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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

FONG YU LIU,

Plaintiff and Respondent,

v.

XIAO CHENG LIU,

Defendant and Appellant.

B281128

(Los Angeles County
Super. Ct. No. EC06254)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ralph C. Hofer, Judge. Affirmed.

Law Offices of Barry K. Rothman, Barry K. Rothman; Law Offices of Gordon J. Zuiderweg and Gordon J. Zuiderweg for Defendant and Appellant.

Law Office of Michael J. Danner, Michael J. Danner, for Plaintiff and Respondent.

Fong Yu Liu obtained a judgment against Xiao Cheng Liu for his conversion of proceeds from the sale of “Little Chicken Seeking Food,” a painting by the noted Chinese artist Qi Baishi. Xiao Cheng appeals, contending the judgment is unsupported by substantial evidence because his testimony was credible whereas Fong Yu’s was not. (We use the parties’ given names for clarity.) We conclude that under the applicable standard of review we may not reweigh the evidence, and therefore affirm.

BACKGROUND

In 1997, Fong Yu, an experienced businesswoman with a masters degree in business administration, purchased several paintings from Xiao Cheng, including “Little Chicken Seeking Food,” by Qi Baishi, for \$10,000.

Fifteen years later, in 2012, Fong Yu contracted with an auction house in China to sell the Qi Baishi, which had been appraised at approximately \$100,000. After Fong Yu delivered the painting to the auction house but before it was sold Xiao Cheng asked to buy it back for \$20,000. Fong Yu explained she had already put it up for auction, but offered him half of the proceeds as a gift. Xiao Cheng offered to facilitate transfer of the proceeds from China to Fong Yu.

After the Qi Baishi was sold a dispute arose between Fong Yu and the auction house. An attorney was hired, the matter went to arbitration in Beijing, and Fong Yu ultimately prevailed, obtaining an award of approximately \$102,000. The auction house remitted the award to Xiao Cheng’s sister-in-law in China.

Xiao Cheng thereafter paid \$20,000 to Fong Yu but refused to make any further payment.

Fong Yu sued Xiao Cheng for conversion. Trial was to the court.

Fong Yu testified that in 1997 she and Xiao Cheng were friends, and she purchased his paintings because he needed the money, having newly arrived in the United States after a failed restaurant venture in China. Fong Yu's daughter and husband corroborated this testimony. Fong Yu further testified that when Xiao Cheng paid her \$20,000 from the auction proceeds he admitted he owed her another \$24,850, which was still in his sister-in-law's account and which he still controlled.

Xiao Cheng, on the other hand, testified the Qi Baishi held such strong sentimental value that he would never have considered selling it. He delivered it to Fong Yu in 1997 only because she had offered to store his paintings at her house, which had a security system, his home having none. Xiao Cheng testified that approximately one month after he delivered the paintings Fong Yu gave him \$10,000 because, as she said at the time, he had "put away so many valuables" in her home.

Xiao Cheng further testified that he demanded return of the paintings several times over the years but Fong Yu refused to return them until he paid \$20,000, which he did not have immediately but was working to obtain. In 2012, he offered Fong Yu the \$20,000 and demanded return of the paintings, but she had already put the Qi Baishi up for auction. They agreed to split the auction proceeds evenly, after expenses, and he arranged to have them wired to the United States through his sister-in-law in China.

Xiao Cheng admitted that in 2014 his sister-in-law wired him \$20,000 of the auction proceeds but retained the rest, awaiting his instructions. Although he had agreed to pay Fong Yu a total of \$44,850, he paid only \$20,000, and thereafter refused to pay more because after the first payment she filed this

lawsuit and demanded \$70,000, which was more than he owed her.

Xiao Cheng offered as exhibit 6 a written accounting in which the parties calculated the net proceeds of the auction in China after deduction of arbitration expenses and attorney fees. Xiao Cheng argued the accounting constituted a settlement agreement.

When the trial court asked Xiao Cheng why Fong Yu gave him \$10,000 when he delivered his paintings to her, he testified, “I did not ask [her] to pay me.” When the court asked whether he delivered the paintings as collateral for a \$10,000 loan, he testified, “I did not ask her for a loan.” Instead, he considered the \$10,000 be a “sort of security bond.”

The trial court expressly found Fong Yu to be credible and Xiao Cheng incredible. It found Xiao Cheng sold the Qui Baishi to Fong Yu in 1997, and she later made a gift to him of half of the proceeds from the sale of the painting. But she revoked the gift when he refused to pay her from the funds in his sister-in-law’s account, which he controlled. His control of the funds and refusal to remit them to Fong Yu constituted conversion.

The court rejected Xiao Cheng’s argument that exhibit 6 memorialized a settlement agreement, finding it to be merely an accounting, and in any event unsupported by consideration. The court awarded Fong Yu \$71,402.01 in damages and restitution, and entered judgment accordingly.

DISCUSSION

Xiao Cheng contends the trial court’s finding that Fong Yu’s version of events was credible and his was not reflected a misunderstanding of the evidence and a disregard of numerous inconsistencies in Fong Yu’s testimony. He argues insufficient

evidence supports the judgment because it is inherently improbable that an experienced businessperson like Fong Yu would pay \$10,000 for paintings she had not examined, with “no preliminaries” and “no negotiations.”

Xiao Cheng misapprehends the nature of an appeal and the limited power of an appellate court.

“Where findings of fact are challenged on a civil appeal, we are bound by the ‘elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,’ to support the findings below.” [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor” (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.) The “judgment . . . is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.)

Conversion is the wrongful exercise of dominion over the personal property of another. (*Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208.) The elements of conversion are: (1) the plaintiff’s ownership or right to possession of property; (2) the defendant’s wrongful exercise of dominion or control over the property; and (3) damages. (*Ibid.*)

Here, Fong Yu testified she purchased paintings from Xiao Cheng and later agreed to give him half the proceeds from selling the Qi Baishi because they were friends, and she knew he needed the money.

Testimony of a single witness, unless physically impossible or inherently improbable, is sufficient proof of any fact. (Evid. Code, § 411.) There is nothing impossible, inherently improbable, or even unusual about Fong Yu's conduct. Her testimony therefore constituted substantial evidence supporting the trial court's finding that Xiao Cheng exercised wrongful control over her property.

Xiao Cheng's argument to the contrary is an unveiled invitation to reweigh the trial court's credibility determinations. We cannot accept this invitation.

A trial judge serving as a finder of fact reviews documents, inquires into their origin and authenticity, and weighs their probity and import. The judge examines witnesses, observes their demeanor, and evaluates their percipience, biases and, ultimately, credibility. An appellate court is one step removed from this process. We have no facilities for calling witnesses or determining the provenance of documents, and no occasion or ability to evaluate the credibility of either. We thus may not disturb the factual findings of a trial court absent a clear showing that the court in some manner abused its discretion, even if we would have made different findings had the matter been submitted to us in the first instance.

Here, the trial court heard Xiao Cheng's testimony, examined his documentary evidence, and considered his arguments. The court weighed this evidence, determined its credibility and import, and made detailed findings of fact. It is of no consequence that the trial court might have reached a contrary conclusion had it believed other evidence or drawn different inferences. Under the applicable standard of review, we may not reweigh the evidence or substitute our deductions for

those of the trial court. (See *People v. Brown* (1984) 150 Cal.App.3d 968, 970.)

Xiao Cheng argues the trial court erred as a matter of law in finding that Fong Yu revoked her gift of half of the Qi Baishi auction proceeds, because the gift was completed when he transferred the proceeds from the auction house to his sister-in-law's account, thereby relinquishing his control of the funds and effecting a "symbolical delivery" to Fong Yu. But the argument flatly contradicts Fong Yu's testimony that when Xiao Cheng paid her \$20,000 he admitted he retained control over the remaining proceeds in his sister-in-law's account, and therefore made no delivery, symbolic or otherwise. The trial court was entitled to credit this testimony.

Xiao Cheng argues the trial court erred in finding that exhibit 6, a written accounting, was unsupported by consideration and therefore unenforceable. The point is irrelevant because the court found the accounting did not constitute an agreement.

Because Xiao Cheng identifies no deficit in Fong Yu's evidence other than its lack of credibility, which lies exclusively in the purlieu of the trial court, we have no cause to disturb the judgment.

DISPOSITION

The judgment is affirmed. Respondent is to recover her costs on appeal.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.