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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

BERTRAM FULLER,

Plaintiff and Respondent,

v.

YUNUEN N. CAMPOS,

Defendant and Appellant.

B278860

(Los Angeles County
Super. Ct. No. YC069237)

APPEAL from a judgment of the Superior Court of Los Angeles County. Ramona G. See, Judge. Affirmed.

Magnanimo & Dean, Lauren A. Dean and Frank A. Magnanimo for Defendant and Appellant.

Holmes, Taylor, Scott & Jones, Andrew B. Holmes and Matthew D. Taylor for Plaintiff and Respondent.

* * * * *

During the five years they dated, a girlfriend repeatedly asked her boyfriend to loan her money. Based on her assurances that she had equity in her home and car and that she would soon receive a large inheritance, the boyfriend loaned her more than \$110,000—his life savings. After they broke up, the boyfriend sued to collect the debt. Following a bench trial, the trial court ruled for the boyfriend. The girlfriend now appeals. Because her appeal lacks merit, we affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

Plaintiff Bertram Fuller (boyfriend) and defendant Yunuen Campos (girlfriend) were in a dating relationship that started in 2005, and ended in May 2010. Midway through their relationship, boyfriend moved into girlfriend's house.

While they dated, girlfriend would ask boyfriend to borrow money. Boyfriend obliged, and made a series of interest free loans to her that, in total, came to more than \$110,000, which was effectively boyfriend's "life savings."

As boyfriend made these loans, girlfriend repeatedly assured him that she would repay him. Girlfriend told him that she had equity in her home and in her car (a BMW), and either told him or let him believe that she would add him as a co-owner to both assets, even though she later admitted she had no intention of doing so. Starting in 2006, girlfriend also told boyfriend that she would be receiving a big inheritance due a friend's death; she would mention that the inheritance was "going to come through" when asking him for more money; and she repeatedly renewed her promise that she would repay him the full amount of all of his loans.

Although their loan arrangement was not written down, boyfriend understood that girlfriend would repay him “when she was able to or if [he] demanded it.”

II. Procedural Background

In January 2011, boyfriend sued girlfriend to collect on the loans. When girlfriend filed for bankruptcy a few months later, boyfriend dismissed his lawsuit without prejudice and filed a claim in the bankruptcy proceeding. In June 2013, girlfriend’s bankruptcy petition was dismissed without a discharge of her debts.

Less than 60 days later, boyfriend sued girlfriend a second time. In the operative second amended complaint (and as pertinent here), boyfriend sued her for (1) breach of their oral contract, and (2) money lent.¹

The matter proceeded to an eight-day bench trial. At the close of boyfriend’s case, girlfriend moved for judgment on boyfriend’s breach of contract and money lent claims, and the trial court denied her motion.

In a statement of decision issued after trial, the trial court awarded boyfriend \$111,325 on his breach of contract and money lent claims. The court concluded that boyfriend’s claims were not barred by the otherwise applicable two-year statute of limitations because girlfriend was equitably estopped from asserting the statute of limitations. The court reasoned that girlfriend should

¹ Boyfriend also sued for (1) fraudulent inducement of the oral contract, (2) intentional misrepresentation, and (3) trespass to chattels. The trial court granted girlfriend’s motion for summary adjudication on the trespass to chattels claim and granted her midtrial motion for judgment on the fraudulent inducement and intentional misrepresentation claims. These claims are not at issue in this appeal.

not be allowed to assert the time bar due to “the parties’ romantic relationship,” and girlfriend’s “continued . . . reassur[ances]” that “she would repay him the money, that she had other sources of money that she would be able to use to repay him, and that she might even put [boyfriend] on title to her car and/or her house.” “All of these assurances,” the court found, “served two purposes for [girlfriend]. One was to stop [boyfriend] from demanding repayment, and two, to keep ‘the Bertram Fuller bank’ open and ready to issue more checks to her.”

The court further concluded that boyfriend had established the elements of his two claims. Finding boyfriend to be a credible witness, the court went on to hold that “the terms of [the parties’ oral loan] agreements were clear”—namely, that girlfriend “would repay the sums either upon demand or when [girlfriend] was able” On this basis, the court awarded boyfriend all of the sums he loaned girlfriend while they were in a relationship, but declined to award him sums for loans he made to her after their break-up in July 2010. That amount came to \$111,325.

After the trial court entered judgment, girlfriend filed this timely appeal.

DISCUSSION

Girlfriend argues that the trial court erred—while denying her motion for judgment and in its ultimate ruling—in concluding that (1) boyfriend’s claims were not barred by the statute of limitations due to equitable estoppel, and (2) boyfriend was entitled to relief on the merits. We review these claims for substantial evidence. (*Roth v. Parker* (1997) 57 Cal.App.4th 542, 549-550 [motion for judgment reviewed for substantial evidence]; *Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632 [rulings on factual issues reviewed for substantial

evidence]; *Hopkins v. Kedzierski* (2014) 225 Cal.App.4th 736, 756 (*Hopkins*) [ruling on equitable estoppel reviewed for substantial evidence].) In assessing whether substantial evidence supports a ruling, we “examin[e] the whole record, including conflicting evidence, in the light most favorable to the ruling below to determine whether there is reasonable, credible evidence of solid value to support that ruling.” (*Ferguson v. Yaspan* (2014) 233 Cal.App.4th 676, 682.) In so doing, we may not second guess the trial court’s credibility findings. (*Id.* at p. 684.)

I. Equitable Estoppel

The doctrine of equitable estoppel empowers a court to allow a plaintiff to proceed with a time-barred claim because the defendant has engaged in inequitable conduct. The doctrine is designed to do equity: “[O]ne cannot justly or equitably lull [her] adversary into a false sense of security, and thereby cause [her] adversary to subject his claim to the bar of the statute of limitations, and then be permitted to plead the very delay caused by [her] course of conduct as a defense to the action when brought.” (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 383 (*Lantzy*), quoting *Carruth v. Fritch* (1950) 36 Cal.2d 426, 433.) The doctrine applies only if the plaintiff establishes that “(1) the [defendant] [was] apprised of the facts; (2) the [defendant] . . . intend[ed] . . . her conduct [to] be acted upon, or . . . act[ed] [so] that the [plaintiff] had a right to believe it was so intended; (3) the [plaintiff] [was] ignorant of the true state of facts; and (4) the [plaintiff] . . . [relied] upon the conduct to his . . . injury.” (*Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1785; *Hopkins, supra*, 225 Cal.App.4th at p. 756.) The plaintiff need not show that the defendant’s acts were part of a “‘designed fraud’”; in this regard, it is enough to show that the plaintiff’s “‘delay in

commencing [the lawsuit] [was] induced by the conduct of the defendant.”” (Lantzy, at p. 385.)

Substantial evidence supports the trial court’s finding that equitable estoppel applies here. Girlfriend knew that there was no forthcoming inheritance and knew that she had no intention of placing boyfriend as a co-owner of her home or car; she admitted that she misled him on both accounts—either by telling him about the inheritance or by “just smil[ing] and nod[ding]” whenever he asked about adding his name to the title; boyfriend did not know girlfriend was misleading him; and he loaned his life savings to girlfriend on the basis of these assurances.

Girlfriend makes three arguments in response.

First, she argues that boyfriend’s reliance on her assurances was not reasonable because he should have realized that she was lying to him when she refused to show him the will that was the basis for the alleged inheritance. To be sure, equitable estoppel is appropriate only when the plaintiff’s reliance was “reasonable under the circumstances.” (*Santos v. Los Angeles Unified School Dist.* (2017) 17 Cal.App.5th 1065, 1076.) But the trial court concluded that boyfriend’s reliance upon girlfriend’s assurances was reasonable, and this conclusion is supported by substantial evidence—namely, that it is reasonable for a person to believe that his romantic partner would not casually and repeatedly lie about the death of a friend in order to obtain “loans” she had no intention of repaying. Girlfriend urges that the trial court was wrong to consider the parties’ romantic relationship when assessing the reasonableness of boyfriend’s reliance, but no case law requires a trial court to ignore this fact, which is part of the totality of the circumstances. What is more, we find no fault with the trial court’s observation

that it is reasonable for a person to give his romantic partner the benefit of the doubt and to assume, as a default matter, that the partner is being honest rather than deceitful.

Second, girlfriend asserts that boyfriend did not act with reasonable diligence in bringing suit once the basis for equitable estoppel ended—that is, once they broke up. “The rule of equitable estoppel includes . . . the requirement that the plaintiff exercise reasonable diligence.” (*Bernson v. Browning-Ferris Industries* (1994) 7 Cal.4th 926, 936.) However, substantial evidence supports the trial court’s finding that boyfriend was reasonably diligent: He sued girlfriend just over six months after they broke up; dismissed his lawsuit only after girlfriend declared bankruptcy (and sought to obtain relief from the bankruptcy court); and sued girlfriend again within two months of the dismissal of girlfriend’s bankruptcy petition without a discharge.

Lastly, girlfriend contends that the trial court erred in its analysis of whether the statute of limitations on boyfriend’s claims had expired because the court: (1) ignored that the statute of limitations begins to run once a loan is made if the loan is payable upon demand; (2) declined to find that any tolling of the limitations period ended when boyfriend started to have concerns about the legitimacy of her claimed inheritance; (3) did not recognize that boyfriend’s dismissal of his first lawsuit was “fatal” to the timeliness of his claim; (4) overlooked that girlfriend’s lies about the inheritance first occurred in 2009, long after the limitations period had run on several of the loans; and (5) wrongly applied tolling due to her bankruptcy petition to *all* of boyfriend’s loans rather than a subset of them. We need not evaluate the merits of these contentions because they are irrelevant. ““Equitable estoppel,”” our Supreme Court has

noted, ““comes into play only after the limitations period has run.”” (*Lantzy, supra*, 31 Cal.4th at p. 383.) Thus, girlfriend’s arguments directed to whether the statute of limitations on boyfriend’s claims has run has no effect on the trial court’s equitable estoppel ruling. (Accord, *ibid.* [noting that “[e]quitable tolling and equitable estoppel are distinct doctrines”]; *Battuello v. Battuello* (1998) 64 Cal.App.4th 842, 847 [same].)

II. Merits

Boyfriend’s breach of contract and money lent claims share a comment element—namely, that the defendant owes the plaintiff money. (*Reichart v. General Ins. Co.* (1968) 68 Cal.2d 822, 830 [breach of contract action requires proof of “plaintiff’s performance or excuse for nonperformance”]; *Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460 [money lent requires proof of indebtedness to the plaintiff for money that was “had and received by the defendant”].) If the parties so agree, the defendant’s duty to pay can be made contingent upon the happening of an event. (E.g., *JMR Construction Corp. v. Environmental Assessment & Remediation Management, Inc.* (2015) 243 Cal.App.4th 571, 593.)

Girlfriend argues that the trial court’s ruling on boyfriend’s breach of contract and money lent claims is not supported by substantial evidence because boyfriend never proved that her duty to repay him had been triggered. More specifically, she asserts: (1) that she and boyfriend agreed that her duty to repay him arose only if boyfriend demanded payment *and* she was able to pay; and (2) boyfriend never proved that she was able to pay. Thus, girlfriend concludes, the verdicts must be overturned.

We reject girlfriend’s argument because its first premise is invalid. The trial court found that the parties’ agreement

required girlfriend to repay boyfriend if he so demanded *or* if she were able to pay. This finding is supported by substantial evidence because boyfriend so testified. (*Pope v. Babick* (2014) 229 Cal.App.4th 1238, 1247 [“the testimony of a single witness is enough to prove a fact”]; accord, *Treadwell v. Nickel* (1924) 194 Cal. 243, 260-261 [trial court’s findings on oral contract’s terms reviewed for substantial evidence].)

Girlfriend responds with three arguments, none of which has merit. First, she argues that boyfriend took the position—in the operative complaint and in a prior declaration—that girlfriend was only required to repay him if he so demanded *and* if she were able to pay; thus, she concludes, he was judicially estopped from testifying to the contrary at trial. We reject this argument. To begin, the operative complaint twice alleged that the loans were due “at the time repayment was demanded by [boyfriend]”; these allegations are consistent with boyfriend’s trial testimony that his demand was enough by itself to trigger the duty to repay. Further, although boyfriend, in a declaration opposing girlfriend’s summary judgment motion, stated that “the loans would be repaid by [girlfriend] as soon as she was able, and on demand by me,” a party is not judicially estopped from testifying inconsistently with his prior statements in a deposition or declaration unless a court has accepted those prior statements (*Jogani v. Jogani* (2006) 141 Cal.App.4th 158, 176); the required judicial acceptance is absent here. Consequently, the court was free to reject boyfriend’s prior statement in favor of his testimony at trial.

Second, girlfriend contends that inconsistencies in boyfriend’s testimony render the oral contract ambiguous. Although “[a]n alleged oral contract with vague and uncertain

terms is not binding” (*Halvorsen v. Aramark Uniform Services, Inc.* (1998) 65 Cal.App.4th 1383, 1389), the trial court had substantial evidence upon which to credit boyfriend’s in-court testimony and thereby determine the terms of the oral contract.

Lastly, girlfriend asserts that there was no evidence of her ability to repay the loan. However, because the trial court found that her duty to repay was triggered by one of two alternative contingencies (namely, boyfriend’s demand *or* her ability to pay), the absence of proof of one does not matter if the other is proven. (Civ. Code, § 1448 [“If an obligation requires the performance of one of two acts, in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation.”]; *San Bernardino Valley Water Dev. Co. v. San Bernardino Valley Mun. Water Dist.* (1965) 236 Cal.App.2d 238, 247.) And, here, boyfriend proved that he made a demand for repayment by virtue of suing girlfriend. (*Heinlen v. Martin* (1879) 53 Cal. 321, 346 [“The commencement of the action was undoubtedly a sufficient demand”].)

DISPOSITION

The judgment is affirmed. Respondent is entitled to his costs on appeal.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ