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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of MIKE and LAYLA
BOYAJIAN.

MIKE BOYAJIAN,

Appellant,

v.

HARRY K. AYVAZIAN,

Appellant;

LAYLA BOYAJIAN,

Appellant.

G043629

(Super. Ct. No. 04D001384)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Robert J. Moss, Judge. Affirmed.

Law Offices of Robert Boyajian and Robert Boyajian for Appellants Mike Boyajian and Layla Boyajian.

James G. Morris, Law Offices of Phunphilas Viravan and Phunphilas Viravan for Appellant Harry K. Ayvazian.

* * *

Over the course of a decade, from 1992 to 2002, Mike and Layla Boyajian¹ borrowed over \$600,000 from Mike’s nephew — Harry K. Ayvazian. In 2002, Mike said he had no money to pay Harry back and asked Harry to extend the term of the loan. Mike then unilaterally changed the interest rate on the loan from 10 percent to 12 percent compounded monthly, purportedly to show his “gratitude and appreciation” to Harry. Harry was surprised by the high interest rate and did not know it was usurious.

In 2007, Mike sought declaratory relief against Harry and asked the court to declare the interest rate on the loan to be usurious. Harry filed a cross-complaint for fraud and reformation of contract. The trial court applied the equitable remedy of reformation of contract to revise the interest rate on the loan to 10 percent and awarded attorney’s fees to Harry as the prevailing party. Mike and Layla appeal from that portion of the judgment. Mike also contends he was prejudiced by the court’s premature signing of its statement of decision. Harry cross-appeals from the court’s directed verdict on his fraud claim. For the reasons discussed below, we affirm the judgment.

¹ To avoid confusion, we refer to Harry Ayvazian and Mike, Layla, Robert, and Rostom Boyajian individually by their first names. We mean no disrespect. Mike and Layla were husband and wife, but divorced in 2008. Mike’s complaint and Harry’s cross-complaint in the instant matter were bifurcated from Mike and Layla’s divorce proceeding.

FACTS

In accordance with the usual standard, we view the record and recite the facts “most strongly in favor of the judgment.” (*Shupe v. Nelson* (1967) 254 Cal.App.2d 693, 696.) In May 1992, at Mike’s request, Harry agreed to loan Mike and Layla “\$120,000 to pay [Mike and Layla’s] debt to their largest creditor.” (Harry’s mother pressured him to make the loan because of her strong love for her brother, Mike.) From December 1992 to May 1994, Mike and Layla borrowed more money from Harry. At times, Harry told Mike he could not lend them any more money. But Mike was “persistent and persuasive,” as Mike and Layla needed the funds to make payments on the motel that provided their livelihood and on which their lender had at one point foreclosed, and to complete construction on their home. By May 1994, Mike and Layla had borrowed almost \$508,000 from Harry (including the initial \$120,000).

Around September 8, 1993, Mike and Layla had an attorney prepare a promissory note (the 1993 note) in Harry’s favor for \$500,000 at an interest rate of 7 percent, as well as a deed of trust (to secure the 1993 note) covering a motel and restaurant owned by Mike and Layla (the real property). Earlier, in 1992, Mike had agreed in writing to pay Harry 10 percent interest on the loan. But when Harry received the 1993 note in the mail, he saw that Mike and Layla had unilaterally reduced the interest rate to 7 percent. When Harry asked Mike why he had reduced the interest rate, Mike said he felt at the time that he had to do it.

In 1995, Mike and Layla filed bankruptcy. In a March 1997 agreement (the 1997 Agreement), they acknowledged: (1) they owed the principal sum of \$507,575; (2) the interest rate was set at 6.25 percent; and (3) interest was to have begun accruing on April 1, 1993. When Harry received the initial draft of the 1997 Agreement in the mail, he saw the interest rate had been reduced from 7 percent to 5 percent. Harry notified Mike and Layla that he disapproved the note. Harry then received a revised agreement in

the mail, but the changed interest rate was 6.25 percent, not 7 percent. Harry went to the office of Mike and Layla's son, attorney Robert Boyajian, to complain but ultimately "gave into" or "conceded" to the 6.25 percent interest rate.

The 1997 Agreement required Mike and Layla to (1) pay the accrued interest for 1993, 1994, and 1995 within two weeks of executing the 1997 Agreement, and (2) by April 1, 1997 and April 1 of each subsequent year, to pay the accrued interest for the prior year. The 1997 Agreement provided that if they failed to make interest payments when due, 10 percent of the amount then due would be assessed and payable by them. The entire debt (principal and interest) would mature around March 6, 2002.

Pursuant to the 1997 Agreement, Mike and Layla paid accrued interest of \$126,893 in March 1997, and \$31,723 in April 1998.

In 2002, as the maturity date of the debt approached, Mike sought further extensions from Harry. Mike said he had no money to pay Harry back. Ultimately, Harry and Mike entered into a loan agreement dated April 4, 2002 (the 2002 Agreement). The 2002 Agreement is the agreement that is the subject of Mike's usury claim.

The 2002 Agreement extended the maturity of the existing loan for five more years, with full payment due by March 6, 2007. Mike also borrowed an additional \$100,000 from Harry. Mike and Layla executed a deed of trust for \$700,000 covering the real property (the 2002 Deed of Trust). The 2002 Deed of Trust was recorded in third position, junior to other recorded deeds of trust. In second position was a deed of trust held by a corporation owned by Robert's wife, with the deed of trust being the corporation's sole asset.

The 2002 Loan Agreement contained usurious terms, including an interest rate of 12 percent, which Mike unilaterally gave Harry. During the discussions between Mike and Harry about the terms of the loan, Mike "scratched" off the 10 percent interest rate (on Harry's handwritten notes) and handwrote a rate of 12 percent compounded monthly. Harry never asked for 12 percent interest and was "taken back" upon seeing the

number. He asked Mike, “Why would you want to pay 12 percent if you already have an agreement for 10?” Mike replied, “This is . . . out of my gratitude and appreciation for all the help you have been in the past and with my financing.” At the time, Mike knew that an interest rate higher than 10 percent was usurious.²

Beginning in late 2005, Harry began to inquire about Mike’s plans for paying off the loan. In response, Robert told Harry that the 12 percent interest rate in the 2002 Agreement was usurious. Robert told Harry to accept Mike and Layla’s terms for settlement, because otherwise Harry stood “to lose not only the interest, but also the principal” on the loan. Harry was “in shock,” because he had never heard the word “usury” before and now realized that Mike’s gift of 12 percent interest to him had been “a premeditated plan to make [the] note illegal” Harry modified the agreement to specify a 10 percent interest rate and sent it by certified mail to Mike and Robert. Although Mike signed for receipt of the document, he did not reply to Harry; neither did Robert.

Harry then hired American Trust Deed Service who sent Mike and Layla a notice requesting evidence of fire and liability insurance. When the note matured and Mike and Layla failed to pay any of the indebtedness, American Trust Deed Service commenced foreclosure on the property on Harry’s behalf.

On June 21, 2007, Mike filed a complaint against Harry and asked the court, *inter alia*, to declare: (1) the interest rate in the 2002 Agreement to be usurious and void, and (2) that Mike was obligated to pay Harry no more than principal on the loan less any interest payments already made by Mike and Layla. Mike also sought an

² Rostom, Mike’s cousin, testified that Mike was aware in 1992 that an interest rate greater than 10 percent was usurious. When Mike was going through bankruptcy in 1992, he tried to borrow money from Rostom. Rostom said he could not lend Mike money, but suggested Mike borrow funds from Harry. Rostom told Mike he (Rostom) did not know how much Harry would “charge” Mike for the loan. Mike replied, “The most he can charge is 10 percent. That’s the law.”

injunction against the foreclosure commenced on Harry's behalf. The court granted the preliminary injunction.

Harry's answer to Mike's complaint included affirmative defenses of estoppel, unclean hands, and "profiting from own wrong."

On August 20, 2007, Harry filed a cross-complaint against Mike and Layla for, inter alia, fraud and reformation of contract.

Ultimately, the court dismissed the jury and conducted a bench trial on the parties' equitable causes of action.³

The Court's Statement of Decision

The court's January 6, 2010 statement of decision provides in relevant part:⁴

³ The court granted Harry's motion for nonsuit on Mike's legal causes of action, leaving "nothing for the jury to decide." The court granted Mike and Layla's motion for directed verdict on Harry's fraud claim, on the basis his fraud claim was "premature" because he had not been deprived of any interest yet.

⁴ In the first 5 paragraphs of the statement of decision, the court found: From December 1992 to May 1994, Harry loaned \$507,574.94 money to his uncle (Mike) and his wife. The loan enabled Mike and Layla to pay creditors who were foreclosing on their motel and "[e]ffectively, . . . saved the Motel, [Mike and Layla's] family business and sole source of income." The loan also helped Mike and Layla to dismiss their 1992 bankruptcy case and pay off creditors on their Laguna Beach home. Mike initially agreed in writing to pay 10 percent interest on the sum loaned. But in a 1993 promissory note that Mike had drafted, he unilaterally reduced the interest rate from 10 to 7 percent per annum. Robert, the attorney son of Mike and Layla, prepared a related deed of trust. Mike and Layla filed bankruptcy again in 1995. Through this bankruptcy, Mike, Layla and Harry entered into a 1997 agreement, acknowledging the principal on the loan to be \$507,574.94; reducing the interest rate to 6.25 percent per annum, made retroactive from April 1, 1993; requiring accrued interest to be paid annually and if not, 10 percent would be charged on the amount then due; and specifying a due date for the balance of the loan on March 6, 2002. "Altogether, from 1992 to the present, [Mike and Layla] made the 2 payments on the loan . . . (\$126,893.00 on or about April 1, 1997 and \$31,723.43 on or about April 3, 1998). No other payments have been made."

“6. When the loan matured [on] March 6, 2002, Mike . . . did not pay off the loan, but rather negotiated an extension. In addition, [Harry] loaned an additional \$100,000. This extension and additional loan was evidenced by the Loan Agreement, dated April 4, 2002 (‘2002 Loan Agreement’). The 2002 Loan Agreement was secured by an additional Deed of Trust . . . (‘2002 Deed of Trust’). The 2002 Loan Agreement arose out of conversations between [Harry and Mike] telephonically and in meetings at the Doubletree Hotel.”

“8. The 2002 Loan Agreement contained usurious terms. Both [Harry and Mike] testified that they were unaware of the illegality of the terms of the 2002 Loan Agreement. [Harry] testified that it was [Mike’s] idea to insert illegal terms into the 2002 Loan Agreement, including increasing the interest rate from 10% to 12%. It is [Harry’s] theory that [Mike] knew the 12% rate would be usurious and tricked him into accepting this rate so he could later avoid having to pay any interest at all. [Mike] testified that it was [Harry] who insisted on the 12% rate. [Harry’s] theory is that Mike . . . knew that there were legal limits on amounts that can be charged on a loan. Mike . . . said that he had no knowledge of any limits for the charging of interest on a loan. However, ROSTOM . . . , cousin of Mike . . . and brother-in-law of [Harry], testified that Mike . . . was aware of the illegality of interest over 10% prior to the signing of the 2002 Loan Agreement. Specifically, Mike . . . told Rostom . . . , well before 2002, that interest in excess of 10% per year was illegal. The Court finds Rostom . . . to be a credible witness. The court finds that the facts offered by [Harry] are true.

“9. In addition, when informed by Robert . . . , [Mike and Layla’s] attorney son, that the 2002 Loan Agreement was usurious, on or about December 2005, at which time [Harry] first became aware that the 2002 Loan Agreement may be usurious, [Harry] offered to reform the 2002 Loan Agreement to remove usurious terms, but [Mike] somewhat coyly declined to accept the offer to reduce the interest rate, thinking he had [Harry] over the proverbial barrel at this point.

“10. The Court does not agree with [Mike] that the only option open to the Court is to disallow interest altogether for the period in question. No illegal interest has been paid. Whether Mike . . . fraudulently concealed his knowledge of the illegal nature of the interest rate or not, the Court has the equitable power to reform the 2002 Loan Agreement, particularly when [Mike] has not paid any of the illegal interest to date. When one party makes a mistake, which the other party at the time knew or suspected, the contract may be revised, so far as it can be done without prejudice to rights acquired by third persons. [Citation.]

“11. Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest. [Citation.] If a court finds as a matter of law that a clause of a contract is unconscionable at the time it was made, as the Court does here, the court may limit the application of any unconscionable clause as to avoid any unconscionable result. [Citation.] Exercising its equitable power, the Court reforms the 2002 Loan Agreement such that the only interest provision consists of simple interest at the legal rate of 10% per annum, rendering void the terms regarding interest rate of 12%, regarding monthly compounding of interest, and regarding annual 12% penalty, as well as reforms the principal amount of the Loan to be \$747,511.23, as agreed by the Parties.”

On Harry’s fraud cause of action in his cross-complaint, the court granted directed verdict in Mike and Layla’s favor because Harry suffered no damages since the court had ruled in his favor on his equitable causes of action.

The court granted Harry’s motion for attorney fees.

DISCUSSION

The Court Did Not Abuse Its Discretion by Reforming the Usurious Contract to Provide for a Legal Interest Rate

Mike and Layla contend the court erred by awarding interest to Harry on a usurious loan. The California Constitution, article XV, section 1 permits parties to contract in writing for a loan or forbearance of money “for use primarily for personal, family, or household purposes, at a rate not exceeding 10 percent per annum.” “[T]he intent sufficient to support the judgment [of usury] does not require a conscious attempt, with knowledge of the law, to evade it. The conscious and voluntary taking of more than the legal rate of interest constitutes usury and the only intent necessary on the part of the lender is to take the amount of interest which he receives; if that amount is more than the law allows, the offense is complete.” (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 798.)

But courts have struggled with the potential conflict between the usury law and the legal maxim that no person should take advantage of his or her own wrong. (*Buck v. Dahlgren* (1972) 23 Cal.App.3d 779, 788-789.) In *Buck*, for example, a fraudulent borrower was estopped from recovering the usurious interest he had paid. (*Id.* at pp. 788-789.)

Here, the court exercised its equitable power to reform the contract to preserve Harry’s right to recover interest on the loan. A court’s revision of a contract is governed by Civil Code section 3399 et seq.⁵ Section 3399 provides: “When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised, on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.” Three other statutes are contained in the article of the Civil

⁵ All statutory references are to the Civil Code unless otherwise stated.

Code that includes section 3399: “For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.” (§ 3400.) “In revising a written instrument, the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.” (§ 3401.) “A contract may be first revised and then specifically enforced.” (§ 3402.)

We recite additional statutes which are relevant to this case. “No one can take advantage of his own wrong.” (§ 3517.) “For every wrong there is a remedy.” (§ 3523.) “Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest.” (§ 1599.) “If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.” (§ 1670.5, subd. (a); *Carboni v. Arrospide* (1991) 2 Cal.App.4th 76, 79-80 [court reduced interest rate in secured note because unconscionable].) “Mistake of law constitutes a mistake . . . only when it arises from: [¶] 1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or, [¶] 2. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.” (§ 1578.)

“Trial courts have broad equitable power to fashion any appropriate remedies.” (*Shapiro v. Sutherland* (1998) 64 Cal.App.4th 1534, 1552.) “Equitable relief is by its nature flexible” (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 390) and “does not wait upon precedent which exactly squares with the facts in controversy” (*Times-Mirror Co. v. Superior Court* (1935) 3 Cal.2d 309, 331).

The “remedy of reformation is equitable in nature and not restricted to the exact situations stated in section 3399.” (*Jones v. First American Title Ins. Co.* (2003) 107 Cal.App.4th 381, 388 (*Jones*)). “Each case must be judged on its own facts.” (*Id.* at p. 389.) Reformation has a “broad reach” (*id.* at p. 388); its essential purpose “is to reflect the intent of the parties” (*id.* at pp. 388-389).

The “intention of the parties is a factual matter to be determined by the trial court, and our review of the judgment is limited to the question whether it is supported by substantial evidence.” (*Campbell v. Republic Indemnity Co.* (1957) 149 Cal.App.2d 476, 480.) A trial court may consider extrinsic evidence to “divine the true intentions of the contracting parties and determine whether the written agreement accurately represents those intentions.” (*Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 525.) Mistake and fraud are two statutory exceptions to the parol evidence rule, codified in Code of Civil Procedure section 1856, which generally prohibits the introduction of extrinsic evidence to vary the terms of an integrated written agreement. (Code Civ. Proc. § 1856, subs. (e) & (g); *Pacific State Bank v. Greene* (2003) 110 Cal.App.4th 375, 384.)

A trial court’s ruling on a claim for reformation of contract is reviewed for an abuse of discretion. (*Jones, supra*, 107 Cal.App.4th at p. 390.)

Here, Harry alleged in his claim for reformation of contract that the 2002 Agreement was prepared by Mike and Layla’s agent and failed to represent the parties’ true intentions, as the parties never intended “an interest-free loan for 5 years,” nor did Harry ever intend to charge more than a legal rate of interest. Harry alleged that the mistake in the 2002 Agreement was the result of fraud by Mike, or a mutual mistake as to the law made by all the parties, or a misapprehension of the law by Harry (which Mike and Layla knew or suspected but which they failed to rectify).

The court exercised its equitable power under section 3399 to reform the 2002 Agreement to provide for simple interest at the legal rate of 10 percent per year. The court found the 12 percent interest rate in the 2002 Agreement resulted from Harry’s

unilateral mistake, about which the other party knew or suspected. Substantial evidence supports the court's finding. Just as Mike unilaterally reduced the interest rate to 6.25 percent in the 1997 Agreement, he unilaterally raised it to 12 percent in 2002. Harry testified he was surprised by the 12 percent interest rate and did not realize it was usurious. Rostom testified that Mike knew the 12 percent rate was illegal. The court found Harry's theory that Mike knowingly tricked him was true. The court also concluded the contractual interest rate clause was unconscionable.

Yet, Mike and Layla challenge the court's reformation of the contract on several grounds. First, they contend usurious contracts should not be equitably reformed because to do so would undercut the "strong public policy against usury." (*Gamer v. DuPont Glove Forgan, Inc.* (1976) 65 Cal.App.3d 280, 287.) The purpose of the usury law is "to protect the necessitous, impecunious borrower who is unable to acquire credit from the usual sources and is forced by his economic circumstances to resort to excessively costly funds to meet his financial needs." (*Ghirardo v. Antonioli, supra*, 8 Cal.4th at pp. 804-805.) The theory "is that society benefits by the prohibition of loans at excessive interest rates, even though both parties are willing to negotiate them." (*Stock v. Meek* (1950) 35 Cal.2d 809, 817.) But, here, it was the borrower who was responsible for and insisted upon the usurious interest rate, knowing the rate was unenforceable. The lender, who was the unwary and reluctant maker of a family loan, never asked for the excessive rate and was unaware it was usurious. Affording Harry equitable relief under these facts will not weaken the societally beneficial deterrence against usurious loans.

Still, Mike and Layla contend usurious contracts are uniquely immune to reformation, asserting, in effect, that the usury law trumps equitable remedies. They argue section 3399 "cannot override the specific anti-usury laws," citing the pronouncement in *Strauss v. Bruce* (1934) 139 Cal.App. 62, 65 (*Strauss*) that "equity will not contravene the positive enactments and requirements of law and defeat its policy by supplying under the guise of amending defective instruments" the essential elements of a

contract. But Mike and Layla omit a material part of Strauss' pronouncement: *Strauss* went on to state that section 3399 applies a different principle and, pursuant to that statute, affirmed the trial court's reformation of a usurious contract on the basis of a mutual mistake. (*Id.* at pp. 64, 66.) Similarly, in *First American Title Ins. & Trust Co. v. Cook* (1970) 12 Cal.App.3d 592, 595 (*First American*), the appellate court affirmed the trial court's reformation of a promissory note "by deleting a compound interest provision which made the note usurious." Indeed, a California practice guide contains a form for a complaint for the reformation of a usurious contract. (5 Masterson et al., Cal. Civil Practice; Business Litigation (2006) Usury, ch. 54, § 54:49, pp. 54-42 to 54-44.)

But, although *Strauss* and *First American* demonstrate that a court may reform a usurious contract to remove the usurious terms, Mike and Layla cite these same cases as support for their next contention — that a contract may be reformed only when the parties "did not actually agree to the terms in the contract." Both *Strauss* and *First American* involved usurious provisions which were inadvertently included in the contracts by third party scriveners (an attorney and an escrow company, respectively) and which were never contemplated by the parties to the loan. (*Strauss, supra*, 139 Cal.App. at p. 64; *First American, supra*, 12 Cal.App.3d at pp. 595-596.) Based on precedents such as *Strauss* and *First American*, Mike and Layla would limit the equitable remedy of contract reformation to the mere correction of scrivener's errors.

Mike and Layla cite no authority, nor has our research uncovered any, which states that reformation is limited *only* to scrivener's errors. Militating against this assertion is the adaptable nature of equitable relief. Indeed, the equitable remedy of reformation has a broad reach that is flexible enough to encompass varying factual situations. (*Jones, supra*, 107 Cal.App.4th at p. 388.) Section 3399, by its terms, applies when "a written contract does not truly express the *intention* of the parties." (Italics added.) "[T]his language refers to a single intention which is entertained by both parties." (*Shupe v. Nelson, supra*, 254 Cal.App.2d at p. 700.)

But what is the scope of a court's inquiry into the parties' *intention* in entering into a contract? Here, for example, is the inquiry into the parties' intention (within the meaning of § 3399) limited to a determination of whether they actually agreed to a 12 percent interest rate (or whether the number "12" was instead a scrivener's error)? We think the inquiry is not so narrow. Rather, a misunderstanding about the *legal effect* of a contract may constitute a mistake of law within the meaning of section 3399. (*Stafford v. California C.P. Growers* (1938) 11 Cal.2d 212, 219; see also *Nunes v. De Faria* (1951) 107 Cal.App.2d 794, 795, 797 [grantee's misrepresentation of law supported court's cancellation of grantor's deed]; *Shupe v. Nelson, supra*, 254 Cal.App.2d at pp. 695, 700-701 [deeds reformed where court found parties intended all lots to have access to a roadway].) Section 3401 makes clear that a court may inquire into the intended "legal consequences" of a contract. Under general contract law, a "contract may be explained by reference to . . . the matter to which it relates' [citation]." (*Hess v. Ford Motor Co., supra*, 27 Cal.4th at pp. 521, 524 [contract reformed to delete release of third parties].) Under section 3400, parties are presumed to make an "equitable and conscientious agreement." We can presume, then, that both Mike and Harry intended the loan to bear interest. Reformation has even been granted "to prevent the fraudulent use of a paper for a purpose not contemplated at the time it was made, . . . where there was no mistake or fraud in its execution," where to do otherwise "would be to uphold and sanction fraud and bad faith." (*Stafford, supra*, 11 Cal.2d at p. 219.) We conclude the court properly reformed the 2002 Agreement on the basis of Harry's unilateral mistake or the parties' mutual mistake, which resulted in a usurious contract which did not truly express the intention of the parties — i.e., their intention that the loan would indeed bear interest. Thus, we reject Mike and Layla's contention that the equitable remedy of reformation is limited solely to the correction of scrivener's errors.

But Mike and Layla assert reformation is the wrong remedy for a lender whose borrower fraudulently induced the usurious terms of a loan. They point to cases

where lenders exercised their remedy at law to argue that *fraudulent* borrowers were *estopped* to urge the defense of usury. Mike and Layla emphasize that, here, the question of whether Mike acted fraudulently did not go to the jury. It is true the court entered a directed verdict against Harry on the fraud cause of action in his cross complaint, because the court believed Harry's fraud claim was "premature" since he had not been deprived of any interest yet. As a result of the directed verdict, however, Harry had no available remedy at law and was an appropriate candidate for equitable relief.⁶

In a final alternative argument, Mike and Layla contend the court erred by "awarding prejudgment interest, as the amount owed was uncertain and required a judicial determination pursuant to" section 3287, subdivision (a). Under that statute, a person "entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor from paying the debt." Mike and Layla note "a judicial accounting was necessary to determine the amount actually owed on the outstanding loan." Mike and Layla's contention lacks merit. Section 3287, subdivision (a) does not apply in this case because the contract itself provided for prejudgment interest. (*Roodenburg v. Pavestone Co., L.P.* (2009) 171 Cal.App.4th 185, 187, 191.) Moreover, Harry's cross-complaint stated no claims for damages on a contract.

The court did not abuse its discretion by reforming the 2002 Agreement to provide for a legal interest rate.

⁶ In Harry's cross-appeal, he contends the court erred in granting Mike and Layla's motion for a directed verdict on the fraud claim in his cross-complaint. Harry asks us to address his cross-appeal only if we reverse the court's reformation of the 2002 Agreement. Because we affirm the judgment, we do not address Harry's cross-appeal.

The Court's Premature Execution of Its Statement of Decision Was Harmless Error

The court signed and entered its statement of decision on January 6, 2010, before Mike timely filed on January 11, 2010 his written objections to the proposed statement of decision.⁷ The parties agree the court erred by prematurely signing the statement of decision (Cal. Rules of Court, rule 3.1590(g)), but disagree on whether Mike was prejudiced as a result. The error is reversible only if Mike can identify a substantial right he lost as a result of the court's premature signing of the statement of decision. (*In re Marriage of Steiner & Hosseini* (2004) 117 Cal.App.4th 519, 524 [premature signing of judgment].) Mike has failed to make such a showing on appeal.

DISPOSITION

The judgment is affirmed.⁸ Harry is entitled to costs on appeal.

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.

⁷ The record contains no objections by Layla to the court's proposed statement of decision.

⁸ Because we affirm the judgment, we need not address Mike and Layla's contention that reversal of the judgment requires reversal of the determination of the prevailing party for purposes of attorney fees.