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

JOEL GAMBORD, as Trustee, etc.,

Plaintiff and Appellant,

v.

GALLI PRODUCE COMPANY et al.,

Defendants and Respondents.

H039760

(Santa Clara County

Super. Ct. No. 111CV192674)

I. INTRODUCTION

In 1993, respondent Galli Produce Company (Galli Produce) began leasing a warehouse in San Jose from appellant Gambord Trust Properties¹ under a written lease agreement that was extended twice, to 2015. During 2008 and 2009, Jerry Pieracci,² the president of Galli Produce, requested five reductions in the monthly rent because Galli Produce's business had declined. Joel Gambord, as trustee for Gambord Trust Properties, agreed to the rent reductions. The oral rent reduction agreements were silent as to whether payment of the full amount of the rent due under the written lease agreement had been forgiven or deferred. Gambord Trust Properties accepted the reduced rent payments from Galli Produce without objection.

¹ The record reflects that the full name of appellant is Joel & Dena Gambord Charitable Remainder Trust doing business under the name Gambord Trust Properties (hereafter, Gambord Trust Properties).

² Pieracci testified that his actual first name is Gerald.

In 2010 Gambord Trust Properties demanded that Galli Produce pay the full amount of the rent due under the written lease agreement, since Gambord believed that the parties had agreed that payment of the full amount would be deferred until Galli Produce's business improved. Galli Produce refused to pay Gambord Trust Properties' demand, since Pieracci believed that the parties had agreed that payment of the reduced rent was payment in full. After Gambord Trust Properties filed an action against Galli Produce and the individual lease guarantors seeking recovery of more than \$200,000 in unpaid rent, the matter proceeded to a court trial. The trial court determined that Gambord Trust Properties could not recover unpaid rent for any period except August 2010 through December 2010, for which Galli Produce owed unpaid rent and property taxes in the total amount of \$36,390.

Gambord Trust Properties has appealed from the March 1, 2013 judgment in its favor in the amount of \$36,390 plus prejudgment interest of \$8,821.79. For the reasons stated below, we determine the trial court did not err and we will affirm the judgment.

II. FACTUAL BACKGROUND

Our summary of the facts is drawn from the reporter's transcript of the testimony given at the court trial held in June 2012 and the documentary evidence admitted at the trial.

A. The Written Lease Agreements

In January 1993 Galli Produce entered into a written lease agreement with Gambord Trust Properties for warehouse space in San Jose. The 1993 lease had a term of nine years. The lease was signed by Pieracci, the president of Galli Produce, and Gambord as trustee for Gambord Trust Properties. Three individual guarantors also signed the lease, including Pieracci, Dennis Tinnucci, and Joseph Vanni. Paragraph 22 of the lease agreement provided in part that "[t]his Lease may be modified in writing only, signed by the parties in interest at the time of the modification."

In April 1998 Gambord Trust Properties agreed to extend the warehouse lease for eight years, to January 2010. In July 2005 Gambord Trust Properties agreed to a second lease extension. The warehouse lease was extended for five years, with a termination date of January 31, 2015.

The written lease extension stated that the monthly rent, commencing August 1, 2005, would be \$14,492. Additionally, the lease extension stated, “Beginning in 2006, the monthly rent payable shall be increased according to the change in the CPI(U) as prescribed in Paragraph 47 of the Lease Agreement dated January 13, 1993. . . . [¶] . . . All other Terms and Conditions of the Lease Agreement dated January 13, 1993 shall remain in effect.” Both lease extensions were signed by Gambord on behalf of Gambord Trust Properties and Pieracci on behalf of Galli Produce.

B. The Rent Reductions

Pieracci was in charge of running Galli Produce, which had been in business at the warehouse location leased from Gambord Trust Properties since 1991 or 1992. Galli Produce had done well at that location and had always paid the rent on time. In 2006 or 2007, Galli Produce lost a major account and more than half of its business volume. The staff of Galli Produce was reduced from 51 employees to about 21 employees. The staff, management, and shareholders all had their pay cut.

In August 2008 Pieracci asked Craig Bauer, the property manager for Gambord Trust Properties, to present Gambord with a request for a rent reduction due to the decline in Galli Produce’s business. Gambord approved a \$2,000 reduction in monthly rent. When Bauer told Pieracci that Gambord had approved the rent reduction, Bauer also told Pieracci that “any unpaid rent would be an issue that would be dealt with later.” Galli Produce then made five payments of monthly rent in 2008 at the reduced rate of \$13,225.

Gambord understood that his agreement to a rent reduction in August 2008 was only an agreement to defer payment of the full amount of the rent due under the written lease agreement until Galli Produce’s business got better. He recalled that “there was no

agreement or even a discussion about a specific time of repayment. [¶] It was one of those gentleman handshake kind of deals . . . and the unspoken word was that when things get better we'll pay this money back.”

Sometime around December 2008 Pieracci telephoned Gambord to request a second rent reduction because Galli Produce was still “having difficulties.” Gambord agreed to reduce the monthly rent to \$11,500.

In March 2009 Pieracci telephoned Gambord to request a third rent reduction. During that telephone conversation, they discussed economic conditions and Gambord said, “Jerry, what can I do to help you?”³ Pieracci responded, “I need you to put the rent to [\$]10,000.” Gambord replied, “You have it, Jerry.”

During the December 2008 and March 2009 telephone conversations between Pieracci and Gambord regarding Pieracci’s three requests for a rent reduction, Gambord did not mention that payment of the full amount of the rent due under the written lease agreement was being deferred.

In June 2009 Pieracci telephoned Gambord to request a fourth rent reduction. Gambord agreed to reduce the monthly rent to \$8,500. Pieracci recalled that he told Gambord that when business improved he would pay more rent. Gambord thought Pieracci understood that the unpaid rent (the difference between the rent due under the written lease agreement and the reduced rent) had only been deferred until Galli Produce’s business was better.

In August 2009 Pieracci and Gambord had a telephone conversation about a fifth rent reduction. Pieracci asked for a reduction of the monthly rent to \$7,500. Gambord responded, “Jerry, if that’s what you need, you’ve got it.” Thereafter, Galli Produce made 11 payments of monthly rent in the amount of \$7,500. Gambord Trust

³ Since the parties referred to each other by their first names, we will use their first names to be consistent with the record below and not out of disrespect.

Properties accepted these payments and all previous reduced rent payments without objection.

None of the oral rent reduction agreements between Gambord Trust Properties and Galli Produce were memorialized in writing. Pieracci was not expressly told that Galli Produce had only agreed to defer the full amount of monthly rent due under the written lease agreement. Additionally, Pieracci was never told by Gambord or Bauer that the amount of reduced rent that Galli Produce was paying was unacceptable. Pieracci explained that he would never have agreed to a rent reduction if he had understood that Gambord was only agreeing to defer payment of the full amount of the monthly rent. Instead, Pieracci would have utilized his personal resources to pay the full amount of the rent owed under the written lease agreement.

For his part, Gambord never intended that the difference between the amount of the monthly rent due under the written lease agreement and the amount of the reduced rent paid by Galli Produce would be forgiven. Gambord informed Bauer and his accountant/bookkeeper each time Galli Produce's rent was reduced. Bauer maintained an internal record of Galli Produce's reduced rent payments that indicated the amount of deferred rent, but he did not communicate that information to Galli Produce.

C. Claim for Unpaid Rent

In June 2009 Bauer sent a letter to Pieracci enclosing a bill for property taxes in excess of \$4,000 that were owed under the terms of the written lease agreement. The cover letter for the bill stated, "Joel says to defer the amount due as it can be part of future considerations."

On July 26, 2010, Pieracci and Gambord had a telephone conversation in which Gambord asked Pieracci to begin increasing the amount of monthly rent that Galli Produce paid in order to get the "lease payments back to what the contract calls for." Pieracci agreed to increase the monthly rent payments by \$500 every month, so that the total monthly rent would be \$10,000 by the end of 2010.

The July 26, 2010 telephone conversation was followed by a July 26, 2010 email from Gambord to Pieracci confirming the increase in the monthly rent payment. The July 26, 2010 email also stated: “At the end of December, your rent will still be 30% below the Lease, which difference we will continue to defer. At the end of the year, if you find this rate difficult for you to maintain, please call me personally so we can discuss. You know I will work with you in every way I can – we’ve had a great relationship with you for a lot of years.”

After Pieracci received the July 26, 2010 email, his son Jeff Pieracci,⁴ who was the chief operations officer for Galli Produce, became involved. Jeff drafted and sent an email under his father’s name dated July 27, 2010 that stated: “Thanks Joel, [¶] I am glad to be able to progressively increase our rent towards a more suitable number for both of us. I must say though, I am taken aback by the use of the word ‘defer’ in your email. Does this mean that you feel that the reduced amount [of rent] is accumulating?”

Gambord responded in a July 27, 2010 email in which he stated: “I’m surprised and a little saddened by your reaction to my mention of the word ‘defer.’ [¶] I’m really sorry if you misinterpreted my willingness to temporarily defer a part of your monthly rent, a significant portion of it at that, until such time as business conditions improve for you. . . . [¶] . . . But this continued forbearance is only done with the understanding that the unpaid rent each month will continue to be deferred, not forgiven.” The July 27, 2010 email also stated: “At no time, have I inferred or implied that the deferred rent would be forgiven. As a Trustee, I have no authority to give away assets of the trust for no reason. Additionally, any such basic change in the Lease, as a change of rent would entail, can only be accomplished by written agreement signed by both parties. This has not taken place.”

⁴ Since Pieracci and his son have the same surname, we will refer to Jeff Pieracci by his first name for purposes of clarity and not out of disrespect.

In a subsequent email to “Jerry/Jeff” on the deferred rent issue dated November 9, 2010, Gambord stated, “I do plead guilty, your honor – I failed to reduce to writing what I believed what a gentleman’s understanding, in fact I seem to remember Jerry saying he would get back to me with some plan for repayment, but I guess I misunderstood.”

Thereafter, Gambord sent Pieracci a demand letter dated December 17, 2010, in which Gambord requested payment of deferred rent and deferred property taxes in the total amount of \$203,939.

III. PROCEDURAL BACKGROUND

A. The Complaint

In January 2011 Gambord Trust Properties filed a complaint naming Galli Produce and the individual guarantors (Pieracci, Tinucci, and Vanni) as defendants.

1. First Cause of Action for Breach of Contract

In the first cause of action for breach of contract, Gambord Trust Properties alleged that it entered into a 2008 oral agreement with Galli Produce to modify the 1993 written lease agreement by reducing Galli Produce’s rent, with the difference between the reduced monthly rent payment and the monthly rent payment due under the lease agreement to accrue and be payable on demand by Gambord Trust Properties.

Gambord Trust Properties further alleged that the parties had performed the oral agreement to modify the 1993 lease agreement in that Galli Produce made payments of “Deferred Rent” that Gambord Trust Properties accepted for the period of August 1, 2008 to December 1, 2010. In November 2010 Gambord Trust Properties demanded that Galli Produce pay the accrued balance of the deferred rent which Galli Produce had allegedly refused to do.

Gambord Trust Properties sought damages from defendant Galli Produce in the amount of \$195,142, plus interest, late charges, and attorney’s fees.

2. Second Cause of Action for Breach of Contract

In the second cause of action for breach of contract, Gambord Trust Properties alleged that the 1993 written lease agreement provided that the monthly rent would increase during the period of February 1, 2007 to February 1, 2011. Gambord Trust Properties further alleged that Galli Produce has failed to pay the monthly rent increases for the period of February 1, 2007 to August 1, 2008.

Based on these allegations, Gambord Trust Properties sought damages from defendant Galli Produce in the amount of \$7,530 plus interest, late charges and attorney's fees.

3. Third Cause of Action for Breach of Guaranty

In the third cause of action for breach of guaranty, Gambord Trust Properties alleged that defendants Pieracci, Tinucci, and Vanni had executed a personal guarantee to corporate obligation in which they promised to personally guarantee Galli Produce's performance of all of its obligations under the 1993 written lease agreement. Gambord Trust Properties further alleged that the individual defendants had failed to perform their obligations under their personal guarantee during the period of February 1, 2007 to February 1, 2011.

Gambord Trust Properties sought damages from the individual defendants in the amount of \$202,672, plus interest, late charges, and attorney's fees.

B. Court Trial and Statement of Decision

A court trial was held in June 2012. The trial court issued a proposed statement of decision in July 2012 in which the court found in favor of Gambord Trust Properties and proposed a judgment in the amount of \$177,983 for unpaid deferred rent and property taxes. Defendants objected to the proposed statement of decision and in August 2012 the trial court issued an amended proposed statement of decision.

As amended in August 2012, the court made several factual findings in the proposed statement of decision. Among them was the court's finding that "[t]here is no

doubt that in Mr. Gambord's mind he was deferring rather than forgiving or reducing the rent. . . . However, in none of these instances were his unexpressed intentions memorialized with the tenants." The court further found that "Mr. Pieracci was working on the assumption that this was an actual *rent reduction or modification* of the rent." Additionally, the court found that "there never was a meeting of the minds between Mr. Gambord and Mr. Pieracci as to whether the rent would be *forgiven* or *simply deferred*. The parties obviously agreed that for a period of time different amounts of lesser rent could be paid, and the landlord would not seek to evict the tenant. However, on the critical question of whether the rent was deferred or forgiven, there was no meeting of the minds."

In the legal analysis portion of the amended proposed statement of decision, the trial court relied on the decision in *Julian v. Gold* (1931) 214 Cal. 74 (*Julian*) for the proposition that under Code of Civil Procedure section 2076,⁵ a landlord who accepts reduced rent payments without objection has waived the right to recover the full amount of the rent set forth in the lease agreement. Based on defendant's Exhibit S (not included in the record), the court determined that defendants did not owe any unpaid rent for any period except August 2010 through December 2010, for which unpaid rent and property taxes were owed in the total amount of \$36,390.

The amended proposed statement of decision was entered as the statement of decision on September 20, 2012. Gambord Trust Properties objected to the statement of decision on several grounds and requested that the trial court make findings on a number of issues.

⁵ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

During the hearing held on January 11, 2013, the trial court stated, “I found both gentlemen [Gambord and Pieracci] entirely credible. I found them both decent, honorable, credible. They were working under different assumptions.”

On January 25, 2013, the trial court issued its ruling on motion to amend statement of decision filed September 20, 2012. In its written ruling, the trial court stated that it had reviewed all the cases cited by the parties and had done independent research. The court determined that the applicable law was as follows: “1. The parties may modify a written lease by an oral agreement that is fully executed. [¶] 2. Where the parties agree to an oral modification, if the landlord accepts the tenant’s payment without objection or clarification, i.e., without expressing the landlord’s intention that there are strings attached to the arrangement, such as later repayment of the deficiencies, the landlord is precluded from later seeking such deficiencies. [¶] 3. This rule places the burden on the landlord to make it clear that his [or her] acceptance of the rent does not discharge the full obligation for that month.” (Fns. omitted.) The court denied Gambord Trust Properties’ motion to amend the statement of decision and ruled that Gambord Trust Properties was entitled to attorney’s fees.

The judgment in favor of Gambord Trust Properties in the amount of \$36,390, plus prejudgment interest of \$8,821.79 was entered on March 1, 2013. The March 1, 2013 judgment also provides that Gambord Trust Properties is entitled to reasonable attorney’s fees as the prevailing party.

Gambord Trust Properties filed a timely notice of appeal from the judgment that states that the appeal is “[o]nly as to basis for calculating damages, and amounts awarded in damages and prejudgment interest.”

IV. DISCUSSION

On appeal, Gambord Trust Properties contends that the trial court erred because (1) there was no oral agreement to modify the rent due under the 1993 written lease agreement; (2) the parties’ actual oral agreement was that Galli Produce would not be

evicted if it paid the partial rent; (3) Gambord Trust Properties did not waive its right to claim the deferred rent pursuant to section 2076; and (4) Gambord Trust Properties cannot be estopped from claiming the unpaid rent.

We will begin our evaluation of Gambord Trust Properties' contentions with the applicable standard of review, followed by an overview of the rules governing the oral modification of written lease agreements.

A. Standard of Review

Where, as here, the trial court's statement of decision contains both findings of fact and conclusions of law, " '[w]e review the trial court's findings of fact to determine whether they are supported by substantial evidence. [Citation.] To the extent the trial court drew conclusions of law based upon its findings of fact, we review those conclusions of law de novo. [Citation.]' [Citation.]" (*ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1266.)

Accordingly, " 'in reviewing a judgment based upon a statement of decision following a bench trial, "any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision. [Citations.]" [Citation.] In a substantial evidence challenge to a judgment, the appellate court will "consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.]" [Citation.] We may not reweigh the evidence and are bound by the trial court's credibility determinations. [Citations.] Moreover, findings of fact are liberally construed to support the judgment. [Citation.]' [Citation.]" (*Cuiellette v. City of Los Angeles* (2011) 194 Cal.App.4th 757, 765 (*Cuiellette*)).

B. Oral Modification of Written Lease Agreement

Where the written lease agreement expressly bars oral modification, the lease agreement may be orally modified if the requirements of Civil Code section 1698 are

met. Relevant here, Civil Code section 1698, subdivision (b) provides: “A contract in writing may be modified by an oral agreement to the extent that the oral agreement is executed by the parties.” “An executed contract is one, the object of which is fully performed.” (Civ. Code, § 1661.)

The California Supreme Court has instructed that Civil Code “[s]ection 1698 has a dual operation. On the one hand it invalidates oral contracts of modification that are unexecuted, and on the other hand, it validates executed agreements that might otherwise fail for lack of consideration. [Citation.] Typical of the latter category are agreements to accept less than is due under the terms of a written contract [citations]. . . . [Citations.] Since in such cases the modification agreement requires no additional act or forbearance on the part of the obligor, it can only be executed to the extent that the obligee accepts performance in accordance with its terms. Accordingly, in the absence of a valid waiver of a condition [citations], or facts establishing an estoppel to rely upon [Civil Code] section 1698 [citations], the section may only be satisfied by execution on the part of the obligee by accepting less than his [or her] due. [Citations.]” (*D. L. Godbey & Sons Const. Co. v. Deane* (1952) 39 Cal.2d 429, 432-433.)

Our Supreme Court has further instructed that where there is an oral agreement to reduce the rent, “[i]n so far as the payments of rent made under the oral agreement of the parties are concerned, there can be no question that as to those payments actually made and accepted as rent in full for the period covered by them, the oral agreement reducing the rent was executed and no claim for the recovery of rent during the period covered by said payments can be maintained. [Citation.]” (*Stoltenberg v. Harveston* (1934) 1 Cal.2d 264, 266 (*Stoltenberg*); *Julian, supra*, 214 Cal. at pp. 78-79; see also *Cirimele v. Shinazy* (1954) 124 Cal.App.2d 46, 49-50; *Taylor v. Taylor* (1940) 39 Cal.App.2d 518, 521-523; *Kennedy v. Moyer* (1935) 5 Cal.App.2d 29, 30-31.)

C. Analysis

The trial court found that the parties had entered into an executed oral rent reduction agreement that modified the written lease agreement. Under the executed oral rent reduction agreement, as determined by the trial court, “for a period of time different amounts of lesser rent could be paid, and the landlord would not seek to evict the tenant.” Substantial evidence supports the trial court’s implied finding under Civil Code section 1698 that the parties executed an oral rent reduction agreement that modified the written lease agreement, since it is undisputed that Gambord agreed to all of Pieracci’s requests for a rent reduction in 2008 and 2009, accepted each reduced rent payment, and did not seek to evict Galli Produce. (See *Cuiellette, supra*, 194 Cal.App.4th at p. 765)

The trial court further found that the parties did not enter into an oral agreement that Galli Produce’s payment of the reduced monthly rent, as agreed by Gambord Trust Properties, constituted payment of rent in full under the parties’ written lease agreement. The court stated, “on the critical question of whether the rent was deferred or forgiven, there was no meeting of the minds.” Substantial evidence also supports this finding. It was undisputed that Pieracci believed that the parties had agreed that payment of the reduced monthly rent constituted payment in full, while Gambord believed that the parties had agreed that payment of the full amount of monthly rent due under the written lease agreement would be deferred until Galli Produce’s business improved.

Where there is neither an express oral agreement nor evidence permitting an inference that the reduced rent payments were accepted by the landlord as payment in full, there is no enforceable oral rent reduction agreement that bars the landlord’s recovery of the full amount of the rent. (See *Stoltenberg, supra*, 1 Cal.2d at pp. 266-267 [landlord is bound by reduced rent agreement where lower rent was accepted as “satisfaction in full”]; see also *Macauley v. Jayben Corp.* (1936) 17 Cal.App.2d 37, 39-40

[acceptance of reduced rent does not discharge rent obligation absent agreement that reduced rent accepted as payment in full].)

Here, there was no express oral agreement that the reduced rent payments would be accepted by Gambord Trust Properties as payment in full, and the trial court did not make a finding that there was evidence from which it could be reasonably inferred that the reduced rent payments were accepted as payment in full. However, that does not end our analysis of the trial court's ruling that Gambord Trust Properties was not entitled to recovery of unpaid rent from Galli Produce.

Where, as here, there was no express oral agreement that the reduced rent payments would be accepted as payment in full under the written lease, the lessor's recovery of the unpaid rent may be precluded under section 2076. (See *Julian, supra*, 214 Cal. at p. 79.)

Section 2076 provides: "The person to whom a tender is made must, at the time, specify any objection he [or she] may have to the money, instrument, or property, or he [or she] must be deemed to have waived it; *and if the objection be to the amount of money*, the terms of the instrument, or the amount or kind of property, he must specify the amount, terms, or kind which he requires, or be precluded from objecting afterwards." (Italics added.) Our Supreme Court stated in *Julian* that under section 2076, "if the lessor was unwilling to accept the amount tendered as in full, he [or she] could have protested then, but his [or her] acceptance, as in full payment, of a lesser sum than that due, brings him [or her] within the rule of estoppel declared by . . . section [2076]." (*Julian, supra*, 214 Cal. at p. 80.)

In the present case, the trial court found that the facts "are very close to *Julian v. Gold* (1931) 214 Cal. 74. . . . As in this case, the landlord kept her mental reservations to herself while accepting the tenant's reduced rent payments." The court therefore determined, based on section 2076 as applied in *Julian* to bar the landlord's recovery of the full amount of the rent, that Galli Produce did not owe unpaid rent for the periods

in 2008, 2009, and 2010 during which Gambord Trust Properties accepted the reduced rent payments without objection.

The trial court further determined that Galli Produce owed the full amount of rent due under the written lease agreement beginning on August 1, 2010, since “[a]s there was never a meeting of the minds, there can be no doubt that the defendants owe the full \$16,278 per month rent from August 1, 2010 through December 31, 2010, for a total of \$36,390.” The parties do not challenge the trial court’s ruling that Galli Produce owes the full amount of monthly rent for that period, which followed the July 26, 2010 email from Gambord to Pieracci expressly stating for the first time that Gambord Trust Properties had only agreed to defer the unpaid rent.

Having reviewed the trial record in its entirety, we determine that substantial evidence supports the trial court’s ruling that Gambord Trust Properties is precluded from recovering unpaid rent for the periods in 2008, 2009, and 2010 during which Gambord Trust Properties accepted, without objection, reduced rent payments from Galli Produce pursuant to the parties’ five oral rent reduction agreements. We recognize that Gambord Trust Properties agreed to reduce the monthly rent when Galli Produce’s business declined as an accommodation to a valued tenant. However, if Gambord Trust Properties was unwilling to accept the amount of reduced rent tendered by Galli Produce as payment in full of Galli Produce’s rent obligation under the written lease agreement, it “could have protested then, but [Gambord Trust Properties’] acceptance, as in full payment, of a lesser sum than that due, brings [it] within the rule of estoppel declared by . . . section [2076].” (*Julian, supra*, 214 Cal. at p. 80.)

Gambord Trust Properties argues that section 2076 does not apply in this case because the statute “is a ‘mere rule of evidence affecting the question of costs and the right to bring actions in cases where a tender is necessary before commencing the action,’ ” citing *Colton v. Oakland Bank of Savings* (1902) 137 Cal. 376, 383 (*Colton*). Gambord Trust Properties also argues that section 2076 only applies where the amount

tendered is defective, unlike the present case where Galli Produce's rent payments conformed to the parties' oral rent reduction agreement, or, also unlike here, where the payment was expressly tendered as payment for all sums due. Additionally, Gambord Trust Properties maintains there can be no waiver under section 2076 because Gambord Trust Properties did not knowingly and voluntarily relinquish its rights.

We are not convinced by Gambord Trust Properties' argument that section 2076 does not apply in the present case. "The well-known rule of waiver has been codified by section 2076, *supra*. It has been applied to cases involving executed oral agreements (*Julian v. Gold*, 214 Cal. 74) and other controversies wherein section 1698 of the Civil Code has been invoked [citations]." (*Fidler v. Schiller* (1963) 212 Cal.App.2d 569, 574 (*Fidler*)). "[T]he reason for the rule stated in section 2076 that a debtor who is able and willing to pay his [or her] debt has a right to know what his [or her] creditor will demand, so that his [or her] offer may be made to conform if he [or she] chooses to do so. [Citation.]" (*Fidler, supra*, at pp. 575-576.)

As we have discussed, the California Supreme Court in *Julian* applied section 2076 to the issue of whether an oral agreement reducing the rent was binding upon the lessor. (*Julian, supra*, 214 Cal. at p. 79.) The *Julian* court stated: "We therefore conclude that in so far as said lease contract has been fully executed, the plaintiffs have lost their right to recover the sums allowed as rebates on the several installments of rent. We reach this same conclusion upon a well-known rule of waiver set up by section 2076 [¶] Under this section, if the lessor was unwilling to accept the amount tendered as in full, he [or she] could have protested then, but his [or her] acceptance, as in full payment, of a lesser sum than that due, brings him [or her] within the rule of estoppel declared by . . . section [2076]." (*Julian, supra*, at pp. 79-80.)

As an intermediate court, we are bound to apply the law as interpreted by our Supreme Court in *Julian*. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Moreover, none of the decisions relied upon by Gambord Trust Properties for

its contention that section 2076 does not apply in this case concern an oral rent reduction agreement. (See *Colton, supra*, 137 Cal. 376 [action to recover alleged value of shares of bank capital stock]; *Hixson v. Hovey* (1912) 18 Cal.App. 230 [action to compel specific performance of land purchase contract]; *Hansen v. Fresno Jersey Dairy Co.* (1934) 220 Cal. 402 [action for breach of a contract for the sale of milk]; *Thomassen v. Carr* (1967) 250 Cal.App.2d 341 [judgment challenged as based on usurious loan]; *Still v. Plaza Marina Commercial Corp.* (1971) 21 Cal.App.3d 378 [action arising from promissory note financing land purchase]; *Hoopes v. Dolan* (2008) 168 Cal.App.4th 146 [action by tenant claiming exclusive parking rights under lease]; *City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal.App.4th 455 [action for declaratory relief regarding insurance coverage].) The decisions are therefore distinguishable and do not aid Gambord Trust Properties.

For these reasons, we conclude that the trial court did not err in determining that Gambord Trust Properties is precluded from recovering unpaid rent for the periods in 2008, 2009, and 2010 during which Gambord Trust Properties accepted reduced rent payments from Galli Produce without objection. Having reached this conclusion, we need not address Gambord Trust Properties' alternative contention that the doctrine of equitable estoppel does not apply in this case.

V. DISPOSITION

The judgment is affirmed. Each party is to bear its own costs on appeal.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

GROVER, J.