122 Cal.App.5th 877
Court of Appeal, Second District, Division 8, California.

Mark BUCHHEIM et al.,
Plaintiffs and Appellants,
v.
Gustavo ANAYA et al.,
Defendants and Respondents.

B339494
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Filed 8/25/2026
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As Modified on Denial of Rehearing 9/2/2026
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As Modified on Denial of Rehearing 9/9/2026

Synopsis

Background: Private lenders, who financed multiple house-flipping projects with group of four remodelers, brought action against remodelers, asserting breach of contract, fraud, and rescission of covenant not to sue, alleging that remodelers failed to repay consolidated promissory note. Two remodelers cross-claimed against lenders and unnamed other parties. The Superior Court, Los Angeles County, No. 19STCV04540, Steven J. Kleifield, J., 2021 WL 11959533, granted remodelers' motion for summary judgment, entering partial judgment for remodelers that did not have outstanding cross-claims. Lenders appealed. The Court of Appeal, 2023 WL 6782877, affirmed. After remittitur and dismissal of remodelers' cross-complaint, the Superior Court, Los Angeles County, No. 19STCV04540, Michael C. Small, J., 2024 WL 5690139, entered final judgment in the remodelers' favor based on their earlier summary judgment motion. Lenders appealed.

The Court of Appeal, Wiley, J., held that lenders had no damages to support their claims.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

APPEAL from a judgment of the Superior Court of Los Angeles County, Steven J. Kleifield and Michael C. Small, Judges. Affirmed. Los Angeles County Super. Ct. No. 19STCV04540

Attorneys and Law Firms

Bradley Bernstein Sands and Erin Bernstein for Plaintiff and Appellant.

Law Offices of Adam C. Rapaport, Adam C. Rapaport; Benedon & Serlin, Gerald M. Serlin and Wendy S. Albers, Woodland Hills, for Defendants and Respondents.

Opinion

WILEY, J.

***878** ****37** When undisputed evidence shows defendants have repaid a debt, plaintiffs cannot defeat a motion for summary judgment simply by swearing "we never got our ****38** money back." In financial matters, unexplained statements of fervent belief lose to an objective record of fact. We affirm.

I

Two families had been in a close personal relationship for 20 years. They also worked together professionally by flipping houses. One couple supplied funds to buy and remodel homes: Mark Buchheim and his former wife Tatjana Luethi ran their company Prima Impresa, LLC. We call these "the ***879** lenders" or simply Buchheim. The other family managed the remodeling: Gustave Anaya and his wife Olivia Anaya Valenzuela, together with their daughter Maria Anaya Taglioli, ran their company called United Home Buyers of America, Inc. (United Home). We sometimes refer to this second group as "the remodelers," or Anaya.

Buchheim and Anaya first did business together in 2004. Buchheim loaned Anaya money at an interest rate of 20 percent to buy a property. When the project was finished, Anaya paid Buchheim back and sold the house.

The record is not explicit about all the financial aspects, but presumably the parties sold the renovated house for an attractive premium. We draw this inference because the parties continued their approach on other properties. Buchheim was the private lender for Anaya. Buchheim

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funded Anaya's property purchases in exchange for repayment of the loan principal at a 20 percent rate of interest.

We jump forward from 2004. In March 2016, Buchheim and Anaya were finishing a home remodeling project they called the Cleveland property. For this venture, Buchheim once again had loaned Anaya funds at 20 percent interest to acquire and redo the house. Anaya had an outstanding $36,000 debt on this loan when he and Buchheim decided to embark on their next project: the so-called Rose home.

The intertwined finances for the Cleveland and Rose projects are the heart of this case. The finances were intertwined because Buchheim and Anaya decided to consolidate Anaya's remaining $36,000 Cleveland debt with the $388,928 Buchheim loaned Anaya to buy and remodel the Rose property. On March 2, 2017, the parties agreed to this consolidation (totaling $424,928) into a written promissory note, which Buchheim and the lenders would eventually append to their complaint against Anaya. A deed of trust secured the one-year promissory note, which set a 20 percent annual rate of return with a balloon payoff of $509,913.60 due March 2, 2018.

The Rose venture ended in litigation because Buchheim and Anaya could not agree about the best way to improve the property. The litigation culminated in this appeal.

At the outset, however, the Rose venture seemed promising. In early 2017, with the aid of Buchheim's lending, Anaya bought the rundown, roughly 1,600 square foot home at auction for $1,095,000. After renovation, the home sold for $2,018,000 in November 2018. In other words, after renovation, the house price appreciated some $923,000 in about 20 months. Whether this apparently impressive $923,000 surplus in fact yielded a profit would depend, of course, not just on *revenue* from the price escalation, however, but also on the *costs* of the venture.

***880** Ay, there's the rub, for the parties developed clashing visions of how to remodel the Rose house. These differing visions had differing construction costs and produced the dispute that required litigation to resolve.

****39** The first disagreement was about how to remodel the Rose property. Buchheim wanted to stick with the original plan of a limited remodel: add a second story as well as a ground floor room. Anaya became convinced, however, that the way to maximize value was to tear down the old structure and build a new and larger home that would be markedly more valuable.

This disagreement eventually destroyed the amicable relationship between the parties and turned into this long-lasting lawsuit.

We break down events in more detail.

In January 2017, Anaya presented Buchheim with a proposal to acquire the Rose property in West Los Angeles. Buchheim loaned Anaya $25,000 to secure the winning bid and $84,500 for the down payment.

Buchheim then loaned $102,428.04 to help Anaya secure a primary loan and construction loan from Trillion Capital Corporation, and eventually another $176,999.96 to assist with mortgage payments and construction costs.

As stated, the parties consolidated the various Rose loans with the unpaid $36,000 Cleveland property debt into a single written promissory note. Whether Anaya fully repaid this consolidated note turned into the big issue.

The consolidated note was for $424,928, and it was secured by a second deed of trust on the Rose property, carrying a 20 percent interest rate and a scheduled balloon payment of $509,913.60 due in March 2018.

After escrow closed on the Rose home, the relationship between Buchheim and Anaya deteriorated as their project visions diverged. Anaya came to believe a teardown and new construction would maximize profit.

The breaking point was July 14, 2017. On that day, Anaya proposed this change of scope to Buchheim and asked Buchheim for an additional $275,000 loan to fund the new vision. Buchheim refused. The project ground to a halt as the parties wrestled over how to proceed.

After July 2017, Anaya stopped paying Trillion on its loan. Trillion filed a notice of default on the Rose property on October 23, 2017. The looming foreclosure increased the pressure on the parties to sort their plans.

***881** Buchheim and Anaya debated the way forward on the Rose property. Their negotiations became heated in the last quarter of 2017. Buchheim and Anaya finally agreed in principle that Buchheim would buy the Rose property from

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Anaya and, as part of the deal, would sign a covenant not to sue Anaya. But the two could not agree on the wording of the covenant, with each insisting on language the other refused to accept.

For instance, on November 8, 2017, Buchheim emailed Anaya, demanding that Anaya sign Buchheim's version of his covenant not to sue Anaya. Buchheim also demanded Anaya sign the purchase agreement by which Buchheim would buy the house from Anaya. With Buchheim's emphasis and capitalizations, Buchheim wrote:

"**If you** [Anaya] **want to be sued**...then don't sign it [Buchheim's version of the covenant] or the purchase agreement. [¶] **If you don't want to be sued**...then sign the fucking agreement."

"We will not sue you if you sign this too. This is the original version and not your chopped up version. I do not trust you or your agreements. [¶] **If you want to pay off Trillion's arrears and all the closing costs...then I might consider reading and signing yours.** [¶] Otherwise...have ****40** fun in foreclosure, court, bankruptcy, and struggling to run your fraudulent business with me lurking around every corner. [¶] STOP FUCKING AROUND! YOU ARE ALLOWING US TO SUE AND A LOT MORE IF YOU DON'T SIGN!"

Eventually Buchheim and Anaya agreed on the wording of both the purchase agreement and Buchheim's covenant not to sue Anaya. They signed both documents on November 9, 2017. The deal closed on January 12, 2018, with Buchheim buying the Rose property from Anaya for $1,550,000.

To consummate the transaction, Buchheim got a loan of $1,240,000 from Recovco Mortgage Management and transferred $1,550,000 in escrow to Chicago Title Company to obtain title. After escrow closed, Chicago Title wired *$471,381.46* to Buchheim to pay off the consolidated promissory note with interest. Buchheim belatedly raises an argument about the calculation of interest. Because he did not develop this argument in a timely fashion that would have given the remodelers a chance to respond, we assume the interest amount is proper for purposes of our analysis. Keep that sum in mind: *$471,381.46*.

Buchheim then renovated the Rose house himself and, as mentioned, sold the property for $2,018,000 in November 2018.

Buchheim remained dissatisfied, however, and claimed Anaya had not paid him back as the consolidated promissory note required.

***882** Despite his much-negotiated covenant *not* to sue Anaya and the remodelers, Buchheim *did* sue them all. This was in February 2019. Buchheim's complaint asserted twelve causes of action, including breach of contract, fraud, and rescission of the covenant not to sue.

Anaya moved for summary judgment, which the trial court granted on two grounds. First, Anaya had completely paid off the consolidated note and owed Buchheim nothing, so Buchheim had no damages. Second and in the alternative, Buchheim's covenant not to sue barred Buchheim's suit.

Because Anaya and United Home had a pending cross-complaint, the court entered final judgment only as to wife Olivia Anaya Valenzuela and daughter Maria Anaya Taglioli. (*Buchheim v. Anaya* (Oct. 13, 2023, B312307) [nonpub. opn.] (*Buchheim I*).)

Buchheim appealed this partial judgment, and we affirmed in an unpublished opinion. We declined to reach the merits because Buchheim's opening brief cited no record evidence. (*Buchheim I, supra*.)

After the remittitur issued, Anaya and United Home dismissed their cross-complaint. A different trial judge entered final judgment in their favor based on Anaya's same summary judgment motion that Buchheim had challenged in our 2023 appeal in *Buchheim I*. Buchheim again appealed.

II

We affirm because uncontroverted evidence showed Anaya fully paid Buchheim, who therefore suffered no damages. Our review is independent. (See *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843, 850–851, 860, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

Once we untangle the facts, this case is simple. Anaya owed Buchheim *$471,381.46* on the consolidated note plus interest. The two agreed Anaya would sell Buchheim the Rose house for $1,550,000, which Buchheim bought with the aid of a home loan. During escrow, buyer Buchheim received a transfer of *$471,381.46* to pay off the promissory note with interest. This transfer of money back *to a buyer* is ****41** not

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usual. Usually the money flows *from buyer* to seller. But here, Buchheim the house buyer enjoyed an inflow of *$471,381.46* for *buying* the house.

This unusual escrow transfer cleared Anaya's debt. It was the same as if Anaya had given Buchheim a discount on the house in the amount Anaya owed Buchheim.

***883** That should have ended the matter. But Buchheim launched an expensive and ill-conceived lawsuit under the mistaken but apparently impassioned belief that Anaya owed him still more.

Not so. The undisputed evidence shows the escrow transfer satisfied Anaya's debt in whole. Buchheim's fervent belief Anaya owed more was no defense against Anaya's well-founded motion for summary judgment.

This case thus stands for the proposition that an overwhelming belief something is true, without facts to back it up, does not make it so. Driving forward on baseless claims only compounds the eventual disaster, because evidence trumps mere beliefs in financial transactions.

We explain in more detail.

The undisputed evidence was that the parties intended the Rose promissory note to include Buchheim's loans on the Rose property totaling $388,928.00 as well as the previously unpaid promissory note for $36,000.00 on the Cleveland property for a grand total of $424,928.00. By the time of the purchase, the note had accrued about $46,000 in interest, resulting in a value of $471,381.46. Buchheim got the $471,381.46 repayment on the consolidated note in the escrow transfer. In his deposition, Buchheim repeatedly admitted receiving that sum. The $471,381.46 escrow transfer repaid the $424,928.00 debt with the proper interest.

In short, as the trial court properly ruled, the evidence showed Buchheim got his money back.

What then is Buchheim's complaint? Apparently Buchheim's view was that this escrow transfer was not a true or real debt satisfaction because it was "his money" paying off the consolidated note. Buchheim repeated this logic, both in his deposition and in his opposition to Anaya's motion for summary judgment. The trial court noted this was Buchheim's argument: "It is [Buchheim's] contention that the payoff was made with [Buchheim's] money, meaning that [the remodelers] are still liable for the $424,928, to be paid from [the remodelers'] own pockets."

Buchheim's belief was that *I paid myself and so it was not you who paid me*.

This was illogical. True, Buchheim had just put $1,550,000 into escrow and he got $471,381.46 back out of escrow. But Buchheim *also* got from escrow the title to the Rose house that was worth $1,550,000.

***884** In other words, Buchheim gave up $1,550,000 in cash, got $1,550,000 in property value, and *also* got $471,381.46 in the escrow transfer. Buchheim's belief during his deposition and in the trial court that he was merely paying *himself* $471,381.46—and that did not count as Anaya's note repayment—is logically mistaken.

Imagine you buy a car for $50,000. You hand the dealer a check for $50,000 and the dealer gives you the keys to a car worth $50,000. Now assume the dealer *also* hands you a bag containing $4,000. The result of the bag transfer is that you are $4,000 richer. Maybe the $4,000 is a loan repayment, maybe it is a gift, maybe it is an investment in a future relationship. Whatever it is, you are not paying *yourself* $4,000, even though you just gave the dealer $50,000. To think otherwise is a fallacy.

****42** If this fallacy has been the basis for Buchheim's passion propelling this litigation, the whole thing has been drastically in error from the start.

Buchheim refrains from repeating this fallacy in our court. Rather, his opening brief isolates *one sentence* from Buchheim's deposition testimony. This one sentence is Buchheim's unexplained and unelaborated assertion that Anaya's company has not repaid all of Buchheim's loans. Buchheim's brief does not explain the basis for this bald deposition assertion. The unexplained basis presumably was Buchheim's fallacious *I-paid-myself* reasoning, for no other foundation is given or is apparent.

Buchheim also emphasizes his former wife's deposition testimony asserting that "[w]e never received any money. We never got our money back." These statements likewise stand as unexplained in our court.

These unexplained and fallacious declarations of personal conviction could not defeat summary judgment. Buchheim

had agreed the promissory note rolled up Anaya's debts into one package. As stated, Buchheim also agreed he received the $471,381.46 escrow transfer. When there is stipulated financial evidence to the contrary, Buchheim's opaque assertions of belief do not create disputed fact issues, any more than a party can change its story to avoid summary adjudication. (Cf. *Wawrzenski v. United Airlines, Inc.* (2024) 106 Cal.App.5th 663, 686, 327 Cal.Rptr.3d 245 [plaintiff cannot change story to avoid summary adjudication].)

This result is not a credibility determination, which is forbidden at summary judgment. Rather it is a matter of procedural fairness: you must explain your inchoate belief that the other side's accounting does not add up. Summary judgment is the time to put up or shut up. In this situation, subjective beliefs do not create a genuine issue of fact. Uncorroborated, ***885** unexplained, and self-serving deposition testimony fails for the same reason. (See *King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 433, 60 Cal.Rptr.3d 359.)

Pivoting to an alternative angle of attack, Buchheim tells us there is evidence he suffered damages of *other* kinds, such as "extra closing costs, late fees due to the delinquent mortgage, unpaid property taxes, and other monetary outlays that were not a part of the initial deal." Buchheim forfeited these arguments by failing to present them to the trial court. (See *Quiles v. Parent* (2018) 28 Cal.App.5th 1000, 1013, 239 Cal.Rptr.3d 664 [failure to raise specific challenges in the trial court forfeits the claim on appeal].)

Because we affirm the grant of summary judgment on one ground, we need not address other issues this ruling renders moot.

DISPOSITION

We affirm the judgment and award costs to the respondents.

We concur:

STRATTON, P. J.

VIRAMONTES, J.

All Citations

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