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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

PHAT DINH TRINH,

Plaintiff, Cross-defendant and
Appellant,

v.

SAMUEL C. LOH,

Defendant, Cross-complainant and
Respondent.

H036957

(Santa Clara County
Super. Ct. No. CV140281)

Plaintiff and appellant Phat Dinh Trinh appeals from the judgment in favor of defendant Samuel C. Loh after a court trial. Trinh challenges the sufficiency of the evidence to support the trial court's rejection of his breach of contract and common counts causes of action. He claims that he was entitled to prevail because he presented a "prima facie case" in support of his causes of action. (*Italics omitted.*) We reject Trinh's challenge and affirm the judgment.

I. Factual and Procedural Background

The record in this case consists, in its entirety, of a clerk's transcript containing the trial exhibits, the judgment, the notice of appeal, and the notice designating the record, and a reporter's transcript of the court trial. The only witnesses who testified at trial were

Trinh and Loh. The complaint and cross-complaint are not included in the record.¹ Nor does the record include the parties' trial briefs or any other pleadings.

The trial exhibits established the following facts, which were not disputed at trial. In May 2005, Trinh and Loh signed a written contract in which they agreed that Trinh would advance \$15,000 to Loh "for the use as initial capital" to help fund the creation of an air duct cleaning business.² The May 2005 agreement also provided that Loh "will personally guaranteed [*sic*] the repayment of this \$15,000 amount should [the company] default on the repayment of the initial capital."

In June 2005, Trinh, Loh, and Danny Ma entered into a written agreement "for the purpose of starting" the air duct cleaning company.³ The June 2005 agreement provided that Trinh "will loan the company the initial \$45,000 as starting capital. The company will pay the monthly [10 percent] interest payment and eventually the principal." "[T]he principal amount will be paid off to Phat Trinh before any distribution of funds are distributed to all the partners." "It is also agreed that [if] for whatever reason the company has to fold, all assets will be sold and whatever is raised will first be used to pay off debts." The June 2005 agreement provided that the initial capital would be used to purchase equipment and a vehicle. Neither the May 2005 contract nor the June 2005 contract was integrated.

¹ Loh's cross-complaint apparently alleged that Trinh had fraudulently induced Loh to enter into the May 2005 contract.

² Loh testified that Trinh and Ma came to him with the idea of forming this company to offer air duct cleaning services. Loh worked in financing, and they wanted him to be in charge of the company's "paperwork." Trinh offered to advance Loh \$15,000 to invest in the company to entice Loh to lend his expertise to the company. Loh testified that he was "not paid a penny for my work" for the company.

³ Loh testified that the company was organized as an "LLC" (a limited liability corporation).

The company paid \$17,750 for equipment and \$20,471.52 for a vehicle. While the company was in business, Trinh received four months of monthly interest on the initial capital for the months of August, September, October, and November 2005.

A few facts were established by undisputed testimony at trial. Trinh admitted that the vehicle had been purchased in his name and that the company had also paid expenses of approximately \$3,000. Trinh also admitted that he had suffered multiple felony convictions and had been sentenced to four years in state prison in 1999. Loh was unaware that Trinh was a convicted felon. Trinh admitted that he sold the vehicle in 2007 for \$8,000. He did not sell the equipment even though it was “brand new.”

The remaining facts were in dispute with the testimony of Trinh and Loh diverging sharply.

Trinh testified that Ma had possession and use of the equipment and the vehicle after the company went out of business. Loh testified that Trinh retained both the vehicle and the equipment after the company went out of business. Loh testified that the retail value of the vehicle at that time was between \$14,000 and \$15,000.

Trinh testified that the company went out of business in June or September 2006, and it was only after the company’s demise that he began spending his time gambling. Loh testified that the company was only in business for four months and went out of business in September 2005. Loh maintained that the company failed because Trinh and Ma spent their time gambling at a Sacramento-area casino rather than running the company.

Trinh testified that he had twice demanded that Loh repay him the money, but Loh had never done so. Loh testified that the three men agreed that the company would be responsible for repaying Trinh for this \$15,000 investment on Loh’s behalf. Loh testified that Trinh had never demanded repayment from him. Loh testified that the three men agreed in October 2005, after the company went out of business, that the company’s

assets would be sold “as soon as possible to pay off the capital.” Loh also testified that he had not guaranteed repayment of the entire \$45,000 in initial capital.

Trinh’s trial counsel argued to the court that this was a “very simple and straightforward case.” He asserted that Trinh and Loh had “entered into an agreement that plaintiff advanced 15,000 dollars as defendant’s investment into the cleaning business. And defendant refused to repay the advancement.” Loh’s trial counsel also asserted that this was “a simple case” and attacked Trinh’s credibility. Loh’s argument was that the parties had agreed that the \$15,000 advanced by Trinh to Loh would “be paid back by the company assets.” Since Trinh retained all of the assets after the company went out of business, and those assets were worth far more than \$15,000, they “are more than sufficient to satisfy the obligation of paying back the capital”

The trial court entered judgment for Loh on Trinh’s complaint and awarded Loh his costs.⁴ Trinh timely filed a notice of appeal.

II. Analysis

“When a finding of fact is attacked on the ground that there is not any substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether there is any substantial evidence contradicted or uncontradicted which will support the finding of fact.” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; accord *Gray v. Don Miller & Associates, Inc.* (1984) 35 Cal.3d 498, 503.) “[W]e have no power to judge of the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom.” (*Leff v. Gunter* (1983) 33 Cal.3d 508, 518.) Our role is limited to determining whether the

⁴ The court also denied Loh any relief on his cross-complaint.

evidence before the trier of fact supports its findings. (*Reddy v. Gonzalez* (1992) 8 Cal.App.4th 118, 123.)

The trial court was entitled to reject Trinh's testimony on credibility grounds, given Trinh's status as a felon and the sharp conflict between Trinh's testimony and Loh's testimony. We have no power to reconsider the trial court's credibility determinations. The June 2005 contract explicitly provided that, if the company failed, "all assets will be sold and whatever is raised will first be used to pay off debts." No evidence was presented that the company had any debts other than the initial capital. Loh testified that the three men agreed that the company's assets would be sold to "pay off the capital."

Trinh's argument appears to be that the repayment by the company of more than \$15,000 would not eliminate Loh's responsibility. In his view, only repayment of the entire \$45,000 by the company would obviate Loh's duty of repayment. Nothing in either the May 2005 or June 2005 contracts addressed the order in which the company's debts would be repaid. Loh testified that he had not guaranteed the repayment of the entire \$45,000 in initial capital, and the contracts were consistent with his understanding. Yet Trinh's view would essentially make Loh liable for at least some repayment so long as the entire \$45,000 was not repaid. Since the contracts did not explicitly address this issue, and Loh's testimony was sufficient to support his understanding that the \$15,000 advanced to him would be repaid by the company before the other initial capital was repaid, the trial court was entitled to reject Trinh's position. The value of the company's assets remaining in Trinh's possession after the demise of the company far exceeded the \$15,000 guaranteed by Loh.

Consequently, the trial court could have reasonably concluded that Trinh's retention of the company's assets satisfied the company's obligation to repay the \$15,000 Trinh advanced to Loh. On this basis, the trial court could have concluded that Loh had

no obligation to pay anything further to Trinh. As substantial evidence supports the trial court's judgment, Trinh's challenge must fail.

III. Disposition

The judgment is affirmed.

Mihara, J.

WE CONCUR:

Bamattre-Manoukian, Acting P. J.

Duffy, J.*

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.