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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JAMSHID SAZEGAR et al.,	B262344
Plaintiffs and Appellants,	(Los Angeles County Super. Ct. No. SC110705)
v.	
BEHDAD JADIDOLAHI,	
Defendant and Respondent.	

APPEAL from an order of the Superior Court of Los Angeles County. Richard A. Stone, Judge. Affirmed.

Jason D. Ahdoot, James Orland and Michael Roofian for Plaintiffs and Appellants.

Anaya Law Group, Alana B. Anaya and Jonathan A. Malek for Defendant and Respondent.

* * * * * *

Homeowners agreed to sell their home to a buyer to avoid foreclosure. When a foreclosure sale was imminent, the homeowners and buyer orally agreed to a new deal—the buyer would pay the foreclosing lender $100,000, and the homeowners would hand over the grant deed. Both parties performed. When the homeowners stopped talking with the buyer, the buyer recorded the grant deed and moved into the house. The homeowners and buyer sued each other, and the jury found that the home belonged to the buyer. The homeowners appeal two of the trial court's evidentiary rulings. We conclude there was no error, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

We recount the facts in the light most favorable to the jury's verdicts. (*Sacramento Sikh Society Bradshaw Temple v. Tatla* (2013) 219 Cal.App.4th 1224, 1227.)

In 2000, Jamshid and Roya Sazegar (collectively, the homeowners) owned a home on Coldwater Canyon Drive in Beverly Hills, California (the Property). Sometimes they lived in the home; other times, they rented it out. By 2009, the homeowners had taken out two loans secured by deeds of trust on the Property, had fallen behind on their loan payments, and had let the Property fall into a state of disrepair.

In October 2009, the homeowners put the Property up for sale. In July 2010, and again in October 2010, the homeowners

signed a written purchase agreement with defendant Behdad Jadidolahi (buyer); the agreements were identical but for the date. Under these agreements, the buyer agreed to pay $1 million to obtain the Property free of the two outstanding loans. The agreements also provided that "[n]either this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller." Because the $1 million purchase price would obviously not cover the $1.5 million in loan debt or the $40,000 in tax liens still outstanding on the Property, the homeowners and the buyer also executed a Short Sale Addendum acknowledging that it was up to the lenders whether to accept less than the full amount they were due.

Escrow never opened under either agreement.

In November 2010, Jamshid[1] called the buyer to advise him that the primary lender was threatening to hold a foreclosure auction on the Property in the next week unless Jamshid paid $98,190.86 to reinstate the loan. Jamshid and the buyer orally agreed to a new deal: The buyer would pay the lender the $98,190.86 immediately due to forestall the foreclosure auction, and the homeowners would execute and deliver a grant deed on the Property. Both parties performed: The buyer paid the lender the next day, and the homeowners executed and delivered a grant deed. However, when the buyer called the homeowners to proceed with the sale transaction, the homeowners refused to

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1 We refer to Jamshid by his first name to avoid confusion with his wife, who shares the same last name. We mean no disrespect.

proceed and refused to repay the buyer the $98,190.86 he had paid the lender.

After giving the homeowners 10 days to respond, the buyer recorded the grant deed with the Los Angeles County Registrar, moved into the Property, and disposed of some of the homeowners' property that was still on the premises.

II. Procedural History

The homeowners sued the buyer. In the operative third amended complaint, the homeowners sued the buyer for (1) intentional misrepresentation, (2) concealment of a material fact, (3) false promise, (4) breach of contract, (5) rescission, (6) quiet title, (7) conversion, (8) claim and delivery, (9) cancellation of the grant deed, and (10) wrongful eviction.[2] The buyer cross-complained, alleging claims for (1) quiet title, (2) breach of contract, and (3) fraud.

The homeowners filed two motions in limine pertinent to this appeal: (1) a motion to exclude evidence of the parties' oral modification of the written purchase agreements; and (2) a motion to admit the buyer's 1995 felony conviction for submitting false claims to the United States government for a small business loan (in violation of 18 U.S.C. § 287). The trial court denied both motions.

The matter proceeded to trial by jury. The jury ruled that title belonged to the buyer; that the buyer owed the homeowners $60,750 for wrongful eviction and for conversion of their personal

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[2] The homeowners initially sued the parties' brokers and brokerage firms as well, but none of those parties is a party to this appeal.

property; and that the parties were entitled to no relief on their remaining claims.

The homeowners filed this timely appeal.

DISCUSSION

The homeowners contend that the trial court erred in (1) admitting evidence regarding the November 2010 oral agreement to modify the purchase agreements, and (2) excluding evidence of the buyer's 1995 conviction.[3] We review the trial court's evidentiary rulings for an abuse of discretion. (*Union Pacific Railroad Co. v. Santa Fe Pacific Pipelines, Inc.* (2014) 231 Cal.App.4th 134, 156.)[4]

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[3] In their briefs on appeal, the homeowners express general discontent with the jury's findings, asserting that (1) the original purchase agreement was created by "whiting out" and writing over an earlier purchase agreement involving a different prospective purchaser; (2) the buyer never funded the escrow and wrongly withdrew from escrow without their consent; (3) they signed the grant deed delivered to the buyer under false pretenses; (4) they filed for bankruptcy at some point; and (5) the net result of the jury's verdict is that the buyer got the Property for less than $100,000 instead of $1 million. These comments are not supported by reasoned argument or citation to relevant legal authority; consequently, we need not consider them. (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52.) We nevertheless note that the buyer did not end up with a better deal—instead of paying $1 million for a home free and clear of all loans, he paid nearly $100,000 for a home saddled with $1.5 million in debt.

[4] The homeowners filed a motion to augment the record with several trial exhibits. We grant the motion as to the exhibits admitted at trial, but deny it as to the exhibits not so admitted.

I. Evidence of the Oral Agreement

California's statute of frauds requires that "[a]n agreement . . . for the sale of real property" is "invalid" unless it is "in writing" and signed by the party to be charged. (Civ. Code, § 1624, subd. (a)(3).) Any amendment or modification to such an agreement must also be in writing if the agreement so requires. (*Id.*, § 1698, subd. (c); *Conley v. Matthes* (1997) 56 Cal.App.4th 1453, 1465 ["[o]ral modifications of written agreements are precluded only if the written agreement provides for written modification"].) However, one of the "well-recognized exception[s]" to these rules is the doctrine of part performance. (*Sutton v. Warner* (1993) 12 Cal.App.4th 415, 422; *In re Marriage of Benson* (2005) 36 Cal.4th 1096, 1108.) Under that doctrine, an oral agreement for the transfer of real property will be enforced—notwithstanding non-compliance with the statute of frauds—if (1) the buyer has taken possession of the property, and (2) "'in reliance on the oral agreement,'" the buyer either (a) "'makes a full or partial payment of the purchase price'" or (b) "'makes valuable and substantial improvements on the property.'" (*Sutton*, at p. 422, italics omitted.) Partial performance and the writing required by the statute of frauds serve the same function—namely, to provide evidence "confirming that a bargain was in fact reached." (*In re Marriage of Benson*, at p. 1109.)

The oral agreement proffered in this case meets both requirements of the partial performance exception. The buyer took possession of the Property and paid the lender nearly $100,000 in reliance on the homeowners' promise to provide him

the grant deed.[5] Consequently, the trial court did not abuse its discretion in admitting evidence of the oral agreement.

The homeowners assert that Civil Code section 1698, subdivision (c) bars the admission of evidence of any oral modification in this case. In pertinent part, that provision provides: "[U]nless the contract otherwise expressly provides, a contract in writing may be modified by an oral agreement supported by new consideration." (Civ. Code, § 1698, subd. (c); accord, *In re Ins. Installment Fee Cases* (2012) 211 Cal.App.4th 1395, 1413 [applying this provision].) The homeowners contend that the purchase agreements in this case required any modifications to be in writing, and that the buyer provided no new consideration because all he did was pay a lender $98,190.86 when he was already obligated to pay them $1 million. We need not decide whether the oral modification was valid—and hence evidence of it admissible—under Civil Code section 1698, subdivision (c) because, as we explain above, the oral modification was valid (and hence admissible) under the doctrine of partial performance. One basis for admissibility is enough.

II. Evidence of the Buyer's 1995 Conviction

A trial court may admit a witness's prior felony conviction as grist for impeachment of the witness's credibility after considering (1) "whether the prior conviction reflects adversely on [the witness's] honesty or veracity"; (2) whether the prior

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[5] The record is unclear as to whether the oral modification was meant to supplement, or instead substitute for, the written purchase agreements. No matter which, the trial court instructed the jury on oral modifications, and the jury found such a modification. The homeowners do not challenge the sufficiency of the evidence underlying that finding.

conviction is near or remote in time; (3) "whether the conviction is for the same or substantially similar conduct [at issue in the current litigation]"; and (4) whether admission of the conviction will deter the witness from testifying. (Evid. Code, §§ 352 & 788; *People v. Mendoza* (2000) 78 Cal.App.4th 918, 925, citing *People v. Beagle* (1972) 6 Cal.3d 441, 453.) Given the age of the buyer's 1995 conviction, the fact that he had led a relatively crime free life in the intervening years, and the lack of similarity with the issues in the current case (submitting false claims versus lying about a real estate contract), the trial court acted within its broad discretion in excluding the conviction. (Accord, *Beagle*, at p. 453 ["[R]emoteness of the prior conviction is . . . a factor of no small importance. Even one involving fraud or stealing . . . if it occurred long before and has been followed by a legally blameless life, should generally be excluded."]; *People v. Clark* (2011) 52 Cal.4th 856, 932 (*Clark*) [same].)

The homeowners press two arguments. First, they contend that the buyer's credibility in this type of "he said"-"we said" case was crucial, and they cite cases in which similarly ancient convictions have been admitted. At bottom, the homeowners are asking us to reweigh the factors that the trial court properly articulated and applied; this, we may not do. (E.g., *County of Imperial v. Superior Court* (2007) 152 Cal.App.4th 13, 35 [appellate court may not "reweigh . . . discretionary factors to reach a contrary result"].) Indeed, the decisions the homeowners cite all involve an appellate court deferring to the trial court's ruling on the admissibility of the prior conviction. (*Piscitelli v. Salesian Society* (2008) 166 Cal.App.4th 1, 11-12 [deferring to decision to admit 17-year-old conviction]; *Robbins v. Wong* (1994)

27 Cal.App.4th 261, 274 [same, as to 15-year-old conviction].) We give the trial court's ruling in this case the same deference.

Second, the homeowners argue that the buyer "opened the door" to the admission of his prior conviction by lying about it during his testimony. The trial court had excluded the buyer's conviction when ruling on the motion in limine prior to trial. The homeowners' attorney violated that ruling, asking the buyer during cross-examination at trial whether he had ever been convicted of a felony; the buyer responded, "as far as I know, no." The homeowners' attorney then urged the court to reconsider its earlier ruling in light of the buyer's alleged "perjury" in denying the prior conviction on the stand. The court ruled there was no perjury, finding that the buyer's answer reflected "a misunderstanding with regard to the questions that were being asked" rather than an intentional falsehood. The court went on to reweigh the four factors outlined above, and reaffirmed its earlier ruling excluding the conviction. We must defer to the trial court's assessment of the buyer's credibility in answering the question about his prior conviction. (*In re Maya L.* (2014) 232 Cal.App.4th 81, 104, fn. 6.) What is more, the homeowners are only able to argue that the buyer opened the door because *they* violated the court's earlier ruling; we are reluctant to reward such conduct. Most fundamentally, the trial court's ruling—even considering the buyer's answer on the stand—did not "exceed[] the bounds of reason" (*Clark*, *supra*, 52 Cal.4th at p. 933); because it did not, we must leave that ruling intact.

DISPOSITION

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

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
GOODMAN

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