Filed 9/12/18 Wei v. Chen CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CHEN CHUANG WEI, Plaintiff and Respondent, v. WEN TU CHEN et al., Defendants and Appellants.	B283024 (Los Angeles County Super. Ct. No. BC616605)

APPEAL from a judgment of the Superior Court of Los Angeles County, William F. Fahey, Judge. Affirmed.

Younesi & Yoss, Jan A. Yoss, for Defendants and Appellants.

Law Offices of Vincent Y. Lin, Vincent Y. Lin and Vincent Chan for Plaintiff and Respondent.

I. INTRODUCTION

Defendant Wen Tu Chen appeals from a judgment following a bench trial. Plaintiff Chen Chuang Wei is the current trustee of the Huang 2013 Family Trust dated June 19, 2013 (Huang Trust) and defendant's stepson. Plaintiff's mother, Huang Miao Wei[1], was the trustee until her death in 2016. Huang and defendant were previously married and purchased property together. After their divorce, Huang as trustee of the Huang Trust sold her 50 percent interest in the property to defendant for $900,000.

The sale agreement was memorialized in escrow instructions that included the two disputed terms: defendant was credited $200,000 he had paid previously paid Huang, and defendant was credited $198,084.45 as reimbursement for Huang's share of certain costs he had paid on the property. Huang subsequently sued alleging she had not received the full $900,000 owed and disputing defendant's entitlement to the $200,000 and $198,084.45 credits. Plaintiff intervened in the action after Huang died.

The court found in favor of plaintiff, determining that defendant was not entitled to the $200,000 credit and to $100,000 of the $198,084.45 credit. The court accordingly entered judgment in the amount of $300,000.

Defendant contends the trial court erred by in effect reforming the contract to delete the $200,000 credit and reduce the $198,084.45 credit, even though plaintiff did not plead

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[1] Huang Miao Wei shares the same last name with plaintiff. We will refer to her by her first name for clarity. No disrespect is intended.

reformation. Defendant further contends that insufficient evidence supports the judgment and the court improperly allowed extrinsic evidence to dispute the contract terms. We affirm.

II. BACKGROUND

A. *Factual Background*

Defendant and Huang owned property at 514, 518 and 520 1/2 Howard Street in Alhambra, California (Howard Street properties). In 2015, defendant purchased Huang's 50 percent share of the Howard Street properties for $900,000. Defendant and Huang retained Culture Escrow, Inc. (escrow company) and escrow officer Kevin Hsu (Hsu) for the sale. The sale agreement was memorialized in a document entitled "SUPPLEMENTAL SALE ESCROW INSTRUCTIONS" (escrow instructions). Huang and defendant initialed and signed the escrow instructions. The escrow instructions stated: "Buyer has paid to seller outside of escrow, receipt of which is hereby acknowledged by seller the sum of . . . [$]200,000.00." And the instructions authorized the escrow company "to CREDIT BUYER AND DEBIT SELLER in the amount of $198,084.45 for reimbursement of up-front costs at close of escrow." Part of the purchase price was covered by a $471,915.55 note to Huang. Accordingly, defendant executed a first deed of trust in the amount of $471,915.55 in favor of Huang as trustee of the Huang Trust. The parties executed a grant deed reflecting the transfer of title on September 29, 2015.

On April 12, 2016, Huang as trustee of the Huang Trust sued defendant individually and in his capacity as trustee of the Wen Tu Chen Trust dated 10/18/2006 (Chen Trust), Hsu, and the

escrow company, alleging fraud, breach of fiduciary duty, breach of contract, and specific performance. Huang alleged that she had received only the deed of trust and not the balance of the $900,000. After Huang's death, plaintiff as trustee of the Huang Trust filed a first amended complaint and then a complaint in intervention.

B. *Trial and Judgment*

Trial occurred on March 15, 2017 and March 16, 2017. We summarize the relevant testimony.

1. Defendant

Defendant and Huang purchased several properties together during and after their marriage. Defendant communicated with Huang in either Taiwanese or Mandarin because Huang's English was "extremely poor." Therefore, defendant primarily handled the real estate transactions.

In 2015, defendant, Huang, and Hsu had a meeting to discuss the sale of Huang's interest in the Howard Street properties. They discussed the $200,000 credit. Defendant told Huang that she owed him $200,000 from an old loan, and she agreed.

The loan originated years earlier with the purchase of a property in Chino, California. Defendant's testimony on the loan was contradictory. Defendant testified both that he loaned $200,000 to Huang for the purchase, and that he loaned the money to plaintiff. The only documentary evidence of the loan was a $200,000 cashier's check made out to plaintiff, which

plaintiff endorsed and cashed. Defendant testified he prepared a promissory note for this loan and plaintiff gave the note back to him when plaintiff returned the money. Defendant testified both that he had oral and written agreements for this loan, and that he had no loan agreement. No written loan agreement was produced at trial.

Also at the 2015 meeting, defendant told Hsu that he was entitled to a $198,084.45 credit. Defendant derived that number by taking half of a $396,168.90 figure representing fees defendant said he had paid for development of the Howard Street properties. Defendant identified Exhibit 44, a 77-page document, as receipts for the fees. Included among the fees was $200,000 defendant paid as a security deposit for a water pipeline. Defendant eventually received back the entire $200,000 security deposit. He knew he would be getting the deposit back but did not tell that to Huang or Hsu. As the trial court noted, defendant did not testify that he specifically told Huang about the $198,084.45 reimbursement credit.

Defendant and Huang discussed the terms of their agreement in Chinese. Defendant testified Huang understood and agreed to all of the terms. Hsu documented the terms in the escrow instructions in English. Defendant and Huang initialed each page of the escrow instructions and signed the document. When escrow closed, defendant received sole ownership of the Howard Street properties and $200,000 out of escrow.

2. Plaintiff

In 2010, Plaintiff was interested in buying a property in Chino. Defendant offered to buy it as a gift for plaintiff. Plaintiff

testified defendant gave him the $200,000 check as a gift, but plaintiff also referred to the check as a loan. Two days after delivering the $200,000 check, defendant asked plaintiff to pay $100,000 back, which plaintiff did. Huang then gave plaintiff around $120,000 to help plaintiff complete the purchase of the Chino property. Defendant never requested repayment of the remaining $100,000. Plaintiff did not learn that defendant considered the money a loan until the trial.

Plaintiff testified that Huang could not understand, read, or write English. Huang and defendant had other properties together, including 10 condominiums in Huntington Park and properties in Texas and Michigan. She followed defendant's lead in real estate.

Plaintiff was not present when defendant and Huang agreed to the sale of the Howard Street properties. But he talked to Huang about the deal later when Huang complained she had not received the $900,000 she was owed from the sale.

3. Kevin Hsu

Hsu began preparing escrow instructions for the sale of the Howard Street properties in June 2015. In July 2015, defendant told Hsu to include the $200,000 credit in the escrow instructions.

In September 2015, Hsu prepared final escrow instructions in connection with a meeting with defendant and Huang. At the meeting, defendant gave Hsu a note listing the terms of the deal, including the $200,000 and $198,084.45 credits. Hsu used that note and the discussions at the meeting to prepare the escrow instructions. During the meeting, defendant and Huang talked

about the terms of the deal. Huang understood the terms and that she would be receiving the note but no cash out of the deal.

4. Decision

The trial court ruled in favor of plaintiff.[2] The trial court determined that credible evidence showed the $200,000 check was a gift to plaintiff, not a loan to Huang, and thus defendant still owed $200,000 to the Huang Trust. The court stated it was not giving much weight to defendant's testimony that the $200,000 was a loan and found the information given to Hsu about the $200,000 credit was incorrect.

The trial court found defendant owed plaintiff $100,000 of the $198,084.45 credit because defendant knew he would be refunded the $200,000 security deposit but did not disclose that.

On April 6, 2017, the trial court entered judgment in favor of plaintiff in the amount of $300,000 jointly and severally against defendant individually and as trustee of the Chen Trust for specific performance and breach of contract.[3]

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[2] The trial court granted the escrow company and Hsu's motion for judgment against plaintiff.

[3] The judgment was amended nunc pro tunc on April 26, 2017 to correct plaintiff's name.

III. DISCUSSION

A. *The Doctrine of Implied Findings Applies*

In the absence of a statement of decision, the doctrine of implied findings applies. (*LSREF2 Clover Property 4, LLC v. Festival Retail Fund 1, LP* (2016) 3 Cal.App.5th 1067, 1076.) Defendant waived a statement of decision by not making a timely request. (*Jones v. Adams Financial Services* (1999) 71 Cal.App.4th 831, 840.) The bench trial concluded in less than eight hours over two days. Therefore, defendant needed to request a statement of decision before submission of the matter. (Code Civ. Proc., § 632.) Defendant did not request a statement of decision until after entry of judgment.

Under the doctrine of implied findings, we presume the trial court made all factual findings necessary to support the judgment for which substantial evidence exists in the appellate record. (*LSREF2 Clover Property 4, LLC v. Festival Retail Fund 1, LP, supra*, 3 Cal.App.5th at p. 1076.) The doctrine of implied findings is "'a natural and logical corollary to three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error.'" (*Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 970.)

B. *Reformation of the Contract Was at Issue in the Trial*

Defendant argues that he did not breach the plain language of the escrow instructions granting him the $200,000 and $198,084.45 credits. He asserts that to find for plaintiff, the trial court in effect had to change the terms of the escrow instructions to delete the $200,000 credit term and modify the $198,084.45 credit term. But because plaintiff did not plead reformation of contract, defendant contends the trial court had no basis to change the contract and award $300,000 to plaintiff. We are not persuaded because the parties tried the case as if plaintiff had pled reformation.

The doctrine of theory of trial "holds that '[w]here the parties try the case on the assumption that a cause of action is stated, that certain issues are raised by the pleadings, that a particular issue is controlling, or that other steps affecting the course of the trial are correct, neither party can change this theory for purposes of review on appeal.'" (*State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1130; see also *Hilliard v. A.H. Robins Co.* (1983) 148 Cal.App.3d 374, 392 [punitive damages claim was at issue, even though not properly pled, because claim had been tried]; *Jones v. Dutra Construction Co.* (1997) 57 Cal.App.4th 871, 877 [plaintiff "waived any right to claim on appeal that the answer was defective" and did not state an affirmative defense because parties had litigated the merits of that affirmative defense].) Thus, even when a complaint does not properly plead a cause of action, if the parties proceed to litigate the merits of that cause of action to a judgment, a party cannot later on appeal contend that it was not properly before the trial court. Likewise, when the

parties litigate a factual issue at trial, a party "cannot for the first time on appeal" argue that the factual issue is irrelevant and the trial court erred by deciding the issue. (*County of Los Angeles v. Southern Cal. Edison Co.* (2003) 112 Cal.App.4th 1108, 1119.)

Although the pleadings did not expressly ask for reformation of the escrow instructions, the parties and the trial judge tried the case as if reformation of the $200,000 and $198,084.45 credits was at issue. Defendant concedes on appeal that at trial "the crux of [p]laintiff/[r]espondent's claim was that . . . the terms of the contract should be reformed[.]" The trial focused on whether defendant in fact had paid or loaned the amounts credited, whether the credits had been properly included in the escrow instructions, and plaintiff's entitlement to receive those amounts from defendant. Defendant never argued that the trial court could not modify those credits and never objected that reformation had not been pled. Instead, defense counsel argued that "a crucial fact in this case" was "[w]hether or not in nature this is a gift or this is at least in the form of a loan" and that the escrow instructions were done "correctly." The trial court summed up: "This is really an action by the trust and whether the trust was somehow deprived of the benefits to which it was entitled." Thus, the parties and trial court tried the case as if plaintiff had pled a cause of action for reforming the escrow instructions to give the trust the benefits to which it was entitled.[4] Defendant cannot now for the first time argue that the trial court erred by deciding the issues presented to it.

Further, we "must affirm the trial court's judgment . . . if it is correct on any ground," regardless of the reasons the trial court

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[4] A trial court may order specific performance of a reformed contract. (Civ. Code, § 3402.)

gave for the decision. (*Donovan v. RRL Corp.* (2001) 26 Cal.4th 261, 278, fn. 5; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 18-19.) Likewise, we can affirm a remedy even if that remedy was not specifically pled. (*Singleton v. Perry* (1955) 45 Cal.2d 489, 498-499 ["It is the usual rule that in a contested case plaintiff may secure relief justified by the allegations of the complaint and the evidence, even though the relief is greater than or different from that demanded"].)

Here the pleadings sufficiently alleged the basis for reformation under Civil Code section 3399, which allows a contract to be revised when "through fraud . . . a written contract does not truly express the intention of the parties[.]" (Civ. Code, § 3399.) The Civil Code also defines fraudulent inducement to enter into a contract: "Actual fraud . . . consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract: [¶] 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; . . . ." (Civ. Code, § 1572.)[5]

The pleadings alleged that in 2015 defendant told Huang that Hsu would prepare escrow documents whereby Huang would receive $900,000 for her share of the Howard Street properties and that the English language escrow documents in fact reflected

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[5] """The necessary elements of fraud are: (1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage." [Citations.]"' (*Belasco v. Wells* (2015) 234 Cal.App.4th 409, 424.)

that agreement. Plaintiff further alleged that defendant intentionally did not tell her the escrow instructions included the disputed terms, Huang relied on defendant's representations in signing the escrow instructions, and as a result Huang did not receive the full $900,000. This was enough, if supported by substantial evidence, for the trial court to grant the judgment in effect reforming the escrow instructions.

C. *Substantial Evidence Supports the Judgment*

Defendant argues the evidence does not support findings that Huang misunderstood the terms of the contract, the $200,000 check to plaintiff was a gift rather than a loan to Huang, and defendant did not incur at least $198,084.45 in charges for which he was entitled to be reimbursed. We disagree.

Substantial evidence supports implicit findings that defendant misrepresented the terms of the escrow instructions to Huang with the intent to deceive her, she relied on his representations in entering into the agreement, and she did not receive the benefits she expected. Defendant instructed Hsu about the credits to include in the escrow instructions. Huang did not read English and so needed to rely on defendant's explanation of the English escrow instructions, as she had followed his lead with past transactions. Defendant was not truthful in explaining the escrow instructions. He did not tell her or Hsu that he expected to receive back the $200,000 security deposit, and instead treated it as a fee that he had incurred. He did not testify that he specifically told Huang about the $198,084.45 credit. Huang expected to receive $900,000 from the transaction, and when she did not, she complained to plaintiff.

Substantial evidence supports the finding that the $200,000 check was not a loan to Huang. At a minimum, the undisputed evidence showed defendant gave plaintiff, not Huang, the $200,000 check, and plaintiff quickly paid back half. The only evidence that defendant loaned Huang $200,000 was his say-so. The trial court found defendant not credible on this point, and his testimony about the $200,000 credit was contradictory.

Defendant contends that the evidence does not support the trial court's reduction of the $198,084.45 credit by $100,000 because defendant incurred much more on the Howard Street properties, even excluding the $200,000 deposit. Defendant points to Exhibit 44, the compilation of defendant's expenses, arguing the expenses add up to $385,273.24 excluding the $200,000 deposit. However, defendant did not testify to that at trial. The trial court specifically noted that "in no way, shape or form, did he testify about the entirety of Exhibit 44."

Finally, defendant argues the trial court erred by permitting extrinsic evidence to interpret unambiguous terms in the escrow instructions in violation of the parole evidence rule. This was no error because extrinsic evidence to demonstrate fraud in contract formation is an exception to the parole evidence rule. (*Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Assn.* (2013) 55 Cal.4th 1169, 1174-1175; see Code Civ. Proc., § 1856, subd. (g).)

IV. DISPOSITION

The judgment is affirmed. Plaintiff Chen Chuang Wei as trustee of the Huang 2013 Family Trust dated June 19, 2013 is entitled to recover his costs on appeal.

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SEIGLE, J.*

We concur:

BAKER, Acting P.J.

MOOR, J.

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