Filed 11/5/18 Grant v. AssistMed, Inc. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

DAVID GRANT, Plaintiff and Appellant, v. ASSISTMED, INC., Defendant and Respondent.	B283303 (Los Angeles County Super. Ct. No. BC503141)

APPEAL from a judgment of the Superior Court of Los Angeles County, David Sotello, Judge. Affirmed.

Shulman Hodges & Bastian, Ronald S. Hodges, Gary A. Pemberton, and Shane M. Biornstad for Plaintiff and Appellant.

Apex Law and Thomas N. FitzGibbon for Defendant and Respondent.

Plaintiff David Grant sued his former employer AssistMed, alleging AssistMed breached the loan, stock option, expense reimbursement, and severance pay provisions of an employment agreement between the parties. Grant now appeals from the superior court's judgment, after a court trial, in favor of AssistMed. On appeal, Grant: (A) challenges the court's interpretation of the terms in that agreement regarding a loan AssistMed was to provide Grant for a down payment on a home and moving expenses; and (B) argues the court erred in granting AssistMed's motion for judgment under Code of Civil Procedure section 631.8 because Grant "presented substantial evidence that AssistMed breached [the employment agreement]."

We disagree with Grant on the interpretation of the agreement, the appropriate standard of review, and the sufficiency of the evidence under that standard. With respect to the contractual interpretation question, we agree with the trial court that the agreement required Grant identify a specific home he intended to purchase before AssistMed would be obligated to tender the loan. We review the sufficiency of the evidence to support the trial court's factual findings and conclude substantial evidence supports them. Because these findings render it impossible for Grant to carry his burden of proof on any of his claims, we affirm the trial court's order granting AssistMed's motion for judgment pursuant to Code of Civil Procedure section 631.8.

FACTUAL BACKGROUND

Grant was the only witness at trial. Although the court ultimately determined that he lacked credibility (see pp. 9-10, *post*), we discuss his testimony as necessary to better understand the issues.

A. *The Employment Agreement*

According to Grant, he began working for AssistMed as its chief information officer in February 2007. On February 6, the parties signed an agreement setting forth the terms of his employment and subsequently amended it in December 2010 (collectively "Employment Agreement"). Grant testified that he drafted no part of either document.

Section 8 of the Employment Agreement obligated AssistMed to "provide [Grant] with a loan for moving expenses and a down payment for a house, based on the terms and conditions set forth [t]herein." The 2010 amendment did not change any provisions regarding the loan. At all times that Grant was employed at AssistMed, he lived in Mission Viejo, a substantial distance from AssistMed's offices in Beverly Hills. Grant does not dispute that the purpose of the loan described in section 8 of the Employment Agreement was to facilitate Grant moving closer to AssistMed's offices. The following are the loan terms in the Employment Agreement:

"(a) Amount of Loan. Employer will provide Employee with a loan in the amount of $150,000 (One Hundred Fifty Thousand Dollars) if Employee wants the loan after July 1, 2007. If, however, Employee wants the loan after July 1, 2008, Employer will provide Employee with a loan in the amount of $250,000 (Two Hundred Fifty Thousand Dollars).

"(b) Repayment of Loan. Employer is providing Employee the loan referenced herein with the expectation that Employee will be employed by Employer for a five year period. If Employee voluntarily resigns his employment prior to the end of the five year period, or if Employee is terminated for "[c]ause" as defined in [s]ection 11 below, Employee will be required to pay back the loan on a pro-rata basis. Specifically, for each year of Employee's employment with Employer, 20% of the total amount of the loan will be forgiven. Thus, if Employee resigns his employment during the third year of employment, he will be required to pay Employer 60% of the loan amount at that time."

Section 3(d) of the Employment Agreement obligated AssistMed to "reimburse [Grant] on a monthly basis for all preapproved, reasonable expenses incurred by [Grant] in the performance of [his] duties under [the a]greement in accordance with applicable company policy." Section 9 of the Employment Agreement provided that Grant "shall receive an additional grant of One Million Five Hundred Thousand (1,500,000) stock options of [AssistMed]." Finally, section 11(c) provided for "severance pay" in an amount "equal to two (2) times the amount of [Grant's] Basic Salary at the time of termination," should AssistMed terminate Grant "without [c]ause."

B. *Grant's Requests for a Loan Under the Employment Agreement*

Grant testified that he first requested the loan described in the Employment Agreement in December 2010 and, in the months that followed, had a number of discussions and email exchanges with Dr. Leonardo Berezovsky, AssistMed's principal owner, chairman, and chief executive officer, and Raul Kivatinetz, the

company's founder and chief operating officer, regarding the request. In his written communications, Grant indicated that he would begin looking for a specific home to purchase only *after* receiving the loan proceeds.

Berezovsky initially neither refused nor agreed to pay the loan. When Grant met with Berezovsky regarding the loan request on March 17, 2011, Berezovsky indicated that AssistMed did not have the funds to pay the loan, but that he would "work on some proposal" for further discussions. Grant met with the AssistMed board regarding the loan request on April 6, 2011. On April 11, 2011, Berezovsky informed Grant via email that the board had approved Grant's "request for a loan to fund [his] down payment for a house near [AssistMed's] offices and related moving expenses." Specifically, this email noted that "[t]o comply with the terms of [Grant's] employment agreement, the [c]ompany intends to deposit $250,000 into an escrow account within two weeks for the purpose of funding the loan upon satisfaction of" the loan terms described in the email. These terms required that: (1) Grant pay interest on the loan in an amount of "6% per annum if the company is in the [first] position as secured lender" and "12% if the [c]ompany assumes a secondary position as a secured lender"; (2) Grant select a home within an eight-mile radius of the company's Beverly Hills offices within 6 months; and (3) the loan "be forgiven over a five-year period from the date the proceeds of the loan [are] disbursed for its intended [purpose]," provided that Grant remained at AssistMed during that time. The company deposited the money into an escrow account on April 26, 2011. The escrow instructions associated with this account incorporated the board's proposed loan terms and required Grant to close escrow on the purchase of a qualifying home in order to release the funds.

Grant testified that he rejected the board's loan offer. Grant also sent an email to AssistMed on August 17, 2011, in which he described his rejection of the board's April 11, 2011 proposed loan terms, noting the terms were inconsistent with what the parties had agreed to in the Employment Agreement. Contrary to several contemporaneous written communications in which Grant stated he would begin looking for a house only after he received the loan, Grant testified that he was "always" looking for homes, and that he continued those efforts even after rejecting the board's April 2011 proposed loan terms. He further testified that his efforts included searching for suitable homes for his family within the Beverly Hills area the board had identified, as well as in the other areas that he felt might be conveniently located to AssistMed's offices in Beverly Hills or its contemplated new office location in Woodland Hills. Grant did not identify any other areas in which he had searched for homes. He testified he was unable to find a suitable home for his family that he could afford. Grant further testified that, in any event, he would not qualify to purchase a home in the Beverly Hills area without first obtaining the loan from AssistMed, and that he could not afford the interest terms AssistMed had proposed.

C. *Grant's Resignation from AssistMed*

Grant testified that, after a March 2011 meeting with Berezovsky to discuss Grant's loan request, Grant perceived a change in his employment conditions. Specifically, Grant testified that after he requested the forgivable loan, he was often asked to come to work in AssistMed's office despite Berezovsky's oral representation at the beginning of Grant's employment that Grant could work from home. Grant further testified that after the March 2011 meeting, the company hired someone else to perform his role at the company.

Grant also testified, however, that he never complained in writing to anyone at AssistMed about his working conditions. He offered no testimony suggesting he ever informed anyone at the company that, because of those working conditions or the company's failure to give him a loan on his desired terms, he intended to resign. Nor did he mention either grievance when, on November 7, 2011, in compliance with the Employment Agreement's 90-day notice requirement, he gave notice that he would resign from his position effective February 10, 2012.

Grant testified that he continued what he referred to as "the negotiation process" with AssistMed regarding his loan request up until the time he gave notice. He testified that he ultimately resigned because the Company didn't give him the loan on his terms and made his job more difficult.

Grant further testified that AssistMed never provided Grant with any stock options, despite Grant having requested them. According to Grant, he had submitted a request for reimbursement of various business expenses in January or February 2012, but "d[id not] recall" ever receiving reimbursement for any expenses. Grant called no other witnesses and rested on the first day of trial.

D. *AssistMed's Section 631.8 Motion*

After Grant presented his case-in-chief, AssistMed[1] moved for judgment pursuant to Code of Civil Procedure section 631.8, on the basis that Grant had not made a prima facie case to support any of its claims. In response to such a motion, a court acting as trier of fact may enter judgment in favor of the defendant if it concludes

---

[1] While Grant initially named Berezovsky as a defendant, Berezovsky passed away in March 2015, and Grant ultimately dismissed Berezovsky and the estate of Berezovsky as defendants.

that the plaintiff failed to sustain its burden of proof. (See *ibid.*; *Orange County Water Dist. v. MAG Aerospace Industries, Inc.* (2017) 12 Cal.App.5th 229, 239 (*Orange County Water Dist.*) [describing standard for granting defense motion under Code Civil Procedure section 631.8].) The court granted the motion, commenting that Grant had offered no evidence beyond his general testimony to support his claims regarding repudiation, unpaid stock options, or severance entitlement.[2]

Finally, the court found the loan terms in the Employment Agreement to be unambiguous in requiring AssistMed to provide Grant a loan for moving expenses and a down payment on a new home. But the court interpreted this obligation as being triggered only after Grant had identified a home he would use the loan funds to purchase. The court concluded that, because Grant had been unable to find a home, "a house loan was never requested, period."[3]

After the court informed the parties that Grant's failure to identify a home defeated his loan claims, Grant asked to reopen his direct examination and provide additional testimony on that point. The court permitted him to do so. Grant then offered entirely new testimony that he had actually found three condominiums in Culver City, as well as "run down" homes, and that he "believe[d]" he had emailed Berezovsky "saying [he] ha[d] identified a home

---

[2] The court did not address Grant's expense reimbursement claim.

[3] The court noted that, if Grant had trouble affording a home absent the loan, Grant could have requested AssistMed provide him with a letter of guarantee for a down payment, but that "he never got that far because unfortunately he just never found a house."

[in Culver City] and where it was," though no such email is contained in the record.[4]

Whereas the court had judged Grant as "honest" and credible after he initially testified, the court now found him "not 'very

---

[4] Specifically, Grant offered the following additional testimony that speaks to this point:

> "Q: Did you ever communicate that [you had found condominiums in Culver City] to anyone at AssistMed?
>
> "A: Yes. It was an economic meltdown in the market. I communicated to [Berezovsky] that I needed the down payment and I was working with a realtor. He was aware of that.
>
> "Q: When was that that you communicated that?
>
> "A: I communicated that roughly about the March-to-May time[]frame because we were trying to set it up for a summer move so that I could be there in the summer. And we were worried about the interest rates rising, and I wrote him an e-mail about that.
>
> "[¶] . . . [¶]
>
> "Q: You never sent any written document to AssistMed that requested the loan for a specific residence, did you?
>
> "A: I believe I told—I wrote a document to [Berezovsky that said . . . I have identified a home and where it was and that I needed to get that loan. And that was one of the reasons we were going to be meeting on April 1st. [Berezovsky] skipped that meeting.
>
> "Q: You never offered that document into evidence, right?
>
> "A: AssistMed has all my e-mails."

credible' at all" and granted the company's Code of Civil Procedure section 631.8 motion.

The court issued a final judgment in favor of AssistMed, and Grant timely appealed.

STANDARD OF REVIEW

The standard of review after a trial court issues judgment pursuant to Code of Civil Procedure section 631.8 is the same as if the court had rendered judgment after a completed trial. (*Pettus v. Cole* (1996) 49 Cal.App.4th 402, 424–425.) Accordingly, we first conduct an independent analysis to determine whether we agree with the trial court's interpretation of the relevant law as reflected in the court's judgment. (*Medrazo v. Honda of North Hollywood* (2012) 205 Cal.App.4th 1, 10 (*Medrazo*).) To the extent the court reached its decision based on an interpretation of contractual language without resorting to extrinsic evidence, we independently review "the validity of the trial court's construction" as well. (*Lugosi v. Universal Pictures* (1979) 25 Cal.3d 813, 852; *Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 527 [" 'It is solely a judicial function to interpret a written contract unless the interpretation turns upon the credibility of extrinsic evidence, even when conflicting inferences may be drawn from uncontroverted evidence.' "].) We then review to determine whether substantial evidence supports the trial court's factual findings, viewing the record in the light most favorable to the prevailing party, and uphold the judgment if there is any substantial evidence to support it. (*Medrazo*, *supra*, 205 Cal.App.4th at p. 10; *Rodde v. Continental Ins. Companies* (1979) 89 Cal.App.3d 420, 423–424 [when a section 631.8 motion "is granted, our function is to ascertain whether the trial court's decision is supported by substantial evidence"].)

The relevant inquiry on appeal is not, as Grant suggests, whether Grant presented substantial evidence to support *his claims*. In deciding a Code of Civil Procedure section 631.8 motion, the court acts as a trier of fact, " 'assess[ing] witness credibility and resolv[ing] conflicts in the evidence.' " (*Kinney v. Overton* (2007) 153 Cal.App.4th 482, 487.) Thus, *even where the plaintiff has offered evidence to support a prima facie case*, the trial court may "conclude the plaintiff has not carried his or her burden of proof and grant judgment [for the defendant]," if, for example, the court "disbelieve[s] the plaintiff's evidence, draw[s] adverse (rather than favorable) inferences therefrom" or "credit[s] contrary evidence." (*Orange County Water Dist.*, *supra*, 12 Cal.App.5th at p. 239.) Such is the case here. The court determined that Grant was not truthful on an important issue—indeed, an issue dispositive of Grant's loan-related claims—which undermined the whole of Grant's case. (See CACI No. 5003 ["[I]f you decide that a witness did not tell the truth about something important, you may choose not to believe anything that witness said."].) On appeal, we consider whether the record contains substantial evidence to support these findings.

DISCUSSION

I. The Trial Court Correctly Interpreted the Loan Terms in the Employment Agreement

Grant contends that the trial court incorrectly interpreted the Employment Agreement as requiring Grant identify a particular home in order for the loan described in section 8 of the agreement to come due. To support his argument, Grant notes that the Employment Agreement does not expressly discuss any such prerequisite as a condition for the company's performance, that the law generally disfavors conditions precedent, and that courts should

construe contractual ambiguities against the drafter of the agreement. We disagree that these general maxims mandate the unreasonable interpretation Grant proposes.

Both the Civil Code and decisional law require us to accord contractual language a reasonable interpretation "which gives effect to the intent of the parties as it may be interpreted from their entire agreement rather than one which renders the contract void." (*Frankel v. Board of Dental Examiners* (1996) 46 Cal.App.4th 534, 544–545 (*Frankel*), citing Civ. Code, §§ 1650, 1652, 1654, 1655 & 1656; *Department of Forestry & Fire Protection v. Lawrence Livermore National Security, LLC* (2015) 239 Cal.App.4th 1060, 1066 [" 'courts must give a " 'reasonable and commonsense interpretation' " of a contract consistent with the parties' apparent intent' "].) To this end, courts view contracts as including "not only the promises set forth in express words" but "all such implied provisions as are indispensable to effectuate the intention of the parties and as arise from the language of the contract." (*Sacramento Navigation Co. v. Salz* (1927) 273 U.S. 326, 329; *Los Angeles City Employees Union v. City of El Monte* (1985) 177 Cal.App.3d 615, 623.) This rule is codified in California: "All things that in law or usage are considered as incidental to a contract, *or as necessary to carry it into effect*, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded." (Civ. Code, § 1656, italics added.)

Grant does not dispute that the purpose of the loan was to allow Grant to buy a home closer to work. Nonetheless, Grant contends that the literal terms of the agreement require the company to give him the loan upon his request, regardless of whether he has identified a home for purchase. We disagree. Grant's interpretation would transform a commitment to provide

funds for a specific purpose into an obligation to pay without any indication that the money will be used for that purpose. As such, Grant's suggested literal interpretation is inconsistent with the purpose of the loan.

It is thus " 'necessary to imply certain duties and obligations . . . in order to effect the purposes of the parties to the contract.' " (*Addiego v. Hill* (1965) 238 Cal.App.2d 842, 847; Civ. Code, § 1656.) We interpret the Employment Agreement in a manner that makes it "reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties." (Civ. Code, § 1643.) Applying these principles, we agree with the trial court's interpretation of section 8 of the agreement as including an implied condition precedent that Grant, at a minimum, identify a specific home he intends to purchase before any loan funds become due. Common sense dictates that the term "loan for moving expenses and a down payment" means money payable only to fund such relocation efforts—not a loan payable on demand and wholly untethered to such efforts. The trial court's interpretation activates this commonsense meaning of the terms used and provides a concrete, efficient means of pursuing the parties' stated intent. Indeed, Grant's apparent proposed alternative—that AssistMed must loan Grant the money, and if he doesn't buy a residence, the company must sue him to recover the loan amount—is so impractical that the parties could not have intended it.

Grant argues that the law generally disfavors conditions precedent. But this is only true where, unlike here, the express contractual language or the parties' intent does not require such a condition. (See *JMR Construction Corp. v. Environmental Assessment & Remediation Management, Inc.*

(2015) 243 Cal.App.4th 571, 593–594 [“ ‘The existence of a condition precedent normally depends upon the intent of the parties as determined from the words they have employed in the contract.’ ”].) The cases Grant cites are inapplicable because they involve contracts with “no provision that either expressly states or implies [a condition precedent].” (*Karpinski v. Smitty’s Bar, Inc.* (2016) 246 Cal.App.4th 456, 464.)

Finally, Grant relies on a subsection in the Employment Agreement’s loan terms that provides AssistMed “will provide” Grant one of two different loan amounts, depending on when Grant “wants the loan.” That subsection provides: “(a) Amount of Loan. Employer will provide Employee with a loan in the amount of $150,000 (One Hundred Fifty Thousand Dollars) if Employee wants the loan after July 1, 2007. If, however, Employee wants the loan after July 1, 2008, Employer will provide Employee with a loan in the amount of $250,000 (Two Hundred Fifty Thousand Dollars).” Grant argues the phrase “wants the loan” sets forth the sole requirement for the loan to come due. But it is unreasonable to read this subsection in isolation and claim that Grant’s mere *desire* for the loan triggers AssistMed’s obligation to pay.

We therefore agree with the trial court’s interpretation of the Employment Agreement as requiring that Grant, at a minimum, identify a specific home that he intended to purchase before AssistMed was obligated to provide the loan.

II. The Trial Court Did Not Err in Granting AssistMed's Motion for Judgment under Code of Civil Procedure Section 631.8

The trial court granted AssistMed's motion for judgment on all of Grant's claims based on, among other reasons, its finding that Grant was "not 'very credible' at all" as a witness. We conclude that substantial evidence supports this factual finding. In light of this finding, under the appropriate interpretation of the Employment Agreement discussed above, Grant has failed to carry his burden of proof, and the trial court properly granted AssistMed's motion for judgment.

A. *AssistMed's Failure to Give Grant the $250,000 Loan*

On appeal, Grant contends that because no testimony contradicted his, the court should have accepted it. We disagree. In his initial testimony, Grant testified that he had not found a property he could afford. After hearing the judge's interpretation of the contract as requiring him to identify a home before the funds were due, he took the opposite tack, now claiming that he had identified some properties. Tellingly, not even in this new testimony did Grant identify any specific addresses, purchase prices, or down payment amounts needed for these properties. Given the sudden change in Grant's testimony and the lack of any detail supporting it, the court was not unreasonable in reassessing his credibility and finding it wanting. Moreover, the court could reasonably find the only explanation Grant offered for this sudden change—that he was initially limiting the scope of his answers to homes suitable for his family, choosing not to testify regarding

other homes he found that could help shorten his commute—unconvincing.

In any case, in neither version of Grant's testimony did he establish that the failure to get the loan caused him damages. He offered no testimony or other evidence suggesting that he could afford to buy a home if he received the loan and, as previously discussed, no evidence regarding home purchase prices or the down payment required.

B. *Anticipatory Repudiation Claim Based on AssistMed's Proposed Loan Terms*

Grant argues that AssistMed's April 11, 2011 proposal for loan terms not reflected in the Employment Agreement constitutes a repudiation of that agreement. But Grant testified, and contemporaneous documents reflect, that Grant continued to negotiate the terms of a loan under the Employment Agreement for many months after receiving AssistMed's proposed terms. Meanwhile, he apparently continued to perform under the Employment Agreement. The court could reasonably infer from this evidence that AssistMed's loan proposal was part of an ongoing negotiation regarding the details for a loan transaction the Employment Agreement generally described. Such ongoing negotiations are inconsistent with the "clear, positive, unequivocal refusal to perform" that repudiation requires. (See *Taylor v. Johnston* (1975) 15 Cal.3d 130, 137 [defining anticipatory repudiation]; see also *April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 825, fn. 10 [threat made in negotiations to secure a new contract did not amount to a clear and unequivocal repudiation of joint venture, but rather a "bargaining tactic[] made in the context of contract negotiations"].) These negotiations continued until Grant resigned from AssistMed, at which time the

loan had not yet come due (because, as we previously discussed, Grant had not yet identified a home for purchase).

Grant argues that his negotiations with AssistMed do not affect whether AssistMed's proposal constituted a repudiation, and cites *Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 470, 489-490. This case considered whether the statute of limitations on plaintiff's breach of contract claim against his employer began to run on the date the employer stated it planned to terminate plaintiff's employment contract, or on the date the employer actually terminated him. (*Id*. at p. 489.) The court concluded plaintiff could elect to treat the contract as still in effect after his employer's explicit repudiation in the hopes his employer might retract the repudiation, and that plaintiff should not be penalized for doing so by triggering the limitations period. (*Id*. at pp. 489-490.) This case thus does not speak to how, if at all, plaintiff's reaction to his employer's conduct affects whether that conduct constituted a repudiation.

Finally, to support his repudiation claims, Grant also points to his own testimony that Berezovsky told Grant "[Berezovsky] never planned to pay me the loan; that he couldn't pay the loan, and neither could AssistMed; and that he had never expected that I would actually ask for the loan." There is conflicting documentary evidence as to whether Berezovsky ever stated that he did not intend to pay the loan. And as discussed above, the court reasonably found Grant to be not credible, and could disregard Grant's statements if it did not believe them. (See Discussion part II *ante*, at pp. 15-16; see also Factual Background *ante*, at pp. 9-10.)

Substantial evidence therefore supports the court's conclusion that AssistMed did not repudiate the Employment Agreement.

C. *Claims Regarding Severance Pay and Constructive Discharge*

The Employment Agreement entitles Grant to severance pay if he is "terminated without [c]ause." Because Grant resigned, he can only recover severance pay if he establishes AssistMed effectively terminated him without cause. To do this, Grant must prove AssistMed "either intentionally created or knowingly permitted working conditions that were so intolerable or aggravated at the time of [his] resignation that a reasonable employer would realize that a reasonable person in [his] position would be compelled to resign." (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1251.)

Grant offered only his own testimony on this point. The court found Grant to be a not very credible witness following his "180 degree" change in testimony on a separate and important issue (his efforts to find a home). On this basis, the court was free to disbelieve Grant's testimony on any other topic as well. (See CACI No. 5003 ["[I]f you decide that a witness did not tell the truth about something important, you may choose not to believe anything that witness said."].)

Grant also argues that AssistMed's refusal to pay Grant the loan could contribute to circumstances establishing constructive discharge. As discussed above, however, AssistMed's obligation to pay this loan was never triggered.

Because the court disbelieved the only evidence Grant offered regarding constructive discharge, substantial evidence supports the trial court's finding that Grant was not entitled to severance.

D. *Expense Reimbursement and Stock Options Claims*

Grant offered only his own testimony to establish that he requested but did not receive any AssistMed stock options owed him. No other evidence supports this. Grant likewise offered only his own testimony to establish that he submitted expense reimbursement requests to AssistMed, and that AssistMed failed to reimburse him. Grant's testimony is not even definite on the latter point; he testified only that he "d[id not] recall" ever receiving reimbursement for any expenses. Because the only evidence in the record that might support Grant's stock options and reimbursement claims is the testimony of a witness the court reasonably found to be not credible, substantial evidence supports judgment in AssistMed's favor on these claims.

In addition, the record reflects a failure of proof of damages from Grant's stock option and reimbursement claims. With respect to the stock option claim, the Employment Agreement provided that the options to purchase common stock of AssistMed "shall be exercisable . . . at an exercise price of $0.50 per share," and Grant testified that Berezovsky was "raising capital [for AssistMed] at $4.50 a share in San Francisco" at some point "during the time [Grant] worked there." There is no evidence, however, establishing that Grant had the funds to exercise the options, what their value was at the time he claims AssistMed should have allowed him to exercise them, or even their value at the time of trial. Likewise, Grant failed to identify specific expenses, let alone the dollar amounts thereof, for which he sought reimbursement. Grant's failure to prove damages provides a separate basis for granting judgment in AssistMed's favor on these claims.

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.