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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

AVNINDER S. DHALIWAL,

Plaintiff and Respondent,

v.

CHARLES G. WESTLUND, JR.,

Defendant and Appellant.

B242282

(Los Angeles County  
Super. Ct. No. YC062670)

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

Evans, Brizendine & Silver and Richard C. Brizendine for Defendant and  
Appellant.

John Guy for Plaintiff and Respondent.

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Charles G. Westlund, Jr., appeals from the trial court's judgment after a bench trial awarding Avninder S. Dhaliwal \$50,000. We affirm.

### **BACKGROUND**

On June 23, 2010, Dhaliwal filed a complaint against Westlund. Westlund demurred, and the trial court sustained the demurrer with leave to amend. Dhaliwal filed a first amended complaint on September 10, 2010, naming Westlund and Charanjeet Kaur<sup>1</sup> as defendants. Westlund's answer asserted the statute of limitations as an affirmative defense.

The complaint alleged that Westlund was the owner and managing member of The Starting Gate, LLC (Starting Gate). On April 4, 2008, Westlund entered into an oral contract with Dhaliwal to sell the business to Dhaliwal for \$500,000 by October 4, 2008, by transferring Westlund's interest in Starting Gate to Dhaliwal. Dhaliwal paid Westlund \$50,000 in cash. Westlund breached the agreement because he did not transfer the business to Dhaliwal and refused to return the \$50,000. Westlund also defrauded Dhaliwal by falsely representing that he would sell the business to Dhaliwal, with the intent of inducing Dhaliwal to act in reliance on that representation. Dhaliwal paid Westlund \$50,000 with the expectation that Dhaliwal would be able to complete the purchase of the business. Kaur was Dhaliwal's agent, and she negligently failed to competently advise Dhaliwal about the purchase. The complaint alleged causes of action for breach of contract, negligence, fraud, money had and received, and declaratory relief.

At a court trial, Dhaliwal testified that on March 4, 2008,<sup>2</sup> he met with Westlund, Kaur, and Westlund's lawyer at the lawyer's office. Kaur, who translated for Dhaliwal (who spoke Punjabi) at the meeting, had told Dhaliwal about the business and introduced Dhaliwal to Westlund. Dhaliwal brought \$50,000 cash in his pocket, in \$100 and \$50 bills, and gave Westlund the \$50,000 in cash so that he could see the tax returns and

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<sup>1</sup> Kaur defaulted.

<sup>2</sup> The receipt stated that the \$50,000 was transferred on April 4, 2008, but that was an error.

business records of Starting Gate, which was a bar next to the Los Alamitos race track. Westlund and Kaur counted the money. Westlund went into the next room to get an envelope, put the money in the envelope, and placed the envelope on the side of Westlund's chair next to the wall. Westlund gave Dhaliwal a receipt for the money. Kaur and Dhaliwal left with a proposed purchase agreement, but without the envelope; Dhaliwal believed that Westlund took the money. Despite numerous attempts, Dhaliwal was never shown the records, and could not get hold of Westlund or his lawyer. Dhaliwal believed he would get the \$50,000 back if he decided not to enter into an agreement to purchase the business. When he was unable to contact Westlund on his own or through Kaur, Dhaliwal realized he would not get the \$50,000 back, and contacted an attorney.

Westlund testified that at the March 4, 2008 meeting with Dhaliwal, they reached an agreement that Dhaliwal would pay \$500,000 for the business, and Westlund would pay a \$50,000 finder's fee to Kaur. The parties agreed that the cash would be her finder's fee. Dhaliwal gave Westlund the \$50,000, and Westlund put it in an envelope and gave it to Kaur, who left with the envelope holding the money. Westlund signed a receipt to document that he had received the \$50,000. The receipt stated the money was "[n]ot to apply towards ANY purchase." Dhaliwal did not show up to execute the purchase agreement, and Westlund was unable to consummate the sale. Westlund believed Kaur owed him the \$50,000. Eventually, Westlund sold his interest in the business for \$260,000.

On cross-examination, Westlund testified that Starting Gate was "successful." The tax returns from 2005, 2006, and 2007 all showed losses. Westlund explained that although he said that the business was making money, he "couldn't explain the nuance of depreciation in the tax schedules."

Westlund's attorney testified that he had the financial documents and the tax returns for Starting Gate available for Dhaliwal to inspect on the Monday after the meeting, and Dhaliwal did not show up for the scheduled appointment; he had no further contact with Dhaliwal. He did not prepare a written contract. Westlund's attorney

believed the finder's fee was Dhaliwal's responsibility, and the sum of \$50,000 came up for the first time at the March 4 meeting. He thought that the \$50,000 was Kaur's idea. He noticed the envelope, and understood that the money was given to Westlund, who then elected to pay Kaur. Kaur left the office with the envelope. After Dhaliwal did not show up for the meeting to review the tax returns, Westlund's attorney called Kaur, who put him off and then never called him back.

Westlund's attorney pointed out that Dhaliwal filed the complaint more than two years after the date of breach, which was raised as an affirmative defense in the answer to the complaint. The statute of limitations for fraud was three years from when Dhaliwal would have known of the fraud.

At the court's request, Dhaliwal's attorney brought a purchase and sale agreement into court, and the court admitted it into evidence over Westlund's objection. Dhaliwal testified that Westlund's attorney printed the purchase agreement from his computer and gave it to him at the meeting at which Dhaliwal paid Westlund the \$50,000.

On April 19, 2012, the court filed a judgment awarding \$50,000 to Dhaliwal plus interest from May 1, 2008. No party requested a statement of decision. Westlund appealed.

## **DISCUSSION**

Westlund argues that the two-year statute of limitations for breach of an oral contract, Code of Civil Procedure<sup>3</sup> section 339, applies and so the complaint was not timely filed. He argues that the statute began to run on March 7, 2008 (when Dhaliwal was denied access to the financial records), more than two years before the complaint was filed on June 23, 2010.

This argument ignores that the statute of limitations for fraud is three years (§ 338, subd. (d)), and the complaint, which included a fraud cause of action, was filed within three years of the March 7, 2008 meeting. The "[r]esolution of a statute of limitations

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<sup>3</sup> All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

[defense] is normally a question of fact.” (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 810.) Because the parties did not request a statement of decision, we cannot tell on what ground the trial court based its decision; we imply all findings necessary to sustain the judgment that are supported by substantial evidence. (*In re Marriage of Starr* (2010) 189 Cal.App.4th 277, 287.) We therefore imply that the trial court found in favor of Dhaliwal on the timely fraud cause of action.

The complaint’s fraud cause of action alleges that Westlund represented that he would sell the business to Dhaliwal, knowing those representations to be false, and that in reliance on those representations, Dhaliwal was induced to deliver the \$50,000; having received nothing in return, Dhaliwal was damaged in the sum of \$50,000. A cause of action for fraud accrues at the time that the aggrieved party discovers the facts constituting fraud. (§ 338, subd. (d).) As Westlund’s brief states, Dhaliwal knew as of (at the latest) May 1, 2008 that Westlund was not going to sell him the business, which is when he discovered the facts constituting the alleged fraud. That date was within three years of the filing of the complaint on June 23, 2010.

Substantial evidence supports the conclusion that Westlund committed fraud. In general, the elements of a fraud claim are “(1) a misrepresentation of a material fact (false representation, concealment, or nondisclosure); (2) knowledge of falsity; (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage. [Citation.]” (*Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 259.) At trial, Dhaliwal testified that he believed he would get the \$50,000 back if he decided not to enter into a purchase agreement. The testimony at trial, construed favorably to the judgment, supports an inference that Westlund, working with and speaking through Kaur (the broker and translator), misrepresented to Dhaliwal that if he gave Westlund the \$50,000, Westlund would show him the financial records of the business so that Dhaliwal could decide whether to enter into a purchase agreement. Westlund knew this was false, because he had no intention of showing Dhaliwal the tax returns (thus enabling Dhaliwal to decide whether to enter into a purchase agreement), because the returns showed that Starting Gate lost money for each of the last three years. Westlund signed a receipt

stating that the \$50,000 was not part of the purchase price, and Dhaliwal testified that he left with a proposed purchase agreement, which supports a conclusion that Westlund intended Dhaliwal to rely on the misrepresentation that he would get the \$50,000 back if, after reviewing the financial documents, Dhaliwal decided not to go through with the purchase. Westlund's signature on the receipt, and the proposed purchase agreement, are also evidence that Dhaliwal's reliance was justifiable. The resulting damage was undisputed: Dhaliwal was out his \$50,000 in cash.

Where there is conflicting evidence, we accept the inferences chosen by the trier of fact. (*Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871–872.) “[W]e look only to the evidence supporting the prevailing party. [Citation.]” “The trier of fact is not required to believe even uncontradicted testimony.” (*Rodney F. v. Karen M.* (1998) 61 Cal.App.4th 233, 241.) There was substantial evidence of fraud to support the judgment.

#### **DISPOSITION**

The judgment is affirmed. Costs on appeal are awarded to respondent.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.