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Court of Appeal, Second

District, Division 7, California.

FOROUGH ETELAEI, as Trustee, et al.,
Plaintiffs, Cross-defendants and Appellants,

v.

FIRST GENERAL BANK, Defendant,
Cross-complainant and Respondent.

B287186

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Filed 06/18/2019

APPEAL from the judgment of the Superior Court of Los Angeles County, Marc R. Marmaro, Judge. Reversed. (Los Angeles County Super. Ct. No. BC519769)

Attorneys and Law Firms

Paul M. Hittelman; Greines, Martin, Stein & Richland and Marc J. Poster for Plaintiffs, Cross-defendants and Appellants.

Cunningham, Treadwell & Bartelstone, Francis J. Cunningham III and David S. Bartelstone for Defendant, Cross-complainant and Respondent.

Opinion

FEUER, J.

*1 Forough Etelaie, as trustee of the Toufer Arrowroot Trust, and Shahzad Khaligh¹ appeal from a judgment

entered in favor of First General Bank (the Bank) on Etelaie and Khaligh's third amended complaint and the Bank's cross-complaint arising out of a loan transaction that encumbered property held in trust for Khaligh. Etelaie and Khaligh alleged Benjamin Toufer fraudulently executed a deed of trust on the property to secure a home equity line of credit from the Bank. The third amended complaint sought cancellation of the deed of trust and notice of default recorded on the property. The Bank in its cross-complaint sought to quiet title and declaratory relief, declaring the deed of trust valid and enforceable.

¹ Khaligh's first name appears as Shahrzad and Shahzad in the record. We use the spelling Khaligh uses in her briefing.

The trial court entered judgment after granting the Bank's motion for summary adjudication of the Bank's 26th affirmative defense of ratification, finding Khaligh had ratified Toufer's loan transaction with the Bank, regardless of whether she authorized the loan in the first instance. In addition, the court granted the Bank's motion for judgment on the pleadings on its cross-complaint based on the court's ruling on the motion for summary adjudication finding ratification.

Etelaie and Khaligh contend there are triable issues of material fact as to whether Khaligh ratified Toufer's loan transaction. We agree and reverse the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. Khaligh's Transfer of Title to Toufer in 2008

On August 31, 2001 Khaligh purchased a single-family residence on Arrowroot Lane in Rancho Palos Verdes (the Property). On February 6, 2008 Khaligh transferred title of the Property to Toufer for the purchase price of \$952,000. Toufer paid \$457,000 in cash, borrowed \$285,000 from a private lender, Schaefer Funds, and borrowed the rest from Khaligh's family members. Khaligh transferred title to Toufer in order to acquire funds to settle a judgment against her. Khaligh and Toufer verbally agreed Khaligh would continue to be the exclusive beneficial owner of the Property, and Toufer would hold title in trust for Khaligh's exclusive use and benefit. They also agreed Toufer's title was nominal and he would transfer title back to Khaligh at her request. On March 31, 2008 Toufer transferred title back to Khaligh by a quitclaim deed, which was not recorded.

Khaligh's sister, Shahla Sina, paid \$287,000 to Schaefer Funds to repay the loan on behalf of Khaligh. In addition, Sina paid Toufer \$151,000 on behalf of Khaligh.

B. The 2012 Loan Transaction

By early 2012 Toufer had recouped all but \$250,000 of the amount he had paid to Khaligh in February 2008. According to Khaligh, at that time she and Toufer agreed to seek a new loan of no more than \$500,000, from which Toufer would receive \$250,000 to repay the amount Khaligh owed him, with the remainder going to Khaligh to service her debts while she sought employment. Khaligh declares she and Toufer agreed he would not enter into a loan transaction without her authorization and consent.

*2 In mid-November 2012 an appraiser came to the Property, and Khaligh answered the appraiser's questions about the Property. Toufer and the appraiser refused to tell Khaligh the name of the lender or the amount and terms of the proposed loan.

In late 2012 Toufer applied to the Bank for a home equity line of credit with a credit limit of \$990,000, which the Bank approved. As part of the transaction, Toufer signed a home equity line of credit agreement with the Bank. He also executed a deed of trust on the Property in favor of the Bank to secure repayment of the loan, which was recorded on December 13, 2012. On December 18, 2012 the Bank advanced Toufer \$700,000 on the line of credit (the loan or 2012 loan). The next day Toufer withdrew the funds from his checking account with the Bank.

C. Khaligh's Actions After Learning of the 2012 Loan

According to Khaligh, she did not know about Toufer's loan from the Bank until December 21, 2012, when she received at her home a copy of the loan closing statement. She called Toufer and her sisters, Sina and Hayedeh Khaligh,² seeking information about the loan. Hayedeh told Khaligh she thought Toufer had received \$700,000 from the Bank; Toufer refused to tell Khaligh how much money he received. Khaligh demanded Toufer cancel the loan and return the money to the Bank. She requested a meeting with Toufer and her sisters, and they agreed to meet on December 28 at Hayedeh's house. At that meeting, Khaligh again asked Toufer to cancel the loan and confirmed he had no authority to obtain a loan without her approval. She requested Toufer go with her

to the escrow office on the following Monday to sign documents to transfer title of the Property to a trust to protect her interest.

² Because Hayedeh Khaligh shares the same last name as appellant Shahzad Khaligh, we refer to Hayedeh Khaligh by her first name to avoid confusion.

On December 27, 2012 Khaligh called the Bank and spoke with Jeanette Lin, the Bank's senior vice president. Khaligh notified Lin that Toufer had fraudulently obtained the loan without her authority. Lin said the Bank would "freeze" the loan to prevent further withdrawals. On December 31, 2012 Lin sent a letter to Toufer at the Property's address, stating in part, "We received [a] phone call on December 27, 2012 from Shahzad Khaligh Ms. Khaligh informed the bank, the subject loan is unauthorized and fraudulent." The letter notified Toufer his credit line was "temporarily suspended, and we reserve our right to call the loan if we do not receive [a] Notarized Affidavit from both you and Shahzad Khaligh reaffirming your authority of subject loan request."

On December 31, 2012 Khaligh met with Toufer, Hayedeh, and David Gibson at Gibson's escrow office. At the start of the meeting, Toufer executed a quitclaim deed transferring title of the Property to Etelaei as trustee of the Toufer Arrowroot Trust. Gibson notarized the deed and handed it to Khaligh. Khaligh asked Toufer to acknowledge and Gibson to notarize a "special power of attorney" Toufer had signed on August 30, 2010, appointing Khaligh as an agent and "attorney-in-fact" for Toufer, and authorizing Khaligh to act "in any lawful way in order to obtain any permit/s including but not limited to the execution of any and all documents necessary or advisable with respect to the [P]roperty ... , and the expenditure of any and all funds necessary for the payment of expenses in connection with such matters." Gibson notarized the document.

*3 Khaligh states that at the meeting she also demanded Toufer not to "touch" the loan or any of the loan proceeds. She represented she intended to continue to take tax deductions for the property taxes she paid and the interest payments she made on the 2008 loans. Further, Khaligh confirmed she would be responsible for any capital gains taxes incurred by Toufer arising from the transfer of the property. Khaligh and Toufer also discussed the costs of a future refinancing. Khaligh claims they did not discuss Toufer's initial withdrawal of \$700,000, his payments from

the loan amount to Sina, or whether Toufer's transfer of title back to Khaligh was consideration for Toufer keeping the remainder of the loan proceeds. After this discussion, Khaligh left the meeting to distribute Christmas gifts to Gibson's staff.

A few minutes later, Hayedeh came out of the meeting room and gave Khaligh two copies of a document. According to Khaligh, Hayedeh told her the document was a typed list of Khaligh's instructions to Toufer that Gibson had prepared. Khaligh states she did not read the agreement before signing two copies of it because she believed the document reflected her instructions during the meeting.

The December 31, 2012 agreement (Agreement), which is on David Gibson Escrow Co., Inc., letterhead, states: “ ‘AGREEMENT’ ¶ 1. Benjamin Toufer agrees to not file Bankruptcy prior to June 1, 2013. ¶ 2. Benjamin Toufer to pay the costs of refinancing the [Property] ... NOT to exceed \$5,000.00, ONLY if the property is refinanced within one (1) year from date hereof. ¶ 3. Benjamin Toufer will allow Shahzad Khaligh to deduct any and all interest she pays on the [Property]. ¶ 4. Benjamin Toufer will NOT withdraw any funds and make any other changes on the Line of Credit without the written permission of Shahzad Khaligh. ¶ 5. Benjamin Toufer has paid the sum of \$328,000.00 to Shahla Sina with the permission of Shahzad Khaligh on this date. ¶ 6. In the event that Benjamin Toufer be responsible for any Capital Gains Taxes on the [Property] that Shahzad Khaligh would be responsible. ¶ 7. Benjamin Toufer is not responsible for the Real Property Taxes and the Beneficiary of the Toufer 6100 Trust Agreement shall be responsible on [the Property].”

After signing the Agreement, Khaligh went to her car. Khaligh claims it was then that she read the Agreement. While Khaligh was sitting in her car, Hayedeh approached her and asked why she was crying. Khaligh inquired about Toufer's payment of \$328,000 to Sina as indicated by the Agreement. Hayedeh informed Khaligh that earlier that day Sina had taken Toufer to her bank, and he deposited \$328,000 in Sina's bank account.

Khaligh and Toufer characterize the Agreement differently. Toufer states in his declaration the Agreement was “regarding, among other things, the disbursement of the \$700,000.00 advanced on the First General Bank

Equity Line, and how title to the Arrowroot Property would thereafter be held.” By contrast, Khaligh states as of December 31, 2012 she did not “have any arrangement, written or oral, with Toufer that would have authorized him or consented to the retention by him of any portion of a \$700,000 withdrawal from a loan secured by my residence.... ¶ ... I signed the ‘Agreement’ of December 31, 2012 believing that this would lead to the cancellation of the loan and the removal of its effect on the title to my property and that Toufer would, as he had promised be removed from the title as I could [no] longer trust him.”

On January 21, 2013 Toufer signed the affidavit Lin requested in her December 31, 2012 letter. The affidavit purports to have Khaligh's signature, and states the January 4, 2008 quitclaim deed transferring the Property from Khaligh to Toufer is a “true transfer.” On February 5, 2013 Lin called Khaligh to verify her signature on the affidavit; Khaligh denied she signed it and asserted it was a forgery.

*4 On February 25, 2013 Khaligh recorded the quitclaim deed Toufer had executed on December 31, 2012, conveying title to the Property to Eteelai, as trustee of the Toufer Arrowroot Trust.³

³ The record also contains another quitclaim deed executed on January 7, 2013 by Khaligh, purporting to act as Toufer's attorney-in-fact, transferring the Property to Eteelai as trustee of the Toufer Arrowroot Trust. Khaligh recorded this deed the next day.

D. The Bank's Notices of Default

In February 2013 Toufer made the first payment on the 2012 loan, but he failed to make any further payments. After recording the initial notice of default in May 2013 to initiate foreclosure proceedings, on August 27, 2013 trustee Stewart Default Services recorded a second notice of default. On July 25, 2014, at the request of the Bank, Stewart Default Services rescinded the second notice of default.

E. The Pleadings

After the Bank initiated foreclosure proceedings on the Property, Khaligh and Eteelai, as trustee of the Toufer Arrowroot Trust, filed a complaint against Toufer, the Bank, and Stewart Default Services. The operative May 26, 2015 third amended complaint sought from all

defendants cancellation of the deed of trust and notice of default and declaratory relief the documents were void and unenforceable. In addition, the third amended complaint alleged against Toufer causes of action for breach of fiduciary duty, money had and received, and intentional and negligent infliction of emotional distress.

In its answer, the Bank alleged ratification as its 26th affirmative defense, asserting Khaligh ratified Toufer's actions in connection with the loan from the Bank.

F. The Bank's Motion for Summary Adjudication

On August 7, 2015 the Bank moved for summary adjudication of the first cause of action for cancellation of the deed of trust and notice of default and the second cause of action for declaratory relief. The Bank argued its affirmative defense of ratification provided a complete defense to the first and second causes of action.⁴ The Bank contended Khaligh ratified the 2012 loan by entering into an agreement with Toufer after she learned about the line of credit and Toufer's advance of \$700,000, as reflected by the Agreement. According to the Bank, the Agreement shows Khaligh agreed Toufer would disburse \$328,000 to Sina as repayment for funds she paid on behalf of Khaligh in connection with the 2008 property transaction, including \$150,000 to Toufer and \$178,000 as partial repayment to Schaefer Funds. The Bank also asserted the Agreement reflects Toufer would keep the balance of the \$700,000 advance as consideration for transferring the Property back to Khaligh. The Bank argued Khaligh ratified the loan transaction by her voluntary acceptance of the benefits of the loan, including paying off Khaligh's debt to Sina and allowing Toufer to keep the balance of the funds so he would transfer the Property back to Khaligh.

⁴ The Bank also argued the request for cancellation of the notice of default was moot because the Bank had already rescinded it.

On October 30, 2015 the trial court granted the Bank's motion for summary adjudication. The court ruled Khaligh ratified Toufer's loan transaction with the Bank by accepting its benefits, "regardless of whether it was authorized in the first instance." The court found Khaligh was bound by the terms of the Agreement, which expressly states Khaligh agreed to Toufer's distribution of \$328,000 to Sina. Further, the court found Khaligh did not take steps to cancel the loan or require Toufer to return the

loan proceeds; thus, there was a reasonable inference Toufer kept the proceeds with Khaligh's knowledge and permission. The court noted Toufer joined in the Bank's motion, but denied the motion as to him because the causes of action for cancellation and declaratory relief were directed at the Bank's deed of trust, not Toufer.

G. The Subsequent Court Proceedings and Judgment

*5 On April 7, 2016 the trial court granted the Bank's motion for judgment on the pleadings on the causes of action in its cross-complaint against Eteelai and Khaligh for declaratory relief and to quiet title. The court reasoned its earlier ruling, finding ratification on the Bank's motion for summary adjudication, resolved the validity of the deed of trust in the Bank's favor, and against Eteelai and Khaligh.


The case proceeded to a jury trial on Khaligh's claims against Toufer. On September 28, 2017 the jury rendered a verdict in favor of Khaligh on her breach of fiduciary duty claim, awarding her \$50,000 in damages. However, the jury found in favor of Toufer on Khaligh's claims for money had and received and intentional infliction of emotional distress. The jury found Toufer had acted with malice, oppression, or fraud, but did not award Khaligh any punitive damages.

On October 16, 2017 the trial court entered judgment, reflecting the jury verdict as to Toufer; the judgment in favor of the Bank on the first and second causes of action of the third amended complaint; and judgment in favor of the Bank on the first and second causes of action of its cross-complaint. The court dismissed as moot the Bank's causes of action for imposition of equitable lien, restitution based on unjust enrichment, and indemnity.

Eteelai and Khaligh timely appealed from the judgment in favor of the Bank, challenging the trial court's grant of the Bank's motions for summary adjudication and judgment on the pleadings.

DISCUSSION

A. Standard of Review

Summary judgment is appropriate only if there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law.⁵  Code

Civ. Proc., § 437c, subd. (c); [Regents of University of California v. Superior Court](#) (2018) 4 Cal.5th 607, 618; accord, [Barenborg v. Sigma Alpha Epsilon Fraternity](#) (2019) 33 Cal.App.5th 70, 76.) A defendant moving for summary judgment has the initial burden of presenting evidence that a cause of action lacks merit because the plaintiff cannot establish an element of the cause of action or there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2); [Aguilar v. Atlantic Richfield Co.](#) (2001) 25 Cal.4th 826, 853; [Drexler v. Petersen](#) (2016) 4 Cal.App.5th 1181, 1188 [“ ‘A defendant has the initial burden to show that undisputed facts support summary judgment based on the application of an affirmative defense.’ ”]; [Varshock v. Department of Forestry & Fire Protection](#) (2011) 194 Cal.App.4th 635, 651, citing [Anderson v. Metalclad Insulation Corp.](#) (1999) 72 Cal.App.4th 284, 289-290 [“to shift burden to plaintiff, defendant must establish each element of affirmative defense”].) If the defendant satisfies this initial burden, the burden shifts to the plaintiff to present evidence demonstrating there is a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); [Aguilar](#), at p. 850; [Gund v. County of Trinity](#) (2018) 24 Cal.App.5th 185, 193.)

⁵ We apply the summary judgment standard of review because “ ‘[a] summary adjudication motion is subject to the same rules and procedures as a summary judgment motion.’ ” ([Butte Fire Cases](#) (2018) 24 Cal.App.5th 1150, 1157; accord, [Petitpas v. Ford Motor Co.](#) (2017) 13 Cal.App.5th 261, 269.)

We independently review the trial court's grant of summary judgment, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained. ([Hampton v. County of San Diego](#) (2015) 62 Cal.4th 340, 347; [Wilson v. 21st Century Ins. Co.](#) (2007) 42 Cal.4th 713, 717.) “ ‘ “We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party.” ’ ” ([Hampton](#), at p. 347; accord, [Wilson](#), at p. 717.) “ ‘[S]ummary judgment cannot be granted when the facts are susceptible to more than one reasonable inference’ ” ([Husman v. Toyota Motor Credit Corp.](#) (2017) 12 Cal.App.5th 1168, 1180; accord, [Soria v.](#)

[Univision Radio Los Angeles, Inc.](#) (2016) 5 Cal.App.5th 570, 583.)

B. There Are Triable Issues of Material Fact Necessary to the Bank's Ratification Defense

1. Law of ratification

*6 “An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification.” (Civ. Code, § 2307;⁶ accord, [UFCW & Employers Benefit Trust v. Sutter Health](#) (2015) 241 Cal.App.4th 909, 932.) “ ‘Ratification is the voluntary election by a person to adopt in some manner as his own an act which was purportedly done on his behalf by another person, the effect of which, as to some or all persons, is to treat the act as if originally authorized by him.’ ” ([Estate of Stephens](#) (2002) 28 Cal.4th 665, 673, quoting [Rakestraw v. Rodrigues](#) (1972) 8 Cal.3d 67, 73 ([Rakestraw](#))). “Ratification of part of an indivisible transaction is a ratification of the whole.” (Civ. Code, § 2311; accord, [Navrides v. Zurich Ins. Co.](#) (1971) 5 Cal.3d 698, 704 [“a principal is not allowed to ratify the unauthorized acts of an agent to the extent that they are beneficial, and disavow them to the extent that they are damaging”]; [Friddle v. Epstein](#) (1993) 16 Cal.App.4th 1649, 1656 [purchaser could not ratify unauthorized purchase agreement without ratifying agreement to pay broker 10 percent commission].)

⁶ All further statutory references are to the Civil Code.

“A purported agent's act may be adopted expressly or it may be adopted by implication based on conduct of the purported principal from which an intention to consent or adopt the act may be fairly inferred, including conduct which is ‘inconsistent with any reasonable intention on his [or her] part, other than that he [or she] intended approving and adopting it.’ ” ([Rakestraw, supra](#), 8 Cal.3d at p. 73 [wife ratified conduct of husband in forging her name on promissory note and deed of trust to obtain funds for corporation where she failed to disavow forgeries, actively participated in corporation, and financially benefitted from corporation's operations]; accord, [Behniwal v. Mix](#) (2005) 133 Cal.App.4th 1027, 1040 ([Behniwal](#)) [sellers ratified their realty agent's counteroffer by signing disclosure forms that referenced

the purchase agreement].) “Generally, the effect of a ratification is that the authority which is given to the purported agent relates back to the time when he performed the act.” (*Rackstraw*, at p. 73; accord, *Ram v. OneWest Bank, FSB* (2015) 234 Cal.App.4th 1, 14.) Ratification is ordinarily an affirmative defense. (*Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079, 1097, fn. 16.)

“It is essential, however, that the act of adoption be truly voluntary in character. Moreover, there can be no adoption if the act, although voluntary, is done only because the purported principal is obligated to minimize his losses caused by the agent's wrongful act [citation], or because of duress or misrepresentation by the agent [citation].” (*Rakestraw, supra*, 8 Cal.3d at p. 73; accord, *Pacific Vinegar & Pickle Works v. Smith* (1907) 152 Cal. 507, 511 [where prior president of company accepted notes for payment from third party without authorization, company was entitled to recover from president's estate for unauthorized notes because its acceptance of partial payment was an effort to minimize its loss, not ratification of president's actions].)

Significantly, with respect to execution of a deed transferring property, pursuant to “the equal dignities rule of ... section 2310 ... just as an agent's authority to execute a deed must be in writing, so also must a principal's ratification of an invalid execution be in writing.”⁷ (*Estate of Stephens, supra*, 28 Cal.4th at p. 673; see § 2310 [“A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or retaining the benefit of the act, with notice thereof.”])⁸

⁷ Under section 1091, “An agent's authority to execute a deed on behalf of a principal must be conferred in writing.” (*Estate of Stephens, supra*, 28 Cal.4th at p. 672.)

⁸ In *Rakestraw*, although the wife's ratification was not in writing, the court concluded a writing was not required because the wife's liability arose from the promissory note, not the deed of trust, which only secured the note. (*Rakestraw, supra*, 8 Cal.3d

at p. 76.) Here, by contrast, Khaligh's liability only arises from the deed of trust because the promissory note was signed by Toufer, not Khaligh. In addition, the *Rakestraw* court explained because the husband purported to act as the agent for the wife in signing her name, section 2310 did not apply because it “was not intended to apply as between an agent and principal.” (*Rakestraw*, at p. 76.) However, section 2310 does apply where, as here, the dispute is between the principal and a third party who received the interest in the property. (See *Estate of Stephens, supra*, 28 Cal.4th at p. 674 [distinguishing *Rakestraw* as a case involving oral ratification in a dispute between a principal and an agent].)

2. Whether Khaligh by the Agreement ratified Toufer's loan transaction is a disputed question of fact

*7 The Bank contends Khaligh ratified the loan transaction by accepting the benefits of the 2012 loan and entering into the Agreement, which it asserts reflects Khaligh's knowledge and ratification of the line of credit and deed of trust.⁹ Although the parties argue at length whether Khaligh accepted the benefits of the 2012 loan, ratification based on the principal's acceptance of the benefits of the agent's actions is applicable only “where an oral authorization would suffice.” (§ 2310; see *Cleveland v. Johnson* (2012) 209 Cal.App.4th 1315, 1336-1337 [plaintiffs ratified defendants' investment in company by accepting benefits of investment]; *Alvarado Community Hospital v. Superior Court* (1985) 173 Cal.App.3d 476, 481 [client ratified attorney's acceptance of settlement offer by obtaining settlement amount from state bar after dismissal of her action].) The Bank has not cited to any authority to the contrary, nor are we aware of any.

⁹ Khaligh's argument she should not be bound by the Agreement because she did not read it is not persuasive. Khaligh states in her declaration she signed the Agreement without reading it because Hayedeh informed her it was a typed statement reflecting Khaligh's instructions to Toufer. But as the trial court noted, the entire agreement “is not long, consisting of only seven enumerated items on a single page.” Further, in the absence of fraud by Toufer in preparing the agreement, by signing the agreement Khaligh is bound by its terms. (*Jimenez v. 24 Hour Fitness USA, Inc.* (2015) 237 Cal.App.4th 546, 563 [“Generally, a person who signs an instrument

may not avoid the impact of its terms on the ground that she failed to read it before signing. [Citation.] However, a release is invalid when it is procured by misrepresentation, overreaching, deception, or fraud.”]; [C9 Ventures v. SVC-West, L.P. \(2012\) 202 Cal.App.4th 1483, 1501](#) [“ ‘A party cannot avoid the terms of a contract on the ground that he or she failed to read it before signing.’ ”].)

The Bank does not dispute Khaligh could only ratify Toufer's authorization to encumber the Property by a written authorization. Therefore, we look to the Agreement to determine whether it reflects Khaligh's intention to adopt Toufer's actions in securing the 2012 loan. ([Rakestraw, supra, 8 Cal.3d at p. 73](#); [Behniwal, supra, 133 Cal.App.4th at p. 1040](#).) The Bank met its initial burden to present evidence establishing its affirmative defense of ratification, including the Agreement and Toufer's declaration stating the Agreement reflected Khaligh's assent to how the \$700,000 would be disbursed. However, Khaligh presented evidence demonstrating triable issues of fact as to whether the Agreement reflected her intention to adopt the conduct of Toufer in securing the 2012 loan. (See [Code Civ. Proc., § 437c, subd. \(p\) \(2\)](#); [Aguilar v. Atlantic Richfield Co., supra, 25 Cal.4th at p. 853](#).)

As an initial matter, nowhere in the Agreement does it state explicitly that Khaligh authorized the 2012 loan transaction, by which Toufer encumbered the Property and withdrew \$700,000. Instead, the Bank argues paragraph 4, which provides that “... Toufer will NOT withdraw any funds and make any other changes on the Line of Credit without the written permission of Shahzad Khaligh,” shows Khaligh's acquiescence in the loan by “directly referenc[ing] the ‘Line of Credit.’ ” Although this paragraph does reference the line of credit, it could reasonably be construed, as argued by Khaligh, that this only meant Toufer could not withdraw any additional funds, not that she authorized the \$700,000 he had already withdrawn on the line of credit. Further, this paragraph may reasonably be interpreted as Khaligh's attempt to minimize her losses caused by Toufer's unauthorized loan. (See [Rakestraw, supra, 8 Cal.3d at p. 73](#) [there is no ratification “if the act, although voluntary, is done only because the purported principal is obligated to minimize his losses caused by the agent's wrongful act”].)

*8 The Bank also points to paragraph 3, which allows Khaligh “to deduct any and all interest she pays on the ... [P]roperty,” as evidence she acquiesced in the loan by reaching an agreement with Toufer that she could take a tax deduction for any interest payments she made on the 2012 loan. But Khaligh states in her declaration that at the December 31, 2012 meeting she demanded the right to continue deducting the interest payments she made on Toufer's 2008 loan, not the 2012 loan. In addition, the Bank relies on paragraph 2, which refers to a future refinancing of the Property, as evidence Khaligh ratified the 2012 loan. But paragraph 2 does not state whether it is referring to refinancing of the 2008 or 2012 loans on the Property. There are disputed questions of fact whether these paragraphs refer to the 2008 or 2012 loans.

The Bank also points to the statement in paragraph 5 that “Toufer has paid the sum of \$328,000.00 to Shahla Sina with the permission of Shahzad Khaligh on this date” to show Khaligh benefitted from the loan transaction by paying off Khaligh's debt to Sina. As noted, the benefit to Khaligh from the 2012 loan cannot alone support ratification of the loan transaction. However, this statement may be relied on by the Bank to show Khaligh by the Agreement adopted Toufer's distribution of the \$700,000 loan proceeds, as asserted by Toufer in his declaration. In [Behniwal, supra, 133 Cal.App.4th at page 1040](#), the court concluded the sellers ratified their realtor's forgery of their names to a counteroffer to sell their property because the sellers would not have signed disclosure documents relating to the purchase agreement unless they approved the sale. Similarly, the Bank argues Khaligh's agreement to pay her sister and for Toufer to keep the remainder of the proceeds shows her acquiescence in the loan transaction.

However, nothing in the Agreement states Toufer would retain some or any of the \$700,000 loan proceeds. Khaligh disputes she agreed Toufer could obtain a \$700,000 loan. She also disputes she agreed for him to retain more than the \$250,000 she owed him on the 2008 loan. Khaligh also disputes she owed Sina more than the \$150,000 Sina paid to Toufer.¹⁰ The Bank is correct that one reasonable reading of the Agreement is that Khaligh, by agreeing to payment of \$328,000 to Sina, retroactively authorized Toufer to obtain the 2012 loan and distribute \$328,000 of the proceeds to Sina to repay Khaligh's debt. But another reasonable reading of the same language is that Khaligh

was trying to protect her interests by ensuring Toufer did not withdraw any additional funds on the line of credit and used some of the funds to repay Sina. As discussed, an agent may minimize his or her loss without authorizing prior conduct. (📄 *Rakestraw, supra*, 8 Cal.3d at p. 73; 📄 *Pacific Vinegar & Pickle Works v. Smith, supra*, 152 Cal. at p. 511.) Further, Khaligh states in her declaration she “believed that [Sina] would return [the \$328,000] to the lender so that the loan could be cancelled.” Given the ambiguity in the Agreement, Khaligh's declaration creates a triable issue of fact.

10 In her declaration, Khaligh denies she owed Sina any money at the time of the December 31, 2012 meeting. But she does not dispute that Sina paid Toufer \$151,000 on her behalf. Moreover, in her deposition, Khaligh does not challenge Sina's claim that Khaligh owed her \$150,000.

The Bank argues Khaligh could not rely on the statements in her declaration to defeat summary adjudication because she provided contradictory testimony at her deposition, including admitting she agreed to repayment of her debt to Sina and Toufer's disbursement of funds. However, Khaligh's deposition testimony is not so clear. For example, the Bank points to Khaligh's testimony that “[m]y sister claims that she pays \$150,000 to [Toufer] for me toward my house debt. So I assume I owe her the 150.” But the excerpts of Khaligh's deposition transcript in the record do not show Khaligh owed any additional money to Sina. For example, nowhere does Khaligh state she owed a debt to Sina for her payment of \$287,000 to Schaefer Funds. As to this amount, Khaligh states in her declaration she had worked for Sina's business in early 2009 for 10 to 11 months, and as a result, “any obligation to [Sina] for repayment of the funds that she had paid to Schaefer was essentially written off.” Khaligh added, “At this point, [Sina] gave me a paycheck for 10 days or two weeks work and said you have already paid back the \$285,000 so here is a check for now.”

*9 Similarly, Khaligh's deposition testimony does not show she agreed to Toufer's plan for disbursement of the \$700,000 in loan proceeds. She testified:

“Q After you found out about 990,000 line of credit, then you agreed that both your sister and Mr. Toufer should be paid; correct?”

“A No.

“Q You never did?”

“A No. Paid what? I agreed for [Sina] to be paid 150 and for [Toufer] to get the money, but that's not after they got their 990. From the beginning I agreed for the \$500,000 loan. That was the agreement.

“Q But after you found out about 990,000, you also agreed again; correct?”

“A For the 250 plus 150, 400 something, yes.”

Although the Bank focuses on Khaligh's statement she agreed to the “250 plus 150, 400 something,” Khaligh initially testified she only agreed to a \$500,000 loan, not the \$990,000 line of credit. Further, although the trial court found “this statement amounts to recognition by Khaligh that she agreed Toufer would keep a portion of the proceeds, which ultimately amounted to \$372,000,” at most this statement confirmed Khaligh agreed to repay the \$250,000 she owed Toufer and \$150,000 she owed Sina. It does not mean Khaligh agreed Toufer could take out the \$700,000 and keep the \$378,000 balance, or that she owed Sina \$328,000. ¹¹

11 Although ratification could be supported by Khaligh ratifying “a part of an indivisible transaction” (§ 2311) by approving the \$250,000 repayment of her debt to Toufer and \$150,000 debt to Sina, it is a question of fact whether by agreeing to this repayment she was accepting Toufer's actions “to the extent that they are beneficial, and disavow[ing] them to the extent that they are damaging.” (📄 *Navrides v. Zurich Ins. Co., supra*, 5 Cal.3d at p. 704.) In 📄 *Rakestraw, supra*, 8 Cal.3d at page 75, for example, the wife benefitted by working for the corporation her husband's forged documents helped fund. Here, there was no benefit to Khaligh from Toufer encumbering her property with a \$700,000 lien to enable her to repay Toufer \$250,000 and Sina \$150,000, but with Khaligh receiving nothing.

The trial court's ruling on ratification was also based on its finding there was no evidence “Khaligh took steps to cancel the loan.” But it is undisputed that on December 27, 2012 Khaligh informed Lin, the Bank's senior vice president, that Toufer had fraudulently obtained the loan without Khaligh's authorization. As a result of Khaligh's

conversation with Lin, the Bank suspended Toufer's line of credit. Lin notified Toufer of her telephone conversation with Khaligh in her December 31, 2012 letter to Toufer. Unlike the plaintiff in [Rakestraw, supra](#), 8 Cal.3d at page 75, who waited three years after learning her husband forged her name on a promissory note and deed of trust to inform the lender of his fraud, Khaligh disavowed the transaction by notifying the Bank six days after learning about the loan.

Finally, the court found there was no evidence Khaligh required Toufer to return the proceeds he had withdrawn. But in her declaration, Khaligh states that when she learned about the loan on December 21, 2012, she contacted Toufer, Sina, and Hayedeh, "seeking information and demanding that the loan be cancelled and any money returned to the lender." Further, at the December 28 meeting she "demanded that the loan be cancelled," and told Toufer he needed to contact the Bank to cancel the transaction. Khaligh again told Toufer at the December 31 meeting he "cannot touch the loan or any of the loan funds."

*10 Because there are disputed questions of material fact as to whether Khaligh ratified the 2012 loan, the Bank was not entitled to summary adjudication as a matter of law. The Bank likewise was not entitled to judgment on the pleadings on its cross-complaint premised on the grant of its summary adjudication motion.

DISPOSITION

The judgment is reversed as to the Bank, and the matter remanded for further proceedings consistent with this opinion. Etelaei and Khaligh are entitled to their costs on appeal from the Bank.

WE CONCUR:

[ZELON](#), Acting P. J.

[SEGAL](#), J.

All Citations

Not Reported in Cal.Rptr., 2019 WL 2511405