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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SERAFIN LOZA, et al., Plaintiffs and Respondents, v. U.S. BANCORP INVESTMENTS, INC., et al., Defendants and Appellants.	B277905 (Los Angeles County Super. Ct. No. BC601174)

APPEAL from an order of the Superior Court of Los Angeles County, Michael Stern, Judge. Reversed.

Palmer, Lombardi & Donohue, Robert B. Ericson and Angelina T. Evans for Defendants and Appellants.

The Law Office of Carlos A. Lloreda, Jr., and Carlos A. Lloreda, Jr., for Plaintiffs and Respondents.

U.S. Bancorp Investments, Inc. (USBI) and Charlene Spero appeal from an order denying a petition to compel arbitration. Because the record contains no evidence Serafin and Ernestina Loza, who speak and understand only Spanish, were prevented or precluded from obtaining a translation of or otherwise learning the contents of the contract they signed, we reverse.

BACKGROUND

Factual Background

On May 14, 2004, Serafin and Ernestina Loza (the Lozas) went to a U.S. Bank branch in west Los Angeles to discuss investing $300,000. Because the Lozas do not speak English, they took their children, Christina and Juan, to the meeting to translate for them.

The Lozas met with Charlene Spero, a licensed securities broker and USBI employee. The Lozas' meeting with Spero was conducted entirely in English, and the Lozas' children were present for all of the meeting except for the last few minutes. Neither Spero nor USBI provided a translater or interpreter for the Lozas. Spero told the Lozas the documents they were signing were routine documents to open their investment account, and that the Lozas did not need to read the documents. And when Mrs. Loza asked if there were any important details that needed to be translated for the Lozas, Spero told her the only thing that remained to be done was signing the documents to open the account. Spero never discussed the agreement's arbitration clause with the Lozas. At the end of the meeting, the Lozas signed a USBI New Account Application that incorporated a Customer Agreement containing an arbitration clause. The Lozas' children were not present when the Lozas signed the

account application. The account the Lozas opened was a variable annuity.

Procedural Background

The Lozas filed suit against USBI and Spero on November 16, 2015, alleging breach of fiduciary duty, fraud, and negligence causes of action. The Lozas alleged that they had intended to open an account that would pay them interest on their $300,000 investment without reducing the principal. Spero put their principal into a variable annuity, which they contend they did not understand, and which they allege did not meet their investment goals.

On February 5, 2016, USBI and Spero filed a petition to compel arbitration. The Lozas opposed the motion, arguing the Lozas did not know what they were signing when they signed the New Account Application with its arbitration agreement, and therefore they were not bound by the arbitration agreement.

The parties argued the motion on March 7, 2016, and then again at an evidentiary hearing on May 16, 2016. On August 5, 2016, the trial court issued an order denying the petition to compel arbitration, in which it determined that the Lozas "had no understanding of the application or the arbitration agreement attendant to it[,] . . . were offered no reasonable opportunity to acquaint themselves with the application before they signed it[,] and were not negligent in failing to learn the nature of the document signed by them. Simply stated," the trial court concluded, the Lozas "had no meaningful grasp [of] the application that they were signing or the legal consequences of placing their signatures on an English-language application when they were requested by a professional to sign a document

that [they] did not complete by themselves and was not adequately explained to them."

USBI and Spero timely appealed.

DISCUSSION

Arbitration agreements are "enforced on the basis of state law standards that apply to contracts in general." (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.) Code of Civil Procedure "sections 1281.2 and 1290.2 create a summary proceeding for resolving" petitions to compel arbitration. (*Engalla*, *supra*, at p. 972.) "In these summary proceedings, the trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination." (*Ibid.*)

"An order denying a petition to compel arbitration is appealable. (Code Civ. Proc., § 1294, subd. (a).) When a trial court's order is based on a question of law, we review the denial de novo. (*Avery v. Integrated Healthcare Holdings, Inc.* (2013) 218 Cal.App.4th 50, 60.) Decisions on issues of fact are reviewed for substantial evidence. [Citation.]" (*Performance Team Freight Systems, Inc. v. Aleman* (2015) 241 Cal.App.4th 1233, 1239.)

The trial court here found fraud in the execution of the agreement containing the arbitration clause, and therefore denied USBI and Spero's petition to compel arbitration. *Rosenthal v. Great Western Financial Securities Corporation* (1996) 14 Cal.4th 394 (*Rosenthal*) requires a trial court to make two factual determinations to support an order denying a petition to compel arbitration for fraud in the execution; the trial court must first find a misrepresentation, and the trial court must then find that the party seeking to avoid arbitration reasonably relied

on that misrepresentation. "[O]ur law is clear that misrepresentation does not render the contract *void* unless the misled party, before making the agreement, lacked a reasonable opportunity to learn its terms." (*Id.* at p. 421.)

USBI and Spero contend the evidence is insufficient to support the trial court's factual determinations in this case. The misrepresentation the Lozas relied upon is not the type of statement upon which a party can legally rely, according to USBI and Spero. And, they argue, the record lends no support to the trial court's determination the Lozas were not negligent in failing to secure their own understanding of the documents they signed. We agree.

The Lozas contend Spero told them they did not need to read the documents they signed on May 14, 2004. Rather, Spero told them the documents were "just routine documents [the Lozas] needed to sign to open the account." "Before my husband and I signed the documents," Mrs. Loza declared, "I asked Charlene B. Spero whether there were any further important details that needed to be translated for our understanding. [¶] She responded that there weren't any further matters of importance that needed to be discussed and that the only remaining thing to be done was the signing of these papers to open the account. [¶] Prior to signing these documents, I asked Charlene B. Spero what the contents of these documents were. [¶] Ms. Charlene Spero's only response was that they were routine documents needed to open the account that we had to sign if we were to invest the money to receive the interest."

"Such statements, even if falsely and fraudulently made, do not void a written contract, because it is generally unreasonable, in reliance on such assurances, to neglect to read a written

agreement before signing it. One party's making of such an assurance does not, by itself, deprive the other party to a prospective contract of the reasonable opportunity to discover the character and essential terms of the agreement." (*Rosenthal*, *supra*, 14 Cal.4th at p. 424.) " 'No law requires that parties dealing at arm's length have a duty to explain to each other the terms of a written contract, particularly where, as here, the language of the contract expressly and plainly provides for the arbitration of disputes arising out of the contractual relationship.' " (*Brookwood v. Bank of America* (1996) 45 Cal.App.4th 1667, 1674.) And " 'one who accepts or signs an instrument, which on its face is a contract, is deemed to assent to all its terms, and cannot escape liability on the ground that he has not read it. If he cannot read, he should have it read or explained to him.' " (*Randas v. YMCA of Metropolitan Los Angeles* (1993) 17 Cal.App.4th 158, 163.) If the Lozas "did not speak or understand English sufficiently to comprehend the English Contract, [they] should have had it read or explained to [them]." (*Ramos v. Westlake Services LLC* (2015) 242 Cal.App.4th 674, 687 (*Ramos*).)

"To make out a claim of fraud in the execution, . . . plaintiffs must show their apparent assent to the contracts . . . is negated by fraud so fundamental that they were deceived as to the basic character of the documents they signed *and had no reasonable opportunity to learn the truth*." (*Rosenthal*, *supra*, 14 Cal.4th at p. 425 [emphasis added].) Fraud in the execution exists when the actions one party has taken have prevented the other party from learning what the document is.

In *Ramos*, for example, Ramos signed an English-language contract containing an arbitration agreement after reviewing a

Spanish-language "translation" of the English-language contract *that omitted the arbitration clause*. (*Ramos*, *supra*, 242 Cal.App.4th at pp. 687-688.) And in *C.I.T. Corp. v. Panac* (1944) 25 Cal.2d 547 (*C.I.T. Corp.*), upon which the trial court heavily relied, the Supreme Court found fraud in the execution where the defendant enlisted the plaintiffs' friend to convince the plaintiffs to sign documents they did not understand and were refused more time to have an attorney review. (*Id.* at pp. 553-554.) Neither of those factual scenarios applies here.

In *Rosenthal*, our Supreme Court dealt with two sets of non-English speaking plaintiffs in two divergent sets of circumstances vis-à-vis their arbitration agreements with Great Western Financial Securities Corporation (GWFSC). One set—Giovanna Greco and Rosalba Kasbarian—each of whom had a prior relationship with Great Western *Bank* (GWB), and each of whom thought they were speaking to a *GWB* representative, testified that the GWFSC representative "took out some papers, which he held in his hand and said that he would read them for us and that Rosalba should translate for [Greco]. She translated for me what he was saying as he glanced over the documents." (*Rosenthal*, *supra*, 14 Cal.4th at p. 427.) After he purported to read the account documents to Greco and Kasbarian, "[h]e explained that the documents he wanted me to sign 'just repeat what I told' " the women. (*Ibid.*) "*In light of plaintiffs' prior relationship with GWB*, which they were led to believe was also the employer of [the GWFSC representatives to whom the two women spoke], their limited ability to understand English, *and [the representatives'] representations that their oral recitals accurately reflected the terms of the agreements,* plaintiffs would not have been negligent in relying on the GWFSC representatives

instead of reading the agreements themselves," *Rosenthal* explained. (*Id.* at p. 428.)

"Two other plaintiffs, Raul Pupo and Felix Segarra, produced evidence of limited facility with English, but [did] not show[] facts sufficient to make their complete reliance on GWFSC's representatives reasonable." (*Rosenthal*, *supra*, 14 Cal.4th at p. 431.) Pupo and Segarra both "produced evidence of limited facility with English," but neither produced evidence that the GWFSC representative "purported to read the contract to them or to explain its full contents orally." (*Ibid.*) And Pupo "had no prior relationship with GWFSC, GWB or the representative." (*Ibid.*) "Under these circumstances, Pupo and Segarra's failure to take measures to learn the contents of the document they signed is attributable to their own negligence, rather than to fraud on the part of GWFSC or its representatives." (*Ibid.*)

The Lozas had no prior relationship with U.S. Bank or USBI. They had never met Spero before their meeting with her. They never asked Spero to read the account documents to them or to have them translated. Spero neither read nor purported to read the documents or make representations about the documents' contents to the Lozas. Indeed, there is no evidence that anything Spero told the Lozas about the documents they were signing was a *mis*representation in the first instance.

Neither does the record contain evidence Spero or USBI somehow prevented the Lozas from having the documents translated on their own or otherwise learning the contents of the documents they signed before they signed them. The Lozas both testified that they brought their daughter with them to the meeting to translate for them. In fact, when asked whether the

Lozas asked the bank to provide an interpreter, Mr. Loza testified that "[w]e had [our daughter] with us." Yet at no point did either of the Lozas ask their daughter to translate the documents for them. And although the Lozas' daughter was not in the room with them when they signed the new account application, nothing prevented the Lozas from walking outside the bank to where she was standing and asking her to read the documents to them. Neither did the Lozas ask for a Spanish version of the document. The record contains no suggestion that any pressure was placed on the Lozas to immediately sign the documents or that they would have been declined the opportunity to take the documents with them to review, have them read and explained, or to consider further before they signed.

In sum, the Lozas did not use a single resource at their disposal to learn the contents of the documents they were signing before they signed them or make it known in any way that they were interested in learning more about the contents of the documents before they signed them. To benefit from their "fraud in the execution" theory, the Lozas must have "been guilty of no negligence and must generally have taken advantage of such reasonable means as lay at [their] hands" to learn the contents of the documents before they signed. (*C.I.T. Corp.*, *supra*, 25 Cal.2d at p. 560.) The Lozas' failure to learn the contents of the documents had nothing to do with USBI or Spero, but rather everything to do with their own failure to take advantage of the reasonable means at their disposal to have the documents' contents disclosed to them.

"There has always been a sharp struggle in the courts between the desire to repress fraud upon the one hand, and on the other to discourage negligence and the opportunity and

invitation to commit perjury. [¶] . . . We are inclined to the view, therefore, that where the failure to familiarize one's self with the contents of a written contract prior to its execution is traceable solely to carelessness or negligence, reformation as a rule should be denied; but that where such failure, and perhaps negligence, is induced . . . by the false representations and fraud of the other party to the contract that its provisions are different from those set out, the courts, even in the absence of a fiduciary or confidential relationship between the parties, should reform, and in most cases have reformed, the instrument so as to cause it to speak the true agreement of the parties." (*California Trust Co. v. Cohn* (1932) 214 Cal. 619, 627.) This is not a contractual reformation case. (*Rosenthal*, *supra*, 14 Cal.4th at p. 421.) Nevertheless, the Supreme Court's balancing of the policy interests in *Cohn* contextualizes our conclusion.

DISPOSITION

The trial court's order denying USBI and Spero's petition to compel arbitration is reversed. On remand, the trial court is directed to grant the petition to compel arbitration and stay the case. USBI and Spero are awarded their costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J. BENDIX, J.*

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