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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

DAVID DANIEL, Plaintiff and Appellant, v. NISSIM EDRI et al., Defendants and Respondents.	B265527 (Los Angeles County Super. Ct. No. BC542890)

APPEAL from a judgment of the Superior Court of Los Angeles County, William F. Fahey, Judge. Affirmed.

Kinsella Weitzman Iser Kump & Aldisert and Gregory Aldisert for Plaintiff and Appellant.

The Law Office of John Derrick and John Derrick for Defendants and Respondents.

INTRODUCTION

Plaintiff David Daniel and defendant Nissim Edri were equal partners in a jewelry business operating as Continental Coin and Jewelry Co. (Continental Coin).[1] After almost five years, Daniel decided to sell his interest in the company. The partners agreed Daniel would take $4 million in merchandise as payment for his 50 percent interest; however, a dispute later arose over whether the merchandise Daniel received satisfied the buyout amount. In the end, Daniel sued Edri and the company, asserting they breached an alleged oral contract pertaining to the buyout.

Daniel appeals from the judgment entered after a bench trial rejecting his claim for breach of oral contract. The trial court concluded Daniel could not prove the claim, because he subsequently executed a written contract that effectively superseded the terms of the oral contract upon which he sued. The court's conclusion is supported by the law and the evidence. We affirm.

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[1] Continental Coin is the operating name for defendant Diamond Limited Group, Inc. Defendant CB LLC owns the ground lease for the building out of which Continental Coin operates. Edri, Diamond Limited Group, Inc. (Continental Coin) and CB LLC are collectively referred to as "defendants" in this opinion.

FACTS[2] AND PROCEDURAL BACKGROUND

1. *Daniel and Edri Become Partners in Continental Coin*

Daniel and Edri met in 1989. Both are originally from Israel, and their families became very close over their decades-long friendship.

In 2004, Edri acquired Continental Coin. The business buys and sells jewelry, diamonds, watches and art. It also operates a large showroom.

Until 2009, Daniel managed and held ownership interests in several businesses. However, toward the end of 2008, Daniel's businesses began to decline and he had trouble in his personal life. He began visiting Continental Coin daily, where he and Edri talked about partnering in the jewelry business.

In May 2009, Daniel invested $3.35 million to acquire a 50 percent interest in Continental Coin. The partnership agreement was oral; no writing was prepared to memorialize its terms.

As part of the partnership agreement, Daniel requested and was granted control of Continental Coin's bank accounts and inventory. Daniel was also trained on Continental Coin's inventory software, which was used to monitor inventory and pricing information for purchases and sales of merchandise. Daniel was competent with the program and, as an owner, had full administrative privileges. This allowed Daniel to review and change the prices assigned to items of merchandise.

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[2] We state the facts in the light most favorable to the trial court's findings. (See *Estate of Young* (2008) 160 Cal.App.4th 62, 75-76; *In re Marriage of Ruelas* (2007) 154 Cal.App.4th 339, 342.)

Daniel came to the store daily and quickly became familiar with all aspects of Continental Coin's business. He handled all accounting and inventory responsibilities, including examining and verifying sales and purchases. Edri described Daniel as a "genius in mathematic[s]," and observed that by taking charge of the inventory, Daniel developed expertise in valuing the business's merchandise.

In 2012, Edri learned his controller had embezzled substantial sums from the business. Edri fired the controller and came to rely even more on Daniel's accounting and inventory skills.

2. *Daniel Decides to Sell His Interest in the Business*

In early 2013, Daniel decided to sell his interest in Continental Coin. Edri agreed to pay Daniel roughly $4.2 million, representing a return of Daniel's initial investment plus repayment of loans Daniel made to the business during his years with Continental Coin.

Because the company had yet to recover from the embezzlement, Edri told Daniel he would need to be patient while the money was raised through the sale of merchandise. By early 2014, Daniel had received $265,000, leaving roughly $4 million to be paid. Daniel pressed Edri for the remaining payments.

In November 2013, in an attempt to settle their differences over the pace of the buyout, Edri allowed Daniel to take approximately 95 diamonds from Continental Coin's inventory to Avi Chakon, a friend and relative of Daniel's who worked as a diamond dealer. Chakon inspected the diamonds and prepared worksheets appraising their values.

In January 2014, a Continental Coin employee, Sarkis Ambartsumyan, generated a spreadsheet listing all merchandise held by Continental Coin. The spreadsheet described each item and listed its "tag price."[3] Daniel received the spreadsheet in January 2014 and thoroughly studied it at the time.

3. *The February 11, 2014 Meeting*

On February 11, 2014, Edri and Daniel met again to discuss the pace of the buyout. Chakon accompanied Daniel, and Ambartsumyan also was present. Chakon suggested the dispute should be resolved and sought to act as a "mediator" during the meeting.

Chakon recognized that Continental Coin had suffered an embezzlement and that it did not have liquid funds. Thus, he proposed Daniel be bought out with merchandise from the company's inventory in lieu of cash. The partners orally agreed to this resolution.

The discussion then turned to the method for valuing the merchandise, but the parties offered different accounts of what they discussed. According to Edri and Ambartsumyan, the parties agreed coins would be valued according to the "Gray Sheet"—a third party resource consulted to value coins—with a 5 percent discount. Diamonds would be appraised by an independent appraiser, and watches and jewelry would be valued according to their tag price.

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[3] Continental Coin's "tag price" represents the price beneath which an item will not be sold. It is not the "list price" offered to retail customers, nor is it the price Continental Coin paid to acquire the item. By virtue of his inventory and accounting responsibilities, Daniel was familiar with tag prices and how they were determined.

In contrast, Daniel and Chakon said there was no discussion about using tag prices to value jewelry or watches. Rather, they claimed the jewelry was to be delivered to Daniel, who would appraise it with Chakon at Chakon's offices. As for the watches, Chakon maintained that Daniel was only to receive Rolex watches, which had a clear market value. With respect to diamonds, Chakon and Daniel said they agreed Edri would keep the diamonds to sell on the market over the course of the year, with any unsold diamonds going to Daniel at a value to be determined later. They agreed the coins were to be valued according to the Gray Sheet.

During the meeting, Chakon wrote three pages in Hebrew, which he claimed memorialized the parties' agreement. Chakon added signature lines for Daniel and Edri to each of the three pages. Daniel signed all three pages, but Edri signed only the last one. Edri testified that he could not read the Hebrew on the first two pages and that he did not agree with all of the terms. He specifically did not agree with the language regarding the valuation of the jewelry.

4. *Course of Dealings Following the February 11, 2014 Meeting*

After the meeting, Edri instructed Ambartsumyan to begin gathering $4 million worth of merchandise. Ambartsumyan supervised other employees and generated a series of consignment memoranda, which listed each item to be given to Daniel with its determined value.[4]

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[4] An independent appraiser inspected and appraised each diamond.

On February 13, 2014, Daniel returned to Continental Coin to retrieve the merchandise and consignment memoranda. Daniel testified that he did not take the time to examine each piece; he simply accepted all pieces and signed each memorandum. The trial court found that this account made "sense because Daniel was intimately familiar with the [Continental Coin] merchandise from his years at the company and through the [inventory management software]." Further, the court observed that Daniel "had been given sufficient time to review the complete inventory [spreadsheet] since January 2014."[5]

Daniel testified that he and Chakon later appraised some of the pieces and realized Continental Coin had overvalued them. The court found "this testimony did not seem very believable." In its statement of decision addressing the conflicting evidence, the court explained: "Daniel testified that when he mentioned his concerns about the value of the merchandise . . . , Edri supposedly said that 'they would adjust' the prices. But Daniel did not reject any merchandise. Instead, he went back to [Continental Coin] on February 14, 17 and 18 to pick up more

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[5] Daniel testified, contrary to Ambartsumyan's account and the trial court's finding, that he did not receive the inventory spreadsheet until February 12, 2014—the day after the February 11 meeting. The court rejected this assertion, stating it "did not believe" Daniel's testimony. The court also rejected Daniel's claim that he did not examine the spreadsheet thoroughly, observing, "[b]ased on his own testimony and demeanor, and the testimony of other trial witnesses, . . . Daniel was too shrewd and thorough a businessman to have obtained the [Continental Coin] inventory list and not carefully examine it."

merchandise and the accompanying memoranda. No pieces were rejected, no prices were adjusted and Daniel made no more complaints about the values listed on the [consignment] memoranda. On February 20, Daniel was shown even more merchandise. . . . [¶] On February 21, Daniel and Chakon went to [Continental Coin] to pick up the remainder of Daniel's merchandise. Once again, not one piece was rejected, no prices were adjusted and no complaints were made by Daniel."

5. *The February 21, 2014 Written Agreement*

On February 21, 2014, with the process of selecting and packing the merchandise completed, Edri requested a signed agreement before Daniel took final possession of the merchandise. The final typewritten agreement, originally written in Hebrew and translated by the parties' stipulated interpreter, stated as follows:

> "We the undersigned, David Daniel and Nissim Edri, hereby declare, in full faith, that the merchandise to be collected today, Friday, 2/21/2014 from CONTINENTAL COIN & JEWLERY CO is and [*sic*] a payment in full complete repayment for David Daniel's investment in CONTINENTAL COIN & JEWELRY in the sum total of $4,000,000.
>
> "This agreement is signed with a complete understanding that, in the event there are any adjustments to be made between David Daniel and Nissim Edri, they will be handled with good will and in complete consent by both parties.
>
> "David takes from the partnership four million dollars in merchandise that was evaluated by the company while he was a partner[.]

> "Upon [¶] taking the merchandise releases Nissim Edri and Continental C& oinJ ,ewlryCo [*sic*] Nissim releases David from liability.
>
> "In the event the action against [the former controller] concludes successfully and the money is collected it shall be divided equally between Nissim and David." (Footnotes omitted.)

Daniel and Edri signed the agreement. Chakon and Ambartsumyan signed as witnesses.[6] Although Daniel testified that he signed the agreement "under pressure," the trial court found this testimony was not credible.

6. *Daniel's Complaint for Breach of Oral Contract*

On March 4, 2014, Daniel sent an email to Edri claiming the jewelry, diamonds and watches were worth much less than the value assigned in the consignment memoranda. On March 20, 2014, Daniel sent another email claiming the merchandise he received was worth no more than $1.65 to $1.85 million.

Edri wrote back to Daniel on March 24, 2014. He suggested that if Daniel was not satisfied with the assigned values, he could return the merchandise in its entirety. Edri

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6 Chakon drafted a prior handwritten document dated February 21, 2014, which Daniel, Edri and Chakon also had signed. However, Ambartsumyan would not sign the handwritten document, and requested that the parties " 'send it to be typed correctly.' " Edri gave the handwritten document to his wife, who prepared the final typewritten agreement. The trial court found the typewritten document, which included discrete changes from the handwritten version, was the operative agreement.

offered to then sell the merchandise and pay Daniel as the items were sold.

Daniel did not agree or respond to Edri's suggested compromise. Instead, he sold the coins and retained the remaining merchandise.[7]

On April 17, 2014, Daniel filed a complaint for breach of oral contract against Edri, Continental Coin, and CB LLC.[8] The complaint alleges the parties had "an oral agreement for Edri and/or Continental to pay Daniel $4.0 million in exchange for Daniel's 50% ownership interest in Continental Coin" and that defendants agreed to pay this amount in the form of "merchandise consisting of coins, diamonds and jewelry." The complaint further alleges that the notes Chakon prepared during the February 11, 2014 meeting constituted a "handwritten agreement" that specified "the process for valuing the merchandise and resolving disputes about particular valuations." Defendants allegedly breached the oral agreement by "providing merchandise to Daniel worth substantially less than $4.0 million."

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7 At trial, Daniel testified that the coins netted a 7 percent shortfall from the value assigned in the consignment memoranda. However, Daniel did not claim the purported shortfall as damages in his lawsuit.

8 The complaint included an additional claim for conversion, which Daniel dismissed before trial.

7. *Statement of Decision*

On March 13, 2015, the court commenced a six-day bench trial on Daniel's breach of oral contract claim. After considering Daniel's objections to its proposed statement of decision, the court entered a final statement of decision, in which it concluded that Daniel failed to prove his breach of oral contract claim.[9]

The trial court found that, "on February 11, 2014, the parties orally confirmed the general understanding that they had reached in early 2013, *i.e.*, (1) Daniel was entitled to $4 million; (2) Daniel would not be paid in cash; and (3) Daniel would get [Continental Coin] merchandise worth $4 million in lieu of cash." These terms were essentially undisputed by both parties.

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[9] Daniel filed objections to the trial court's proposed statement of decision wherein he identified several omitted findings that he argued were necessary to resolve critical controverted issues. Although his appellate briefs refer to some of those omitted findings, Daniel does not argue the omissions mandate reversal. Our review of the record likewise confirms that the trial court made all essential findings on the material controverted issues necessary to support the judgment. (See *Hellman v. La Cumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224, 1230 ["In rendering a statement of decision . . . a trial court is required only to state ultimate rather than evidentiary facts; only when it fails to make findings on a material issue which would fairly disclose the trial court's determination would reversible error result. . . . A failure to find on an immaterial issue is not error."].)

Turning to the principal controverted issue—whether the merchandise consigned to Daniel satisfied the $4 million buyout amount—the court concluded there was "insufficient evidence [to prove] the parties agreed to the method of valuing the merchandise as testified to by Daniel." In reaching this conclusion, the court rejected Daniel's claim that Chakon's notes of the February 11, 2014 meeting evidenced the terms of the parties' oral agreement with respect to valuation.[10]

Despite rejecting Daniel's version of events, the court did not expressly accept Edri's and Ambartsumyan's account of the agreed upon valuation method. Rather, the court concluded that the oral agreement had been superseded by the February 21, 2014 typewritten agreement, in which Daniel agreed that the merchandise he received was worth $4 million.

Referring to the February 21, 2014 typewritten agreement, the court found: "Ex. 50 [the typewritten agreement] supersedes all the previous negotiations, oral agreements and Ex. 51 [the handwritten agreement, see fn. 6, *ante*]. [Citations.] By signing Ex. 50, Daniel agreed that he had received merchandise valued at $4 million in 'full complete repayment' of the amounts he had invested in [Continental Coin]. Daniel further agreed that the merchandise he had received had been 'evaluated by the company while he was a partner.' And Daniel agreed that 'upon taking the merchandise,' he 'releases' Edri and [Continental Coin] from liability. In addition, Edri released Daniel from liability. This

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[10] The court found the notes were too "vague and incomplete" to be regarded as trustworthy, and that Chakon's "allegiance and trial testimony favored Daniel," which called the reliability of his handwritten notes into further doubt. The court also emphasized that Edri had refused to sign all but the last page of the notes.

language constitutes mutual releases as to the parties' then one year old dispute."

With respect to the written agreement's dispute resolution provision, the court found "the language clearly requires that *both* parties had to agree to any 'adjustment.' " Thus, the court found "Daniel's after-the-fact conclusion that he had received merchandise worth less than $4 million was insufficient" to establish a breach of the written agreement. Further, the court concluded Edri's offer—to take back all the merchandise and to pay Daniel as the items were sold—was a reasonable proposal to resolve the dispute, and that "the parties' actions were consistent with . . . the final written agreement reached on February 21, 2014."

Based on the foregoing, the court concluded: "In sum, Daniel has not carried his burden of proving that Edri or [Continental Coin] breached either the interim oral agreement or their final written agreement." The court entered judgment for defendants. Daniel filed a timely notice of appeal.

DISCUSSION

Daniel proceeded to trial on the sole claim that defendants breached an oral contract to pay him $4 million worth of merchandise in exchange for his interest in Continental Coin. In ruling Daniel failed to meet the burden of proving his claim, the trial court found that a later written agreement—the February 21, 2014 typewritten agreement—superseded all prior negotiations and oral agreements concerning the value of the merchandise Daniel received. In that final written agreement, Daniel affirmed that the merchandise he received constituted "a payment in full complete repayment For David Daniel's investment in CONTINENTAL COIN & JEWELRY in the sum total of $4,000,000."

Despite his assent to the terms of the February 21, 2014 written agreement, Daniel claims he was entitled to a greater share of merchandise pursuant to an alleged valuation method specified in the former oral agreement. As discussed below, the purported oral agreement directly contradicts the unambiguous terms of the final written agreement with respect to the value of the merchandise Daniel received. Thus, under the parol evidence rule, the oral agreement could not serve as the basis for a breach of contract claim.

1. *Because the February 21, 2014 Written Agreement Was Integrated as to the Value of the Merchandise, the Parol Evidence Rule Bars Daniel's Breach of Oral Contract Claim*

"The parol evidence rule is a fundamental rule of contract law which operates to bar extrinsic evidence contradicting the terms of a written contract. [Citation.] It is not merely a rule of evidence but is substantive in scope. [Citations.] Under that rule the act of executing a written contract . . . supersedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument. [Citation.] Extrinsic evidence cannot be admitted to prove what the agreement was . . . because as a matter of law the agreement is the writing itself." (*BMW of North America, Inc. v. New Motor Vehicle Bd.* (1984) 162 Cal.App.3d 980, 990; See *Tahoe National Bank v. Phillips* (1971) 4 Cal.3d 11, 22–23 (*Tahoe National Bank*); *EPA Real Estate Partnership v. Kang* (1992) 12 Cal.App.4th 171, 175 (*Kang*).)

“When the parties to a written contract have agreed to it as an ‘integration’—a complete and final embodiment of the terms of an agreement—parol evidence cannot be used to add to or vary its terms.” (*Masterson v. Sine* (1968) 68 Cal.2d 222, 225.) “[E]xtrinsic evidence is admissible *only* to supplement or explain the terms of the agreement—and even then, only where such evidence is *consistent* with the terms of the integrated document, and only where the writing is not also intended as an *exclusive* statement regarding its subject matter.” (*Kang, supra,* 12 Cal.App.4th at pp. 176-177.) Extrinsic evidence may not “ ‘add to, detract from, or vary the terms of’ ” the integrated written agreement. (*Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 345.)

An agreement also may be *partially* integrated as to those terms set forth in writing. “Obviously where following negotiations the parties execute a written agreement, that agreement is at least ‘partially’ integrated and parol evidence cannot be admitted to contradict the terms agreed to in the writing. [Citation] Evidence of related oral understandings, however, is admissible to prove additional terms of the contract *not inconsistent with the express language of the writing*.” (*Esbensen v. Userware Internat., Inc.* (1992) 11 Cal.App.4th 631, 637 (*Esbensen)*, italics added.)

“Whether the parol evidence rule applies in a given set of circumstances is a question of law, which we consider de novo to the extent that no evidentiary conflict exists. [Citations.] Generally, the resolution of this issue involves a two-part analysis: (1) was the writing intended to be an integration; and (2) is the agreement reasonably susceptible of the meaning urged by the party offering the evidence.” (*Kang, supra,* 12 Cal.App.4th at p. 176.) If the parties intended the writing to be an integration, and the writing is not reasonably susceptible of the meaning urged by the party offering the evidence, the extrinsic evidence must be excluded under the parol evidence rule. (*Id.* at p. 175; *Tahoe National Bank, supra,* 4 Cal.3d at p. 23.)

It follows from the foregoing principles that Daniel could not, as a matter of law, establish a claim for breach of the purported oral contract if, as the trial court concluded, the parties intended the February 21, 2014 writing to be a complete and final embodiment of their agreement regarding the value of the merchandise Daniel received in exchange for his interest in Continental Coin. Daniel contends the trial court erred in treating the writing as an integration because (1) the written agreement did not include an explicit integration clause; and (2) there was no evidence the parties intended the written agreement to supersede prior oral agreements. Neither contention has merit.

Daniel's first point is easily disposed of. While he stresses that the absence of an integration clause is pertinent to the analysis, he concedes it is not determinative of the parties' intent regarding integration. Indeed, in *Wallis v. Farmers Group, Inc.* (1990) 220 Cal.App.3d 718 (*Wallis*)—the case upon which Daniel relies—the court found that although the subject written agreement did not contain an integration clause, the parties nevertheless intended the agreement to be integrated with respect to the subject of the plaintiff's breach of contract claim. In reaching that conclusion, the *Wallis* court noted the written agreement "exhaustively cover[ed] the subject of termination" and that "no other written material discusse[d] the subject." (*Id.* at p. 730.) Thus, the court found that, "while the agreement as a whole was not integrated, it was integrated with respect to the subject of termination," and therefore extrinsic evidence was admissible only to prove elements of the agreement not reduced to writing. (*Ibid.*)

Here, as in *Wallis*, the face of the February 21, 2014 writing and the parties' course of dealings surrounding its execution prove that they intended it to be the final embodiment of their agreement regarding the value of the merchandise Daniel received. Thus, contrary to Daniel's second point, there was ample evidence that the parties intended the written agreement to supersede all prior *inconsistent* negotiations and agreements concerning that subject.

First, the critical contract language is not susceptible of any interpretation other than that the parties agreed the merchandise Daniel received constituted full and complete repayment of his $4 million investment in Continental Coin. The written agreement states: "We the undersigned, David Daniel and Nissim Edri, hereby declare, in full faith, that the merchandise to be collected today, Friday, 2/21/2014 from CONTINENTAL COIN & JEWELRY CO is and [*sic*] a payment in full complete repayment For David Daniel's investment in CONTINENTAL COIN & JEWELRY in the sum total of $4,000,000." (Footnote omitted.) We agree with the trial court that the foregoing language unambiguously superseded any prior agreement between the parties concerning the value of the merchandise and repayment of Daniel's investment. Inasmuch as Daniel sought to establish that the merchandise he received was worth less than $4 million based on the purported terms of the former oral agreement, the trial court properly rejected that effort based on the parol evidence rule.

Second, the parties' conduct preceding execution of the writing is consistent with their intent to treat it as a complete and final expression of their agreement regarding the merchandise's value. As recounted in the court's statement of decision, beginning on February 13, 2014 and continuing through February 21, 2014 when the parties executed the type-written agreement, Daniel received "merchandise and pricing memoranda listing the value of each piece" and "not one piece was rejected, no prices were adjusted and no complaints were made by Daniel." At the end of the process, Edri requested that Daniel sign a written agreement before Daniel took final possession of the merchandise. Edri made clear to Daniel that, in signing the agreement, "he would be waiving any claims about the value of the merchandise." Although Daniel testified that he signed the agreement "under pressure," the court expressly rejected this assertion, stating, it "did not find Daniel to be credible."[11] Taken together, this evidence fully supported the conclusion that the parties intended the writing to be a final expression of their agreement regarding the value of the merchandise Daniel received in exchange for his interest in Continental Coin.

Because the written agreement was at least partially integrated with respect to the merchandise's value, Daniel was barred from introducing extrinsic evidence to establish an agreement inconsistent with the express language of the writing on this subject. (See *Esbensen, supra,* 11 Cal.App.4th at p. 637;

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[11] On appeal, Daniel concedes that he has "never argued that the February 21, 2014 agreement was unenforceable based on duress or for any other reason."

Wallis, supra, 220 Cal.App.3d at p. 730.) But that is essentially what Daniel's breach of oral contract claim sought to accomplish. Daniel contends the merchandise he collected upon signing the written agreement was worth substantially less than $4 million under the valuation method specified in the parties' former oral agreement. In direct conflict with that claim, the written agreement provides that "the merchandise" he collected was "a payment in full complete repayment For David Daniel's investment in CONTINENTAL COIN & JEWELRY *in the sum total of $4,000,000.*" (Italics added.) Because Daniel's claim was premised on a purported oral agreement that was inconsistent with the integrated terms of a final written agreement, the trial court properly rejected his breach of oral contract claim under the parol evidence rule. (See *Tahoe National Bank, supra,* 4 Cal.3d at p. 23; *Kang, supra,* 12 Cal.App.4th at pp. 176-177.)[12]

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[12] In his reply brief, Daniel contends for the first time that the written agreement should not be deemed integrated because it did not specifically identify each piece of merchandise that he was to receive. Thus, he contends there was "no way to prove or disprove whether Daniel received the merchandise that is the subject of the agreement." The argument confuses the evidence required to establish a breach of contract with the evidence needed to establish that the parties intended the contract to be integrated. Here, the written agreement's terms confirm that the parties intended the writing to be the final expression of their agreement regarding the value of the merchandise, and the extrinsic evidence is consistent with that interpretation of the writing. That conclusion is not undermined by the fact that Daniel would be required to introduce evidence outside the writing to prove he did not receive what was promised.

2. *Daniel's Arguments Concerning the Written Agreement's Release Provision Are Irrelevant*

Daniel contends the trial court erred by giving effect to the written agreement's release provision in ruling he was barred from asserting a claim regarding the value of the merchandise. In that regard, he contends the release provision was ambiguous, extrinsic evidence proves he did not release his claim, and defendants waived their right to rely upon the release because they failed to plead it as an affirmative defense. None of these contentions establishes reversible error, because the trial court did not base its judgment upon the release.

As discussed in the previous section, the trial court ruled that Daniel could not establish a claim for breach of *oral* contract because he executed a *written* contract that directly conflicted with his assertion that he received merchandise worth less than $4 million. None of Daniel's arguments attacking the written agreement's release undermines that ruling or addresses the critical provision in the written agreement, in which Daniel affirmed that "the merchandise" he collected from Continental Coin constituted "payment in full complete repayment For David Daniel's investment in CONTINENTAL COIN & JEWELRY in the sum total of $4,000,000." Thus, regardless of the written agreement's release, the trial court properly concluded that Daniel could not prove that he received merchandise worth less than $4 million based on prior oral negotiations or agreements that directly conflicted with this unambiguous provision of the written contract. (See *Tahoe National Bank, supra,* 4 Cal.3d at p. 23; *Kang, supra,* 12 Cal.App.4th at p. 175.)

DISPOSITION

The judgment is affirmed. Defendants are entitled to their costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

STONE, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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