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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MICHAEL R. CARVER, Plaintiff and Appellant, v. LUCINE MEGUERIAN et al., Defendants and Respondents.	B275285 (Los Angeles County Super. Ct. No. BC526009)

APPEAL from a judgment of the Superior Court of Los Angeles County. Malcolm Mackey, Judge. Affirmed as modified.

Michael R. Carver, in pro per, for Plaintiff and Appellant.

Law Offices of Rosenthal & Associates and Lisa F. Rosenthal, for Defendants and Respondents.

Appellant Michael Carver, a former attorney, seeks payment for his representation of now-deceased Azniv Kokikian, the mother of respondents Lucine Meguerian and Hovik John Meguerian (respondents). Although Carver previously filed a creditor's claim in Kokikian's probate proceedings, respondents, acting as the administrators of Kokikian's estate, denied Carver's claim. Carver then filed this lawsuit seeking payment for the legal work he did for Kokikian.

After Carver presented his case to the jury, the trial court granted respondents' motion for nonsuit. Although we find the judgment contains errors, we nonetheless affirm the judgment as modified because, as a matter of law, the jury could not have returned a verdict in Carver's favor based on the evidence he presented. In particular, we conclude Carver could not and did not demonstrate Kokikian breached any of the three alleged retainer agreements she signed. Accordingly, we affirm.

BACKGROUND

1. Carver's Representation of Respondents' Mother and His Creditor's Claim in Probate

Carver used to practice law in California. One of his clients was respondents' mother, Azniv Kokikian (also known as Azniv or Anna Meguerian), who passed away on December 15, 2012. Carver represented Kokikian in three separate matters on and off between July 2008 and February 2012. Specifically, between July 2008 and April 2009, Carver represented Kokikian in two real estate matters. And from January 2010 through February 2012, Carver represented Kokikian in her divorce proceedings against her second husband, *Kokikian v. Hunanyan*, LD046786 (the divorce case). Thus, the latest date Carver represented

Kokikian was February 2012. Carver never represented or worked for respondents.

After Kokikian's death, Carver filed a creditor's claim in Kokikian's probate case, seeking payment of $144,170, plus interest, in unpaid legal fees stemming from his representation of Kokikian. Respondents had been appointed the administrators of their mother's estate and, on September 18, 2013, they rejected Carver's creditor's claim.

2. Complaint

On October 29, 2013, after his creditor's claim was rejected in probate, Carver filed a complaint against respondents both in their individual capacities and as administrators of Kokikian's estate. Carver alleged five causes of action: three breach of contract claims, each one based on one of Carver's alleged agreements with Kokikian to provide legal services, one common count cause of action, and one quantum meruit cause of action. Every cause of action stemmed from Carver's allegations that Kokikian breached her promise to pay him for legal services he had provided. Carver alleged his compliance with the probate claims process and sought $144,170 in damages, plus interest.

Although Carver did not attach any written agreements to his complaint, he did attach his rejected creditor's claim and supporting declaration, through which he had sought the same $144,170, plus interest amount. In his declaration, Carver stated that, because Kokikian did not have sufficient funds to pay him for his work, she agreed to pay him from the proceeds of the divorce case. He also explained the divorce case had not concluded but was still pending.

Respondents filed their answer on November 22, 2013. Among other defenses, respondents asserted Carver failed to

state facts constituting any cause of action, his alleged causes of action were barred by the applicable statute of limitations, and his claim had already been properly disallowed in their mother's probate action. Respondents also asserted a general denial under Code of Civil Procedure section 431.30.

3. Trial and Nonsuit

a. Trial

The case went to trial on March 16 and 17, 2016. During trial, it came to light that Carver had been in a relationship with Kokikian during at least part of the time he had represented her, traveled extensively with her, and in 2012 began living at her home. It was also revealed that Kokikian's first husband had shot and killed Kokikian at home one night when Carver was there having dinner. Kokikian's ex-husband also shot and injured Carver that same night.

Carver testified at trial that, in 2012 when he was representing Kokikian in the divorce case, the State Bar of California placed him on inactive status. As a result, he stopped working on the divorce case, which was the only matter he was working on for Kokikian at the time. He was on inactive status for over three years and eventually was disbarred.

Consistent with the declaration attached to his complaint, Carver testified Kokikian promised to pay him when she received proceeds from her divorce case. He introduced as exhibits three retainer agreements allegedly signed by Kokikian (the agreements), each of which stated she promised to pay Carver for his legal services "when she has the funds available" and "when [client] receives proceeds from [the] divorce case." He also testified the divorce case was still pending and there were some

credits due to her account based on the time he lived with her rent-free.

Carver claimed Kokikian breached the retainer agreements when she died "because after that point, there was no possibility that the person, [Kokikian], could possibly pay me because she ceased to be a person." He said: "We expected that she would get money; she would have gotten money. She would have sold properties at that time. However, she died. Bam. Can't perform anymore. I elected to take that as the date of breach. December 15th, 2012." Carver also testified, however, that Kokikian "actually never became obligated to pay because she never got any money."

Kokikian's son, respondent John Hovik Meguerian, also testified. He stated that, just before her death, Kokikian told Carver to move out of her home because his "money was settled with her."

Respondents called a forensic scientist and handwriting specialist as an expert witness. The expert had studied and compared Kokikian's signature on known documents (such as her passport) with the signatures on the agreements Carver claimed she had signed. The expert testified it was more likely than not that someone other than Kokikian signed the agreements.

b. Nonsuit

On March 17, 2016, at the close of Carver's case, respondents filed and argued a successful motion for nonsuit. In their notice of motion, respondents stated their motion for nonsuit was based on both Carver's failure to comply with Business and Professions Code section 6201 (related to an attorney's duty to notify a client of the right to arbitrate the attorney's fee claims) and his failure to sue the estate of

Kokikian, as opposed to the administrators of the estate. In their supporting memorandum of points and authorities, respondents also argued the court should grant their motion for nonsuit because Carver admittedly had violated the rules of professional conduct, Carver withdrew from his representation of Kokikian without good cause, and his claims were premature because he admitted he was not to be paid unless and until Kokikian received funds from her divorce case. And when arguing the motion, counsel for respondents claimed nonsuit was proper because: (i) Carver failed to give the required notice of the right to arbitrate, (ii) Carver violated the rules of professional conduct, (iii) Carver failed to sue the estate of Kokikian, and (iv) Carver's claims were premature because he testified Kokikian promised to pay him from proceeds received in the divorce case which was still pending.

Carver opposed the nonsuit, claiming he could not have sent a notice to arbitrate because Kokikian had died, it is not possible to sue an estate directly, and his claims were not premature because Kokikian's death constituted a breach of the agreements such that his fees were due at that time. He stated, "when she died . . . that became a breach because she could not pay after that point." He argued that, because Kokikian had died, she no longer could pay him monies from the divorce case because "[s]he is no longer able to receive money. She cannot be a party to a case. She's not even a party to the divorce case." Carver also stated he "expected [Kokikian] to pay, no matter what."

Although at the hearing, the trial court stated it would not grant nonsuit based on either Carver's failure to give notice of the right to arbitrate or his violations of rules of professional conduct,

the court repeatedly indicated Carver's claims were premature. The court noted Carver's alleged agreements with Kokikian each stated she would pay him when her divorce case was final, but that case was still pending. Addressing Carver, the trial court explained: "This is your agreement. You're bound by the agreement. . . . You're bound by the agreement that you're to collect from the divorce. Divorce is still pending." The court also explained, "the divorce isn't completed. The contingent obligation is premature before the happening of the event." The court ruled: "there is no evidence of sufficient substantiality to support a verdict in your favor. So the court is granting a nonsuit."

4. Judgment

Following entry of nonsuit, respondents submitted a proposed judgment, to which Carver filed objections. Carver also filed a request for a statement of decision.

On April 5, 2016, the trial court entered judgment in favor of respondents and against Carver on all counts of the complaint. Although the court denied nonsuit on two of respondents' proffered grounds (namely, Carver's failure to provide notice of the right to arbitrate and his violation of the rules of professional conduct), the court granted nonsuit on a number of grounds. First, the trial court ruled that, as the administrators of Kokikian's estate, respondents could not be sued individually. Second, the court found "the administrators did not act improperly when they rejected [Carver's] claim in the probate case." Third, the court ruled the statute of limitations had expired and "the case is beyond the statute of limitations." Fourth the court found the retainer agreements were forged. The court also awarded $5,613.50 in costs to respondents. Despite the trial court's findings at the hearing with respect to the

prematurity of Carver's claims, the judgment did not address whether his claims were premature.

That same day, the trial court issued its ruling on Carver's objections to the proposed judgment. The court found Carver "violated the rules of professional conduct and is not entitled to attorney fees,"[1] "the administrators cannot be sued individually and . . . there is no liability to the administrators," "there is no misconduct on the part of the administrators or any personal liability for the administrators," the administrators "did not act improperly when they rejected [Carver's] claim in the probate case," "the statute of limitations was violated and had expired," "an expert testified that the retainer agreements were forged . . . [and] the Court while looking at the retainer agreement and the signatures determined that the retainer agreement was forged," and "the family law case [i.e., the divorce case] was still pending."

Finally, the court denied Carver's request for a statement of decision. The court found "there were no controverted issues and therefore, no grounds for a Request for a Statement of Decision." The court further stated, however, if it were to issue a statement of decision, the court's rulings on Carver's objections to the proposed judgment "constitute a sufficient record and the Court would adopt those rulings as a Statement of Decision."

Notice of entry of judgment was served April 15, 2016.

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[1] It is unclear whether this conflicts with the judgment, where the trial court denied respondents' motion for nonsuit on the grounds Carver violated the rules of professional conduct.

5. Appeal

On May 31, 2016, Carver filed a notice of appeal from the April 5, 2016 judgment of dismissal.

DISCUSSION

1. Applicable Law and Standard of Review

Section 581c of the Code of Civil Procedure (section 581c) governs motions for nonsuit, which are "tantamount to a demurrer to the evidence." (*Loral Corp. v. Moyes* (1985) 174 Cal.App.3d 268, 272.) Because a motion for nonsuit raises issues of law, we review the trial court's ruling on such a motion de novo, employing the same standards which govern the trial court. (*Saunders v. Taylor* (1996) 42 Cal.App.4th 1538, 1541–1542 (*Saunders*).)

Section 581c "allows a defendant to test the sufficiency of the plaintiff's evidence before presenting his or her case." (*Carson v. Facilities Development Co.* (1984) 36 Cal.3d 830, 838 (*Carson*).) "Because a successful nonsuit motion precludes submission of plaintiff's case to the jury, courts grant motions for nonsuit only under very limited circumstances. [Citation.] A trial court must not grant a motion for nonsuit if the evidence presented by the plaintiff would support a jury verdict in the plaintiff's favor. [Citations.] [¶] 'In determining whether plaintiff's evidence is sufficient, the court may not weigh the evidence or consider the credibility of witnesses. Instead, the evidence most favorable to plaintiff must be accepted as true and conflicting evidence must be disregarded. The court must give "to the plaintiff['s] evidence all the value to which it is legally entitled, . . . indulging every legitimate inference which may be drawn from the evidence in plaintiff['s] favor . . . ." ' " (*Id.* at pp. 838–839.) "A nonsuit may be granted only where,

disregarding conflicting evidence on behalf of the defendant and giving to plaintiff's evidence all the value to which it is legally entitled, therein indulging in every legitimate inference which may be drawn from that evidence, the result is a determination that there is no evidence of sufficient substantiality to support a verdict in favor of the plaintiff. [Citations.] Neither the appellate court nor the trial court may weigh the evidence nor consider the credibility of the witnesses." (*Jones v. Ortho Pharmaceutical Corp.* (1985) 163 Cal.App.3d 396, 402 (*Jones*).)

"In an appeal from a judgment of nonsuit, the reviewing court is guided by the same rule requiring evaluation of the evidence in the light most favorable to the plaintiff. 'The judgment of the trial court cannot be sustained unless interpreting the evidence most favorably to plaintiff's case and most strongly against the defendant and resolving all presumptions, inferences and doubts in favor of the plaintiff a judgment for the defendant is required as a matter of law.' [Citations.] [¶] Although a judgment of nonsuit must not be reversed if plaintiff's proof raises nothing more than speculation, suspicion, or conjecture, reversal is warranted if there is 'some substance to plaintiff's evidence upon which reasonable minds could differ . . . .' " (*Carson*, *supra*, 36 Cal.3d at p. 839.) "The rules governing the granting of a nonsuit, however, do not relieve the plaintiff of the burden of establishing the elements of his case. The plaintiff must therefore produce evidence which supports a logical inference in his favor and which does more than merely permit speculation or conjecture. [Citation.] If a plaintiff produces no substantial evidence of liability or proximate cause then the granting of a nonsuit is proper." (*Jones*, *supra*, 163 Cal.App.3d at p. 402.)

Although normally, "[o]nly the grounds specified by the moving party in support of its motion should be considered by the appellate court in reviewing a judgment of nonsuit" (*Carson*, *supra*, 36 Cal.3d at p. 839), "grounds not specified in a motion for nonsuit will be considered by an appellate court only if it is clear that the defect is one which could not have been remedied had it been called to the attention of plaintiff by the motion." (*Lawless v. Calaway* (1944) 24 Cal.2d 81, 94.) Similarly, "[w]e may sustain the granting of the motion on any ground specified in the motion, whether or not it was the ground relied upon by the trial court." (*Saunders*, *supra*, 42 Cal.App.4th at p. 1542.)

2. Because Carver did not and could not show Kokikian or respondents as administrators of her estate breached the agreements, nonsuit was proper.

After a claim in probate is rejected, the claimant, such as Carver here, may file a lawsuit on the rejected claim. (Prob. Code, § 9351.) In such cases, the claimant must file suit within one of two timeframes. First, if the claim was due at the time it was rejected, the claimant must file the action within 90 days after the notice of rejection was given. (Prob. Code, § 9353, subd. (a)(1).) Second, if the claim was not due at the time it was rejected, the claimant must file the action on the claim within 90 days after it becomes due. (*Id.*, subd. (a)(2).) As explained below, Carver's claim for attorney's fees was not due at the time respondents rejected his claim. Accordingly, as a matter of law, no relief was possible on his causes of action and a judgment of nonsuit was proper.

a. Breach of Contract Causes of Action

"[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.) As noted above, we must resolve every conflict in the evidence in favor of Carver and indulge in every presumption and inference which could reasonably support his case. (*Jones*, *supra*, 163 Cal.App.3d at p. 402.) However, Carver is not relieved of his burden as plaintiff to establish each element of his case. (*Ibid.*) "If a plaintiff produces no substantial evidence of liability or proximate cause then the granting of a nonsuit is proper." (*Ibid.*)

As to the first, second, and fourth elements of Carver's breach of contract causes of action, the evidence was conflicted. First, while Carver insisted the agreements were valid and signed by Kokikian, respondents disputed the validity of those agreements. Respondents' expert opined Kokikian's signature on the agreements was likely forged. Second, although it appears undisputed that Carver provided legal services for Kokikian, the extent of those services was unclear. Finally, as to the fourth element of a breach of contract cause of action, the extent of damages Carver allegedly suffered was also unclear. Because the evidence was disputed on these issues, we must resolve all conflicts in Carver's favor as plaintiff. Thus, we assume the agreements were signed by Kokikian and enforceable, Carver performed the alleged legal services for Kokikian, and Carver suffered any alleged damages in the amount stated.

However, Carver did not and could not satisfy the third element of his breach of contract claims. Namely, he did not and

could not show Kokikian breached the alleged retainer agreements.[2] Carver testified Kokikian promised to pay him when she had proceeds from the divorce case. He also submitted three agreements, each of which included terms substantially similar to: "The parties agree that [Kokikian] will pay [Carver's] outstanding invoices when she receives proceeds from [the] divorce case." Carver also attached a declaration to his complaint stating "Since decedent lacked the funds to pay attorney's fees, she agreed to pay me from the proceeds of her divorce case." As a matter of law, based on his own evidence and admissions, Carver cannot avoid the legal conclusion that, because the divorce case remained pending, he could not prove Kokikian, or respondents as her representatives, breached the retainer agreements.

We find no support for Carver's position that Kokikian breached the agreements when she died. At trial, Carver testified that, by dying, Kokikian breached the agreements "because after that point, there was no possibility that the person, [Kokikian], could possibly pay me because she ceased to be a person." He stated he "elected to take [Kokikian's death] as the date of breach." And in his letter brief to this court, Carver simply states the agreements were breached "[w]hen [Kokikian] died on December 15, 2012, thereafter being unable to perform."[3]

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[2] Prior to oral argument, we requested the parties to file letter briefs addressing the following questions: Assuming the three written retainer agreements submitted by appellant are enforceable, how and when were they breached? How does the answer to the first question affect the viability of appellant's causes of action?

[3] In his letter brief, Carver also states without discussion that Kokikian breached the agreements when she "claimed she lacked the funds to pay." Because Carver fails to support this

Carver offers no legal support for such a proposition and we find it entirely unsupported. Indeed, when it suits him, Carver is quick to argue the administrators of Kokikian's estate (i.e., respondents) "step into the shoes of the decedent regarding the claims for or against that person." While we agree generally with that proposition (see *Estate of McGuigan* (2000) 83 Cal.App.4th 639, 653, fn. 11), we do not agree with Carver's selective application of it.

Similarly, we find no support for Carver's statements that respondents breached the agreements when they denied Carver's claim in probate. Again, because the divorce case remained pending, Kokikian's alleged obligation to pay Carver had not yet materialized and, therefore, could not have been breached either by Kokikian when she was alive or by the administrators of her estate after her death.

In his letter brief to this court, Carver argues for the first time that, when respondents denied his claim in probate, they repudiated and, therefore, breached the agreements. Carver never argued or presented evidence on repudiation below. Although Carver spends more than two pages of his letter brief reciting the law of repudiation, he fails to indicate either where in the record evidence or discussion of repudiation was presented, or how the specific facts of this case constitute a repudiation of the agreements. He simply concludes "when [respondents] issued their *Rejection of Creditor's Claim* and thereby repudiated the agreements [*sic*]" and "repudiation of the contracts by

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statement with analysis let alone a reasoned legal analysis, we consider it waived. (*Gunn v. Mariners Church, Inc.* (2008) 167 Cal.App.4th 206, 218; *Strutt v. Ontario Sav. & Loan Assn.* (1972) 28 Cal.App.3d 866, 873.)

[respondents] was a breach." We are not persuaded by this argument.

Finally, even Carver seems to admit Kokikian did not breach the retainer agreements. At trial, he testified Kokikian "actually never became obligated to pay because she never got any money."

In sum, it is undisputed neither Kokikian nor respondents as administrators of her estate had breached the agreements. As such, the jury could not have returned a verdict in Carver's favor on his breach of contract causes of action and nonsuit was proper.

b. Quantum Meruit and Common Counts Causes of Action

Similarly, and despite Carver's insistence to the contrary, because his remaining two causes of action—quantum meruit and common counts—are wholly derivative of his breach of contract claims they also fail as a matter of law for the same reason the breach of contract causes of action fail.

" 'Quantum meruit refers to the well-established principle that "the law implies a promise to pay for services performed under circumstances disclosing that they were not gratuitously rendered." [Citation.] To recover in quantum meruit, a party need not prove the existence of a contract [citations], but it must show the circumstances were such that "the services were rendered under some understanding or expectation of both parties that compensation therefor was to be made." [Citations.]' " (*Chodos v. Borman* (2014) 227 Cal.App.4th 76, 96.) "However, it is well settled that there is no equitable basis for an implied-in-law promise to pay reasonable value when the parties have an actual agreement covering compensation." (*Hedging Concepts, Inc. v. First Alliance Mortgage Co.* (1996)

41 Cal.App.4th 1410, 1419.) In other words, "[q]uantum meruit is an equitable theory which supplies, by implication and in furtherance of equity, implicitly missing contractual terms. Contractual terms regarding a subject are not implicitly missing when the parties have agreed on express terms regarding that subject. A quantum meruit analysis cannot supply 'missing' terms that are not missing." (*Ibid.*; accord, *Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 449, fn. 4 [quantum meruit recovery cannot conflict with contract terms].)

"A common count is not a specific cause of action, . . . rather, it is a simplified form of pleading normally used to aver the existence of various forms of monetary indebtedness, including that arising from an alleged duty to make restitution under an assumpsit theory. [Citations.] When a common count is used as an alternative way of seeking the same recovery demanded in a specific cause of action, and is based on the same facts, the common count is demurrable if the cause of action is demurrable." (*McBride v. Boughton* (2004) 123 Cal.App.4th 379, 394.) In other words, the common count "must stand or fall on the viability of plaintiffs' other claims." (*Berryman v. Merit Property Management, Inc.* (2007) 152 Cal.App.4th 1544, 1560.)

Here, the express terms of the agreements govern Kokikian's duty to pay Carver—namely, Kokikian agreed to pay Carver when she received proceeds from the divorce case. As discussed above, however, because the divorce case remained pending, Carver could not and did not demonstrate Kokikian breached the agreements. Because the breach of contract causes of action failed as a matter of law, Carver's derivative quantum meruit and common counts causes of action also failed as a matter of law.

Thus, although Carver properly filed a claim in probate, his lawsuit on that rejected claim fails as a matter of law and could not support a verdict in his favor. "If a plaintiff produces no substantial evidence of liability or proximate cause then the granting of a nonsuit is proper." (*Jones*, *supra*, 163 Cal.App.3d at p. 402.) It remains to be seen how the parties will handle their dispute once the divorce case is final, at which point, if Kokikian's estate receives proceeds from the divorce case and if Carver's claims for payment for legal services are determined to be legally and factually valid, Carver may be due some amount of compensation.

c. Statute of Limitations and Validity of the Agreements

Although we conclude the judgment of nonsuit was proper, we do not agree with the trial court's ruling that nonsuit was proper based on the theory the applicable statute of limitations had expired. As explained above, the alleged agreements had not been breached. Accordingly, the statute of limitations had not begun to run and could not form the basis for a judgment of nonsuit. In this respect, the judgment is inaccurate.

Similarly, we find the judgment for nonsuit improperly states the agreements "were forged." The parties dispute the validity of the agreements and presented conflicting evidence on that issue. On a motion for nonsuit, courts may not weigh conflicting evidence or consider the credibility of witnesses. Rather, " 'the evidence most favorable to plaintiff must be accepted as true and conflicting evidence must be disregarded. The court must give "to the plaintiff['s] evidence all the value to which it is legally entitled, . . . indulging every legitimate inference which may be drawn from the evidence in plaintiff['s]

favor." ' " (*Carson*, *supra*, 36 Cal.3d at pp. 838–839.) Thus, when ruling on respondents' motion for nonsuit, the trial court erred in making the factual determination that the agreements were forged.

Despite these errors, however, the judgment of nonsuit is proper as explained above. We may affirm the judgment of nonsuit on any legal theory raised below, even if it differs from that relied on by the trial court. (*Saunders*, *supra*, 42 Cal.App.4th at p. 1542.)

3. Remaining Arguments on Appeal

The parties make a number of other arguments on appeal, none of which we find persuasive.

a. Premature Claims

Carver argues the trial court erred in granting nonsuit based on the ground that his claims were premature. He contends respondents failed to raise the issue of premature claims—or a plea in abatement—as an affirmative defense and did not otherwise raise the issue prior to trial. Similarly, Carver argues respondents improperly failed to mention the issue of premature claims in their notice of motion for nonsuit, although respondents did address the issue in their memorandum of points and authorities filed with their notice of motion as well as orally argued the point before the trial court. As a result of these purported errors, Carver asserts respondents waived the defense of premature claims and it was error for the trial court to rely on it when granting the motion for nonsuit. Even if we were to assume, however, that Carver is correct and respondents are barred from arguing his lawsuit is premature, our analysis would not change. The conclusion remains that Carver did not and could not show a breach of the agreements. Thus, regardless of

respondents' affirmative defenses or motion practice, Carver could not and did not prove each element of his causes of action as a matter of law.

b. Findings of Fact and Statement of Decision

Carver argues the trial court improperly decided issues of fact when it stated "I don't find there's any claim against the administrator" and "I don't find it's unreasonable denial in this situation." We disagree. The findings Carver challenges are legal findings, not findings of fact. As discussed above, Carver's causes of action were legally deficient. Thus, as a matter of law, the respondents as administrators of Kokikian's estate acted reasonably in denying his claim in probate, which was substantively the same as his breach of contract and breach of contract-based causes of action here.

Carver also claims we must reverse the judgment because the trial court denied his request for a statement of decision. Again, we disagree. Although in certain circumstances the denial of a statement of decision may be reversible error, it is not here. First, the trial court stated its rulings on Carver's objections to the proposed judgment would constitute its statement of decision if it were to issue one. Second, other than the court's finding that the agreements were forged (which we have held was error), the trial court did not make findings of fact. Indeed, as explained above, a motion for nonsuit requires that the court not make findings of fact, but instead accept as true the facts as presented by the plaintiff. (Code Civ. Proc., § 581c; *Jones*, *supra*, 163 Cal.App.3d at p. 402.) When a trial court decides only a question of law—as on a motion for nonsuit—a statement of decision is not required. (*City of San Diego v. Rancho Penasquitos Partnership* (2003) 105 Cal.App.4th 1013, 1045;

Southern Cal. Gas Co. v. City of Vernon (1995) 41 Cal.App.4th 209, 220–221.)

c. Application of Probate Law and Contract Law

Carver also argues the trial court erred by applying contract law instead of probate law. We do not agree. Although Carver is correct in that he must follow probate procedures for pursuing his creditor's claim against Kokikian's estate (see, e.g., Prob. Code, §§ 9100, 9351, 9353), that is only half of the story. After his creditor's claim was rejected and he filed his action in the trial court based on his rejected claim, he then was obligated to prove his causes of action against respondents. His causes of action are based on or are entirely derivative of contract law. And as discussed above, he was and is unable to demonstrate the agreements were breached.

d. Carver's remaining arguments are immaterial or not well taken.

Carver argues the judgment does not reflect the trial court proceedings, is not supported by the record, and was the result of extrinsic fraud or mistake. To the extent the judgment differs from the trial court's ruling on respondents' motion for nonsuit, we conclude such discrepancies are immaterial. As explained above, the judgment is correct because nonsuit was proper based on Carver's inability to show Kokikian or respondents as administrators of her estate breached the agreements. Thus, although the judgment does not track exactly what the trial court stated at the hearing on the motion for nonsuit, it is nonetheless correct in law.

Carver also claims the trial court appeared biased against him and, therefore, if the case were to be remanded, a new trial

judge must be assigned. Because we are not remanding the case, we need not address this argument.

Finally, in the conclusion to his opening brief, Carver makes a cryptic and entirely unsupported statement that the "trial court lacked subject matter jurisdiction over the cause." We find no support for this position whatsoever.[4]

[4] Three days before oral argument (and more than four months after respondents filed their respondents' brief on appeal), Carver sought permission to file his reply brief on appeal. The following day, we granted his request and ordered his reply brief filed. (He also attempted unsuccessfully to file an "appendix" with his reply brief.) In his reply brief, Carver reiterated many of the arguments and points he made in his opening brief. However, he also argued for the first time that the trial court erred in granting respondents' motion for attorney's fees under Probate Code section 9354. Although in his opening brief on appeal Carver included in his list of "issues presented" three issues related to attorney's fees, he did not actually address or argue any of those listed issues in the body of his opening brief. Accordingly, Carver has waived his claim on appeal that the trial court erred in awarding attorney's fees. "Arguments presented for the first time in an appellant's reply brief are considered waived." (*Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1292, fn. 6.)

DISPOSITION

The judgment is modified by striking in its entirety paragraph number "4" on page two of the judgment. As modified, the judgment is affirmed. The judgment of nonsuit is not an adjudication on the merits with respect to Carver's ability to file suit after the divorce case has concluded. (Code Civ. Proc., § 581c, subd. (c).) Each party to bear their own costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.