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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MEHDI HAMEDANI,

Plaintiff, Cross-defendant and
Respondent,

v.

FARID HAKIMPOUR,

Defendant, Cross-complainant and
Appellant;

MANIJEH RAHSEPAR MOHAMMADI,

Cross-defendant and Respondent.

B225902

(Los Angeles County
Super. Ct. No. SC087823)

APPEAL from a judgment of the Superior Court of Los Angeles County. Norman P. Tarle, Judge. Affirmed.

Richland & Associates and Felipa R. Richland for Defendant, Cross-complainant and Appellant.

Amir Pichvai for Plaintiff, Cross-defendant and Respondent.

Forry Law Group and Craig B. Forry for Cross-defendant and Respondent.

Farid Hakimpour appeals from a judgment entered after a court trial in favor of Mehdi Hamedani on Hamedani's complaint against Hakimpour for breach of contract and in favor of Hamedani, Manijeh Rahsepar Mohammadi, and Andraos Capital Management, Inc. (ACM), on Hakimpour's cross-complaint against them for fraud, rescission, unfair business practices, conversion, accounting, and indemnification. Hakimpour contends that the trial court erred by denying his ex parte application for relief from late posting of jury fees and that substantial evidence does not support the trial court's determinations upholding an agreement in Farsi between Hakimpour and Hamedani; applying an equitable rule premised on principles of unjust enrichment; denying Hakimpour's claim for indemnification against Mohammadi; and concluding that an agency relationship did not exist between Mohammadi and ACM. We disagree and affirm the judgment.

BACKGROUND

The following background is derived, in part, from our opinion in *Hakimpour v. Andraos Capital Management, Inc.* (June 25, 2007, B192225) [nonpub. opn.] (*Hakimpour II*). This action began as a complaint filed by Hamedani against Hakimpour for breach of contract. Hamedani alleged that he and Hakimpour executed a written agreement whereby Hamedani would give Hakimpour his half of the stock of Online Auto Repair, Inc. (Auto Repair), and give up his role in managing the business in exchange for Hakimpour's payment of \$25,000. Hamedani further alleged that he gave Hakimpour the stock and took himself off the corporation's bank account, but Hakimpour failed to pay the \$25,000. Hakimpour filed a cross-complaint against Hamedani and Mohammadi, later amending the cross-complaint to add respondent ACM as a cross-defendant. Hakimpour alleged damages from fraud, unfair business practices, conversion and conspiracy and sought declaratory relief, rescission, an accounting and indemnification. Hamedani's demurrer was sustained without leave to amend as to the causes of action for declaratory relief and indemnification, and with leave to amend as to the remainder of the causes of action. Hakimpour then filed a first amended cross-complaint against Hamedani, Mohammadi and ACM for fraud, rescission, unfair

business practices, conversion, accounting and indemnification. Hamedani and ACM filed demurrers to the first amended cross-complaint. The trial court sustained the demurrers without leave to amend and dismissed the first amended cross-complaint. Hakimpour filed a notice of appeal from the judgment of dismissal and also a petition for writ of mandate with respect to the dismissal as to Hamedani. On November 16, 2006, we issued an opinion and order granting a peremptory writ of mandate commanding the trial court to vacate its order of June 27, 2006, as to Hamedani, sustaining the demurrers without leave to amend to the first amended cross-complaint, and to issue a new and different order overruling the demurrers. (*Hakimpour v. Superior Court* (Nov. 16, 2006, B193270) [nonpub. opn.] (*Hakimpour I*)). Hakimpour filed an appeal from the judgment of dismissal as to ACM. On June 25, 2007, in *Hakimpour II*, we reversed the judgment of dismissal as to ACM and directed the court to vacate its order sustaining ACM's demurrer without leave to amend and to enter a new order granting Hakimpour leave to amend his first amended cross-complaint.

Subsequently, trial was scheduled for December 9, 2008. The last day to post jury fees was November 14, 2008. On December 1, 2008, Hakimpour posted jury fees. On December 3, 2008, Hakimpour filed an ex parte application for relief from late posting of jury fees on the basis that a paralegal in the law firm that represented Hakimpour calendared the last day to post fees on Friday, November 14, 2008, when the office was closed. At the December 3, 2008 hearing, the court noted that it had not received verdict forms or jury instructions and the documents prepared for the final status conference were suited for a court trial rather than a jury trial. Hamedani argued that when the clerk of court informed him that jury fees had not been posted, he had prepared final status conference documents for a court trial. ACM argued that a jury trial would cause prejudice to ACM because it would be forced to sit through a fraud trial, even though its liability was limited to the cross-claim. Mohammadi, who was in propria persona, argued that she would be prejudiced because she would have to retain an attorney who would not have time to prepare for a jury trial scheduled to start in six days. The court denied Hakimpour's ex parte application for relief from late posting of jury fees, noting that the

documents required for a jury trial had not been furnished the court. The court also mentioned that no one had raised the issue of a jury trial during the mediation on November 13, 2008, or thereafter. The court stated that it expected trial to start the day after the mandatory settlement conference on December 9, 2008. On December 10, 2008, Hakimpour filed a petition for a writ of mandate and request for stay, which we denied (*Hakimpour v. Superior Court* (B212613)).

Trial commenced on December 15, 2008. Mohammadi was represented by counsel. Both Hamedani and Hakimpour testified through a translator. The trial testimony was as follows. Hamedani was born in Iran and his native tongue is Farsi. In 2004, Hamedani's friend and distant relative Hakimpour, who was an auto mechanic, asked Hamedani, who was a truck driver, to open an auto repair business with him. When Hamedani told Hakimpour that he did not have money to invest in the business, Hakimpour responded, "Don't worry about the money. I have the money. You just come," and that he would loan money to the business from his equity line of credit. In June 2004, Hamedani and Hakimpour purchased an auto repair business across the street from Hakimpour's brother's car dealership in Los Angeles for \$55,000. Hamedani and Hakimpour did not consult with anyone prior to purchasing the business; nor did they look at its financial records or tax returns. Hamedani contributed \$25,000 and Hakimpour contributed \$30,000 toward the purchase of the business. On June 23, 2004, Hamedani and Hakimpour signed a five-year commercial lease for the auto repair business. Hamedani and Hakimpour substantially remodeled the premises by tiling the floor, painting, and building a separate office themselves. Hakimpour paid for the supplies for the work from his equity line of credit but never told Hamedani that he was responsible for half of the obligations or asked for repayment of any portion of the home equity line of credit. Hamedani and Hakimpour were joint account holders on the business checking account.

In July 2004, Mohammadi, a certified public accountant, was retained and paid \$900 by Hamedani and Hakimpour to form Auto Repair. Mohammadi had been referred to Hamedani and Hakimpour by Bahram Ganjineh, who performed bookkeeping services

for Auto Repair. Mohammadi prepared the articles of incorporation, bylaws, and initial minutes of the shareholder and directors meetings. Hamedani and Hakimpour were the sole and equal shareholders of Auto Repair and were its only directors and officers.

Hakimpour worked on the cars and ordered parts and supplies while Hamedani managed the office, ordered parts, advertised, dealt with customers, wrote checks, paid bills, and supervised employees. Hakimpour loaned \$173,790.25 to Auto Repair.

Within a year, Hamedani and Hakimpour decided to terminate their business relationship. Hakimpour rejected Hamedani's suggestion that Hakimpour buy him out for \$25,000. After three or four unsuccessful discussions, Hamedani and Hakimpour agreed to ask Mohammadi to mediate because "she doesn't know any of us." Mohammadi had not spoken or worked with Hamedani and Hakimpour from the time she formed Auto Repair. Hamedani asked Mohammadi to "come and make a peace between" them, and Mohammadi agreed to assist them as a mediator.

On August 6, 2005, Hamedani, Hakimpour, Ganjineh, and Mohammadi held a meeting to negotiate the termination of the business. Mohammadi told them, "I am here to make peaceful solution" to the "disagreement you have." Mohammadi told Hamedani and Hakimpour that she was not going to charge them any money; she was not attending the meeting as a CPA; she was not providing professional services; and she was helping them as a mediator.

Neither Hamedani nor Hakimpour had discussed consulting an expert to determine the value of the business. Hamedani and Hakimpour did not ask Ganjineh how much the business was worth. Hakimpour did not provide Auto Repair's tax returns to Mohammadi, nor did he ask Ganjineh to provide financial documents to her. Mohammadi looked "very briefly" at the "last financial statement" of Auto Repair brought to the meeting by Ganjineh, who said "the accounting is not updated." Ganjineh told Hakimpour that he did not have enough information to put a value on the company. Mohammadi and Hamedani had been unable to find a comparable business and could not reach a valuation for Auto Repair, and at the meeting Mohammadi did not express an opinion about the value of Auto Repair. Hamedani stated that he thought the business

was worth \$300,000 to \$400,000 based on the value of the lease. When Hakimpour discussed the money he invested in Auto Repair, Mohammadi asked him how the money had been invested. Hamedani said that money loaned by Hakimpour to Auto Repair was “lost in the business.” During the meeting, Hakimpour stated that he wanted to continue to run the business with his brothers. Hamedani stated that he wanted the \$25,000 he had contributed to the business to restart his trucking business.

Hakimpour ultimately agreed to purchase Hamedani’s shares of Auto Repair for \$25,000, and Hamedani agreed to give up all rights to Auto Repair. Hakimpour understood that under the agreement Hamedani would have no obligations with respect to the loans of Auto Repair and that Hakimpour was required to pay \$25,000 to Hamedani in return for full ownership of Auto Repair. Hakimpour did not ask Ganjineh whether \$25,000 in exchange for Hamedani’s shares was a “good or balanced decision.” After Hamedani and Hakimpour shook each other’s hands and kissed each other “Persian style,” Ganjineh and Mohammadi told Hamedani and Hakimpour that they should document the agreement. Mohammadi memorialized the agreement in Farsi. Hamedani and Hakimpour read the agreement and signed it. At trial, Hakimpour testified that the Farsi agreement reflected the agreement he and Hamedani had reached at the conclusion of the meeting. Ganjineh and Mohammadi also signed the agreement as witnesses. At the end of the meeting, Hakimpour told Hamedani that he would pay him \$25,000 the following day.

Sometime after the meeting, for reasons not explained in the record, Mohammadi translated the agreement into English. At trial, Hakimpour testified that his understanding was that the agreement “had to be written in English and stamped and bear the stamp or the seal of [Mohammadi],” but that he did not read the document before signing it and had “a lot of problems in reading this.” Mohammadi and Hakimpour signed the English version but Hamedani did not. Among other things, the English version required Hakimpour to pay Hamedani \$7,000 “immediately,” and to pay the remaining balance of \$18,000 within a year. Hakimpour showed the English language version of the agreement to his brother, who said, ““This is not right.”” After speaking to

his brother, Hakimpour spoke to Mohammadi on the telephone and told her to “cancel the deal.” Hakimpour asked Mohammadi to “destroy any of the deals, whether in Farsi or in English.” Hakimpour did not inform Hamedani that “the deal was off” and never paid him \$25,000.

On August 13, 2005, Hakimpour became the sole director and officer of Auto Repair. On August 16, 2005, Hamedani and Hakimpour removed Hamedani’s name as a signatory to the business account at their bank. Hakimpour also changed the activation code of a software program that diagnosed the internal electrical systems of a car. Hamedani never reported to work again at Auto Repair. Nor did Hakimpour call him to ask him to come to work or ride with him to work as he normally did. Hakimpour continued to make business decisions without advising Hamedani, including offering Auto Repair for sale in February 2006. In February 2006, Hakimpour closed down Auto Repair. In the meantime, Hakimpour had started another business at that same location called La Cienega Auto Repair, had obtained a seller’s permit in October 2005, and had opened a new checking account under the new name.

The trial court entered judgment in favor of Hamedani and Mohammadi. The statement of decision states, in part, as follows. “Two unsophisticated businessmen merged what few financial resources and sparse business acumen they had, to buy and run an auto repair shop. This case involves . . . Hamedani’s attempt to contract his way out of the business whose income could not support both parties to the complaint. [¶] Hamedani and . . . Hakimpour bought an existing auto repair shop for \$55,000. [Hamedani] put in \$25,000 and [Hakimpour] \$30,000. They formed a corporation with the help of cross-defendant [Mohammadi], a certified public accountant, who was paid \$900 for this service. [Hakimpour] continued to fund the corporation via a home equity line of credit. [Hakimpour] was the auto mechanic and [Hamedani], a former truck driver, ran the front office. [¶] It became clear that the parties needed help in their negotiations to end their business relationship. They asked [Mohammadi] to act as a mediator, which she agreed to do without pay. There is evidence that they reached an accord by which [Hamedani] would relinquish his share of the corporation and all control

in exchange for \$25,000. [Hakimpour] claims that there was no agreement or in the alternative, that any agreement is subject to rescission.” “An agreement was written in Farsi and signed by both parties. . . . It was at this moment that a binding contract was formed. No more was needed. There was no requirement for additional signatures on a translated copy. It was clear at trial that the language best understood by the parties was Farsi. Any requirement that a translated copy be signed would be pointless, since it was evident that Mr. Hakimpour’s command of the written English language was minimal. [¶] There was no requirement that an agreement be based on the value the business. The parties were entitled to set the price on any rational basis. In this case, it appears to be the amount of Hamedani’s original investment. The parties were equally unsophisticated. There is no evidence of over-reaching or fraud on either side. Neither party asked for an accounting prior to signing the agreement nor was one required. [¶] Hakimpour’s subsequent statement to [Mohammadi], that the deal was off, is irrelevant, since Hakimpour took all the benefits of the bargain. He named himself the sole corporate officer . . . , removed Hamedani from the business’ bank account . . . , changed the name of the business . . . , entered into an agreement to lease a portion of the property . . . , and entered into a contract to sell the business He never communicated to Hamedani that the deal was off, nor did he question Hamedani’s failure to come to work. He who takes the benefit must bear the burden. Civil Code [section] 3521. [¶] This is a simple case where contract was made and benefits were received. Hakimpour owes Hamedani \$25,000.”

Judgment was entered on May 14, 2010, in favor of Hamedani for \$25,000 on his breach of contract claim and in favor of Mohammadi and ACM on Hakimpour’s second amended cross-complaint. Hakimpour appealed.

DISCUSSION

A. The trial court did not abuse its discretion in denying Hakimpour's ex parte application for relief from late posting of jury fees

Hakimpour argues that the trial court abused its discretion in denying his ex parte application for relief from late posting of jury fees because he claims there was no showing of prejudice to Hamedani, Mohammadi, and ACM. We disagree.

Pursuant to former Code of Civil Procedure section 631, subdivision (d)(5), in effect at the time of trial, a party waived a jury trial by failing to timely pay advance jury fees as provided in subdivision (b). Former Code of Civil Procedure section 631, subdivision (b), in effect at the time of trial, provided that each party demanding a jury trial shall deposit advance jury fees at least 25 calendars days before the date initially set for trial. A party that has failed to pay the fee in a timely manner may make a motion for relief from a jury waiver. (*Gann v. Williams Brothers Realty, Inc.* (1991) 231 Cal.App.3d 1698, 1703–1704.) In determining whether to grant the motion to be relieved of a jury waiver, the court may consider delay in rescheduling a jury trial, lack of funds, the timeliness of the request, and prejudice to the litigants. (*Id.* at p. 1704.) “A court does not abuse its discretion where any reasonable factors supporting denial of relief can be found even if a reviewing court, as a question of first impression, might take a different view. [Citations.]” (*Ibid.*)

We conclude that the trial court did not abuse its discretion in denying Hakimpour's ex parte application for relief from late posting of jury fees. The parties agree that the last date to file jury fees in a timely manner was on November 14, 2008; Hakimpour did not post jury fees until December 1, 2008; and trial was set for December 9, 2008, and commenced on December 15, 2008. The evidence supports the conclusion that Hamedani, ACM, and Mohammadi showed that they would have been prejudiced if the court had granted Hakimpour relief from the late posting of jury fees. At the ex parte hearing on December 3, 2008, Hamedani, ACM, and Mohammadi testified that they had prepared for a court trial after Hakimpour had failed to post jury fees and the documents they filed for the final status conference were intended for a court

trial rather than a jury trial. Further, Mohammadi, who was representing herself in propria persona, argued that an attorney would not have time to prepare for a jury trial scheduled to start in six days. At oral argument on appeal, Hakimpour argued Mohammadi had been represented at trial by an attorney and therefore had not been prejudiced. But, as Mohammadi maintained below, her concern was that counsel would not have time to prepare for a *jury trial*. And in denying the ex parte application, the court noted that prior to the ex parte hearing the documents required for a jury trial had not been furnished the court. Nor had there been any discussion regarding a jury trial during the mediation on November 13, 2008, or thereafter.

We conclude that Hakimpour has not shown that the trial court abused its discretion in denying Hakimpour's ex parte application for relief from late posting of jury fees.

B. Substantial evidence supported the trial court's judgment

1. Standard of review

"In reviewing a challenge to the sufficiency of the evidence, we are bound by the substantial evidence rule. All factual matters must be viewed in favor of the prevailing party and in support of the judgment. All conflicts in the evidence must be resolved in favor of the judgment." (*Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 58.)

2. Breach of contract

Hakimpour contends that the trial court erred in concluding that the Farsi agreement was an enforceable contract, claiming Hakimpour and Hamedani intended the English version to be the final agreement and Hakimpour signed and revoked the English version within hours. We disagree and conclude that substantial evidence supports the court's determination that the Farsi agreement was a binding contract which Hakimpour breached when he failed to pay Hamedani \$25,000.

"It is essential to the existence of a contract that there should be: [¶] 1. Parties capable of contracting; [¶] 2. Their consent; [¶] 3. A lawful object; and, [¶] 4. A sufficient cause or consideration." (Civ. Code, § 1550.) "The consent of the parties

to a contract must be: [¶] 1. Free; [¶] 2. Mutual; and, [¶] 3. Communicated by each to the other.” (Civ. Code, § 1565.) “‘The existence of mutual consent is determined by objective rather than subjective criteria, the test being what the outward manifestations of consent would lead a reasonable person to believe.’ [Citation.]” (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 811.) “In order for acceptance of a proposal to result in the formation of a contract, the proposal ‘must be sufficiently definite, or must call for such definite terms in the acceptance, that the performance promised is reasonably certain.’ [Citation.]” (*Ibid.*) “A cause of action for damages for breach of contract is comprised of the following elements: (1) the contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) the resulting damages to plaintiff.” (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1388.)

The evidence showed that Hamedani and Hakimpour mutually consented to Hakimpour’s buying Hamedani’s shares of Auto Repair for \$25,000. During the meeting on August 6, 2005, Hakimpour stated that he wanted to continue to run the business with his brothers and Hamedani stated that he wanted to sell his shares for \$25,000, which was the amount he had contributed to start the business and which he needed to restart his trucking business. Ultimately, Hakimpour agreed that he would pay Hamedani \$25,000 for his shares of Auto Repair, which constituted a definite, material term. Hakimpour and Hamedani shook on the agreement, kissed each other “Persian style,” and signed a writing in Farsi that memorialized the agreement. Hakimpour testified at trial that the Farsi agreement accurately reflected the terms the parties had reached.

Subsequently, Hakimpour did not pay Hamedani \$25,000 as agreed, even though Hamedani performed his part of the bargain by withdrawing entirely from the business and giving his shares to Hakimpour. After the meeting, Hakimpour became the sole shareholder and officer of Auto Repair, and Hamedani and Hakimpour removed Hamedani’s name from the corporate checking account. Hamedani never worked at Auto Repair after he signed the Farsi agreement, and Hakimpour continued to make business decisions for Auto Repair without advising Hamedani.

We are not persuaded by Hakimpour's argument that because the English agreement contained different material terms, including a "condition precedent" that Hamedani's interest in Auto Repair would transfer upon receipt of \$25,000, he and Hamedani intended the English rather than the Farsi agreement to be the final agreement. As the trial court noted, "the language best understood by the parties was Farsi. Any requirement that a translated copy be signed would be pointless, since it was evident that Mr. Hakimpour's command of the written English language was minimal." The court's reasoning is supported by the evidence. Both parties required translators at trial and the court could reject Hakimpour's testimony that he believed an English version was necessary to form a binding contract. Accordingly, we need not address Hakimpour's argument that he revoked the English version within hours after he signed it.

3. The contract is not voidable

Hakimpour argues that the Farsi agreement is voidable or should be revoked or rescinded based on Hamedani's and Mohammadi's misrepresentations of the value of the business to Hakimpour. We disagree because Hakimpour has not shown that Hamedani and Mohammadi made knowing misrepresentations of the value of the business to Hakimpour with the intent to induce him to enter into the Farsi agreement.

"The elements of fraud are "(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.'" (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638; [citation].)" (*Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 184.)

Although Hakimpour points to Hamedani's statements that he thought the business was worth \$300,000 to \$400,000 based on the value of the lease and that money loaned by Hakimpour to Auto Repair was "lost in the business," the record supports the conclusion that Hamedani based his request for \$25,000 on his initial capital outlay to Auto Repair and not on a valuation of Auto Repair. Hamedani and Hakimpour did not discuss hiring an expert to determine the value of the business or ask Ganjineh to put a value on the business. And Mohammadi and Hamedani had been unable to find a

comparable business in order to reach a valuation for Auto Repair. Also, Mohammadi did not express a value for the business, but merely asked Hakimpour how he had spent the money he had invested in Auto Repair. Further, Mohammadi did not act in her capacity as a CPA, but as a mediator, and only looked “very briefly” at the last financial statement of Auto Repair that Ganjineh brought to the meeting.

Accordingly, Hakimpour has not shown that Hamedani and Mohammadi made knowing misrepresentations of the value of the business to Hakimpour with the intent to induce him to enter into the Farsi agreement.

Hakimpour’s further arguments that the English version was a novation and that the trial court erred by applying an equitable rule based on principles of unjust enrichment are not cogent or persuasive arguments. (See *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368 [on appeal, the appellant must present an intelligible legal argument as to why the trial court’s ruling was reversible error].)

Therefore, we conclude that Hakimpour has not shown that the contract is voidable or must be revoked or rescinded.

4. The trial court did not err in denying Hakimpour’s claim for indemnification against Mohammadi

Hakimpour contends that the trial court erred in denying Hakimpour’s claim for indemnification against Mohammadi because Mohammadi was acting in her capacity as a CPA. We disagree.

Hakimpour’s citation to *Richard B. LeVine, Inc. v. Higashi* (2005) 131 Cal.App.4th 566 for the proposition that Mohammadi owed and breached a fiduciary duty to Hakimpour does not avail him. That case states that “the finding of an accountant-client relationship must be founded upon an agreement which, if not expressed, must at least be implied in fact.” (*Id.* at p. 584.) Here, Mohammadi did not render services in her capacity of a CPA at the August 6, 2005 meeting. She told Hamedani and Hakimpour that she was not attending the meeting in her capacity as a CPA; she was not providing professional services to them; she did not want to be paid; and that she was acting solely as a mediator to make peace between them.

We conclude that Hakimpour has not shown that Mohammadi acted in her professional capacity and owed and breached a fiduciary duty to him. Accordingly, we need not address Hakimpour's further argument that the trial court erred in concluding an agency relationship did not exist between Mohammadi and ACM.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

JOHNSON, J.