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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

DARSHAN THIND,

Plaintiff and Respondent,

v.

MUKHTIAR S. KAMBOJ,

Defendant and Appellant.

B285446

(Los Angeles County
Super. Ct. No. BC560351)

APPEAL from a judgment of the Superior Court for the County of Los Angeles, Richard L. Fruin, Jr., Judge. Affirmed. Yash Law Group and Yashdeep Singh for Defendant and Appellant.

Anderson & Associates, Michael D. Anderson and Andrei V. Serpik for Plaintiff and Respondent.

Defendant and appellant Mukhtiar Kamboj appeals from the judgment in favor of Darshan Thind on Thind's breach of oral

contract claim. Kamboj contends the trial court erred by barring him from relying on a statute of limitations defense and by finding that Kamboj breached oral agreements that had been superseded by a written agreement. We affirm.

PROCEDURAL HISTORY

1. Factual Background¹

Thind and Kamboj are from the same region in India and have known each other for over 40 years. Thind's cousin had married into Kamboj's family. Both Thind and Kamboj are experienced businessmen. At the time of the events in question, Thind owned an investment company, among other business holdings, while Kamboj was the sole shareholder of M for K, Inc., which owned a gas station franchise and a convenience store in California.

In 2008, Kamboj borrowed \$20,000 from Thind, and he repaid the loan in 2009. No written loan agreement was prepared. Later in 2009, Kamboj asked Thind to loan him \$100,000. Kamboj stated the loan would be for a "short time"; he intended to sell the gas station and to use the proceeds of the sale to repay the loan. Thind agreed to loan the money. The men did not discuss any arrangement for the payment of interest, and they did not memorialize the loan in any written document. Thind transferred \$100,000 into Kamboj's bank account on December 4, 2009.

Three months later, Thind (who lived in Canada at the time) telephoned Kamboj and requested repayment. Kamboj

¹ The summary of facts is taken from the trial court's statement of decision.

responded he had not yet sold the gas station but would repay the loan after the sale. Similar conversations took place every few months, “with Thind asking for loan repayment and Kamboj acknowledging the debt and promising to repay it when he . . . completed the sale” of the gas station.

In early 2011, Kamboj asked Thind to loan him another \$200,000. Kamboj stated he was completing the sale of the gas station and would repay Thind when the deal closed. The two men had several conversations about Kamboj’s loan request in which Kamboj offered to give Thind an interest in M for K, Inc. as security guaranteeing Kamboj’s repayment of the loans. On February 8, 2011, Thind loaned Kamboj \$200,000, transferring that sum into Kamboj’s account.

Kamboj and Thind met in late February 2011 in California, at which time Kamboj gave Thind a document titled “Stock Purchase Agreement.” Kamboj described the agreement as conveying to Thind an interest in M for K, Inc., “as a guaranty of his promise to repay the loans when M for K, Inc. sold the service station.” However, the agreement does not refer to the loans Thind had made to Kamboj. It provides that Thind would pay \$500,000 on February 25, 2011 as consideration for 10,000 shares of M for K, Inc.’s capital stock, amounting to a 50 percent interest in all outstanding stock. The stock was “to be issued upon approval of [the franchisor] as per the franchise agreement and the State Department of Alcoholic Beverage Control.” M for K, Inc. “agree[d] to do all things necessary to have the new corporate stock certificates issued to [Thind].” Kamboj and Thind signed the agreement on February 25, 2011, and Kamboj handed Thind a stock certificate for 10,000 shares of M for K, Inc. stock. (Thind would learn several years later that Kamboj never took

any steps to obtain the approval of the stock transfer from the gas station franchisor or the State Department of Alcoholic Beverage Control. Further, after the agreement was signed, Kamboj continued to report in shareholder and director meeting minutes that he was the sole shareholder of M for K, Inc.)

Later in 2011, Kamboj telephoned Thind and told him the sale of the gas station was nearing completion, but he needed an additional \$136,000 to cover expenses relating to the sale. Kamboj again stated he would repay Thind from the proceeds of the sale. Kamboj also promised he would send \$5,000 monthly interest payments to Thind until the loans were repaid. Thind agreed to loan Kamboj \$136,000, and Thind transferred that sum to the account for M for K, Inc. on October 5, 2011. Kamboj sent a check for \$5,000 to Thind in October 2011, which was returned for insufficient funds, but then he sent monthly checks in the amount of \$5,000 from M for K, Inc.'s account from November 2011 to July 2012.

When the checks stopped arriving after July 2012, Thind asked Kamboj for an explanation. Kamboj responded he did not have the money, but he promised that soon the sale of the gas station would be complete and he would then pay off the loans.

Thind continued to telephone Kamboj to inquire about the status of the sale of the gas station and Kamboj's plan for repayment of the loans, but Kamboj stopped taking his calls. Thind asked a relative to contact Kamboj to ask when payment would be made. The relative reported back that Kamboj said he was preparing for his son's wedding and then his niece's wedding, and after the celebrations were over Kamboj would be able to advise Thind about repaying the loans.

Thind attended the wedding for Kamboj's son in December 2013 and then Kamboj's niece's wedding in June 2014. At the end of the niece's wedding, Kamboj told Thind he was unable to pay the debt and Thind could do as he wished about it.

2. Thind's Complaint and Kamboj's Answer

Thind filed suit on October 10, 2014, seeking to recover \$436,000 from Kamboj for the \$100,000 Thind loaned him on December 4, 2009, the \$200,000 loaned on February 8, 2011, and the \$136,000 loaned on October 5, 2011.

The Third Amended Complaint (the operative complaint) alleged five causes of action for breach of oral loan agreements; breach of the Stock Purchase Agreement; common counts; declaratory relief; and fraud. Thind's fraud cause of action alleged that Kamboj fraudulently misrepresented that he was granting Thind a 50 percent interest in M for K, Inc. as collateral for the loans until Kamboj repaid the loans. Kamboj denied all the allegations in the complaint and pled a number of affirmative defenses, including the statute of limitations.

3. Trial Court's Findings After Trial

A court trial was held in June 2017. Both Thind and Kamboj testified. The court found Kamboj not to be a credible witness and found that, in every instance in which his testimony conflicted with Thind's, Thind's testimony was credible and Kamboj's was not.

The parties submitted trial briefs on the application of the doctrine of equitable estoppel to the statute of limitations defense. Thind contended that Kamboj's repeated promises to repay the loans as soon as the gas station was sold induced Thind to delay filing a suit against him for breach of contract; accordingly, Kamboj was now estopped from relying on the

statute of limitations as a defense to the cause of action. Kamboj argued the doctrine was inapplicable because, even if Kamboj kept promising to repay, Kamboj did not engage in fraud or deception; further, any reliance by Thind on Kamboj's representations that he would repay the loans was not reasonable.

The court found in favor of Thind on the first cause of action for breach of oral contracts and in favor of Kamboj on the fraud cause of action.² Upon Kamboj's request, the court prepared a tentative statement of decision. Following receipt of Kamboj's objections to the tentative statement of decision, the court filed its final statement of decision, in which it overruled all Kamboj's objections and found no need to modify its tentative decision.

The court ruled Kamboj could not rely on the defense that Thind's claim for breach of oral contract was time-barred. Holding that the limitations period is "tolled when the debtor acknowledges the debt and promises to pay the debt upon some future event," the court found Kamboj had assured Thind until June 2014 that he would repay the loans.

The court also rejected Kamboj's contention that he and Thind entered into an oral agreement whereby Thind agreed to convert the debt Kamboj owed into a 50 percent stake in M for K, Inc. The court found neither the Stock Purchase

² The court dismissed Thind's common count claim on the ground it was subsumed within the cause of action for breach of oral contracts. Thind voluntarily dismissed the cause of action for breach of the Stock Purchase Agreement, and the court determined the dismissal of that cause of action rendered moot the cause of action for declaratory relief.

Agreement nor the stock certificate demonstrated the existence of any such oral agreement. The court noted the Stock Purchase Agreement neither states that Thind was waiving any claim against Kamboj nor provides for conversion of the debt into an equity interest in M for K, Inc. Further, the court emphasized that none of the preconditions necessary for a stock transfer to Thind had been completed, as neither the gas station franchisor nor the State had agreed to the transfer of ownership. Finally, the court found Kamboj's monthly \$5,000 interest payments to Thind after the supposed stock purchase were evidence of the still-existing debt. The court concluded the Stock Purchase Agreement was "consistent with an amateurish attempt to document Kamboj's promise to Thind that he would give Thind a security interest as a guaranty for his promise that he would repay a loan obligation."

The court also dismissed Kamboj's argument that the Stock Purchase Agreement superseded the oral loan agreements. The court found the loan agreements were separate agreements and not earlier versions of the Stock Purchase Agreement, which did not even mention the loans.

The court awarded Thind \$436,000 in compensatory damages and prejudgment interest in the amount of \$115,987.95. Kamboj timely appealed from the judgment entered in Thind's favor.

DISCUSSION

- I. *The Trial Court Did Not Err in Finding Kamboj Was Barred from Relying on a Statute of Limitations Defense*
 - A. *The Trial Court Found Kamboj Was Equitably Estopped from Arguing Thind's Claim Was Time-Barred, Not that the Statute Was Tolloed*

Kamboj contends the trial court erroneously determined the two-year statute of limitations for breach of oral contracts (Code Civ. Proc., § 339, subd. 1) did not bar Thind's cause of action for breach of the oral loan agreements. According to Kamboj, the trial court's ruling was based on its finding that the statute of limitations was tolled due to Kamboj's acknowledgment of the debt. Kamboj contends his acknowledgment of the debt did not toll the statute of limitations because the acknowledgment was not in writing. Kamboj relies on Code of Civil Procedure section 360, which provides: "No acknowledgment or promise is sufficient evidence of a new or continuing contract, by which to take the case out of the operation of [this title regarding the statute of limitations], unless the same is contained in some writing, signed by the party to be charged thereby." (Code Civ. Proc., § 360; see *Western Coal & Mining Co. v. Jones* (1946) 27 Cal.2d 819, 822-825 [discussing the concept of tolling by acknowledgment of a debt in a subsequent writing].)

Kamboj has set up a straw man argument, because the trial court did not reject Kamboj's statute of limitations defense based on the doctrine of tolling by acknowledgment of a debt. In finding that Kamboj could not rely on the statute of limitations as a defense to Thind's breach of oral contract claim, the trial court stated that "[t]he limitations period . . . is tolled when the debtor acknowledges the debt and promises to pay the debt upon some

future event. . . . Kamboj until June of 2014 always assured Thind that he would repay the loans.” Although the court used the word “tolled,” Kamboj concedes the three authorities upon which the court relied concern equitable estoppel,³ not tolling by acknowledgment of a debt.

The trial court first cited *Langdon v. Langdon* (1941) 47 Cal.App.2d 28, 30 (*Langdon*), in which the plaintiff and the defendant (the plaintiff’s son) had entered into an oral contract “by which defendant agreed to pay plaintiff the sum of \$100 in addition to hourly wages for each house painted by plaintiff.” Within a year after the agreement was made, the plaintiff “demanded the \$100 bonus for each house which he had painted but was informed that defendant could not pay the bonus at that time. . . .” (*Id.* at p. 30.) The defendant “repeatedly requested plaintiff to delay the collection of the bonus until defendant would be well started in the building business, which defendant estimated would require three years time; and . . . plaintiff solely because of such requests delayed the collection of the bonus.” (*Id.*

³ As discussed below, the doctrine of equitable estoppel may bar a statute of limitations defense, reflecting the principle that “[o]ne cannot justly or equitably lull his adversary into a false sense of security, and thereby cause his adversary to subject his claim to the bar of the statute of limitations, and then be permitted to plead the very delay caused by his course of conduct as a defense to the action when brought.” (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 383; accord, *May v. City of Milpitas* (2013) 217 Cal.App.4th 1307, 1338; see Evid. Code, § 623 [“[w]henver a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it”].)

at p. 31.) The plaintiff demanded the defendant pay his bonuses two and a half years later, but the defendant refused, and the plaintiff filed suit for breach of the oral agreement. (*Id.* at p. 30.) The defendant argued the suit was time-barred, but the trial court determined the defendant could not rely on a statute of limitations defense given his conduct inducing the plaintiff to delay filing suit. (*Id.* at pp. 31-32.)

The appellate court agreed that the defendant could not assert a statute of limitations defense, holding “the conduct of a promisor, or even his silence under certain circumstances, may result in an equitable estoppel.” (*Langdon, supra*, 47 Cal.App.2d at p. 31.) The court noted, “It is a well-established rule of law that when the act or promise of one person causes another in reliance thereon to do or forbear from doing a thing to his detriment, which he would have otherwise performed, the promisor is estopped from taking advantage of the act or omission of the promisee. The violation of such a promise amounts to fraud and estops the promisor from repudiating the agreement on the doctrine of equitable estoppel.” (*Ibid.*) As particularly relevant here, the court held there need not be a written acknowledgment of the debt for the doctrine of equitable estoppel to apply. (*Ibid.*) The court did not discuss whether the limitations period was tolled under a theory of tolling by acknowledgment of the debt.

The second authority relied upon by the trial court in the instant case was *Gaglione v. Coolidge* (1955) 134 Cal.App.2d 518 (*Gaglione*). In *Gaglione*, the trial court sustained a demurrer on statute of limitations grounds to a complaint alleging a breach of oral contract. (*Id.* at pp. 522-523.) The appellate court reversed, finding the complaint showed the plaintiff “was lulled into

delaying the prosecution of her claim by a continuous course of misleading conduct on the part of respondent. . . . It is well settled that where delay in commencing an action is induced by the conduct of the defendant, he cannot avail himself of the defense of the statute. . . . Acts or conduct which wrongfully induce a party to believe an amicable adjustment of his claim will be made, may create an estoppel against pleading the statute.” (*Id.* at p. 527.) As in *Langdon*, the court of appeal in *Gaglione* did not discuss tolling of the statute of limitations, and only invoked the doctrine of equitable estoppel.

The final authority cited by the trial court was Professor Witkin’s treatise on California Procedure. The court relied on section 762 in the subdivision entitled “Estoppel to Plead Statute of Limitations,” which explains that “[a]n estoppel to set up the defense of the statute of limitations arises as a result of some conduct by the defendant, relied on by the plaintiff, that induces the belated filing of the action. ‘One cannot justly or equitably lull his adversary into a false sense of security, and thereby cause his adversary to subject his claim to the bar of the statute of limitations, and then be permitted to plead the very delay caused by his course of conduct as a defense to the action when brought.’” (3 Witkin, Cal. Procedure (5th ed. 2008) Actions, § 762, quoting *Carruth v. Fritch* (1950) 36 Cal.2d 426, 433.) That section specifically provides that estoppel should be distinguished from equitable tolling, contractual waiver of a statute of limitations defense, and “suspension of the running of the period or revival of a barred claim by acknowledgment.” (*Ibid.*)

Thus, although the trial court used the term “tolled” in its statement of decision, resulting in some ambiguity as to the basis for its ruling, it appears the court intended to invoke the doctrine

of equitable estoppel, not tolling.⁴ Courts sometimes use the term “tolling” when they mean “equitable estoppel.” (See, e.g., *Battuello v. Battuello* (1998) 64 Cal.App.4th 842, 847 [noting the trial court had blurred distinct doctrines of tolling and equitable estoppel].) This appears to be one such instance.

The trial court’s tentative statement of decision contained the identical language used in the final decision. It was Kamboj’s obligation to bring any ambiguity in the tentative decision to the trial court’s attention in order to avoid the inference in favor of the judgment that we must apply on appeal. (See Code Civ. Proc., § 634; *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 59 [“[i]f the party challenging the statement of decision fails to bring omissions or ambiguities in it to the trial court’s attention, then . . . the appellate court will infer the trial court made implied factual findings favorable to the prevailing party on all issues necessary to support the judgment, including the omitted or ambiguously resolved issues”]; accord, *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1135.) In his objections to the tentative decision, Kamboj did not point out the ambiguity or ask the court to clarify which particular doctrine it was applying to bar the statute of limitations defense. Accordingly, we resolve the ambiguity in favor of the judgment, concluding the trial court found Kamboj was equitably estopped from arguing Thind’s suit was time-barred. Because equitable estoppel does not require a written acknowledgment of the debt (*Langdon, supra*, 47 Cal.App.2d at p. 32; *Miles v. Bank of*

⁴ The conclusion that the trial court intended to apply equitable estoppel principles is also supported by the fact that the parties’ trial briefs discussed the issue of equitable estoppel, not tolling based on an acknowledgment of the debt.

America Etc. Assn. (1936) 17 Cal.App.2d 389, 398), it is inconsequential that Kamboj did not sign a document acknowledging the loans he had not yet repaid.

B. *The Trial Court Impliedly Found Thind Reasonably Relied on Kamboj's Promises To Repay the Loans*

Kamboj contends the trial court found there was no reasonable reliance by Thind on Kamboj's promises, negating any determination that equitable estoppel applied. "A party may be equitably estopped to assert the statute of limitations when his or her conduct induced another not to file a lawsuit within the applicable limitations period." (*Walker v. City of San Clemente* (2015) 239 Cal.App.4th 1350, 1370; see *Atwater Elementary School Dist. v. California Dept. of General Services* (2007) 41 Cal.4th 227, 232-233 ["[w]here the delay in commencing action is induced by the conduct of the defendant it cannot be availed of by him as a defense"]; *Battuello v. Battuello, supra*, 64 Cal.App.4th at pp. 844, 848 [the doctrine of equitable estoppel may bar a defense of statute of limitations when the defendant made a false promise that convinced the plaintiff not to file a suit before the end of the limitations period]; *Herman v. Brown* (1949) 91 Cal.App.2d 758, 761 ["a debtor who induces his creditor to defer action, by means of promises to pay the indebtedness or settle the claim, is estopped to plead the statute of limitations"].) The elements of the doctrine of equitable estoppel are that "(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Windsor Pacific LLC v. Samwood Co., Inc.* (2013)

213 Cal.App.4th 263, 271-272, disapproved of on another ground by *Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 Cal.5th 744; accord, *Schafer v. City of Los Angeles* (2015) 237 Cal.App.4th 1250, 1261.) “The detrimental reliance must be reasonable.” (*Windsor Pacific LLC*, at pp. 271-272; see *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 367 [the defendant’s conduct must have reasonably induced the plaintiff to refrain from filing suit within the limitations period].)

The trial court did not specifically address in its statement of decision whether Thind’s reliance on Kamboj’s promises was reasonable. However, Kamboj contends the court previously found there was no reasonable reliance on Thind’s part. Kamboj relies on the court’s comments, made prior to the parties’ closing arguments at trial, regarding the fraud cause of action. The court stated, “I’m not certain that plaintiff has proved fraud. They would have to prove that Mr. Kamboj at the time he said he would make a payment or repayment of the loan agreement was making a misrepresentation and that Mr. Thind relied upon it. I don’t think there is any proof of any particular reliance.” At the conclusion of the hearing, the court found for Kamboj on the fraud claim, simply stating, “[I]t’s not proven”; the statement of decision did not address the fraud claim.

We reject Kamboj’s contention that the court’s oral remarks during trial about the fraud cause of action constituted a finding that Thind did not reasonably rely on Kamboj’s representations such that the elements of equitable estoppel are not satisfied. (See *Key v. Tyler* (2019) 34 Cal.App.5th 505, 539 [holding the court’s “oral comments were not final findings and cannot impeach the court’s subsequent written ruling”].) In making its final ruling the court stated only that the fraud claim was “not

proven”; thus, we do not know the specific basis for the court’s ruling. Moreover, we presume the court made the factual finding that Thind *did* reasonably rely on Kamboj’s promises to repay the loans, because we are required to imply all findings necessary to uphold the ruling on the ultimate fact that Kamboj was equitably estopped from asserting Thind’s breach of oral contract claim was time-barred. (See *Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 771 [because the appellants never asked the trial court to make specific findings on the theory of damages they were appealing, the court applied the doctrine of implied findings]; *Angelier v. State Board of Pharmacy* (1997) 58 Cal.App.4th 592, 597 [“A trial court rendering a statement of decision under . . . [Code of Civil Procedure] section 632 is required to state only ultimate rather than evidentiary facts because findings of ultimate facts necessarily include findings on all intermediate evidentiary facts necessary to sustain them”].)

C. *Substantial Evidence Supported the Trial Court’s
Implied Finding of Reasonable Reliance*

Kamboj contends there was there was “no proof” Thind reasonably relied on his repeated promises to repay the loans. Given that Kamboj never repaid “a single dollar” of the amounts loaned to him despite numerous demands for repayment by Thind, Kamboj contends Thind’s continued reliance on Kamboj’s promises to repay the loans was unreasonable.

Unless the facts are undisputed and only one inference may reasonably be drawn, “the determination of . . . estoppel is a question of fact, and the trier of fact’s finding is binding on the appellate court.” (*Platt Pacific, Inc. v. Andelson* (1993) 6 Cal.4th 307, 319.) We review for substantial evidence the trial court’s implied factual finding that Thind reasonably relied on Kamboj’s

assurances that he would repay the loan upon the sale of his gas station. (See *In re Marriage of Ciprari* (2019) 32 Cal.App.5th 83, 94) [“[t]he substantial evidence standard applies to both express and implied findings of fact made by the superior court in its statement of decision rendered after a nonjury trial”]; *Schwan v. Permann* (2018) 28 Cal.App.5th 678, 699 [accord]; *Holdgrafer v. Unocal Corp.* (2008) 160 Cal.App.4th 907, 926 [on appeal from decision that the defendant was equitably estopped from asserting a statute of limitations defense, findings of fact that the plaintiff reasonably relied on the defendant’s representations “are binding if supported by substantial evidence”].) “Under the substantial evidence standard of review, ‘we must consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.] [¶] It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact. Our authority begins and ends with a determination as to whether, on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, in support of the judgment.’” (*ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1266.)

Substantial evidence supports the trial court’s implied finding that Thind reasonably relied on Kamboj’s promises to repay him when his gas station was sold. Because Kamboj and Thind had been friends for decades and were related by marriage, Thind’s unremitting trust that Kamboj would repay him was more understandable than if they had merely been business associates. Kamboj had also repaid a previous loan by Thind in 2009, suggesting he could be trusted. Further, rather than merely making vague and general promises of repayment,

Kamboj repeatedly told Thind he would be able to pay him back as soon as Kamboj sold his gas station, a specific event that Thind reasonably believed would result in Kamboj generating cash sufficient to repay the loans.

Kamboj contends that the court's statement of decision omitted evidence suggesting Thind should have known Kamboj was not planning to repay him. Kamboj relies chiefly on testimony from Thind that Kamboj told him in March 2010 that Kamboj "owed [Thind] nothing." However, Kamboj failed to bring any such omissions in the tentative statement of decision to the court's attention, and thus he has forfeited the right to complain on appeal about the trial court's failure to include these facts. (See *Fladeboe v. American Isuzu Motors Inc.*, *supra*, 150 Cal.App.4th at p. 59 ["if a party fails to bring omissions or ambiguities in the statement of decision's factual findings to the trial court's attention, then 'that party waives the right to claim on appeal that the statement was deficient in these regards'"].) Further, because substantial evidence supports the trial court's ruling, we must affirm even if there was some evidence adduced at trial supporting the conclusion that Thind was not reasonable to rely on Kamboj's promises. (*ASP Properties Group, L.P. v. Fard, Inc.*, *supra*, 133 Cal.App.4th at p. 1266.)

II. *Substantial Evidence Supported the Trial Court's Determination the Stock Purchase Agreement Did Not Supersede the Oral Loan Agreements*

Kamboj asserts the Stock Purchase Agreement superseded the oral loan agreements, and thus the oral agreements were inoperative and could not support the claim for breach of contract. Kamboj relies on the integration clause of the Stock Purchase Agreement, which provides: "THIS AGREEMENT IS

THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND ANY ORAL AGREEMENT PRIOR TO THIS AGREEMENT [IS] SUPERSEDED BY THIS AGREEMENT.”

Kamboj testified that the Stock Purchase Agreement was meant to supersede the loans, and that the agreement provided he was paying off his debt by granting Thind an interest in M for K, Inc. By contrast, Thind testified that the purpose of the Stock Purchase Agreement was merely to provide security for the loans, which Kamboj still was promising to repay.

The trial court, which deemed Thind credible and Kamboj not credible, found Kamboj had characterized the Stock Purchase Agreement “as conveying to Thind an interest in Kamboj’s company, M for K, Inc., as a guaranty of his promise to repay the loans” The court determined the Stock Purchase Agreement did not convert Kamboj’s loan obligation into an investment. The fact that Kamboj took no steps to obtain the necessary approvals for the stock transfer and continued to report he was the sole shareholder of M for K, Inc. demonstrated there was no mutual intention to actually make Thind a shareholder. The court further found the \$5,000 monthly checks Kamboj continued to send Thind after the Stock Purchase Agreement was signed constituted interest payments on the loan balance, demonstrating Kamboj’s obligation to repay the loans was not extinguished by the Stock Purchase Agreement.

The court interpreted the integration clause in the Stock Purchase Agreement to be “standard language by which the parties agree that earlier versions of the same agreement are superseded by the signed agreement.” The court stated, “The oral loan agreements are not earlier versions of the ‘Stock Purchase Agreement’ and, therefore, the language in the ‘Stock

Purchase Agreement’ does not supersede those agreements. The ‘Stock Purchase Agreement’ does not mention the debt that Kamboj owed nor mention the existence of oral agreements made by Kamb[o]j to repay those loans.”

The interpretation of a contract, including the question whether a contract is integrated, is a question of law that we review de novo, unless the interpretation turns upon the credibility of extrinsic evidence. (See *Kanno v. Marwit Capital Partners II, L.P.* (2017) 18 Cal.App.5th 987, 1001 (*Kanno*); *Wagner v. Glendale Adventist Medical Center* (1989) 216 Cal.App.3d 1379, 1385-1386; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 799.) “If the issue of integration requires a resolution of a conflict in the evidence or of credibility, then the trial court’s determination is reviewed under the substantial evidence standard.” (*Kanno*, at p. 1001; see *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 956 [“[w]hen the competent extrinsic evidence is in conflict, and thus requires resolution of credibility issues, any reasonable construction will be upheld if it is supported by substantial evidence”].)

The trial court concluded the Stock Purchase Agreement did not supersede the oral loan agreements based not only on the language of the Stock Purchase Agreement but also the evidence adduced at trial about the intent of the parties in signing that agreement. Because the court’s ruling turned on credibility determinations in the face of conflicting evidence, we review for substantial evidence the court’s determination that the Stock Purchase Agreement did not supersede the oral loan agreements, such that the oral agreements could support a viable claim for

breach of contract. We find substantial evidence supported the trial court's interpretation.

The law "presumes a written contract supersedes all prior or contemporaneous oral agreements." (*Malmstrom v. Kaiser Aluminum & Chemical Corp.* (1986) 187 Cal.App.3d 299, 314; see Civ. Code, §§ 1625, 1856.) However, "the rule that an agreement in writing supersedes all prior or contemporaneous oral negotiations or stipulations . . . has no application to a collateral agreement upon which the instrument is silent, and which does not purport to affect the terms of the instrument." (*Wright v. Title Ins. & Trust Co.* (1969) 274 Cal.App.2d 252, 260 (*Wright*).)

The Stock Purchase Agreement purportedly concerned the sale and transfer of M for K, Inc. stock, with Thind agreeing to pay \$500,000 in return for a 50 percent interest in the outstanding stock of M for K, Inc. Thind's testimony about the purpose of the Stock Purchase Agreement, the evidence that no stock was ever transferred to Thind, and the continuing \$5,000 interest payments all support the trial court's determination that the purpose of the Stock Purchase Agreement was merely "to document Kamboj's promise to Thind that he would give Thind a security interest as a guaranty for his promise that he would repay a loan obligation." That agreement does not provide that Kamboj's obligation to repay the loans would be satisfied or extinguished by a transfer of stock in M for L, Inc. to Thind. The Stock Purchase Agreement therefore concerned a different subject matter than the loan agreements and did not supersede the oral loan agreements. As such, the oral loan agreements properly formed the basis for Thind's breach of contract claim upon which he prevailed.

DISPOSITION

The judgment is affirmed. Thind is to recover his costs on appeal.

STONE, J.*

We concur:

SEGAL, Acting P. J.

FEUER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.