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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

YAKOV SHLIMOVICH, Plaintiff and Appellant, v. MIKHAIL CHEBAN et al., Defendants and Respondents.	B238602 (Los Angeles County Super. Ct. No. BC408095)

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

Ecoff Blut, Lawrence C. Ecoff and Philip H.R. Nevinny for Plaintiff and Appellant.

Klapach & Klapach, Joseph S. Klapach; Berney Law Corporation and Russell L. Berney for Defendant and Respondent Mikhail Cheban.

Kozberg & Bodell and Gregory Bodell for Defendants and Respondents Rightime Enterprise and Rightime Enterprise of Collateral Lending, Inc.

This appeal is from a judgment dismissing a shareholder derivative action after a three-week bench trial. Appellant Yakov Shlimovich (Shlimovich), derivatively on behalf of Rightime Enterprise, Inc. (RE) and Rightime Enterprise of Collateral Lending, Inc. (RECL), sued respondent Mikhail Cheban (Cheban) for breach of fiduciary duty and conversion.[1] Shlimovich contends the evidence was insufficient to support the trial court's findings that (1) he was never a shareholder or owner of either RE or RECL and therefore lacked standing to bring the derivative claims, and (2) he expressly waived any ownership interest in the companies in a written agreement. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Formation and Ownership of RE

Shlimovich and Cheban are Russian emigrants who knew each other before coming to the United States. At trial, they provided conflicting accounts of the formation and ownership of RE. Both men testified that they independently met a fellow Russian expatriate named Jack Shut (Shut), and agreed with him to start a pawn shop business. Shlimovich testified that he, Shut, and Elvira Shut (Elvira) (Shut's then-girlfriend and current ex-wife) would each own one-third of the business. Cheban testified that he was to provide the start-up capital and would own two-thirds of the business and Shut would own one-third.

Shlimovich's Evidence

Shlimovich testified that Shut hired attorney Keith Bregman (Bregman) to prepare RE's corporate documents, and that Shlimovich, Cheban, and the Shuts met at Bregman's office in May 1995. At the meeting, Cheban, Shlimovich, and the Shuts approved minutes for the first organizational meeting of RE. Shlimovich produced two inconsistent sets of minutes from this meeting. Although the second set of minutes purported to "adopt[] that proposed form of share certificate presented at this meeting," no stock certificates were issued at the meeting. Shlimovich testified that there was no

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[1] Shlimovich also named RE and RECL as defendants, but no cause of action was directed against them.

discussion of stock certificates at the meeting, and that after the meeting he never discussed with Cheban or Shut the issuance of stock certificates.

Shlimovich offered inconsistent testimony about his capital contributions to RE. He initially testified that Cheban was to provide all the money to start the business. He later testified that the parties agreed Cheban would contribute $79,000, the Shuts $20,000, and Shlimovich $1,000. Shlimovich testified that he paid his $1,000 contribution in cash, but he had no documents substantiating the payment. Nor did he have any documents substantiating a cash loan of $50,000 that he claimed to have made to RE in 1995. Shlimovich never mentioned the loan in his pretrial declarations; he was on welfare at the time he made the loan; and he did not offer any expert testimony or documentation to contradict RE's accounting records, which did not reflect any contributions by Shlimovich.

Shlimovich produced documents filed with and subpoenaed from third parties, that were signed by Cheban, and which identified Shlimovich as a 50 percent owner of RE, including pawnbroker license applications, board minutes, bank loan documents, tax returns, and insurance documents.

Cheban's Evidence

Cheban and Shut disputed Shlimovich's account of the May 1995 meeting. They denied consulting with Bregman about RE or attending a 1995 meeting at Bregman's office. They denied that the May 1995 minutes were authentic. They testified that neither Shlimovich, Elvira nor Bregman were ever involved in forming RE. They also testified that Shlimovich was never an owner of RE.

Cheban presented evidence that Shut, not Bregman, prepared the paperwork for the formation of RE, none of which mentioned Shlimovich. In May 1995, Shut prepared corporate by-laws, which provided that RE was authorized to issue a total of 1,000 shares. At the same time, Shut also prepared two stock certificates for RE. The first stock certificate was issued to Cheban for 666 2/3 shares of RE, and the second stock certificate was issued to Shut for 333 1/3 shares of RE, for a total of 1,000 shares. In

return for the stock certificates, Cheban wrote a check to RE for $667, and Shut wrote a check to RE for $333.

To authenticate the stock certificates, which Shlimovich contended were fabricated after this lawsuit was filed, Cheban presented testimony from Dean Stanton (Stanton), the president of Allen Supply Company, which printed RE's stock certificates. Stanton testified that the stock certificates were authentic and dated back to the mid-1990's. He noted that the stock certificates contained printing defects from the process used by Allen Supply in the mid-1990's; the stock certificates listed Allen Supply's old address, which could only be found in corporate supply books printed before 1997; and the stock certificates bore an older seal, which Allen Supply stopped using in the late 1990's.

Cheban also offered the testimony of Gerald La Porte (La Porte), a forensic chemist and ink and document specialist, who testified that the 1995 stock certificates were authentic based upon their similarities and characteristics. He explained that the two certificates were printed using the same typography printing process and toner material; they shared the same defects from offset lithography plates; they shared the same slight misalignment of dates; they shared the same toner adhesion; their toner characteristics were indicative of 1990's copier machines; and the perforations on the two certificates were aligned.

To substantiate the initial capital contributions, Cheban offered evidence from RE's accounting records and a forensic accountant, Thomas Neches (Neches). RE's books, which were kept using QuickBooks accounting software, contained accounting entries reflecting the $667 and $333 contributions made by Cheban and Shut at the time of RE's formation. RE's books also reflected that Cheban made $302,704 in loans to RE in 1995 to fund its operations. RE's books contained no evidence that Shlimovich had contributed money at any time to either RE or RECL. Neches used an anti-fraud program to determine whether any accounting entries had been modified, and concluded that the accounting records were accurate and had not been altered.

Cheban and Shut Part Ways

In 1996, Cheban and Shut decided to part ways. At that time, RE was operating two pawn shops, and Cheban had hired his "friend" Shlimovich to work at the shops to put bread on the table. Cheban and Shut agreed that they would each take one of the stores. On May 1, 1996, they met at a restaurant on Sunset Boulevard to finalize the split. In return for the store he was getting, Shut transferred his one-third interest in RE to Cheban, which Shut memorialized by signing his RE stock certificate over to Cheban. Cheban then owned 100 percent of the shares of RE.

Shlimovich Manages the RE Stores

After Cheban and Shut parted ways, RE purchased a second pawn shop. Shlimovich assumed the role of managing the shops, and received a salary and benefits from RE. Cheban presented evidence that from 1997 to 2007, Shlimovich received $605,719 in salary and forgiven loans, and his wife received an additional $205,650 in salary. During this same period, Cheban received $354,508 in salary.

After becoming RE's manager, Shlimovich began telling RE's employees and third parties that he owned 50 percent of RE. Every year before tax time, Shlimovich directed RE's bookkeeper, Samuel Zaikovaty (Zaikovaty), to make sure the accountants reflected Shlimovich's ownership on RE's corporate tax returns. From 1996 to 2006, RE's accountants prepared tax returns that identified Shlimovich as an owner of RE. Zaikovaty told two of RE's insurers that Shlimovich was an owner of RE, which was reflected in the insurers' internal documents. One of RE's bankers also prepared an internal risk analysis that identified Shlimovich as an owner of RE. Cheban was unaware that Shlimovich was holding himself out as an owner of RE.

Formation and Ownership of RECL

In 2003, Cheban acquired another pawn shop, and formed RECL to operate the new store. Cheban contributed $420,000 from his personal bank account to RECL, which was used to purchase the assets of the new store. On October 14, 2003, Cheban received a stock certificate for 2,000 shares of RECL stock. The stock certificate was signed by Cheban as president of RECL and by Shlimovich as secretary of RECL.

Shlimovich admitted at trial that he signed the RECL stock certificate issued to Cheban. Shlimovich also admitted that he never requested a stock certificate to show that he had an ownership interest in RE or RECL, and that he never received a stock certificate for RE or RECL.

The 2006 Agreement

On January 14, 2006, Shlimovich went to Cheban's house, after claiming he had certain documents he could use to show that he had an ownership interest in RE. The two men decided to prepare a document to clarify the ownership of RE and RECL. Inside his home office, Cheban sat at his computer while Shlimovich stood to his left and looked over his shoulder. Cheban typed up an agreement and then let Shlimovich read the computer screen. Shlimovich proposed some changes, which Cheban made.

The final text of the agreement (the 2006 Agreement) provided: "After discussion of relationship Mikhail Cheban and Yakov Shlimovich mutually agreed on the following: Yakov Shlimovich waives any rights and claims for the possession of any assets and any rights pertaining to: [¶] 1. Business under the name Rightime Enterprise [¶] 2. Building with address 2714-2716 E. Florence Ave., Huntington Park, CA 90255 [¶] 3. Business under the name Rightime Enterprise of Collateral Lending Inc. [¶] 4. Any existed [*sic*] and future acquired assets and businesses belonging to Mikhail Cheban. [¶] Mikhail Cheban will continue to pay Yakov Shlimovich salary for the certain duties associated with Rightime Enterprise and also salary for the similar duties associated with Rightime Enterprise of Collateral Lending Inc. [¶] If Mikhail Cheban will decide to discharge Yakov Shlimovich he will pay Yakov Shlimovich severance pay for the amount of six month salary." Cheban printed the Agreement, and he and Shlimovich signed it in each other's presence.

Shlimovich initially denied signing the 2006 Agreement. He later changed his story. While admitting the signature was his, he claimed that he had merely signed a blank piece of paper at the request of Zaikovaty. Shlimovich testified that Zaikovaty approached him in 2008 at a pawn shop, and stated that he needed a letter to verify an employee's work status for immigration purposes. Because Shlimovich was late for a

meeting, he signed a blank piece of paper with the understanding that Zaikovaty would add the text of the letter later. Based on this testimony, Shlimovich claimed that Cheban fabricated the 2006 Agreement by printing the text on the blank piece of paper that Shlimovich signed in 2008.

Shlimovich offered the expert testimony of Larry Stewart, a forensic chemist, who opined that the 2006 Agreement was "highly suspicious" because Shlimovich's signature line was not aligned with the rest of the text.

Cheban again presented the expert testimony of La Porte, who concluded that the 2006 Agreement was authentic. La Porte explained that the text, signature lines, and signatures on the 2006 Agreement were perfectly aligned both vertically and horizontally on the document, and that the equal spacing between each signature block would have been nearly impossible to fabricate. La Porte demonstrated that Shlimovich's expert had manipulated the spacing in his grid to create a misleading appearance of nonalignment. La Porte also testified that there was no evidence that the document was put through the printer multiple times or otherwise fabricated.

In late 2006, Cheban showed the executed 2006 Agreement to Zaikovaty, who remembered seeing the 2006 Agreement because it was such an "unpleasant event." Zaikovaty realized that he had "been giving incorrect information" to third parties about Shlimovich's ownership interest. Zaikovaty immediately contacted RE's and RECL's accountants to correct the error. Zaikovaty testified that when he saw the 2006 Agreement in the fall of 2006, it bore the signatures of both Cheban and Shlimovich.

Cheban Fires Shlimovich

In 2007 or 2008, Shlimovich bought a piece of property and formed a company, Smart Pawn, LLC, to operate a pawn shop. As Shlimovich devoted more time to his own business, he spent less time managing Cheban's pawn shops. On February 13, 2009, Cheban fired Shlimovich as RE's and RECL's manager. Cheban orally advised Shlimovich of the termination, which he then confirmed in a letter.

In early 2009, Cheban wrote checks from RE and RECL to Shlimovich for severance pay, which Shlimovich deposited into his bank account.

The Proceedings Below

On February 27, 2009, Shlimovich filed a derivative complaint against Cheban for breach of fiduciary duty and conversion, alleging that he had a 50 percent ownership interest in RE and RECL, and that Cheban had misappropriated and diverted RE's and RECL's property for his own benefit. Shlimovich applied ex parte for a temporary restraining order and a preliminary injunction, which was denied on the ground that "Shlimovich could not establish any ownership interest in Rightime sufficient to give him standing to seek relief, especially in light of an agreement dated January 14, 2006, signed by Shlimovich, in which he waived his interests in Rightime in exchange for monetary compensation." Ten months later, Shlimovich applied ex parte for the appointment of a receiver and, again, the trial court denied the application because Shlimovich had "not overcome the January 2006 agreement for purposes of being an owner."

In March 2011, the trial court presided over a three-week bench trial focused on three issues: (1) whether Shlimovich was a shareholder of RE and RECL; (2) the validity of the 2006 Agreement; and (3) whether Shlimovich could open other pawn shops.[2] The trial court issued a statement of decision, finding that Shlimovich's derivative claims were barred, because the evidence showed that he was never a shareholder or owner of RE and RECL, and the 2006 Agreement pursuant to which he waived his rights to these companies was valid and enforceable. The trial court entered judgment accordingly. This appeal followed.

DISCUSSION

I. Standard of Review and Appellant's Burden

When a factual finding is challenged on the ground there is no substantial evidence to support it, "the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or

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[2] The trial court found in favor of Shlimovich on this third issue, which is not a subject of this appeal.

more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. If such substantial evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873–874, italics omitted.) "If this 'substantial' evidence is present, no matter how slight it may appear in comparison with the contradictory evidence, the judgment must be upheld. As a general rule, therefore, we will look only at the evidence and reasonable inferences supporting the successful party, and disregard the contrary showing." (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.)

We 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. (*Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514.) "'It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact.' [Citation.]" (*Ibid*.) We do not evaluate the credibility of the witnesses, but defer to the trier of fact on issues of credibility. (*Id*. at pp. 514–515.) The testimony of a single witness may provide substantial evidence. (*Greenwich S.F., LLC v. Wong* (2010) 190 Cal.App.4th 739, 767–768.) Furthermore, "[w]here [a] statement of decision sets forth the factual and legal basis for the decision, any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision." (*In re Marriage of Hoffmeister* (1987) 191 Cal.App.3d 351, 358.) "[A party] raising a claim of insufficiency of the evidence assumes a 'daunting burden.' [Citation.]" (*Whiteley v. Philip Morris, Inc.* (2004) 117 Cal.App.4th 635, 678.)

When an appellant challenges the sufficiency of the evidence, the opening brief must set forth "*all* the material evidence on the point" and not merely state facts favorable to the appellant. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) An appellant fails to meet this requirement when it "cites the evidence in its favor, points out the ways in which (it contends) it controverted or impeached [the other party's]

evidence, and interprets the evidence in the light most favorable to itself." (*Stewart v. Union Carbide Corp*. (2010) 190 Cal.App.4th 23, 34.) An appellant must present a "fair summary" of all the evidence and "'cannot shift this burden onto respondent,'" nor can it require the reviewing court to "'undertake an independent examination of the record.'" (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409.) When an appellant fails to set forth all of the material evidence, the claim of insufficient evidence is waived or forfeited. (*Arechiga v. Dolores Press, Inc*. (2011) 192 Cal.App.4th 567, 571–572; *Myers v. Trendwest Resorts, Inc*. (2009) 178 Cal.App.4th 735, 749, fn. 1; *Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218.)

Cheban argues that Shlimovich failed to present all the material evidence in his opening brief and urges us to find that he has forfeited his challenge to the sufficiency of the evidence. We agree that Shlimovich largely presented the facts in his favor, and we are tempted to find that he has forfeited his appeal. However, we use our discretion to review the claim of error. But we strongly admonish the practice of failing to present *all* the material evidence in the opening brief.

II. Substantial Evidence Supports the Finding that Shlimovich was not a Shareholder or Owner of RE or RECL

Shlimovich faults the trial court for concluding that he lacked standing to bring this derivative action based on the finding that he was not issued a stock certificate for either RE or RECL. He argues that while a stock certificate constitutes prima facie evidence of corporate ownership, other evidence may establish ownership. However, Corporations Code section 800, subdivision (b) provides that no derivative action "may be instituted or maintained in right of any domestic or foreign corporation by any holder of shares" unless "(1) The plaintiff alleges in the complaint that plaintiff was a shareholder, of record or beneficially . . ." (See *Grosset v. Wenaas* (2008) 42 Cal.4th 1100, 1119 ["California law . . . generally requires a plaintiff in a shareholder's derivative suit to maintain continuous stock ownership throughout the pendency of the litigation"].)

In any event, the trial court did not find that Shlimovich lacked standing to bring a shareholder derivative action based solely on the undisputed fact that Shlimovich was

never issued stock certificates for RE and RECL. The trial court made several findings in this regard, including that: Shlimovich did not own shares in RE or RECL; there were no oral or written agreements to issue stock certificates or shares to Shlimovich in either RE or RECL; Cheban did not intend to make Shlimovich a shareholder or owner of RE or RECL; Cheban was issued shares in both RE and RECL; and Shlimovich had no ownership or controlling interest in RE or RECL. These findings are supported by substantial evidence.

Both Cheban and Shut denied that Shlimovich was ever an owner of RE or RECL. They testified that Shlimovich did not participate in the discussions to form RE in 1995. Cheban presented evidence that Shut prepared the corporate documents for the formation of RE, including the articles of incorporation. None of these foundational documents mentioned Shlimovich or indicated that he had any role with RE at the time of its formation. Cheban also presented evidence that Shut prepared the stock certificates for RE, and he produced the original stock certificates at trial. These stock certificates were issued to only Cheban and Shut. The only stock certificate for RECL was issued to Cheban. Shlimovich admitted at trial that he was aware of the stock certificates for RE and RECL, and that he never requested that he be issued stock certificates to reflect his claimed ownership. Although Shlimovich claimed that he made capital contributions to RE in the amount of $51,000 in 1995 (when he was admittedly receiving welfare), he produced no documentary evidence or expert testimony to substantiate his claim. Nor was there any evidence to refute the expert testimony and documentary evidence produced by Cheban, showing that Cheban had made substantial capital contributions to both RE and RECL.

Shlimovich argues that he presented "overwhelming" oral and documentary evidence at trial showing that he was and is a shareholder of both RE and RECL, including documents signed by Cheban indicating Shlimovich's ownership interest. Putting aside the fact that Shlimovich appears to have been the source of much of this information, the amount and quality of Shlimovich's evidence is irrelevant. "'So long as there is 'substantial evidence,' the appellate court *must affirm* . . . even if the reviewing

justices personally would have ruled differently had they presided over the proceedings below, and even if other substantial evidence would have supported a different result. Stated another way, when there is substantial evidence in support of the trial court's decision, the reviewing court has *no power to substitute its deductions*. [Citations.]'" (*Rupf v. Yan* (2000) 85 Cal.App.4th 411, 429–430, fn. 5.)

Shlimovich also argues that "the testimony presented by Cheban, whether his own or by way of third party witnesses, was dishonest and lacked credibility." But this argument is misplaced. "An appellate court does not reweigh the evidence or evaluate the credibility of witnesses, but rather defers to the trier of fact." (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 958.)

III. Substantial Evidence Supports the Finding that Shlimovich Waived Any Claim of Ownership in RE or RECL

Even if it could be found that Shlimovich had an ownership interest in RE or RECL, substantial evidence supports the trial court's finding that Shlimovich waived any claim of ownership by signing the 2006 Agreement.

"Where contract language is clear and explicit and does not lead to absurd results, we ascertain intent from the written terms and go no further." (*Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582, 1605; see Civ. Code, § 1639.) The clear and explicit meaning of contractual provisions, interpreted in their ordinary and popular sense, controls judicial interpretation. (Civ. Code, §§ 1636, 1638.)

The 2006 Agreement expressly states that Shlimovich "waives any rights and claims for the possession of any assets and any rights pertaining to: [¶] 1. Business under the name Rightime Enterprise. [¶] . . . [¶] 3. Business under the name Rightime Enterprise of Collateral Lending Inc." The terms and conditions of the 2006 Agreement are clear and explicit.

Shlimovich nevertheless argues that Cheban failed to meet his burden of proof at trial of making a showing by clear and convincing evidence that Shlimovich knowingly

waived his rights to the businesses.[3] But it is not our function to review whether the evidence presented below constitutes "clear and convincing evidence" of waiver. Where, as here, an appeal challenges the sufficiency of the evidence supporting a trial court's factual findings, "[t]he substantial evidence rule applies no matter what the standard of proof at trial." (*In re E.B.* (2010) 184 Cal.App.4th 568, 578; see Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2012) ¶ 8:63, p. 8-29.) "Thus, on appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.'" (*In re E.B., supra*, 184 Cal.App.4th at p. 578.)

Shlimovich argues that Cheban's testimony regarding the drafting and signing of the 2006 Agreement was an "illogical, inconsistent, twisted, tortuous tale [that] does not make any sense," and that the trial court should have credited Shlimovich's "logical and consistent" testimony over Cheban's "preposterous story." But the trial court expressly found in its statement of decision that "[t]he testimony by Shlimovich that he signed a blank piece of paper and that he never agreed to the text contained in the agreement is not credible and this court finds such testimony unbelievable." We are bound by this finding. "'It is the trial court's role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence.' [Citation.]" (*In re E.B., supra*, 184 Cal.App.4th at p. 578.)

Shlimovich also argues that even if the 2006 Agreement is authentic and genuine, there is no substantial evidence that Cheban paid all of the consideration under the 2006

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[3] "'"Waiver is the intentional relinquishment of a *known right after knowledge of the facts*.' [Citations.] The burden, moreover, is on the party claiming a waiver of a right to prove it by clear and convincing evidence that does not leave the matter to speculation, and "doubtful cases will be decided against a waiver" [citation].'" (*Florence Western Medical Clinic v. Bonta* (2000) 77 Cal.App.4th 493, 504.)

Agreement and, therefore, the trial court could not have inferred or concluded that the waiver was enforceable. The consideration recited in the 2006 Agreement was continued employment for Shlimovich and six months of severance pay in the event he was fired. It is undisputed that after the 2006 Agreement was executed on January 14, 2006, Shlimovich received salary and benefits for his employment for three more years until he was fired on February 13, 2009. Shlimovich then filed this lawsuit on February 27, 2009. In early 2009, Cheban wrote checks to Shlimovich for severance pay, which Shlimovich deposited into his bank account. The parties dispute whether Cheban made any more severance payments. But even if Cheban did not make all six months' worth of severance payments, this failure would not constitute the failure of *all* consideration so as to render the 2006 Agreement invalid, as Shlimovich argues. Rather, such a failure would be merely a breach of contract, as even Shlimovich acknowledged in his request for statement of decision and objection to order, at page 15.

We also reject Shlimovich's argument that the 2006 Agreement fails for lack of consideration because Cheban arranged for the severance payments to be made from RE and RECL, rather than from Cheban's own personal funds. It is undisputed that Shlimovich received his salary from the companies. It is only logical that he would receive any severance pay from the companies as well. Indeed, Shlimovich deposited the severance checks he received from RE and RECL without complaint. Moreover, the companies were wholly-owned by Cheban, who testified: "It's my company, it's my account, it's my money. I provided my money from a personal account to an account of my company. It's my personal company." Because we have already concluded that the record amply supports the finding that Shlimovich had no ownership interest in either RE and RECL, Shlimovich was not receiving consideration from himself, contrary to his suggestion.

DISPOSITION

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

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ