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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MARGARET B. BERGENER, Plaintiff and Respondent, v. JORGE ARJONA, Defendant and Appellant.	B275933 (Los Angeles County Super. Ct. No. BC563883)

APPEAL from a judgment of the Superior Court of Los Angeles County. Lawrence Cho, Judge. Affirmed.

Jorge Arjona, in pro. per., for Defendant and Appellant.

Klika, Parrish & Bigelow, Franklin T. Bigelow, Jr. and Paige R. Parrish, for Plaintiff and Respondent.

Jorge Arjona (appellant) appeals from a judgment entered after a court trial. The court awarded Margaret B. Bergener (respondent) $65,648 on her claims against appellant for breach of contract, book account, and account stated. Appellant asserts that the trial court improperly interpreted the repayment requirement of the contract between the parties. Further, appellant argues that the parties orally modified the contract by agreeing that some of the debt would be extinguished in exchange for appellant performing labor at respondent's home. We find no error in the trial court's decision, therefore we affirm the judgment.

FACTUAL BACKGROUND

Respondent is a retired psychologist whose husband passed away over 10 years ago. She met appellant at a dance in 2011. The two became friends but were not romantically involved.

In 2012, as his home was about to be foreclosed upon, appellant approached respondent and asked her to loan him $33,000 to pay off the mortgage. Respondent agreed, and the parties entered a loan agreement on July 12, 2012. The handwritten agreement, which was notarized and signed by both parties, reads as follows:

> "To whom it may concern:
>
> "I Jorge Arjona will pay Margaret B. Bergener the sum off [*sic*] $33,000.00, Thirty Three Thousand Dollars.
>
> "The first payment beginning August 12, 2012 of $2,000.00 or more. . . . For money loaned to reinstate residence at 1115 Isabel St. L.A. 90065."

Respondent withdrew $30,000, as evidenced by a withdrawal slip entered into evidence at trial, which she then

provided to appellant. She also loaned appellant $3,000 in cash for him to use at the auction sale of his home.

Appellant and respondent subsequently entered into a number of verbal agreements for additional loans. Respondent entered into evidence a $2,500 cashier's check she wrote to appellant in December 2012, as well as evidence of eight additional checks she wrote to appellant during the period of January through May 2013, totaling $19,800.

In addition to the loans shown by the checks, respondent loaned appellant an additional $10,480 in cash. The total amount respondent loaned to appellant was $65,780.

Appellant made a $1,000 payment in July 2014. All of appellant's other checks to respondent were not honored by the bank due to insufficient funds. Copies of 13 of the returned checks were entered into evidence. At the time of trial, after applying the $1,000 repayment, the balance appellant owed to respondent was $64,780.

On four or five occasions, appellant made cash payments to respondent and in each instance respondent canceled those debts. Respondent estimated that approximately $4,000 to $5,000 had been loaned and repaid by appellant in cash. These debts were not included in respondent's demand at trial for $64,780.

By May 2013, respondent stopped lending appellant money.

Appellant performed work on respondent's property, installing cabinets at her condominium. In return, respondent took appellant on a cruise. Appellant argued that the cruise was a gift to him.

PROCEDURAL HISTORY

In November 2014, respondent filed a complaint against appellant for breach of contract, book account, and account stated. A bench trial was held on May 24, 2016. Respondent was

represented by counsel. Appellant represented himself, in. pro. per. There was no court reporter at trial.

Due to a prior sanction order issued against appellant for failure to comply with final status conference requirements, appellant was barred from calling witnesses or presenting evidence in the defense case-in-chief. Thus, no testimony or exhibits were taken from appellant, although appellant was permitted to argue from respondent's evidence.

Though appellant attempted to argue new facts at trial, the trial court declined to consider those facts.[1]

Judgment was rendered for respondent in the amount of $64,780. The court also awarded respondent $868 in costs, for a total award of $65,648. After trial, appellant made a motion for a settled statement in lieu of a reporter's transcript.[2] On September 7, 2016, the trial court granted the motion. The parties submitted competing arguments regarding the statement.

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[1] Appellant attempted to present the following facts and assertions: that respondent's claimed loans had no interest or repayment provisions; that he did pay back the loan with the checks that bounced; that respondent never complained to him about the checks being declined; that some of the payments he received from respondent were not loans but compensation for the work he did on her home; and that the amount paid to him for the work he did was approximately $18,000.

[2] California Rules of Court, rules 8.130 and 8.137, permit a party to file a motion for a settled statement. Where a party does not have access to a verbatim transcript of the oral proceedings in the trial court, the settled statement provides an alternative. The rules governing settled statements "require[] the parties and the court to create an adequate, accurate record of the trial or ruling on appeal." (*Randall v. Mousseau* (2016) 2 Cal.App.5th 929, 931.)

The court filed a Final Settled Statement on Appeal on November 28, 2016.

DISCUSSION

I. Standards of review

In reviewing a trial court's decision following a bench trial, we review questions of law de novo and apply a substantial evidence standard to the trial court's factual findings. (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981.) "Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings. [Citation.]" (*Ibid.*) A single witness's testimony may constitute substantial evidence to support a finding, and we do not reevaluate any witness's credibility. (*Ibid.*) Further, "[u]nder the doctrine of implied findings, the reviewing court must infer, following a bench trial, that the trial court impliedly made every factual finding necessary to support its decision." (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 48.)

"A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. [Citations.]" (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.)

II. Construction of the contract

Appellant's first argument is that the trial court improperly construed the contract. Appellant argues that the contract lacks a schedule of payments. Appellant references his own testimony at trial as support for his position that respondent agreed that he could make payments whenever he was able to do so.

Appellant's testimony that the parties agreed he could make payments whenever he was able was not considered by the trial court due to the prior sanction order. Appellant does not

argue that the sanction order was an abuse of discretion or that the trial court improperly declined to consider his evidence. However, regardless of the evidentiary sanction, we would affirm the trial court's construction of the contract.

Parol evidence, such as appellant's testimony, may be admissible to construe an ambiguity in a contract. (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165.) In determining whether to admit such evidence, the question is "whether the evidence presented is relevant to prove a meaning to which the [contractual] language is 'reasonably susceptible.' [Citation.]" (*Ibid.*) If, in light of the extrinsic evidence, the court decides the language of the contract is "reasonably susceptible" to the interpretation urged, the extrinsic evidence is then admitted to aid in the interpretation of the contract. (*Ibid.*)

We find that the contract is not reasonably susceptible to the interpretation advocated by appellant -- specifically, that he could repay the money whenever he was able to repay it. Instead, the contract contains a directive that the first payment shall be made no later than August 12, 2012, in an amount of $2,000 or more. This express language suggests that appellant was expected to make regular payments starting exactly one month after respondent made the loan. This language is completely contrary to appellant's position. Thus, the contract is not susceptible to appellant's interpretation.

In sum, the trial court did not err in rejecting appellant's argument that the loan was to be paid "whenever" appellant was able to repay it.

III. Mutual consent

Appellant next argues that there was no mutual consent, thus the loan agreements between the parties are not enforceable. Appellant cites *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793 for the proposition that consent

must be mutual. As stated in *Weddington*, "'[t]he existence of mutual consent is determined by objective rather than subjective criteria, the test being what the outward manifestations of consent would lead a reasonable person to believe.' [Citation.]" (*Id.* at p. 811.) Appellant appears to argue that there is no manifestation of assent to the same thing by both parties in this matter. However, appellant provides no factual explanation.

"[T]he primary focus in determining the existence of mutual consent is upon the acts of the parties involved." (*Meyer v. Benko* (1976) 55 Cal.App.3d 937, 943.) Thus, the fact that a document was signed by both parties indicates that the parties entered into an enforceable agreement. (*Ibid.*) "'The general rule is that when a person with the capacity of reading and understanding an instrument signs it, he is, in the absence of fraud and imposition, bound by its contents, and is estopped from saying that its explicit provisions are contrary to his intentions or understanding.' [Citation.]" (*Ibid.*) Here, the evidence that appellant signed the written loan agreement shows his consent to its terms, including the provision that repayment was to begin the following month.

In addition there is the parties' oral agreement that in exchange for performing work on her home, respondent would take appellant on a cruise. Where a written agreement does not exist "the trier of fact must rely on extrinsic evidence to determine whether a contract existed and if so what it covered." (*Southern Christian Leadership Conference v. Al Malaikah Auditorium Co.* (1991) 230 Cal.App.3d 207, 220.) Such a determination is not a question of law but of fact. (*Ibid.*)

Here, the court heard respondent's testimony regarding the terms of the oral home improvement agreement. Respondent testified that appellant performed work on her home, and in exchange, she took him on a European cruise. This evidence was

sufficient to support the trial court's factual determination of the terms of the oral agreement.

Further, due to the evidentiary sanction imposed upon appellant, the court did not consider appellant's testimony regarding the oral contract. However, the court noted that appellant attempted to assert that some of the funds he received from appellant were not loans but payments for the work he performed. Even if appellant's testimony had been considered, the court was entitled to believe and give greater weight to respondent's testimony regarding the terms of the oral home improvement agreement.

"Whether parties have reached a contractual agreement, and on what terms, are questions for the fact finder when conflicting versions of the parties' negotiations require a determination of credibility. [Citations.]" (*Hebberd-Kulow Enterprises v. Kelomar, Inc.* (2013) 218 Cal.App.4th 272, 283.) Substantial evidence, in the form of respondent's testimony, supports the trial court's conclusion that the parties agreed appellant would work on respondent's home in exchange for a cruise. Substantial evidence, in the form of respondent's testimony, also supports the conclusion that the additional payments respondent made to appellant were loans -- not payments -- which the parties agreed would be repaid. We decline to disturb the court's factual findings. (*Thompson v. Asimos, supra,* 6 Cal.App.5th at p. 981.)

IV. Interest

Appellant makes no argument in his opening brief regarding the trial court's award of interest. Respondent raises the issue in her respondent's brief, and appellant argues in his reply brief that there is no interest owed. We do not address arguments raised for the first time in the reply brief. (*Provost v.*

Regents of University of California (2011) 201 Cal.App.4th 1289, 1295.)

In addition, appellant fails to cite to a page in the record showing the amount of interest imposed or the court's calculation of such interest. An appellate court is not "'required to consider alleged error where the appellant merely complains of it without pertinent argument.' [Citation.]" (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119-1120.)

For these reasons, we decline to address the issue of interest.

DISPOSITION

The judgment is affirmed. Respondent is awarded her cost of appeal.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST