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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

ROLANDO DIAZ et al., Plaintiffs and Respondents, v. EL GALLITO I, INC. et al., Defendants and Appellants.	B262900 (Los Angeles County Super. Ct. No. BC546376)

APPEAL from an order of the Superior Court of Los Angeles County, William F. Highberger, Judge. Affirmed.

Law Office of Chad Biggins and Chad Biggins for Defendants and Appellants.

Abrolat Law, Nancy L. Abrolat and Shahane A. Martirosyan for Plaintiffs and Respondents.

Rolando Diaz (Diaz), Andres Soriano (Soriano), and Nery Polanco (Polanco) filed a class action complaint against El Gallito I, Inc., El Gallito II, Inc., El Gallito III, Inc., Christian Arturo Llamas Corona (Christian), Valeria Llamas (Llamas), and Claudia Corona (Claudia)[1] (collectively, Defendants) alleging, inter alia, violations of California's wage and hour laws.

Defendants brought a motion to compel arbitration of the claims asserted by two of the three plaintiffs: Diaz and Soriano (collectively, Plaintiffs[2]). Finding that the parties had not formed an agreement to arbitrate, the trial court denied the motion.

Defendants appeal from the trial court's order denying their motion to compel arbitration of Plaintiffs' claims. We affirm.

BACKGROUND

I. Facts of the case

El Gallito I, Inc. and El Gallito II, Inc. (companies of which Christian and Llamas, respectively, are president) engage in the catering and food service business via more than a dozen mobile food trucks at various locations in Los Angeles County. El Gallito III, Inc. (of which Claudia is president) is a brick-and-mortar restaurant located in Harbor City having no involvement in the food truck business.[3]

In April or June 2011, Defendants hired Diaz as a cashier and a cook to work in their food trucks. In April 2012, Defendants employed Soriano to work in a similar role.

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[1] In the interests of clarity, as Christian Arturo Llamas Corona and Claudia Corona share the same last name, we refer to them by their first names. We intend no disrespect.

[2] Defendants' opening brief to this court omits any argument alleging a legal basis to compel Polanco to participate in arbitration and contains an admission that Polanco did not sign an arbitration agreement. Similarly, their reply brief alleges that Polanco is "[n]ot [r]elevant" to the motion to compel. Accordingly, we omit any further discussion concerning Polanco.

[3] Defendants' counsel represented that Claudia is the mother of Christian and Llamas.

In March 2013, approximately one year after Soriano's initial date of hire and two years after Diaz's initial date of hire, Defendants El Gallito I, Inc. and El Gallito II, Inc. each presented two separate agreements to Diaz and Soriano for their signatures (four agreements total); each Plaintiff signed one agreement with El Gallito I, Inc. as a contracting party and another identical agreement with El Gallito II, Inc. as a contracting party (collectively, Agreements).

Each agreement is a two-page, stand-alone document entitled, in blocked, bold lettering, "***EMPLOYMENT ARBITRATION AGREEMENT***." It relates to resolving claims between the employee signing the document and the employer (El Gallito I, Inc. or El Gallito II, Inc.) and provides that "any conflict arising between them from Employee's employment application to the Company or somewhat related to that application or to the work relationship, including any conflict due to termination, shall be solved by binding arbitration before only one arbitrator as the sole and exclusive solution for the parties."[4] The agreement further provides that any arbitration "shall be held and governed by [the] American Arbitration Associa[t]ion ('AAA') rules." The entire document is in English.

At the bottom of the second page, one pair of agreements contains the handwritten signature of Diaz next to a handwritten date of March 27, 2013; the other pair of agreements contains the handwritten signature of Soriano next to a handwritten date of March 28, 2013. The parties dispute the circumstances surrounding the signing of the Agreements. We take the following summary of the facts from the declarations of the parties filed in connection with the motion to compel arbitration.

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[4] Although the Agreements identified as contracting parties only the company defendants El Gallito I, Inc. and El Gallito II, Inc., Defendants argued that the contracts also covered Plaintiffs' claims against the individual defendants (Christian and Llamas) because of their status as employees of those two corporate defendants and that the contracts also covered Plaintiffs' claims against El Gallito III, Inc. (and Claudia). As to El Gallito III, Inc., Defendants further argued that "that entity does not belong in this case at all."

According to Plaintiffs, Defendants provided orally to Plaintiffs what purported to be a Spanish translation of the Agreements—that the documents merely confirmed Plaintiffs' employment statuses as current employees of El Gallito I, Inc. and El Gallito II, Inc. Relying on Defendants' oral representation because they lacked the ability to read English, Plaintiffs signed the Agreements without any understanding that the Agreements concerned arbitration.

Specifically, while Diaz worked a shift at one of Defendants' food trucks serving food to customers, his supervisor, Francisco Garcia (Garcia), approached him and handed him the Agreements written in English. Garcia, as well as Christian and Llamas, knew that Diaz had no ability to speak or read English; consistent with that awareness, Diaz had always communicated with them in Spanish. Speaking in Spanish, Garcia told Diaz that he "needed to sign" the documents. At the end of his shift, Diaz returned to the warehouse where the employees prepared food to sell at the food trucks; at the warehouse, Diaz explained to Christian that because Diaz could not read or speak English he could not understand the content of the Agreements. Responding in Spanish, Christian purported to provide orally a Spanish translation of the Agreement and represented that "the documents simply confirm that [Diaz] was employed by El Gallito." In reliance on Christian's representation that signing the documents merely confirmed Diaz's employment status as a current employee of Defendants, Diaz signed the Agreements and handed the signed documents to Christian. Christian never disclosed that the documents constituted agreements to arbitrate claims against Defendants and a waiver of Diaz's right to a jury trial to resolve any such claims. According to Diaz, he therefore lacked any understanding that he was signing arbitration agreements. In his declaration, Diaz stated that he asked Garcia for a copy of the Agreements but that he never received one; however, the declaration did not identify the date of Diaz's request.

Similar to Diaz's experience, while Soriano was working a shift at one of Defendants' food trucks serving food to customers, his supervisor[5] approached Soriano and handed him the Agreements written in English. The supervisor, as well as Christian and Llamas, knew that Soriano could not speak or read English; consistent with that awareness, Soriano had always communicated with them in Spanish. Speaking in Spanish, the supervisor told Soriano that he "needed to sign" the documents. When Soriano asked the supervisor to explain the content of the documents, the supervisor purported to provide orally a Spanish translation of the Agreements and responded that "the documents only confirmed that [Soriano] was employed by El Gallito." The supervisor never disclosed that the documents constituted agreements to arbitrate claims against Defendants and a waiver of Soriano's right to a jury trial to resolve any such claims. According to Soriano, he therefore lacked any understanding that he was signing arbitration agreements. In reliance on the supervisor's representation that signing the documents merely confirmed Soriano's employment status as a current employee of Defendants, Soriano signed the Agreements. In his declaration, Soriano stated that he asked the supervisor for a copy of the Agreements but that he never received one; however, the declaration did not identify the date of Soriano's request.

In January 2014 and May 2014, respectively, Defendants terminated Diaz and Soriano's employment.

According to the initial set of declarations that Defendants filed with their motion to compel arbitration, Christian and Llamas both were "personally involved" in the hiring process for Diaz and Soriano, conditioned the offer of employment upon Diaz and Soriano signing the Agreements, and provided them the opportunity to "ask questions about the hiring process and the arbitration agreement." Christian and Llamas declared that they "explained in detail the arbitration agreement to both of them." Neither declaration disclosed further details other than those summary statements.

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[5] Soriano does not recall the name of the supervisor.

However, with the reply in support of their motion to compel arbitration, Christian and Llamas submitted supplementary declarations stating that they may have been "mistaken" in their previous declarations in asserting that Plaintiffs signed the Agreements "at the time of hire" rather than "during employment." They further asserted that Diaz and Soriano never asked for a Spanish translation of the Agreements and that Plaintiffs "feign ignorance of English . . . [because in] their jobs they are required to speak some English." Christian's declaration further asserted that he has a "specific recollection of seeing both Plaintiffs [Diaz and Soriano] and speaking with them about the arbitration agreements" and that he "did not deceive them in any way and fully explained the terms of the agreement in Spanish before they signed it." The declaration submitted by Llamas summarily asserted, without further detail, that the Agreements "were explained in detail to each employee." As explained further below, the trial court granted the Plaintiffs' evidentiary objections to the entirety of these two supplementary declarations.

II. Procedural history

On May 21, 2014, Plaintiffs filed a putative class action complaint against Defendants seeking damages, injunctive relief, and restitution. The complaint alleged violation of California wage and hour laws (claim 1), violation of California unfair competition laws (claim 2), "FRAUD AND DECEIT" (claim 3), and "FAILURE TO PAY STATUTORILY MANDATED WAGES—INSUFFICIENT FUNDS INSTRUMENT" (claim 4).

On December 4, 2014, on the basis of the Agreements allegedly mandating arbitration, Defendants filed a motion to compel arbitration of all claims asserted by Diaz and Soriano and sought dismissal of the superior court action. In support of the motion to compel, Defendants filed declarations executed by Christian, Llamas, and Claudia. On December 16, 2014, Claudia filed a supplemental or corrected declaration.

On December 22, 2014, Plaintiffs filed an opposition to the motion to compel arbitration with declarations signed under penalty of perjury by each Plaintiff and evidentiary objections to Defendants' declarations.

On January 12, 2015, Defendants filed a reply, supplemental declarations executed by Christian and Llamas, and evidentiary objections to Plaintiffs' declarations.

On January 20, 2015, Plaintiffs filed a declaration executed by Christian Ortiz in support of the opposition as well as evidentiary objections to Defendants' supplemental declarations submitted in support of the reply. In his declaration, Ortiz, an office administrator employed by Plaintiffs' counsel, described his role as an interpreter between the English-speaking attorneys and the Spanish-speaking Plaintiffs in the course of this litigation. To prepare Plaintiffs' declarations submitted in support of the opposition, Ortiz acted as an interpreter among Plaintiffs and their counsel and further sought the third-party services of a professional court-certified translator. Based on that experience, Ortiz declared that Plaintiffs possessed extremely limited English-speaking skills and no ability to read or write in English.

On January 26, 2015, the trial court issued a tentative ruling denying Defendants' motion to compel arbitration. At the close of the hearing the next day, the trial court adopted its tentative ruling and denied the motion to compel arbitration with prejudice.

Following the hearing, a January 27, 2015 minute order documented the following: the trial court denied the motion to compel arbitration with prejudice; the trial court sustained several of Plaintiffs' evidentiary objections to Defendants' initial declarations submitted with the motion to compel; the trial court sustained all of Plaintiffs' evidentiary objections to Defendants' supplemental declarations submitted with the reply; and the trial court overruled all of Defendants' evidentiary objections.

The trial court found that Defendants had "failed to show with competent, persuasive evidence that an arbitration agreement was formed as between either such plaintiff [Diaz or Soriano] and the employer(s). Given the two plaintiff[s'] inability to read English and the failure to show that a translated version of the agreement was supplied in fact to the employee, the Court is not prepared to find that an agreement to arbitrate was ever formed as to either such person." The trial court also found that Defendants had "failed to show with competent, admissible evidence" that the Federal

Arbitration Act (FAA) covered the employment relationships between the Plaintiffs and the Defendants.

Defendants timely appealed.

DISCUSSION

I. The procedure, standards of review, and burdens of proof for resolving a motion to compel arbitration

Private arbitration is a matter of agreement between the parties. A petition to compel arbitration "'"is in essence a suit in equity to compel specific performance of a contract."'" (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 411 (*Rosenthal*).)

In *Rosenthal*, *supra*, 14 Cal.4th 394, the California Supreme Court explained the nature of a proceeding to resolve a petition to compel arbitration. When presented with a petition to compel arbitration and prima facie evidence of a written agreement to arbitrate the controversy, the trial court must make a determination as to the existence or nonexistence of an arbitration agreement and whether the agreement is enforceable. (*Id.* at p. 413; *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 962, 971–972 [applying *Rosenthal* to an arbitration agreement governed by California law].)

Our Supreme Court explained the shifting burdens of proof between the petitioner and the party opposing the petition to compel arbitration: "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. If the party opposing the petition raises a defense to enforcement—either fraud in the execution voiding the agreement, or a statutory defense of waiver or revocation [citations]—that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." (*Rosenthal*, *supra*, 14 Cal.4th at p. 413.)

Where, as in this case, the order denying a motion to compel arbitration depends on resolution of disputed facts, we review the decision for substantial evidence.[6] (*Ramos v. Westlake Services LLC*, *supra*, 242 Cal.App.4th at p. 686.) In such a case, we must "'"'"accept the trial court's resolution of disputed facts when supported by substantial evidence; we must presume the court found every fact and drew every permissible inference necessary to support its judgment, and defer to its determination of the credibility of witnesses and the weight of the evidence.'"'" (*Hotels Nevada, LLC v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348.)

II. The trial court correctly refused to compel arbitration.

The right to compel arbitration depends upon the existence of a valid contractual agreement to arbitrate between the parties. (*Larian v. Larian* (2004) 123 Cal.App.4th 751, 759.) A party seeking to compel arbitration has the burden to prove the existence of a valid agreement to arbitrate. (*Avery v. Integrated Healthcare Holdings, Inc.* (2013) 218 Cal.App.4th 50, 59.) We apply general California contract law to determine whether the parties formed a valid agreement to arbitrate their dispute. (*Id.* at p. 60.)

It is a settled principle of contract law that an essential element to the existence of a contract is the consent of the contracting parties. (Civ. Code, §§ 1550, 1565.) To determine whether the parties have mutually consented to form a contract, courts do not rely on the subjective intentions or state of mind of the parties but rather apply an objective standard whereby the reasonable meaning of the parties' outward manifestation or expression of consent is controlling. (*King v. Stanley* (1948) 32 Cal.2d 584, 591–592; *Brant v. California Dairies, Inc.* (1935) 4 Cal.2d 128, 133–134; *Leo F. Piazza Paving Co. v. Bebek & Brkich* (1956) 141 Cal.App.2d 226, 230, 232.) When there is no evidence establishing mutual consent to contract (based on, for example, the parties' words, acts, and conduct), no contract has been formed. (*Avery v. Integrated Healthcare Holdings,*

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[6] If the order rests solely on a decision of law, we employ a de novo standard of review. (*Ramos v. Westlake Services LLC* (2015) 242 Cal.App.4th 674, 686.)

Inc., *supra*, 218 Cal.App.4th at p. 67; *H. S. Crocker Co., Inc. v. McFaddin* (1957) 148 Cal.App.2d 639, 643.)

A party's signature on a written instrument is an objective manifestation of assent to the formation of the contract stated therein regardless of whether the person read the document, intended to enter into a contract, or is ignorant of the fact that the document is a contract absent certain recognized exceptions. (*Rodriguez v. Oto* (2013) 212 Cal.App.4th 1020, 1027; *Greve v. Taft Realty Co.* (1929) 101 Cal.App. 343, 351; *Randas v. YMCA of Metropolitan Los Angeles* (1993) 17 Cal.App.4th 158, 163.) One such exception is fraud in the execution (also referred to as fraud in the inception) which negates a signor's apparent assent to a written contract and therefore the requisite element of mutual assent for formation of a contract is lacking. (*Rosenthal*, *supra*, 14 Cal.4th at pp. 416, 425.)

As a preliminary matter, we note that it is unclear what legal doctrine the trial court relied on to deny the motion to compel arbitration. The trial court states twice in its minute order that no arbitration agreement "was formed" between the parties but does not expressly identify the legal ground on which it relies to negate the prima facie evidence of mutual assent based on the Plaintiffs' signatures on the Agreements. Because of the similarity between the facts of this case and the facts in *Rosenthal*, *supra*, 14 Cal.4th 394, we conclude (as discussed in more detail below) that this California Supreme Court case and its holding on fraud in the execution controls the issue presented. Specifically, fraud in the execution negates the party's apparent manifestation of assent to a contract and thus permits the court to conclude that mutual assent is lacking. (*Id.* at p. 425.)

We note that the trial court expressly found that the Plaintiffs had no ability to read English and that the Defendants only provided the Agreements written in English and failed to provide a translated version of the Agreements. Such findings support a

determination of fraud in the execution.[7] Thus, we construe the trial court's opinion as relying on fraud in the inception although the court did not expressly identify that legal doctrine. However, even if the trial court did not rely on the legal doctrine set forth in *Rosenthal, supra,* 14 Cal.4th 394, we may affirm a correct decision by the trial court on any theory of law applicable to the case regardless of the considerations which may have moved the trial court to its conclusion. (*Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329.) It is judicial action, not judicial reasoning, which is the subject of review. (*Id.* at p. 330.)

We also recognize that generally fraud is a question of fact reserved for the trial court to determine in the first instance because of the element of intent; however, we have previously held without relying on alleged facts concerning the drafting party's intent that a trial court's findings as to the parties' conduct was sufficient to demonstrate fraud in the inception. In *Duick v. Toyota Motor Sales, U.S.A., Inc.* (2011) 198 Cal.App.4th 1316, we held that conduct identical to that cited by the trial court here was tantamount to fraud in the inception: "*Our conclusion that the contract is void because of fraud in the inception is not, however, based on any alleged facts concerning defendants' intent.* Rather, our conclusion is based solely on the following propositions: (1) defendants were the drafters and creators of the relevant Web pages, including the full text of the terms and conditions; (2) by drafting and presenting the terms and conditions as they did, . . . defendants misrepresented and concealed (whether intentionally or not) the true nature of the conduct to which Duick was to be subjected; and (3) Duick was not negligent in failing to understand the true nature of the conduct to which she was to be subjected, because no reasonable person in her position would have understood it." (*Id.*

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[7] The trial court also included a *Cf* citation to a case concerning unconscionability; but it had previously stated at the hearing that because that case concerned unconscionability the case was not on point, that it was not proposing to find the contract unconscionable, and that its ruling concerned a "formation analysis."

at p. 1322, italics added.) Having addressed this initial matter, we proceed now to discuss the fraud in the execution doctrine and its application to this case.

A party who has signed an arbitration agreement can avoid enforcement of the agreement if it can establish that the agreement is void for fraud in the execution. (*Rosenthal, supra,* 14 Cal.4th at p. 425.) As defined by the California Supreme Court in *Rosenthal*, fraud in the execution occurs when """the promisor is deceived as to the nature of his act, and actually does not know what he is signing, or does not intend to enter into a contract at all, *mutual assent is lacking,* and [the contract] is *void*."""" (*Id.* at p. 415, first italics added.).[8] The fraud negates the party's apparent manifestation of assent to the arbitration agreement. (*Id.* at p. 425.)

However, fraud in the execution does not render a written contract void where the defrauded party had a reasonable opportunity to discover the real terms of the contract before executing it yet failed to do so. (*Rosenthal*, *supra*, 14 Cal.4th at pp. 419–420, 423 ["*Reasonableness of Reliance as an Element of Fraud in the Inception*"].) When "a party, with such reasonable opportunity, fails to learn the nature of the document he or she signs, such 'negligence' precludes a finding the contract is void for fraud in the execution. [Citation.] [¶] It follows that one party's *unreasonable* reliance on the other's misrepresentations, resulting in a failure to read a written agreement before signing it, is an insufficient basis, under the doctrine of fraud in the execution, for permitting that party to avoid an arbitration agreement." (*Id.* at p. 423.)

Thus, under *Rosenthal*, *supra*, 14 Cal.4th 394, the law requires two elements to prove fraud in the execution: first, one party's deception as to the existence or meaning of the arbitration agreement, either by an affirmative misrepresentation or an active concealment about the existence or meaning of the arbitration provision, resulting in the

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[8] By contrast, fraud in the inducement occurs when the promisor knows what he or she is signing but that consent """is *induced* by fraud, mutual assent is present and a contract is formed, which, by reason of the fraud, is *voidable*."""" (*Rosenthal*, *supra,* 14 Cal.4th at p. 415.)

other party's lack of knowledge or intent to enter into the agreement; second, reasonable reliance on that fraudulent misrepresentation or concealment due to the absence of a reasonable opportunity to learn the true character or essential terms of the arbitration agreement prior to its execution. (*Id.* at pp. 415, 423, 425–426.)

These *Rosenthal, supra*, 14 Cal.4th 394 definitions apply even when, as here, the parties dispute whether the FAA governs the putative agreement because we apply state contract law to resolve the question of whether the parties agreed to arbitrate. Although *Rosenthal* involved an arbitration agreement governed by the FAA, our Supreme Court in *Rosenthal* interpreted California law on the general subject of fraud in the execution of an agreement. (*Id.* at pp. 405, 415.) Stating that "we apply the California law of contracts generally," the *Rosenthal* court cited and relied on California cases. (*Id.* at pp. 419–420.) Subsequent cases have agreed that the statements in *Rosenthal* are equally applicable in cases governed by California law. (See, e.g., *Duffens v. Valenti* (2008) 161 Cal.App.4th 434, 448; *Duick v. Toyota Motor Sales, U.S.A., Inc.*, *supra*, 198 Cal.App.4th at pp. 1320–1321.)

Further, the question of fraud in the execution is for the trial court, not the arbitrator, to decide: "claims of fraud in the execution of the entire agreement are not arbitrable under either state or federal law. If the entire contract is void *ab initio* because of fraud, the parties have not agreed to arbitrate any controversy." (*Rosenthal*, *supra*, 14 Cal.4th at p. 416; see *id.* at p. 419.) Where fraud in the execution negates a party's apparent assent to a written agreement, "there is simply no arbitration agreement to be enforced." (*Id.* at p. 416.)

Rosenthal, supra, 14 Cal.4th 394, is controlling on the point disputed by the parties in this appeal. There, multiple individuals invested in stock and bond mutual funds through a brokerage firm; when the value of the mutual funds declined, the individual investors brought a lawsuit against the brokerage firm, a related bank, and individual representatives of the brokerage firm, alleging claims for, inter alia, fraud and negligent misrepresentation. (*Id.* at pp. 402–403.) Pursuant to an arbitration provision contained in the customer agreements signed by the plaintiffs, the defendants moved to

compel arbitration of the plaintiffs' claims. (*Id.* at p. 403.) As to the allegations brought by two of the plaintiffs, a mother and a daughter with limited English skills, our Supreme Court held that they had alleged facts that, if found true, would support a finding of fraud in the execution of the defendants' customer agreement that included the arbitration agreement. (*Id.* at pp. 427–428.)

Specifically, the mother and daughter plaintiffs alleged that when they met with the brokerage firm defendant's representative, he began describing the mutual fund investment in English; the mother told him that "she could not understand a lot of what he was saying because her English was so poor." (*Rosenthal*, *supra*, 14 Cal.4th at p. 427.) The representative then handed the two plaintiffs the customer agreement containing the arbitration provision and instructed the daughter to translate his words into the mother's native language (Italian) as he described in English the content of the document. (*Ibid.*) Purporting to describe the full contents of the agreement accurately, the representative falsely represented that the document constituted merely a formality in order to open an account and never disclosed that the document contained an arbitration provision. (*Ibid.*) Several months later, another representative of the brokerage firm purported to describe the content of the agreement accurately for the plaintiffs, failed to disclose the true nature of the document as containing an arbitration provision, and urged the plaintiffs to """just sign here."""" (*Id.* at pp. 427–428.) In reliance on the representatives' descriptions of the content of the agreement, the plaintiffs signed the agreement on those two occasions and had no understanding that they were signing an arbitration agreement. (*Ibid.*)

Our Supreme Court held that the two plaintiffs had alleged sufficient facts to support a finding of the reasonable reliance element for fraud in the execution: "In light of plaintiffs' prior relationship with [the defendant bank], . . . their limited ability to understand English, and [the defendant brokerage firm representative's] representations that their oral recitals accurately reflected the terms of the agreements, plaintiffs would not have been negligent in relying on the [defendant's] representatives instead of reading the agreements themselves." (*Rosenthal*, *supra*, 14 Cal.4th at p. 428.) Under those

circumstances, our Supreme Court concluded that the alleged fraud "would have deprived [the plaintiffs] of a reasonable opportunity to learn the character and essential terms of the documents they signed."[9] (*Ibid.*)

Here, although the parties disputed the circumstances surrounding the signing of the Agreements, the trial court considered the evidence presented by the parties and resolved the factual disputes in favor of the Plaintiffs. Substantial evidence supported the trial court's findings. Plaintiffs provided similar detailed declarations that their supervisors told them that they "needed to sign" the English language Agreements, that the supervisors had prior knowledge that Plaintiffs lacked the ability to read English, that there were no written Spanish translations of the Agreements, and that the supervisors purported to provide orally a Spanish translation but falsely represented that the Agreements merely confirmed the employment statuses of Plaintiffs. Supporting the inability of Plaintiffs to comprehend written English, Ortiz's declaration described Plaintiffs' need for assistance from an interpreter and a translator to prepare their declarations because of their lack of capacity to read or write English. The trial court, sitting as factfinder, acted within its powers to deem credible Plaintiffs' version of the events surrounding the execution of the Agreements.

The remaining issue is whether, on those facts as found by the trial court, (1) the Defendants deceived Plaintiffs as to the existence or meaning of the Agreements and (2) the Plaintiffs' reliance on Defendants' fraudulent misrepresentations was reasonable thus depriving Plaintiffs of a reasonable opportunity to learn the true character or

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[9] Because the parties disputed many of the facts, for example, whether the defendant's representative accurately disclosed the content of the agreement and the extent to which the plaintiffs could read English, and because the trial court had declined to resolve the parties' factual disputes based on an erroneous belief that it could not resolve those factual issues at the preliminary stage of determining whether a valid arbitration agreement existed, our Supreme Court remanded the case back to the trial court to permit it to resolve these factual disputes. (*Rosenthal*, *supra*, 14 Cal.4th at pp. 404, 413–414, 428.)

essential terms of the Agreements before signing. We agree that substantial evidence supports both elements here.

As to the first element, at the time of execution of the written agreements, Defendants falsely represented the true nature of the Agreements by purporting to provide an oral Spanish translation of the arbitration agreements that they were asking Plaintiffs to sign but their translation contained no disclosure that the Agreements concerned arbitration. Relying on Defendants' representation and having no ability to read the Agreements written in English, Plaintiffs asserted that they were unaware until Defendants filed their motion to compel arbitration that the documents they had signed constituted agreements to arbitrate claims. Based on the record, the trial court could reasonably conclude that Defendants had deceived Plaintiffs as to the basic character of the Agreements and that Plaintiffs had no understanding that they were signing arbitration agreements or even that they were entering into a contract at all. (See *Rosenthal*, *supra*, 14 Cal.4th at p. 415.)

As to the second element, "[i]n light of plaintiffs' prior relationship with [the Defendants], . . . their limited ability to understand English, and [Defendants'] representations that their oral recitals accurately reflected the terms of the agreements," Plaintiffs were not negligent in relying on Defendants' translations instead of reading the Agreements themselves. (*Rosenthal*, *supra*, 14 Cal.4th at p. 428.) The record supported the trial court's implied finding that Diaz and Soriano had no reason to distrust their supervisors' translations of the content of the Agreements. The evidence that Plaintiffs told their supervisors they could not read the documents made even more reasonable their reliance on the Defendants' subsequent misrepresentations. By consistently omitting in the translations any reference to arbitration, Defendants "deprived [the Plaintiffs] of a reasonable opportunity to learn the character and essential terms of the documents they signed." (*Ibid.*)

The lack of mutual assent rendered the putative contracts void for fraud in the execution; accordingly, the trial court correctly denied Defendants' motion to compel arbitration. Given our resolution of the fraud in the execution issue, we need not address

the parties' remaining contentions regarding whether the FAA governs the Agreements or whether the Agreements are unenforceable due to unconscionability. (See *Cheng-Canindin v. Renaissance Hotel Associates* (1996) 50 Cal.App.4th 676, 683.) In *Cheng-Canindin*, the appellants contended, among other things, that the trial court had erroneously concluded that the FAA did not govern the putative arbitration agreement at issue: the appellate court determined that resolution of this governance question was unnecessary because it concluded that the respondent had not knowingly and intentionally entered into an arbitration agreement and therefore no valid arbitration agreement existed among the parties. (*Id.* at pp. 683, 692–693.) Similarly here, having concluded that the parties to this appeal did not enter into an arbitration agreement, we hold that this threshold determination renders moot Defendants' remaining arguments, including the argument concerning FAA governance.

DISPOSITION

The order is affirmed. Rolando Diaz and Andres Soriano shall recover their costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.