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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

Estate of CARLOS ADOLFO FERNANDEZ, Deceased.	B276193 (Los Angeles County Super. Ct. No. BP145072)
ALBERTO MANUEL FERNANDEZ, Petitioner and Appellant, v. YEAR SEVEN LLC et al., Objectors and Respondents.	

APPEAL from an order and judgment of the Superior Court of Los Angeles County, David J. Cowan, Judge. Affirmed.

Law Offices of Egbase & Associates and Gerald O. Egbase for Petitioner and Appellant.

Brifman Law Corporation and Mark Brifman for Objectors and Respondents.

INTRODUCTION

Carlos Adolfo Fernandez owned three pieces of property in Los Angeles County. Seven months before he died, Carlos transferred the three properties to a friend and business colleague, Thomas Skouros, in two agreements, one in 2012 and the other in 2013. After Carlos died, his brother, Alberto Manuel Fernandez, became the executor and sole heir of Carlos's estate. Alberto filed a petition under Probate Code section 850 to recover the three properties for the estate.[1] The trial court, after a court trial, denied the petition, ruling the agreements and transfers to Skouros were valid.

Alberto appeals, arguing Skouros obtained Carlos's consent to the agreements by undue influence. He also argues the 2012 agreement violated the statute of frauds, the 2013 agreement violated the antideficiency laws, and Skouros committed fraud in connection with the transactions giving rise to the 2013 agreement. We affirm.

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1 Undesignated statutory references are to the Probate Code.

FACTUAL AND PROCEDURAL HISTORY

A. *The 2012 Agreement*

In 2007 Carlos purchased commercial property on Newgrove Street in Lancaster (the Newgrove property). In 2008 Carlos obtained from CFM Corporation a $200,000 home equity line of credit secured by the Newgrove property.

Skouros and the Vander Hook Family Trust purchased the loan from CFM.[2] CFM assigned the Newgrove deed of trust to a company Skouros owned, Investors Trust Loans, which subsequently transferred the deed of trust to another of Skouros's companies, Year Seven, LLC. Meanwhile, Carlos failed to make some of his monthly payments on the line of credit.

In June 2008 a check Carlos received from the escrow company that CFM used for the line of credit was returned for insufficient funds. At Carlos's request, Skouros made an unsecured $40,000 loan to Carlos with the understanding that, once Carlos got the funds from the escrow company, he would repay Skouros.

In 2010 Carlos suffered a stroke. Prior to his stroke, Carlos was "delinquent" on the Newgrove line of credit. After his stroke, he made payments "sporadically." Eventually, after Carlos missed five or six monthly payments, Skouros began foreclosure proceedings. Skouros asked a loan service agency to issue a notice of default and a demand for sale. When Skouros learned Carlos had suffered a stroke, however, Skouros and the trustee of

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[2] Skouros described the transaction as follows: CFM "funded" the line of credit, and Skouros "bought the loan from CFM upon its execution" by giving $200,000 to "the escrow [company] that handled this transaction."

the Vander Hook Family Trust agreed to "hold off" on the foreclosure. Skouros instructed the loan service company to maintain the notice of default but to continue collecting payments.

On October 17, 2012 the balance on the line of credit, which Carlos had unsuccessfully tried to refinance, became due. Because Carlos was unable to pay the balance due on the line of credit, he orally agreed with Skouros to transfer the deed for the Newgrove property to Skouros in lieu of foreclosure (the 2012 agreement). Carlos and Skouros also agreed Carlos would continue collecting the rents on the property for six months and "in return" he would pay all utilities and property taxes during that time. Carlos transferred the deed for the Newgrove property to Year Seven, LLC, and Skouros recorded the deed.[3]

B. *The 2013 Agreement*

Although Carlos had represented to Skouros he had paid the utility bills and property taxes on the Newgrove property, Skouros learned Carlos in fact had not paid the property taxes for several years. Skouros paid a $37,000 delinquent tax bill to avoid a tax sale.

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[3] In obtaining the deed on the Newgrove property, Skouros assumed the debt Carlos owed to the Vander Hook Family Trust. To determine the value of the Newgrove property, Carlos and Skouros reviewed tax assessments on the property and other properties in the neighborhood. They decided the Newgrove property "was not worth nearly what was owed on the property," which explained why Carlos had been unable to refinance the property.

To resolve the tax delinquency and the $40,000 loan, Carlos and Skouros entered into a second agreement, this time in writing. On February 20, 2013 Carlos and Skouros signed an agreement titled "Stipulations for Deed in Lieu on . . . Newgrove Street" (the 2013 agreement). Skouros drafted the document, although he and Carlos conferred several times about its terms and language, and Skouros sent Carlos a copy to review before Carlos signed it.

The 2013 agreement memorialized the terms of the October 2012 oral agreement and resolved additional debts Carlos owed to Skouros, including the $40,000 loan, the $37,000 tax payment, and the payments Skouros made for the Newgrove property's utilities. Skouros calculated that the total debt Carlos owed him at the time of the 2013 agreement included a "deficiency" of $59,474 because the Newgrove property was only worth $160,316 in 2013 and the amount due on the line of credit (as a result of Carlos's failure to make some of the monthly payments) was $219,790.

Carlos acknowledged in the 2013 agreement that he had various debts to Skouros and that, "if he decided not to pay those monies that were owed, . . . he had the option of deeding . . . two [other] properties to satisfy the debt." Carlos and Skouros referred to these two properties as the Nestle property and the Outpost property, neither of which had any equity at the time. The 2013 agreement included the following representations, acknowledgements, and terms: Year Seven, LLC had recorded the Newgrove grant deed on October 18, 2012; Carlos had collected rents on the Newgrove property until February 1, 2013; Carlos would bring current "all utilities/debts," which included "Gas, Electrical, Water, Taxes, Insurance, and

Trash services"; an "outstanding balance of $59,474.33" remained on the Newgrove property; Carlos owed $40,000 from a loan related to the insufficient funds check issued by the escrow company; Carlos would pay all delinquent utility and tax bills accrued until February 1, 2013, but if he failed to do so, Year Seven, LLC would "accept title" to the Nestle and Outpost properties "as payment in full"; and Carlos would have 60 days to deliver the Nestle and Outpost property deeds or "make full payment on all delinquent debt."

At the time they entered into the 2013 agreement Carlos and Skouros understood that the total debt was "well in excess" of what the Nestle and Outpost properties were worth. The Nestle property was in a "short sale," which led Skouros to believe the liens on the property exceeded the listed price of the property, and, because the property had not sold at the listed price after multiple listings, Skouros believed the property was worth even less than the listed price. The note and taxes were current on the Outpost property, but the property was worth $150,000 to $250,000 less than the loan on the property. Because both properties were "under water," Skouros believed that Carlos could not make any money by selling the properties in 2013 and that, if Skouros held the properties or rented them, he would have "some small ability . . . in the future down the road" to get his money back.

On April 9, 2013 Carlos transferred the deeds for the Nestle and Outpost properties to Year Seven, LLC. On May 23, 2013 Carlos died.

C. *The Section 850 Petition and Trial*

Alberto filed a petition in the probate court under section 850 to reclaim the Newgrove, Nestle, and Outpost properties for Carlos's estate. Alberto alleged Carlos "lacked the capacity to engage in transactions" in 2012 and 2013 because he had suffered a stroke in 2010 that left him "incapacitated and incompetent." Alberto alleged Skouros "took advantage" of Carlos, "obtained and or proceeded to register fraudulent Deeds," and did not give Carlos "any consideration or proceeds from the alleged transfer of these properties." In his trial brief, Alberto attacked the validity of the 2012 and 2013 agreements on various grounds, including that they were the product of undue influence, Carlos lacked the capacity to execute the agreements, the signatures on the deeds were forged, the 2012 agreement violated the statute of frauds, and the 2013 agreement violated Code of Civil Procedure section 726. In his closing brief, Alberto also argued Skouros committed fraud by not providing the funds for the line of credit.

The parties presented conflicting evidence at trial about Carlos's cognitive functioning at the time of the 2012 and 2013 agreements. Skouros testified that Carlos, a loan officer before his stroke, was "extremely business savvy," was "very quick," and "could calculate things to within a dime of the financial aspect of the loan." Skouros stated that, after the stroke, Carlos was "able to understand everything that was going on but may have [had] a problem verbalizing it and getting it out the exact way that he wanted to." Skouros said Carlos drove, lived by himself, and did "all of the things he needed to do," although "with more difficulty." According to Skouros, Carlos "stuttered quite a bit," but "was still very clear in what was going on" and "was able to

convey his thoughts clearly." Skouros described an incident, after the stroke, where Carlos brought an eviction action against a tenant, drove to court, and successfully represented himself in the proceeding. The trial court took judicial notice of a Los Angeles Superior Court case docket that reflected Carlos represented himself in a lawsuit in November 2012 and prevailed. Skouros also observed that Carlos, after his stroke, negotiated "loan modifications" on his other properties. Skouros testified Carlos did not appear to have any impairment preventing him from understanding the nature of the 2013 agreement.

Yalie Herrera, the notary for the 2013 agreement, testified that, when Carlos went to her office to sign the 2013 agreement, he drove himself. Herrera testified Carlos did not have any trouble understanding or speaking English. Herrera verified that Carlos read the agreement, agreed to sign it, and knew what he was signing.

On the other hand, Federico Triebel,[4] a real estate broker and lender who knew Carlos personally and professionally, testified that after the stroke Carlos "was unable to understand what was going on," had "a lot of incapacities," and "forgot the English language." Triebel said he assisted Carlos in modifying loans on Carlos's properties, including the Nestle and Outpost properties. Triebel testified that Carlos's condition improved "somewhat" over time and Triebel acknowledged that in March 2013 he asked Carlos to sign a listing agreement authorizing Triebel to sell the Nestle property to avoid foreclosure.

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[4] Triebel was listed with Alberto as a petitioner in the section 850 petition, but he is not a party to this appeal.

Richard Horowitz, Carlos's physician from 2010 until his death in 2013, testified that immediately after the stroke Carlos was paralyzed to a "significant degree on one side" and was unable to speak or understand what people were saying to him. Dr. Horowitz testified that, over the course of two or three years, Carlos's ability to communicate "improved to where he could put words together in English" and, "towards the end," Carlos "could speak reasonably well on an elementary level." Dr. Horowitz testified it would not surprise him to learn Carlos was conducting business from November 2012 to January 2013, including collecting rents and managing his rental properties. Dr. Horowitz referred to his notes throughout his testimony to recall Carlos's physical and mental condition.

D. *The Trial Court's Decision and Judgment*

The trial court ruled in a written statement of decision that Alberto had failed to prove that Carlos lacked capacity to enter into the 2012 and 2013 agreements, that the deeds were forged, that Skouros had exerted undue influence on Carlos to sign the agreements, or that Skouros engaged in any fraudulent conduct. In finding Skouros did not commit fraud, the court commented, "If there was any chicanery, it appeared to emanate from [Alberto]." The trial court also noted Alberto had failed to prove that Skouros did not provide the funds for the line of credit or that Skouros had any involvement in the check from the escrow company that was returned for insufficient funds and that required Carlos to borrow $40,000 from Skouros.

The trial court denied Alberto's section 850 petition and entered judgment against Alberto and in favor of Skouros, Year

Seven, LLC, and the Vader Hook Family Trust. Alberto timely appealed.

DISCUSSION

Although it is not entirely clear, Alberto appears to challenge the validity of the 2012 agreement and the 2013 agreement on several grounds. He states the first issue in the appeal is whether the trial court "erred in failing to find that the 2012 Agreement and Corresponding Deed in Lieu of the Newgrove Property to the Respondent's is marred by undue Influence," although in the argument section of his brief Alberto contends the 2013 agreement was also "marred by undue influence." Alberto states the second issue is: "Whether the Trial Court Erred in Upholding The 2013 Agreement Between The Decedent And Respondent To Sustain The Corresponding Transfer of the Nestle and Outpost Properties."

A. *Standard of Review*

"In general, in reviewing a judgment based upon a statement of decision following a bench trial, 'any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court's decision. [Citation.]' In a substantial evidence challenge to the judgment, the appellate court will 'consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.]' [Citation.] We may not reweigh the evidence and are bound by the trial court's credibility determinations. [Citations.] Moreover, findings of fact are liberally construed to support the judgment." (*Estate of Young*

(2008) 160 Cal.App.4th 62, 75-76; see *Butler v. LeBouef* (2016) 248 Cal.App.4th 198, 208 ["[t]he power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, that supports the judgment"].)

Where, however, the party appealing the judgment had the burden of proof at trial,[5] and "'where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) "uncontradicted and unimpeached" and (2) "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding."'" (*Dreyer's Grand Ice Cream, Inc. v. County of Kern* (2013) 218 Cal.App.4th 828, 838; see *Atkins v. City of Los Angeles* (2017) 8 Cal.App.5th 696, 734.)

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[5] Alberto does not argue on appeal, and did not argue in the trial court, that the presumption of undue influence under section 21380 applies. (See *Butler v. LeBouef*, *supra*, 248 Cal.App.4th at p. 208.) As the petitioner, Alberto had the burden of proving Carlos's transfers were invalid because Skouros exercised undue influence. (See *Estate of Gelonese* (1974) 36 Cal.App.3d 854, 862 [challengers to a will have the burden of proving the decedent executed the will as the result of undue influence].)

B. *The 2012 and 2013 Agreements Were Not the Product of Undue Influence*

Section 850, subdivision (a)(2)(D), provides that a personal representative of the decedent "may file a petition requesting that the court make an order" where "the decedent died having a claim to real or personal property, title to or possession of which is held by another." (See *Estate of Young*, *supra*, 160 Cal.App.4th at p. 86 ["[w]hen a petition is brought under section 850, the issues include . . . whether the decedent died having a claim to real or personal property, title to or possession of which is held by another"]; *Estate of Kraus* (2010) 184 Cal.App.4th 103, 110 [same].) Section 855 provides: "An action brought under [section 850] may include claims, causes of action, or matters that are normally raised in a civil action to the extent that the matters are related factually to the subject matter of a petition filed under this part." (See *Estate of Young*, at p. 86.)

Section 86 provides: "'Undue influence' has the same meaning as defined in Section 15610.70 of the Welfare and Institutions Code." (See *Lintz v. Lintz* (2014) 222 Cal.App.4th 1346, 1356, fn. 3.) Welfare and Institutions Code section 15610.70, subdivision (a), provides, "'Undue influence' means excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity. In determining whether a result was produced by undue influence, all of the following shall be considered:

(1) The vulnerability of the victim. Evidence of vulnerability may include . . . incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim's vulnerability.

(2) The influencer's apparent authority. Evidence of apparent authority may include . . . status as a fiduciary, family

member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification.

(3) The actions or tactics used by the influencer. Evidence of actions or tactics used may include . . .

(A) Controlling necessaries of life, medication, the victim's interactions with others, access to information, or sleep.

(B) Use of affection, intimidation, or coercion.

(C) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.

(4) The inequity of the result. Evidence of the equity of the result may include . . . the economic consequences to the victim, any divergence from the victim's prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received . . . ." (See *Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 857.)

Alberto has not shown the evidence compels a finding that any of these undue influence factors was present. Nor has he shown the evidence compels a finding Skouros, by excessive persuasion, overcame Carlos's free will leading to an inequitable result.

1. *Carlos Was Not Vulnerable*

"Section 810 establishes a rebuttable presumption 'that all persons have the capacity to make decisions and to be responsible for their acts or decisions,' recognizing that persons with mental or physical disorders 'may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions.'" (*Lintz v. Lintz, supra,*

222 Cal.App.4th at p. 1351; see § 810, subds. (a) and (b); *Doolittle v. Exchange Bank* (2015) 241 Cal.App.4th 529, 545.)

Alberto did not rebut the statutory presumption of capacity or prove Carlos was vulnerable under Welfare and Institutions Code section 15610.70, subdivision (a)(1). Alberto argues Carlos "suffered from paralysis and mental infirmity that affected his cognitive abilities." The trial court found, however, that two and a half years after Carlos suffered the stroke his "condition had improved" and he did not lack the capacity to enter into the 2012 oral agreement or the 2013 written agreement. The evidence does not compel a contrary finding. Carlos represented himself in court, initiated and prevailed in an unlawful detainer action against a tenant, drove himself to doctor appointments and to the notary, and collected rents and managed his rental properties, evidence that showed Carlos was far from "vulnerable." In addition, Skouros testified Carlos did not show any signs of mental impairment at the time he executed the two agreements, and the notary stated Carlos understood what he was signing and wanted to sign the 2013 agreement. Even Triebel, who testified Carlos was "incompetent," thought Carlos was competent enough in March 2013 to sign a listing agreement for Triebel to sell the Nestle property.

2. *Skouros Did Not Have Apparent Authority*

There was no evidence that Skouros served in any of the capacities Welfare and Institutions Code section 15610.70, subdivision (a)(2), lists as indicative of having "apparent authority" over Carlos. Alberto asserts a "[c]onfidential relationship existed" between Skouros and Carlos, but Alberto does not cite any facts in the record or legal authority to support his assertion, essentially forfeiting the argument. (See *Estates of Collins & Flowers* (2012) 205 Cal.App.4th 1238, 1251, fn. 11

[arguments not supported by a citation to the record on appeal are forfeited]; *Estate of Cairns* (2010) 188 Cal.App.4th 937, 949 [arguments unsupported by citation to authority are forfeited].) That Skouros and Carlos were friends and business associates did not, without more, create a fiduciary or confidential relationship. (See *Worldvision Enterprises, Inc. v. American Broadcasting Companies, Inc.* (1983) 142 Cal.App.3d 589, 595 ["mere fact that in the course of their business relationships the parties reposed trust and confidence in each other does not impose any corresponding fiduciary duty in the absence of an act creating or establishing a fiduciary relationship known to law"]; *Schultz v. Steinberg* (1960) 182 Cal.App.2d 134, 138 ["'[i]n the absence of a showing of the exercise of undue influence mere friendship does not constitute a confidential relationship'"]; *In re Williams Estate* (1950) 99 Cal.App.2d 302, 314 [no undue influence where "the evidence shows but a close friendship . . . , not a confidential or fiduciary relationship"].)

3. *Skouros Did Not Engage in Any of the Actions or Tactics Indicative of Undue Influence*

There was also no evidence Skouros engaged in any of the conduct listed in Welfare and Institutions Code section 15610.70, subdivision (a)(3), as indicative of an attempt to unduly influence Carlos. Alberto asserts Skouros "lulled and manipulated [Carlos] to repose confidence and trust in him" by having Skouros's wife, a neuropsychologist, treat him. Alberto asserts that Skouros "got [Carlos] to come over to [his] home and they [got] to chart [*sic*]" and that Skouros "had the opportunity to chart [*sic*] with [Carlos]," which allowed Skouros to gain Carlos's trust and manipulate him. Given the longstanding friendship between Carlos and Skouros, however, the two men would have been able to discuss business and personal matters regardless of the

therapy sessions. Alberto did not present any evidence showing Skouros used the therapy sessions as part of a master plan to gain Carlos's trust and take advantage of him.

Instead, the evidence showed that in October 2012, when Carlos could not make payments on the line of credit, he negotiated an arrangement that allowed him to continue collecting rents for six months, even after he defaulted on a $200,000 debt. With respect to the 2013 agreement, the evidence showed Carlos recognized how much money he owed Skouros, understood the Nestle and Outpost properties had declined in value, and acknowledged the encumbrances on the properties exceeded the equity in the properties. There was no evidence suggesting the agreements were negotiated in "haste" or "secrecy." (Welf. & Inst. Code, § 15610.70, subd. (a)(3)(C).) Indeed, Skouros made efforts to ensure transparency. He conferred with Carlos several times to discuss the drafting of the 2013 agreement, sent the document to Carlos to review, and used a notary, who verified that Carlos understood the nature of the document and wanted to sign it.

4. *The Agreements Were Equitable*

Carlos owed Skouros a substantial amount of money but did not have cash available to pay him. Skouros allowed Carlos to use the Nestle and Outpost properties in lieu of cash, even though both properties were "under water" and Skouros might not be able to recover all the money Carlos owed him. The results of the transactions were not unfair to Carlos. And, even if they were, such unfairness would not, without more, support a finding of undue influence. (See Welf. & Inst. Code, section 15610.70, subd. (b) ["[e]vidence of an inequitable result, without more, is not sufficient to prove undue influence"].)

C. *The 2012 Agreement Was Not Invalid Under the Statute of Frauds*

Alberto contends the 2012 oral agreement is "unenforceable" because it was not reduced to writing. It appears Alberto is arguing Skouros could not have enforced the 2012 agreement because it was oral.

To the extent the statute of frauds even applies, however, full performance takes an oral agreement out of the statute. (*Dougherty v. California Kettleman Oil Royalties, Inc.* (1937) 9 Cal.2d 58, 81; see *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1176 ["'[f]ull performance takes a contract out of the statute of frauds . . . where performance consisted of conveying property, rendering personal services, or doing something other than payment of money'"]; *Secrest v. Security National Mortgage Loan Trust* 2002-2 (2008) 167 Cal.App.4th 544, 556 ["'[w]here the contract . . . has been fully performed by one party the remaining promise is taken out of the statute [of frauds], and the party who performed may enforce it against the other'"]; see also *Estate of Duke* (2015) 61 Cal.4th 871, 889 [""'[t]he primary purpose of the Statute [of Frauds] is evidentiary, to require reliable evidence of the existence and terms of the contract and to prevent enforcement through fraud or perjury of contracts never in fact made'""].) Here, both sides fully performed. Carlos gave Skouros the Newgrove property in exchange for Skouros's cancelling the foreclosure proceedings and allowing Carlos to collect the rents for six months even though Carlos no longer owned the property. When Carlos could not pay the taxes and utilities on the Newgrove property, he transferred the Nestle and Outpost properties to Skouros.

Moreover, "[a] memorandum satisfies the statute of frauds if it identifies the subject of the parties' agreement, shows that

they made a contract, and states the essential contract terms with reasonable certainty." (*Sterling v. Taylor* (2007) 40 Cal.4th 757, 766.) Carlos and Skouros memorialized the terms of the 2012 oral agreement by signing the 2013 written agreement. Specifically, the 2013 agreement stated that Skouros received and recorded the deed for the Newgrove property, Carlos would collect the rents until February 1, 2013, and Carlos would be responsible for paying the taxes and utilities. (See *Potter v. Bland* (1955) 136 Cal.App.2d 125, 131 [""[a]n oral agreement, within the statute of frauds, may be satisfactorily evidenced, by a subsequent writing, notwithstanding the fact that the agreement has already been executed by one party,"" and ""[t]he subsequent written contract relates back to the making of the oral agreement which it embodies, so as to validate the latter under the statute of frauds""]; *Hausen v. Goldman* (1954) 124 Cal.App.2d 25, 31 ["[a]n oral agreement may be taken out of the operation of the statute of frauds by a written memorandum executed subsequently, even though the agreement has already been performed by one party"].)

The case on which Alberto relies, *Seaman's Direct Buying Service, Inc. v. Standard Oil Co.* (1984) 36 Cal.3d 752, 762-763, overruled on another ground in *Freeman & Mills, Inc. v. Belcher Oil Co*. (1995) 11 Cal.4th 85, 88, does not support his argument the 2012 oral agreement was unenforceable. In that case, the Supreme Court held that a letter memorializing an agreement contained terms with "sufficient specificity" to satisfy the requirements of Civil Code section 1624. The Supreme Court explained that "[o]nly essential terms must be stated" and that ""[a]n agreement will not be held deficient [under the statute of frauds] for the failure to express that which is clearly *implied* when the writing is interpreted in accordance with the intentions of the parties."" (*Seaman's Direct Buying Service, Inc*., at p. 763.)

Alberto does not state which terms of the 2012 oral agreement the 2013 written agreement failed to specify. As discussed, the 2013 written agreement reflected Carlos's six-month obligation under the 2012 agreement to pay the taxes and utilities while he continued to collect rent.

D. *The Antideficiency Statute Did Not Apply*

Alberto argues that the 2012 deed in lieu of foreclosure Carlos gave to Skouros cancelled all obligations relating to the Newgrove property and that "the antideficiency statute" precludes enforcement of the 2013 agreement. Although Alberto does not identify the antideficiency statute he contends the 2013 agreement violated, he did cite Code of Civil Procedure section 726 in his trial brief. Code of Civil Procedure section 726, subdivision (a), provides: "There can be but one form of action for the recovery of any debt or the enforcement of any right secured by mortgage upon real property . . . ." Section 726, however, "expressly applies to judicial foreclosures; it does not apply if a nonjudicial foreclosure is pursued." (*Black Sky Capital, LLC v. Cobb* (2017) 12 Cal.App.5th 887, 896; see *Walker v. Community Bank* (1974) 10 Cal.3d 729, 736 ["a private sale under the power contained in the trust deed is not a *judicial* foreclosure within section 726"]; *Birman v. Loeb* (1998) 64 Cal.App.4th 502, 509 [a nonjudicial foreclosure does not violate section 726].) Because Skouros did not initiate or conduct a judicial foreclosure, but proceeded by way of a nonjudicial foreclosure (which he cancelled as part of the 2012 agreement), Code of Civil Procedure section 726 did not apply to the 2013 agreement.[6]

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[6] Another antideficiency statute, Code of Civil Procedure section 580d, subdivision (a), provides, in pertinent part: "[N]o

Moreover, even if Code of Civil Procedure section 726 applied, the evidence does not compel a finding that Carlos transferred the Nestle and Outpost properties to satisfy a deficiency on the Newgrove line of credit. To the contrary, the evidence showed Carlos transferred the two properties to reimburse Skouros for other debts he had paid and expenses he had incurred, including utility bills and delinquent taxes. As noted, the 2013 agreement contained a paragraph reflecting this understanding.[7] In addition, Skouros testified that, after Carlos

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deficiency shall be owed or collected, and no deficiency judgment shall be rendered for a deficiency on a note secured by a deed of trust or mortgage on real property . . . in any case in which the real property . . . has been sold by the mortgagee or trustee under power of sale contained in the mortgage or deed of trust." Alberto does not argue on appeal, and did not argue at trial, that the 2013 agreement violated Code of Civil Procedure section 580d. (See *Estate of Leslie* (1984) 37 Cal.3d 186, 202 [an appellant who fails to make an argument in the trial court "is precluded from raising it for the first time on appeal"]; *Estate of Cooper* (1970) 11 Cal.App.3d 1114, 1123 ["under settled principles of appellate review, questions not raised in the court below may not be raised for the first time on appeal," and "[t]hose principles are applicable to appeals in probate proceedings"].)

[7] The paragraph in the 2013 agreement describing the taxes and utilities stated, in pertinent part: "Year Seven, LLC assumes no responsibility for outstanding payments to Gas, Electric, Water, Taxes, Insurance, or Trash bills between 01/29/2008 and 02/01/2013 and reserves the right to collect from Carlos Fernandez . . . on such debts, or will accept title to properties held by Carlos Fernandez . . . listed as . . . Nestle [Avenue] and . . . . Outpost Drive, as payment in full on all above mentioned."

transferred the Newgrove property to him in 2012, the 2013 agreement resolved the remaining issues, which were the $40,000 loan and the tax and utility debts. While Skouros did mention a "deficiency" of $59,474 on the unpaid balance of the line of credit, and the 2013 agreement contained a sentence suggesting Carlos would transfer the Nestle and Outpost properties to satisfy his total debt to Skouros, there was other evidence showing Carlos transferred the Nestle and Outpost properties to Skouros to resolve debts other than a deficiency relating to the Newgrove property. (See *Dreyer's Grand Ice Cream, Inc. v. County of Kern*, *supra*, 218 Cal.App.4th at p. 838 [because an "appellate court . . . must view all factual matters most favorably to the prevailing party and in support of the judgment," all ""conflicts . . . must be resolved in favor of the respondent""].)

E. *There Was No Evidence Skouros Committed Fraud*

Finally, in the last subheading of his opening brief, Alberto contends: "Respondent['s] Claim To The $40,000 Loan Against Decedent Is Unenforceable . . . And Fraud By Respondent's Agent CFM Is Imputable To The Respondent (Principal)." It is unclear what Alberto means by this sentence, but buried in the text of this section of his brief is an assertion the trial court erred in finding the $40,000 loan Skouros made to Carlos was "tenable consideration" for the Nestle and Outpost properties. Alberto appears to be arguing the $40,000 that Skouros lent Carlos was not a valid debt because Skouros was responsible for issuing the escrow check that had insufficient funds and, because Carlos did not actually owe Skouros $40,000, Skouros obtained the Nestle and Outpost properties without any "consideration."

The elements for fraud are ""(a) a misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of

falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.'"" (*Estate of Young*, *supra*, 160 Cal.App.4th at p. 79.) Alberto does not provide any relevant citation to the record to support his assertions that Skouros "retained brokers CFM as his agents" and that he "is liable for his agent's fraud." Alberto does not identify any facts showing whether or how CFM engaged in "false representation, concealment, or nondisclosure" (*ibid.*) with respect to the escrow check. Nor does Alberto cite any legal authority to support his argument CFM was Skouros's agent, again forfeiting the argument. (See *Estates of Collins & Flowers*, *supra*, 205 Cal.App.4th at p. 1251, fn. 11; *Estate of Cairns*, *supra*, 188 Cal.App.4th at p. 949.)[8] Notably, the escrow company issued the check with insufficient funds. Skouros testified he had no connection to the escrow company, and there was no evidence he did.

Alberto also appears to argue Carlos never received any money from the line of credit other than the returned check from the escrow company, which in turn meant, according to Alberto, Carlos was "defrauded." Alberto does not explain how the failure of Skouros to provide money for the line of credit made the 2013 agreement invalid under a fraud theory. Because the 2013 agreement resolved a debt that was separate from the line of credit, however, whether Skouros or the Vander Hook Family Trust ever funded the line of credit is irrelevant. The evidence showed Skouros lent Carlos $40,000 and paid the delinquent tax

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[8] *Spahn v. Guild Industries Corp.* (1979) 94 Cal.App.3d 143, 155-156, cited in Alberto's opening brief, involved a principal's liability for the agent's fraud. The agent in that case was an employee of the principal. (*Id.* at p. 147.) There was no evidence of any such relationship between CFM and Skouros.

and utility bills, which the Nestle and Outpost properties would serve to repay. There was no evidence to support Alberto's assertion that Skouros did not actually provide the funds for the line of credit. Alberto only points to an absence of any record that Carlos drew the full amount from the line of credit, which is not enough. (See *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 ["error must be affirmatively shown"]; *Pizarro v. Reynoso* (2017) 10 Cal.App.5th 172, 181 ["it is [the appellant's] burden to overcome the presumption on appeal that the underlying order is correct"].)

DISPOSITION

The order denying Alberto's section 850 petition and the judgment are affirmed. Skouros, Year Seven, LLC, and the Vader Hook Family Trust are to recover their costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J. WILEY, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.