and signatory, but Cassell's declaration asserted that Stephania owned the unit and signed the agreement. Some of the emails from an account attributed to Robert in the listing agreement were signed "Stephania"; others were unsigned. The trial court resolved these inconsistencies on a factual basis; we accordingly review its decision for substantial evidence.

III. *Governing Principles*

California has a strong public policy in favor of arbitration as an expedient and relatively inexpensive means of dispute resolution. (*Moncharsch v. Heily & Blase* (1992) 3 Cal.4th 1, 9; see also *Avery v. Integrated Healthcare Holdings, Inc.* (2013) 218 Cal.App.4th 50, 59 (*Avery*).) Parties must agree to arbitrate their disputes, however; there is no policy compelling parties to submit to arbitration absent their clear agreement to do so. (*Ibid.*) When there is a dispute about the arbitrability of a dispute, the party seeking to arbitrate may file a petition in the trial court to obtain an order compelling arbitration. (See § 1281.2.)

A trial court presented with such a petition is generally required to grant the petition and order the parties to arbitrate the controversy "if it determines that an agreement to arbitrate the controversy exists." (§ 1281.2.) Accordingly, the trial court's first task is to determine whether the parties have agreed to arbitrate the dispute, using general principles of contract law. (*Avery*, *supra*, 218 Cal.App.4th at p. 59.) Though there are some exceptions, "[g]enerally speaking, one must be a party to an arbitration agreement to be bound by it or invoke it." (*Westra v. Marcus & Millichap Real Estate Inv. Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759, 763.) "Lacking the signature of the adverse party on the contract to arbitrate, [the petitioner] must provide additional substantiation of the agreement. . . ." (*Toal*, *supra*,

178 Cal.App.4th at p. 1223.) "Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence." (*Rosenthal v. Great Western Financial Securities Corp.* (1996) 14 Cal.4th 394, 413.)

IV. *Analysis*

The trial court concluded Cassell did not carry his burden of showing that he and Stephania had agreed to arbitrate. Substantial evidence supported this conclusion. Cassell's declaration stated that title to the property was held by Robert, who was identified in the listing agreement as the seller and contracting party who agreed to arbitrate. The initials "RA" were electronically signed near the arbitration provision. The agreement also included a warranty that provided in part, "Seller is the owner of the Property" and "no other persons or entities have title to the property." The agreement further stated that "[a]ll prior discussions, negotiations, and agreements between the parties concerning the subject matter of this Agreement are superseded by this Agreement, which constitutes the entire contract and a complete and exclusive expression of their agreement, *and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement*." Thus, under the terms of the listing agreement he signed, Cassell's testimony regarding his conversations with Stephania could not be used to contradict the agreement's identification of Robert as the seller and sole owner of the property. (See also § 1856, subd. (a) ["Terms set forth in a writing intended by the parties as a final expression of their agreement with respect to the terms included therein may not be contradicted by evidence of a prior agreement or of a contemporaneous oral agreement."].) The court as trier of

fact was entitled to accord more weight to the plain terms of the agreement than Cassell's declaration.

Cassell contends that Stephania "cannot void a contract simply because she signed with a name other than her own." He points to Commercial Code section 1201, subdivision (b)(37), which defines "signed" as to include "any symbol executed or adopted with present intention to adopt or accept a writing," and Civil Code section 1633.7, subdivision (d),, which provides, "If a law requires a signature, an electronic signature satisfies the law." He also directs us to *Security Pacific National Bank v. Chess* (1976) 58 Cal.App.3d 555, 561, in which we affirmed the validity of corporate notes signed by a corporation's president in his own name. Cassell contends these authorities demonstrate that Stephania's "signing 'Robert Armani' constituted her signature." We are not persuaded.

The agreement identified the seller as Robert Armani. It included a warranty that "Seller is the owner of the Property." It did not suggest anywhere that Stephania was the owner of the property or that Robert Armani was a pseudonym. Cassell has not identified any case, nor has our research uncovered any, holding that an individual may adopt the name of another for the sole purpose of signing a contract. Unlike an X or other signatory mark, which have long been recognized both by the Commercial Code and case law as valid signatures (see, e.g., *Hilborn v. Alford* (1863) 22 Cal. 482), the name of another individual is not an acceptable alternative to one's own name absent evidence sufficient to demonstrate that the name is a pseudonym. Substantial evidence supported the trial court's conclusion that she did not agree to arbitrate.

Security National Bank v. Chess, *supra*, is not to the contrary. In that case, eight notes were indorsed using the name "'Richard L. Burns'" or "Richard L. Burns, Pres." (*Id.* at p. 561.) We concluded that Burns, who was the president of Equipment Lending Company, validly transferred the notes to the plaintiff despite signing them in his own name rather than the corporation's. We explained that "there is no question of his authority, or any reason to doubt his intention thereby to effect a transfer of the notes to plaintiff," and invoked the "principle that a party may adopt any form or symbol as its signature for a particular transaction." (*Ibid.*) Here, the listing agreement itself calls into question Stephania's authority to list the property. The agency checkbox on the agreement was left unchecked, and, aside from the ambiguous "stephania.armani" email address, there is no indication on the face of the agreement that Robert Armani was in fact Stephania Armani or even affiliated with her.

Cassell also relies on *Jacobs v. Locatelli* (2017) 8 Cal.App.5th 317 (*Jacobs*), for the proposition that "the lower court should have accepted Cassell's undisputed and credible evidence" that Stephania signed the agreement on her own behalf. *Jacobs* is distinguishable. Jacobs, a real estate broker, signed a listing agreement with one individual, Locatelli. (*Id.* at p. 320.) The agreement identified the owner of the property as "John B. Locatelli, Trustee of the John B. Locatelli Trust, et al." (*Id.* at p. 328.) It included signature lines for at least five additional parties, but those parties did not sign the agreement. (*Id.* at p. 320.) The agreement, like the one here, included an integration clause. (*Id.* at p. 327.) Jacobs sued the nonsignatory parties for breach of contract on the grounds that Locatelli represented to her that he had authority to sign on their behalf.

The nonsignatory parties demurred, arguing that the integration clause and the parol evidence rule prohibited Jacobs from introducing evidence of that putative agreement. (See *id.* at pp. 322, 327.)

The trial court sustained the demurrer, but the appellate court reversed. It concluded that the parol evidence rule did not bar evidence of the purported agency agreement because Jacobs's allegations did not contradict any terms of the agreement. (*Jacobs*, *supra*, 8 Cal.App.5th at pp. 327-328.) Although the agreement contained an integration clause, and warranted that "Owner is the owner of the Property" and "no other persons or entities have title to the Property," the appellate court observed that the term "Owner" was defined ambiguously, as "John B. Locatelli, Trustee of the John B. Locatelli Trust, et al." (*Id.* at p. 328.) Given the ambiguity surrounding the number and identity of the entities encompassed in the "et al.," the trial court concluded that Jacobs's agency allegation would not "necessarily contradict the terms of the agreement" and therefore parol evidence was admissible to support it. (*Ibid.*)

Here, in contrast, the agreement defines the seller of the property as Robert Armani. The sole signature line for the seller contains a signature reading Robert Armani. The agreement warrants that seller—Robert Armani—is the owner of the property, and further indicates that no one is signing the agreement in an agency capacity. Cassell's declaration necessarily contradicts these terms by stating that Stephania signed the agreement, "in fact owns the Unit" and "had the authority to authorize my listing the Unit for sale." As we noted above, the trial court accordingly was entitled to weigh the evidence, or to entirely discount Cassell's declaration under the

parol evidence rule.

Cassell next asserts that affirming the trial court's ruling "would give a 'cloak of immunity' to a 'hedging' (or colloquially, 'flakey') seller." We disagree. The trial court ordered only that Stephania could not be required to arbitrate the dispute; it did not immunize her from a lawsuit alleging breach of contract or other cause of action. Because we affirm the trial court's ruling that there was no agreement to arbitrate, we need not and do not reach Cassell's final contention, that the trial court erred by concluding that no arbitrable controversy existed.

DISPOSITION

The order of the trial court is affirmed. The parties are to bear their own costs of appeal.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.