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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

M.U.S.E. PICTURE PRODUCTIONS HOLDING CORP. II et al., Plaintiffs, Cross-Defendants, and Respondents, v. ROBERT D. WEINBACH et al., Defendants, Cross-Complainants, and Appellants.	B261146 (Los Angeles County Super. Ct. No. SC101722)

APPEAL from a judgment of the Superior Court of Los Angeles County, Linda K. Lefkowitz, Judge. Affirmed.

James & Stewart LLP, Becky S. James and Jessica W. Rosen, for Defendants, Cross-Complainants, and Appellants.

Clark L. McCutchen, for Plaintiffs, Cross-Defendants, and Respondents.

INTRODUCTION

In 1997, defendants and cross-complainants Robert D. Weinbach and Cyclone Productions Inc. (Cyclone) entered into a settlement agreement (1997 settlement agreement) with plaintiffs and cross-defendants M.U.S.E. Picture Productions Holding Corporation II, Muse Productions, Inc., and Chris Hanley, the President of Muse Productions, Inc., (collectively, Muse) to develop a film based on the novel "The Killer Inside Me" (novel) and a screenplay written by Weinbach. In early 2009, after failing to produce a film with Weinbach and Cyclone, Muse sold its rights to the novel to cross-defendant Windwings Productions, LLC (Windwings), who in turn sold its rights to the novel to cross-defendant Kim Productions LLC (Kim); Kim released a film based on the novel in 2010 that did not use any portion of Weinbach's screenplay.[1]

Shortly after selling its rights to Windwings, Muse sued Weinbach and Cyclone for, among other claims, intentional misrepresentation and declaratory relief, alleging that during the negotiation of the 1997 settlement agreement, Weinbach and Cyclone had misrepresented the nature of their rights to produce a film based on the novel. Weinbach and Cyclone filed a cross-complaint, alleging Muse breached the 1997 settlement agreement through its involvement in Kim's production of the 2010 film. The trial court granted summary judgment on the cross-complaint in Muse's favor, finding the 1997 settlement agreement was voidable and subject to rescission due to a mistake of fact stemming from Weinbach's and Cyclone's

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[1] Windwings and Kim are not parties to this appeal.

misrepresentations of the nature of their rights to produce a film based on the novel. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Weinbach and Cyclone try to produce a film based on the novel

Jim Thompson wrote the novel "The Killer Inside Me," first published in 1952. In 1968, Thompson sold most of his rights to the novel, including film production rights, to Warner Bros.-Seven Arts, Inc. (Warner Bros.). Specifically, he assigned to Warner Bros. "all rights of every kind and nature whatsoever in and to" the novel except the publication and republication rights of the paperback and hardcover versions. Two years later, Warner Bros. sold all of its rights to the novel to Greenway Productions, Inc. (Greenway).

In July 1974, Greenway assigned all of its rights to the novel to Cyclone, a film production and distribution company owned and operated by Weinbach. Around the same time, Weinbach wrote a screenplay based on the novel.

In August 1974, Cyclone sold all of its rights to the novel to J.S. Company, Inc. (1974 agreement). Cyclone guaranteed that it was the "sole and exclusive owner of all right, title and interest in and to" the novel and the screenplay. Simultaneously, Cyclone and Weinbach executed a separate agreement entitled "Assignment of All Rights," assigning to J.S. Company "the entire, worldwide, absolute, unqualified, sole and exclusive common law rights, copyrights, and all literary, publication, novelization, dramatization, performing, mechanical reproduction, radio, television and motion picture rights" to Weinbach's screenplay.

On the same day it executed the assignment to J.S. Company, Cyclone entered into a memorandum of agreement with Tekim, Ltd. (Tekim), an affiliate of J.S. Company, through which Tekim agreed to produce a film based on Weinbach's screenplay of "The Killer Inside Me." The agreement provided that Weinbach would direct and help produce the film.

After beginning principal photography for the film, Tekim fired Weinbach and hired a new director and producer. In November 1974, Weinbach and Cyclone sued Tekim, and that same month, Tekim filed a separate lawsuit against Weinbach and Cyclone. Meanwhile, Tekim released a film entitled "The Killer Inside Me" in 1975 (1975 film).

In 1976, Weinbach, Cyclone, Tekim, J.S. Company, and other related parties, reached a settlement agreement, through which Tekim conveyed to Cyclone certain rights to produce a remake of the 1975 film (1976 settlement agreement). Specifically, Paragraph 3(g) of the agreement provided: "To the full extent that Tekim has such rights, (and Tekim agrees that it has not disposed of any rights acquired by Cyclone) Tekim hereby grants to Cyclone all rights and licenses necessary to produce, distribute and otherwise exploit for its own account a remake of the motion picture 'The Killer Inside Me' based upon the literary material acquired by Cyclone . . . as distinguished from any literary material acquired by Tekim separate and apart from that obtained under the agreement with Cyclone, following termination of the existing distribution agreement, as amended, with National General Pictures Corporation if the said motion picture is released under said distribution agreement with such company, and if not, then following seven (7) years if a third party or Tekim distributes the said motion picture, such seven (7)

year period to commence as of the date of first general release of said motion picture or one year after execution of this Agreement, whichever is earlier."

In 1977, Jim Thompson died, and all of the domestic rights to the novel reverted to his estate by operation of law. In 1981, Thompson's widow renewed the copyright to the novel and reassigned to Warner Bros. the same rights to the novel Thompson had assigned to the company in 1958.

In June 1991, counsel for Weinbach and Cyclone sent a letter to Warner Bros. claiming that Cyclone was the exclusive owner of all rights, title, and interest to the novel and Weinbach's screenplay based on the novel. The letter claimed that Cyclone's rights were derived from "various underlying agreements with Jim Thompson, Warner Brothers, National General, Tekim, Inc., J.S. Productions, and Greenway Productions." In July 1991, counsel for Weinbach and Cyclone sent another letter to Warner Bros., again claiming Cyclone was the exclusive owner of all film rights to the novel.

In November 1993, Warner Bros. transferred its rights to the novel back to Thompson's heirs. However, the company retained a right of first refusal to distribute any future film based on the novel. In 1994, Thompson's heirs sold Muse an option to purchase the film and television rights to the novel.

2. Weinbach and Cyclone sue Warner Bros. and Muse in 1995

In June 1995, Weinbach and Cyclone sued Warner Bros. and Muse for, among other claims, breach of contract, conversion, and unjust enrichment. Weinbach and Cyclone alleged Warner Bros. and Muse had misappropriated, and interfered with, Cyclone's rights to produce and release a remake of the 1975 film

within the United States; they did not raise any claims concerning the extent of Cyclone's rights to release a remake of the film outside the United States. Nevertheless, in their complaint, Weinbach and Cyclone asserted Cyclone was the sole and exclusive owner of the "worldwide" rights to produce a remake of the 1975 film. They claimed those rights derived from the 1976 settlement agreement with Tekim, but they did not reference the 1974 agreement through which they had sold all of Cyclone's rights to the novel to J.S. Company.

In 1996, the trial court dismissed Weinbach and Cyclone's lawsuit and entered judgment in favor of Warner Bros. and Muse after finding Cyclone owned no domestic rights to the novel. The Court of Appeal later affirmed the court's judgment. Muse then sued Weinbach and Cyclone for malicious prosecution.

3. The 1997 settlement agreement

In May 1997, Weinbach, Cyclone, and Muse entered into a settlement agreement, through which the parties agreed to establish a joint venture to produce a film based on the novel, using Weinbach's screenplay, and to contribute all of their respective rights to the novel to the joint venture. The parties also agreed to work in good faith to obtain financing to produce a film version of the novel, and to dismiss their pending lawsuits against each other should they obtain a full commitment for financing. According to Hanley, Muse's president, Muse entered into the 1997 settlement agreement because the company believed Cyclone exclusively owned the international film and television rights to the novel.

In 2009, after the joint venture between Weinbach, Cyclone, and Muse failed to produce a motion picture, Windwings began acquiring the rights to produce a remake of the 1975 film.

In January 2009, J.S. Company and Tekim quitclaimed all of their rights to the novel to Windwings. Thompson's heirs then sold to Windwings an option to purchase all domestic film rights to the novel, which Windwings eventually exercised. Muse also assigned to Windwings all of its rights to a screenplay based on the novel. Windwings then granted a nonexclusive right to produce a motion picture based on the novel to Kim, who released a remake of the 1975 film in 2010.

4. The underlying litigation

In early February 2009, Muse first discovered the existence of the 1974 agreement between Weinbach, Cyclone, and J.S. Company through which Cyclone divested all of its rights to the novel. According to Muse, Weinbach never mentioned or produced the 1974 agreement before the parties executed the 1997 settlement agreement.

On February 13, 2009, Muse sued Weinbach and Cyclone, claiming they had misrepresented the nature and extent of Cyclone's international film and television rights to the novel at the time the parties executed the 1997 settlement agreement.[2] Muse also claimed that Weinbach and Cyclone refused to cooperate in the joint venture created by the settlement agreement and interfered with Muse's efforts to produce a remake of the 1975 film based on the novel. Among other

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[2] Muse alleged the following claims against Weinbach and Cyclone: (1) declaratory relief; (2) intentional misrepresentation; (3) negligent misrepresentation; (4) intentional interference with prospective business advantage; (5) intentional infliction of emotional distress; (6) breach of contract; (7) breach of fiduciary duty; (8) slander of title; and (9) malicious prosecution.

things, Muse sought declaratory relief determining the nature and extent of Cyclone's international film and television rights to the novel. Specifically, Muse sought a declaration that Cyclone "only [has] a non-exclusive ownership interest to limited and specified international motion picture and television rights to the Novel."

Weinbach and Cyclone filed a cross-complaint naming Muse, Windwings, and Kim as cross-defendants. In November 2009, Weinbach and Cyclone filed the operative first-amended cross-complaint alleging breach of the 1997 settlement agreement and several tort claims arising out of Muse's sale of its rights to the screenplay based on the novel and Kim's acquisition of the rights to produce a remake of the 1975 film. Weinbach and Cyclone also sought a declaration that "Cyclone holds the sole and exclusive rights to produce a remake of ['The Killer Inside Me'] in all territories outside the United States."[3]

In early 2010, the parties filed cross-motions for summary judgment or summary adjudication. The court denied both motions, finding a triable issue of material fact existed as to the extent of Cyclone's film rights to the novel.

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[3] Weinbach and Cyclone alleged the following claims in their first-amended cross-complaint: (1) breach of contract (against Muse); (2) breach of the covenant of good faith and fair dealing (against Muse); (3) breach of fiduciary duty (against Muse); (4) conversion (against all cross-defendants); (5) unjust enrichment (against Muse); (6) concealment (against Muse); (7) declaratory relief (against all cross-defendants); (8) preliminary and permanent injunctive relief (against all cross-defendants); (9) intentional interference with contractual relations (against Windwings and Kim); (10) unjust enrichment (against Windwings); and (11) unjust enrichment (against Kim).

In July 2010, the court bifurcated the parties' claims, first conducting a hearing to determine whether Muse's claim for declaratory relief should be tried before a jury. At that proceeding, the parties presented, among other evidence, the testimony of four expert witnesses who testified about the nature and extent of the rights granted to Cyclone through the 1976 settlement agreement with J.S. Company and Tekim. The court concluded that because the extrinsic evidence needed to interpret the 1976 settlement agreement was not in conflict, there was no factual issue concerning the nature and extent of Cyclone's rights to the novel stemming from that agreement for the jury to decide.

On August 9, 2010, the court issued a written ruling in favor of Muse on its declaratory relief claim, finding that under the 1976 settlement agreement, Cyclone received only a "non-exclusive right for one remake of ['The Killer Inside Me'], using Weinbach-authored literary material expressly described in ¶3(g) of the Agreement." The court continued the trial on the parties' remaining claims to August 2011.[4]

In April 2011, Muse, Windwings, and Kim filed a second motion for summary judgment or summary adjudication regarding Weinbach and Cyclone's first amended cross-complaint. The cross-defendants sought to dismiss Weinbach and Cyclone's cross-suit on the grounds that the 1997 settlement agreement was voidable and subject to rescission due to a material mistake of fact existing at the time the agreement was

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[4] On October 7, 2010, Weinbach and Cyclone filed in this Court a petition for writ of mandate challenging the trial court's August 9, 2010 ruling, which we denied on November 3, 2010.

executed concerning the nature and extent of Cyclone's international film and television rights to the novel. Specifically, the cross-defendants argued Muse entered into the agreement with the belief that Cyclone owned the sole and exclusive international film and television rights to the novel, and that Muse would not have entered the agreement had it known that Weinbach and Cyclone owned only a non-exclusive right to produce a single remake of the 1975 film using the screenplay written by Weinbach.

On August 5, 2011, the court granted summary judgment in favor of Muse, Windwings, and Kim. The court found that no triable issue existed as to whether Muse, Weinbach, and Cyclone operated under a mistake of fact as to the nature and extent of Cyclone's international film and television rights to the novel at the time the parties executed the 1997 settlement agreement, and that Muse would not have entered into the agreement had it been aware of the true nature of Cyclone's rights. The court concluded that the 1997 settlement agreement was voidable and subject to rescission based on this mistake of fact. Since all of Weinbach's and Cyclone's claims in the first-amended cross-complaint relied on the enforceability of the 1997 settlement agreement, the court found that none of the claims had merit.

On September 2, 2011, the court entered a judgment dismissing Weinbach's and Cyclone's first-amended cross-complaint with prejudice and dismissing Windwings and Kim from the litigation. Meanwhile, Muse's lawsuit against Weinbach and Cyclone remained active.

On October 6, 2011, Weinbach and Cyclone appealed the trial court's September 2, 2011 judgment, as to Windwings and Kim, challenging the court's summary judgment ruling that

Cyclone owned only a non-exclusive right to make a single remake of the 1975 film. In a non-published opinion filed on March 6, 2013, this Division affirmed the court's judgment in favor of Windwings and Kim. (See *Weinbach v. Windwings Productions, LLC* (March 6, 2013, B236490).)

On November 4, 2014, Muse filed a request for voluntary dismissal of its complaint against Weinbach and Cyclone. That same day, the trial court entered an order dismissing Muse's complaint. On February 7, 2017, the court entered a judgment dismissing the entire lawsuit.[5]

DISCUSSION

Weinbach and Cyclone claim the trial court erred in granting summary judgment because the 1997 settlement agreement cannot be rescinded. Specifically, they argue the parties did not operate under a mistake of fact concerning the nature of Cyclone's rights to produce a film based on the novel when they executed the 1997 settlement agreement. In the alternative, Weinbach and Cyclone contend a triable issue of fact exists as to whether Muse assumed the risk that Cyclone's rights to the novel were not as extensive as Weinbach and Cyclone had claimed leading up to the execution of the settlement agreement. As we will explain below, the court properly granted summary

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[5] Weinbach and Cyclone filed their appeal after the court issued its order granting summary judgment, but before the court entered judgment dismissing Muse's first-amended complaint. We treat Weinbach and Cyclone's premature notice of appeal as being filed immediately after the court entered judgment on February 7, 2017. (*Darling, Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1154.)

judgment and dismissed Weinbach and Cyclone's cross-complaint.

1. Standard of Review

On appeal from a grant of summary judgment, we review the record and the ruling of the trial court de novo. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334 (*Guz*).) We consider all the evidence presented by the parties in connection with the motion, except that which was properly excluded, and all uncontradicted inferences that the evidence reasonably supports. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.) However, "[w]e do not resolve conflicts in the evidence as if we were sitting as the trier of fact. [Citation.] Instead, we draw all reasonable inferences from the evidence in the light most favorable to the party opposing summary judgment. [Citation.]" (*Nadaf-Rahrov v. Neiman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 961.)

A grant of summary judgment is proper if the evidence shows there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c); see also *Guz*, *supra*, 24 Cal.4th at p. 334.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850, fn. omitted.)

2. Relevant law concerning mistake in the formation of a contract

"A contract may . . . be rescinded if the consent of the rescinding party was given by mistake. (Civ. Code, § 1689, subd. (b)(1).) The party attempting to void the contract as a result of mistake [of fact] must also show that it would suffer

material harm if the agreement were enforced, though that need not be a pecuniary loss." (*Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga* (2009) 175 Cal.App.4th 1306, 1332–1333 (*Habitat*).) A "[m]istake of fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in: [¶] 1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or, [¶] 2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed." (Civ. Code, § 1577.)

To warrant rescinding a contract, the mistake of fact must concern present facts (i.e., facts existing at the time the agreement was executed) or past facts. (*Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 245 (*Paramount Petroleum*).) "[T]here is no authority for rescission based on a mistake regarding *future* events. [Citation.]" (*Ibid*, italics in original.) A mistake concerning future events is an error in judgment, which does not constitute grounds for rescinding a contract. (See *Mosher v. Mayacamas Corp.* (1989) 215 Cal.App.3d 1, 6 (*Mosher*) [an " 'error in judgment' " about the occurrence of future events does not constitute grounds for rescinding an agreement].) "In determining whether a mistake is a mistake of fact or an error in judgment, '[i]t is the facts surrounding the mistake, not the label, i.e., "mistake of fact" or "mistake of judgment," which should control.' [Citation.]" (*Paramount Petroleum*, *supra*, 227 Cal.App.4th at p. 245.)

3. The trial court properly granted summary judgment.

3.1. The parties operated under a mistake of fact when they executed the 1997 settlement agreement.

Weinbach and Cyclone contend the parties did not operate under a mistake of fact about the nature of Cyclone's rights to produce a film based on the novel when they executed the 1997 settlement agreement. Instead, Weinbach and Cyclone assert, the parties operated under a mistake of judgment about how a court would interpret the nature of Cyclone's rights in future litigation, a mistake that does not warrant rescinding the settlement agreement. We disagree.

Several cases illustrate the difference between a "mistake of fact" that warrants rescinding a contract and an "error in judgment" that does not warrant rescission. (See *Habitat*, *supra*, 175 Cal.App.4th at p. 1343 [mistake of fact]; *Smith v. Zimbalist* (1934) 2 Cal.App.2d 324, 325-327, 332–333 (*Smith*) [mistake of fact]; *Mosher*, *supra*, 215 Cal.App.3d at pp. 3-6 [error in judgment]; *Paramount Petroleum*, *supra*, 227 Cal.App.4th at pp. 244–249 [error in judgment].) As our discussion of these cases demonstrates, the mistake that Muse, Weinbach, and Cyclone operated under when they executed the 1997 settlement agreement was one of fact that warrants rescinding the agreement.

The first two cases, *Smith* and *Habitat*, demonstrate what constitutes a mistake of fact that warrants rescinding a contract. In *Smith*, a famous violinist contracted to purchase two violins from a seller. Both the violinist and the seller believed one of the violins to be "Stradivarius" and the other a "Guarnerius." (*Smith*, *supra*, 2 Cal.App.2d at pp. 325-326.) The violinist later

discovered the violins were not genuine and stopped making payments to the seller. (*Id.* at p. 326.) The seller sued for breach of contract. (*Id.* at p. 327.) The trial court excused the violinist's performance, finding that at the time the parties entered the purchase agreement, both the violinist and the seller were mistaken about the genuineness of the violins, a fact that existed, but was not known to the parties, at the time they executed the agreement. (*Id.* at p. 327.) The Court of Appeal affirmed the trial court's judgment. (*Id.* at pp. 327, 332–333.)

In *Habitat*, a developer sought to develop a residential subdivision and produced a draft environmental impact report (EIR) that proposed to convey an offsite tract of land to the county to mitigate the potential loss of habitat for plants and animals at the development's site. (*Habitat*, *supra*, 175 Cal.App.4th at p. 1312.) An environmental advocacy group intended to oppose the development because it found the EIR's mitigation provision to be insufficient. (*Ibid.*) The developer and the advocacy group reached an agreement through which the advocacy group agreed not to oppose the development if the developer transferred the offsite tract to the advocacy group rather than the county. (*Id.* at pp. 1312–1313.) The final EIR provided that the developer must convey the mitigation land to the county or " 'other qualified conservation entity approved by the City.' " (*Ibid.*) The developer then executed a separate contract with the advocacy group to convey the offsite tract to the group, and the parties sought to have the city approve the group as a "qualified conservation entity." (*Ibid.*) After the advocacy group failed to obtain city approval as a "qualified conservation entity," it sued the developer for breach of contract for failing to convey the tract. (*Id.* at p. 1315.) As a defense to the group's

lawsuit, the developer sought to rescind the contract on the basis of mutual mistake. (*Id.* at p. 1317.) The trial court granted summary judgment in the developer's favor, and the Court of Appeal affirmed the judgment. (*Id.* at p. 1319.)

The Court of Appeal concluded the parties had operated under a mistake of fact about the qualifications of the advocacy group at the time they executed the contract. (*Habitat*, *supra*, 175 Cal.App.4th at p. 1343.) The court explained it was apparent from the facts that the parties assumed the advocacy group would be approved by the city as a "qualified conservation entity," even though the contract did not expressly state as much. (*Id.* at p. 1334.) Although the advocacy group argued the parties had made an error in judgment about whether the city would approve the group in the future, the court concluded the facts showed that both parties were mistaken "as to the present fact that [the group] would qualify." (*Id.* at p. 1343.) Accordingly, the contract was subject to rescission due to the parties' mistake of fact at the time they entered the agreement. (*Ibid.*)

The next two cases, *Paramount Petroleum* and *Mosher*, demonstrate what constitutes an error in judgment about the occurrence of future events that does not warrant rescinding a contract. In *Paramount Petroleum*, a roofing shingle manufacturer (buyer) entered into a multi-year requirement contract with a petroleum provider (seller) for asphalt coating to be used in the production of the buyer's shingles. (*Id.* at pp. 229-231.) The contract provided that only two types of crude oil—Alaskan North Slope or Oriente—could be used in the asphalt coating. (*Id.* at p. 230.) Because the costs of the ingredients for asphalt coating fluctuate over time, the contract provided that the buyer could choose between two methods to

calculate the price of the coating provided by the seller each month: one method was based on the average price of asphalt coating the month prior, and the other method was based on the prior month's average daily closing price for West Texas Intermediate (WTI) crude oil. (*Ibid*.) The parties tied the cost of crude oil to WTI instead of Oriente or North Alaskan Slope because WTI's price had closely tracked Oriente's in the past and there was more data available to determine WTI's price on a monthly basis than Oriente or North Alaskan Slope. (*Id*. at pp. 233–234.) The contract expressly provided pricing protections for the buyer, but it did not contain any similar protections for the seller. (*Id*. at p. 231.)

Several years after the parties began operating under the contract, the price of WTI crude dropped dramatically compared to the price of Oriente crude, which the seller had been using to make the buyer's asphalt coating, thereby resulting in substantial losses for the seller. (*Paramount Petroleum*, *supra*, 227 Cal.App.4th at pp. 231–232.) After the parties failed to agree on a new pricing index or type of crude oil to use in the buyer's asphalt coating, the seller terminated its performance under the contract and stopped selling coating to the buyer. (*Id*. at p. 232.)

The buyer sued the seller for breach of contract. (*Paramount Petroleum*, *supra*, 227 Cal.App.4th at pp. 232–233.) The seller raised the affirmative defense of mistake of fact, claiming the requirement contract was voidable and subject to rescission based on the parties' mistake of fact concerning the future price of WTI crude oil at the time they executed the contract. (*Id*. at p. 233.) The buyer moved for summary adjudication concerning only the issues of the seller's liability under the contract and the seller's affirmative defenses to

enforcement of the contract. (*Id*. at p. 233.) The court granted summary adjudication in the buyer's favor, finding the seller breached the contract and that the contract was not subject to rescission because the parties had made an error in judgment, as opposed to a mistake of fact, with respect to predicting the price of WTI crude when they executed the agreement. (*Id*. at p. 237.)

On appeal, this Division affirmed the trial court's ruling. (*Paramount Petroleum*, *supra*, 227 Cal.App.4th at pp. 244–249.) We reasoned that, at the time the parties executed the requirement contract, they were not mistaken about the current value of WTI crude oil. (*Id*. at p. 246.) Rather, they made a mistake in judgment about whether the price of WTI crude oil would continue to track the price of Oriente crude oil. (*Ibid*.) Had the parties intended to protect against future fluctuations that could render the price of WTI crude oil a poor indicator for the price of Oriente, they could have included such a provision in the agreement. (*Ibid*.) Instead, the evidence showed the seller was aware that the price between the two crude oils could fluctuate over time but failed to put in the agreement any protections against such fluctuations. (*Id*. at pp. 246, 248–249.) The fact that the pricing system became unfavorable to the seller was a product of the parties' error in judgment in predicting future price trends for WTI crude oil, and not a mistake about any fact or condition that existed when the contract was executed. (*Ibid*.) Accordingly, the contract could not be rescinded. (*Ibid*.)

In *Mosher*, the buyer and the seller had jointly owned properties in Lake Tahoe until the buyer agreed to purchase the seller's interest in the properties. (*Mosher, supra,* 215 Cal.App.3d at p. 3.) After the parties executed the purchase

agreement and the buyer had begun paying the purchase price, a change in federal tax law eliminated the tax benefits of owning a secondary residence, which severely reduced the value of the purchased properties. (*Id.* at pp. 3–4.) As a result of the change in federal tax law, the buyer stopped paying the purchase price for the properties, and the seller sued for breach of contract. (*Ibid.*) The seller obtained summary judgment and the appellate court affirmed, rejecting the buyer's defense of mutual mistake. (*Ibid.*)

The court rejected the buyer's claim that the parties' gross overvaluation of the properties in the purchase agreement was a mistake of fact because there was no evidence that, at the time the agreement was executed, the parties had mistakenly overstated the properties' value. (*Mosher*, *supra*, 215 Cal.App.3d at pp. 5–6.) Instead, the buyer's claim was premised on the argument that the properties' valuation was rendered mistaken by events that occurred after the purchase agreement was executed—i.e., the adverse federal tax law that was enacted several years after the parties executed the agreement. (*Id.* at p. 5.) The court explained, "Absent evidence that the existence of a future contingency (e.g., continuation of tax benefits) is an assumption of the contract . . . , the defense of mistake of fact must be premised on past or present facts about which the parties are ignorant or mistaken. There was no evidence presented to the trial court that the valuation of the properties proposed by appellant itself in 1982 was erroneous in light of facts then or previously in existence." (*Ibid.*)

As to whether the parties intended to make the validity of the purchase agreement dependent on the existence of future tax benefits, the court found there was no evidence to support such

a theory. (*Mosher*, *supra*, 215 Cal.App.3d at pp. 5–6.) The court explained that the buyer "chose to enter into the subject contract knowing that tax benefits were a major aspect of the value of the properties and presumably knowing that the availability of such benefits could be affected by future legislation, yet it made no provision with respect to tax matters in the contract which its own chief executive officer prepared." (*Id.* at p. 6.)

In this case, the evidence is undisputed that the parties operated under a mistake of fact, and not a mistake of judgment, when they executed the 1997 settlement agreement. Specifically, the parties believed Weinbach and Cyclone **exclusively** owned the rights to produce and release a remake of the 1975 film outside of the United States. Importantly, there is no evidence that the parties anticipated that Cyclone's rights could be determined to be less extensive on some future date after they executed the settlement agreement.

Before Weinbach and Cyclone sued Warner Bros. and Muse in 1995, they sent Warner Bros. at least two letters asserting that Cyclone was the exclusive owner of the film rights to the novel, as well as the rights to produce a remake of the 1975 film using Weinbach's screenplay. Muse learned of these letters during that lawsuit, before the 1997 settlement agreement was executed. In addition, throughout their lawsuit against Warner Bros. and Muse, Weinbach and Cyclone repeatedly claimed that they were the exclusive owners of the rights to produce a remake of the film outside of the United States. In their complaint, they alleged that "Cyclone and Weinbach own all rights in all territories to a remake of the Film subject only to the wrongful claims of [Warner Bros. and Muse] to the remake rights in the United States." Weinbach and Cyclone maintained this position

throughout that lawsuit, when Weinbach filed a declaration opposing summary judgment, in which he claimed, "Cyclone and I own the rights necessary to produce and exploit a remake of the Film in all territories outside the [United States]." As Chris Hanley, Muse's president, testified in support of Muse's summary judgment motion, Muse believed, based on these representations, that Cyclone exclusively owned the rights to release a remake of the 1975 film outside of the United States.

The materiality of the parties' belief in the exclusive nature of Cyclone's rights is clear from the purpose of the 1997 settlement agreement. At the time they entered into the agreement, both parties wanted to produce and release a film based on the novel. Muse owned an option that would have enabled it to produce and release the film within the United States, but it believed that Weinbach and Cyclone owned the rights necessary to release the film outside of the United States. Therefore, had the facts been as Muse believed at the time it entered the settlement agreement, it would have been necessary for the company to secure an agreement with Weinbach and Cyclone, since Cyclone would have been the only entity who could have authorized the film to be released internationally. Conversely, Muse would not have had any reason to enter into the settlement agreement had it been aware of the true nature of Cyclone's rights, since Weinbach and Cyclone could not have blocked any effort by Muse to produce and release a film based on the novel outside of the United States. For the same reason, Muse would suffer harm if the settlement agreement were to remain enforceable. That is, the agreement could prevent Muse from engaging in potentially profitable conduct that it otherwise would have been entitled to engage in—i.e., the sale of its

interests in the novel or the production of a film based on the novel.

3.2. Muse did not assume the risk that Cyclone's rights to the novel were less extensive than the parties believed when they executed the 1997 settlement agreement.

Weinbach and Cyclone next contend the court erred in finding the 1997 settlement agreement was voidable and subject to rescission because Muse assumed any risk that Cyclone's rights to release a film based on the novel were not as extensive as Weinbach and Cyclone had claimed. Specifically, Weinbach and Cyclone argue that because Muse was aware of the 1976 settlement agreement between Weinbach, Cyclone, and Tekim before the parties executed the 1997 settlement agreement, Muse should also have been aware that Cyclone may not have had "exclusive" rights to produce an international remake of the 1975 film. At the very least, Weinbach and Cyclone contend, a triable issue of fact exists as to whether Muse assumed the risk that Cyclone's rights were more limited than Weinbach and Cyclone had claimed before the parties executed the 1997 settlement agreement. We disagree.

Generally, a contract cannot be rescinded because of " 'mistakes as to matters which the contracting parties had in mind as possibilities and as to the existence of which they took the risk.' [Citation.]" (*Guthrie v. Times-Mirror Co.* (1975) 51 Cal.App.3d 879, 885.) In that situation, "[a] contracting party bears the risk of a mistake . . . when the party is aware of having only limited knowledge of the facts relating to the mistake but treats this limited knowledge as sufficient." (*Grenall v. United of Omaha Life Ins. Co.* (2008) 165 Cal.App.4th 188, 193.)

Rescission is warranted, however, where a contracting party is not actually aware of the mistake, but may have failed to take sufficient steps to discover facts that would reveal the mistake before entering the challenged contract. "It is settled that, even in the absence of any misrepresentation, the negligent failure of a party to know or discover facts as to which both parties are under a mistake does not preclude rescission or reformation because of the mistake." (*Van Meter v. Bent Construction Co.* (1956) 46 Cal.2d 588, 594 (*Van Meter*).) Instead, "[t]o bar rescission, the party seeking to rescind must be guilty of gross negligence—'the want of even scant care or an extreme departure from the ordinary standard of conduct.' " (*Harris v. Rudin, Richman & Appel* (2002) 95 Cal.App.4th 1332, 1342 (*Harris*), fn. omitted, quoting *Van Meter*, *supra*, 46 Cal.2d at p. 594.)

"There is even more reason for not barring a plaintiff from equitable relief where his negligence is due in part to his reliance in good faith upon the false representations of a defendant, although the statements were not made with intent to deceive. [Citations.] A defendant who misrepresents the facts and induces the plaintiff to rely on his statements should not be heard in an equitable action to assert that the reliance was negligent unless plaintiff's conduct, in the light of his intelligence and information, is preposterous or irrational." (*Van Meter*, *supra*, 46 Cal.2d at p. 595.)

No triable issue of fact exists as to whether Muse assumed the risk that Cyclone's rights to produce a film based on the novel were not as extensive as Weinbach and Cyclone had claimed before the parties entered into the 1997 settlement agreement. Specifically, there is no evidence that Muse was grossly

negligent, or acted in a preposterous or irrational manner, when it did not conduct a more thorough inquiry into the nature of Cyclone's rights. Instead, the evidence establishes that Muse reasonably relied on Weinbach's and Cyclone's claims about the exclusive nature of Cyclone's rights when it entered into the 1997 settlement agreement.

As discussed above, before the parties executed the 1997 settlement agreement, Weinbach and Cyclone had repeatedly represented to Muse and Warner Bros. that Cyclone was the exclusive owner of the rights to release a remake of the 1975 film anywhere outside of the United States. Weinbach and Cyclone never disclaimed any of those representations or suggested to Muse that they were uncertain about the extent of Cyclone's rights to release a film outside of the United States. In his declaration filed in support of Muse's summary judgment motion, Hanley testified that Muse had relied on Weinbach's and Cyclone's representations when it entered into the 1997 settlement agreement.

Although Muse was aware of the existence of Weinbach and Cyclone's 1976 settlement agreement with Tekim before entering into the 1997 settlement agreement, its awareness of that agreement alone does not preclude Muse from raising a mistake of fact defense. During the parties' litigation preceding the 1997 settlement agreement, Weinbach never disclosed to Muse that Weinbach and Cyclone had sold to J.S. Company all of the rights to the novel they had originally obtained in 1974. Instead, they disclosed only the following relevant agreements: the 1974 agreement with Greenway, through which they had obtained the rights to the novel that Thompson had originally sold to Warner Bros., which included "all rights of every kind and

nature whatsoever in and to" the novel, except certain publishing rights; and the 1976 settlement agreement with Tekim. Muse therefore would not have been aware that Weinbach and Cyclone had divested all of the rights obtained through the 1974 agreement with Greenway before they entered into the 1976 settlement agreement. In other words, Muse would not have known that Weinbach and Cyclone no longer owned "all rights of every kind and nature" to the novel, except for certain publishing rights. Although the terms of the 1976 settlement agreement could have given Muse reason to question whether Weinbach and Cyclone continued to own the rights obtained through the 1974 agreement with Greenway, Weinbach's and Cyclone's repeated claims that Cyclone was the exclusive owner of the rights to release a remake of the 1975 film outside of the United States would have discouraged Muse from conducting a more thorough inquiry into the true nature of Cyclone's rights. (See *Van Meter*, *supra*, 46 Cal.2d at p. 595.)

In sum, we conclude there is no triable issue as to whether the parties operated under a mistake of fact about the nature of Cyclone's rights to produce and release a film based on the novel outside of the United States, a mistake that was material to the purpose of the 1997 settlement agreement and warrants rescinding that agreement. Therefore, the trial court properly granted summary judgment in Muse's favor and dismissed Weinbach and Cyclone's first amended cross-complaint.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

ALDRICH, J.