ARTHUR LEEDS, Plaintiff and Appellant,

v.

CHAKO VAN LEEUWEN, Defendant and Respondent.

No. B291409.

Court of Appeals of California, Second District, Division One.

Filed February 6, 2020.

APPEAL from a judgment of the Superior Court of Los Angeles County, Super. Ct. No. SC119281, Craig D. Karlan, Judge. Affirmed.

Robert Petrokofsky for Plaintiff and Appellant.

No appearance by Defendant and Respondent.

Defendant Chako van Leeuwen created the "Piranha" horror/comedy movie franchise. Plaintiff Arthur Leeds helped van Leeuwen obtain financing for the first Piranha movie, released in 1978. Leeds was not involved in the first sequel to Piranha, or a 1995 remake of the original film. In 2004, van Leeuwen approached Leeds about a new Piranha film, and the parties thereafter entered into a written agreement concerning the project. When van Leeuwen went on to make two new Piranha films (2010's Piranha 3D and 2012's Piranha 3DD) without Leeds, he sued van Leeuwen and others for their purported failure to honor the 2004 agreement.

The parties' dispute reached us previously, and we affirmed the trial court's order dismissing a prior complaint by Leeds for failure to serve van Leeuwen as an indispensable party. (*Leeds v. The Weinstein Company, LLC* (August 23, 2012, B235786) [nonpub. opn.].) The present appeal follows a court trial that ended with a judgment in favor of van Leeuwen on Leeds's claims against her for breach of contract, quantum meruit, and fraudulent inducement.

Leeds contends the judgment should be reversed because: (1) the trial court erred by applying collateral estoppel to his contract claim; (2) the court made prejudicial errors of law in denying his quantum merit claim; and (3) the court failed to make requested findings on ultimate issues of fact concerning his fraud claim. Finding no reversible error, we affirm.

BACKGROUND

A. The Original Piranha Films

Leeds is a former entertainment attorney who retired from the practice of law to produce movies. Van Leeuwen is an actress, screenwriter, and producer. She is the owner of defendant Chako Film International (CFI).[1]

Prior to his retirement, Leeds provided legal representation to van Leeuwen in connection with the making of the original 1978 Piranha film.[2] Among other things, Leeds assisted van Leeuwen with obtaining financing for Piranha from his friend and then-head of United Artists film studio, Mike Medavoy, as well as producer Roger Corman. Piranha was very successful. However, the attorney-client relationship between Leeds and van Leeuwen ended badly and van Leeuwen terminated Leeds as her attorney after Piranha was completed. Van Leeuwen went on to make two sequels to Piranha in 1982 and 1995 without Leeds.

B. Piranha 3D

In 2002, van Leeuwen granted a two-year option to IP Worldwide, LLC (IPW) to "arrange for the option, sale and exploitation" of Piranha. The option agreement, which expired by its own terms on November 22, 2004, was signed by Marc Toberoff as IPW's managing member.

Near the end of IPW's option in 2004, van Leeuwen approached Medavoy about developing a new Piranha project to be known as Piranha 3D. Medavoy told van Leeuwen to contact Leeds, who was then acting as Medavoy's lawyer. Van Leeuwen reached out to Leeds to help her make a deal with Medavoy for a "bigger budget" for Piranha 3D.

C. The December 2, 2004 Agreement Between Leeds and van Leeuwen

The parties dispute what happened following their initial conversation after Medavoy directed van Leeuwen to contact Leeds. Leeds testified he and van Leeuwen had numerous discussions that ultimately resulted in Leeds preparing a three-page agreement dated December 2, 2004 (the December 2 Agreement). The December 2 Agreement provided that, "[i]n connection with Piranha, [Leeds] shall serve as a producer/advisor to [van Leeuwen] for the purposes of helping to secure financing, distribution, and talent. If Piranha is actually made, [Leeds] shall serve as one of the Producers and shall receive a shared credit, both on and off screen, as `Producer.' Such credit shall be no less in any way than that of any of the other Producers." In consideration for Leeds's services as a producer/advisor, the agreement stated that his loan-out company, Arthur Leeds Productions, Inc. would be "paid a reasonable fee and contingent fee (both pursuant to customary industry practice) which shall be mutually agreed upon between [Arthur Leeds Productions, Inc.] and the financiers and/or distributors of Piranha."[3]

Leeds also included a provision in the December 2 Agreement, at paragraph 7, stating that "[i]t is understood and agreed that Chako will not enter into any transaction with respect to Piranha that she does not choose so to do." Leeds testified at trial he intended paragraph 7 to memorialize the parties' belief that van Leeuwen was "still . . . the boss, and she has to decide whether or not she likes the deal. . . . I'm not going to be in a position to force her to enter into any kind of a deal."

Leeds testified that he and van Leeuwen reviewed the December 2 Agreement paragraph by paragraph at his home before they signed it in front of two witnesses. Leeds's testimony was corroborated by his assistant, Julie Marsh, who testified she observed Leeds and van Leeuwen sign the agreement, after which Marsh placed an original copy of the executed agreement in Leeds's office files.

Van Leeuwen, on the other hand, denied signing the December 2 Agreement. When presented with the original version at trial, she asserted her signature on the agreement was forged. Van Leeuwen testified Leeds met her in a park near his home and brought a one-page deal memo that he had prepared stating Leeds would be given a producer credit if he obtained financing for the film.[4] Leeds disputed he ever prepared a one-page document or met van Leeuwen in a park. A forensic document examiner hired by Leeds opined at trial that van Leeuwen's signature on the December 2 Agreement was genuine.

Notwithstanding the parties' dispute over the form their agreement took, van Leeuwen agreed Leeds would be a producer on Piranha 3D if he obtained financing for the film.

D. Leeds Attempts To Perform Services Under the Agreement

After signing the December 2 Agreement, Leeds contends he performed services under that agreement. These services included meeting with Toberoff and a proposed director, discussing potential financing with Medavoy, and, after consulting with van Leeuwen, preparing proposed revisions to a new option agreement between van Leeuwen and IPW. On December 15, 2004, Leeds sent proposed revisions to the IPW option agreement to Toberoff, noting, "I am enclosing herewith the following which represent only my views as to what Chako may approve." Among other terms, Leeds proposed that "[t]here will be a separate agreement for my services as a [p]roducer, and I will receive fixed and contingent compensation of a sum of at least 90% of the total that you . . . receive[ ]," plus on- and off-screen credit as a producer on Piranha 3D.

Toberoff responded to Leeds's letter on January 7, 2005 by sending Leeds the then-latest option agreement between van Leeuwen and IPW. The version sent by Toberoff included some, but not all, of the financial and producer's credit terms benefitting van Leeuwen that Leeds proposed in his December 15 letter, but made no mention whatsoever of Leeds, his role as a producer, or any compensation he would receive as a producer.

Leeds attempted to address his compensation with Toberoff, but it only led to a "rather heated discussion." Van Leeuwen testified that, after she signed the deal memo with Leeds, Toberoff called her and told her he was not interested in working with Leeds, who Toberoff described as "greedy" for wanting his "own deal" to be a producer.

E. Van Leeuwen Terminates the December 2 Agreement and Makes Piranha 3D and Piranha 3DD

Around mid-January of 2005, following her discussion with Toberoff, van Leeuwen stopped communicating with Leeds. On February 2, 2005, attorney Martin Barab wrote to Leeds on behalf of van Leeuwen, advising Leeds that van Leeuwen was "terminat[ing]" the December 2 Agreement "for a variety of reasons," including that Leeds "sought to obtain for [himself] a producing fee of over $200,000 and threatened IPW with a lawsuit for intentional interference with contractual relations if it chose to deal directly with" van Leeuwen.[5]

On February 15, 2005, van Leeuwen signed a new option agreement with IPW that provided for a shared executive producer credit by van Leeuwen and Barab. The February 15 agreement negotiated by Barab increased the benefits to van Leeuwen over the January 7 draft negotiated by Leeds in several material respects, including: (a) an increase in the payment by IPW to van Leeuwen for the first six-month option term from $75,000 to $85,000; (b) no deduction of any commission from the term payment to van Leeuwen; and (c) the addition of a provision for contingent compensation to van Leeuwen of 5 percent of the net profits from Piranha 3D and secured fixed and contingent compensation to van Leeuwen for sequels.

Although the record is unclear as to which entities participated in the production of which films, van Leeuwen went on to release Piranha 3D in 2010 and Piranha 3DD in 2012 with some combination of Toberoff, The Weinstein Company (TWC) and Dimension Films. Leeds asserts van Leeuwen was paid $600,000 by TWC for an unspecified aspect of Piranha 3DD.

Leeds did not learn that either Piranha 3D or 3DD was completed without his participation until the films were released.

PROCEDURAL HISTORY

On December 4, 2012, Leeds filed a complaint against van Leeuwen, Toberoff, IPW, TWC, and Dimension Films for breach of contract, negligent and intentional interference with economic relationship, unfair business practices, and conspiracy. Along with the December 2 Agreement between Leeds and van Leeuwen, Leeds alleged that the other defendants entered into unidentified agreements with van Leeuwen to make Piranha 3D and Piranha 3DD. Notwithstanding his allegation that only he, van Leeuwen and van Leeuwen's company were parties to the December 2 Agreement, Leeds claimed the December 2

Agreement was breached by all defendants because Leeds was "prevented from fully serving as a [p]roducer," on Piranha 3D, did not receive his shared executive producer credit, and did not receive any of his producer fees.

A. The Motions for Summary Judgment

TWC moved the court for summary adjudication or, in the alternative, summary judgment as to all causes of action.[6] The trial court granted TWC's motion for summary judgment, finding TWC negated a prima facie element of each of Leeds's claims against it, namely the existence of a contract or economic relationship between van Leeuwen and Leeds. Specifically, the trial court found the December 2 Agreement was only effective if Toberoff failed to obtain financing. Toberoff did not fail at that task.

In addition, the trial court found that Leeds's deposition testimony "yield[ed] another fatal admission regarding the enforceability of" the December 2 Agreement: "Leeds testifies that if Toberoff could not obtain financing, `we would proceed, if she wanted to. That's the point of [p]aragraph 7.' . . . Paragraph 7 clearly grants [van Leeuwen] ultimate, unfettered authority as to whether she wanted to proceed under any financing or business opportunities obtained by Leeds or even the alleged agreement with Leeds: `It is understood and agreed that [van Leeuwen] will not enter into any transaction with respect to Piranha that she does not choose so to do.'"

Based on the language of paragraph 7 and Leeds's own testimony regarding the intent of the parties, the court determined that van Leeuwen's unilateral termination of the December 2 Agreement two months after she signed it constituted undisputed evidence she did not want to proceed with Leeds. Shortly thereafter, the trial court entered summary judgment in favor of Toberoff on the same grounds.

B. The Trial

The case against van Leeuwen proceeded to a bench trial on Leeds's third amended complaint for breach of contract, quantum meruit, and fraud in the inducement. During closing argument, counsel for van Leeuwen raised the issue of collateral estoppel for the first time, arguing the trial court was constrained by the prior judicial officer's determination on TWC's motion for summary judgment that there was no enforceable agreement between Leeds and van Leeuwen.[7] Van Leeuwen also moved to reopen evidence to admit Leeds's deposition transcript, where he stated the point of paragraph 7 in the December 2 Agreement was that if Toberoff could not obtain financing, "we would proceed, if [van Leeuwen] wanted to."[8]

The court requested briefing on the issue of collateral estoppel. In response, Leeds offered many of the same arguments he now makes on appeal, including his assertion that collateral estoppel did not apply because evidence was "restricted" on summary judgment and, even if the requirements were otherwise met, application of collateral estoppel would

"result in an injustice." In support of his position that collateral estoppel did not apply, Leeds submitted both his 2013 declaration in opposition to TWC's motion for summary judgment and excerpts from his 2011 deposition regarding his understanding of the intent of the December 2 Agreement, including his admission about the purpose of paragraph 7.

C. The Decision

Following trial, the court issued a 32-page tentative decision. As an initial matter, the court denied van Leeuwen's motion to reopen evidence, finding she had ample opportunity to seek admission of Leeds's deposition testimony during trial. Nonetheless, the trial court found the pertinent portions of Leeds's deposition transcript to be judicial admissions, because "Leeds attache[d] as Exhibit 3 to his complaint the same transcript of his deposition testimony that [v]an Leeuwen seeks to introduce into evidence."[9]

In discussing the trial evidence, the court rejected van Leeuwen's testimony that she only signed a one-page deal memo, and determined that the "overwhelming evidence" was that the December 2 Agreement constituted the agreement between the parties. The court found it was collaterally estopped from reaching a conclusion contrary to the ruling on TWC's motion for summary judgment, and held that, "[w]hether the [December 2 Agreement] was enforceable was unequivocally decided by Judge Cole in her ruling with respect to TWC's motion for summary judgment. . . . As such, and based on the specific and unique facts of this matter, the [c]court finds the doctrine of collateral estoppel applies to the enforceability of the [December 2 Agreement]. Holding otherwise would result in inconsistent judgments in this very same action, which would undermine the integrity of the judicial system."

However, notwithstanding the effect of collateral estoppel, the trial court also independently found the December 2 Agreement unenforceable because the right conferred by paragraph 7 on van Leeuwen not to enter into any transaction "`she does not choose so to do'" made the contract illusory. The court further found van Leeuwen did not cause any damage to Leeds because their agreement was contingent on him obtaining financing instead of another party, "it is undisputed that [Leeds] did not secure funding for" the Piranha projects at issue, and Leeds failed to meet his burden of showing he was entitled to a fee in "any amount at all."

As to Leeds's claim for quantum meruit, the court found the services Leeds claimed he provided—including proposing terms for a renewed option agreement with Toberoff—did not actually provide any benefit to van Leeuwen. Instead, "[t]he evidence presented at trial . . . was equally consistent with the notion that [Leeds] nearly derailed the Toberoff deal." Because benefit to the defendant is "integral to recovery in quantum meruit," Leeds failed to carry his burden of proof on this claim.

Finally, the court rejected Leeds's claim he was fraudulently induced to enter into the December 2 Agreement. The court found that Leeds failed to meet his burden of proof, because that contract gave van Leeuwen "the unfettered right not to move forward with Leeds" and her exercise of that right did not amount to fraud. Furthermore, Leeds failed to

prove any damages from van Leeuwen's exercise of her right not to proceed with Leeds. Finally, the court noted that although it was not necessary to its findings, Leeds's admission in his deposition about the meaning of paragraph 7 reinforced its conclusion that judgment in van Leeuwen's favor on the fraudulent inducement claim was appropriate.

D. Post-trial Matters

Leeds requested a statement of decision and findings on 27 controverted issues, including whether van Leeuwen intended for Leeds to be a producer on Piranha 3D and whether Leeds entered into the agreement in reliance on alleged misrepresentations by van Leeuwen.

The trial court, citing its obligation only to "`fairly disclose[its] determination as to the ultimate facts and material issues in the case[ ]' (*Golden Eagle Ins. Co. v. Foremost Ins. Co.* (1993) 20 Cal.App.4th 1372, [1380])," declined to respond point-by-point to Leeds's request. It instead adopted its lengthy tentative decision in its entirety, to which it added three clarifications. First, the court found the December 2 Agreement was signed by van Leeuwen. Second, with respect to Leeds's argument that his partial performance under the agreement rendered it enforceable, and not illusory, the court reiterated its prior finding, based on van Leeuwen's testimony, that Leeds's conduct nearly derailed the project. Lastly, the court found Leeds failed to prove the nominal services he rendered actually provided any value to van Leeuwen.

After entry of judgment, Leeds timely appealed.

DISCUSSION

A. Standard of Review

"In reviewing a judgment based upon a statement of decision following a bench trial, we review questions of law de novo. [Citation.] We apply a substantial evidence standard of review to the trial court's findings of fact. [Citation.] Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings. [Citation.]" (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981.)

"When an appellant challenges a trial court's interpretation of a written contract, the substantial evidence standard of review applies when the contract is ambiguous and conflicting extrinsic evidence is admitted to assist the court in interpreting the contract. [Citation.] However, if interpretation of the contract does not turn on the credibility of conflicting extrinsic evidence, the trial court's interpretation of the contract is a question of

law we review de novo, or independently. [Citations.]" (*Tribeca Companies, LLC v. First American Title Ins. Co.* (2015) 239 Cal.App.4th 1088, 1110.)

"It is not our role as a reviewing court to reweigh the evidence or to assess witness credibility. [Citation.] `A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.' [Citation.] Specifically, `[u]nder the doctrine of implied findings, the reviewing court must infer, following a bench trial, that the trial court impliedly made every factual finding necessary to support its decision.' [Citation.]" (*Thompson v. Asimos, supra,* 6 Cal.App.5th at p. 981.)

However "[w]hen a proper request for a statement of decision has been made, the scope of appellate review may be affected. [Citation.] Under [Code of Civil Procedure] section 632, upon a party's request after trial, the court must issue a statement of decision `explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial.' And under [Code of Civil Procedure] section 634, if the statement of decision does not resolve a controverted issue or is ambiguous, and the omission or ambiguity was brought to the attention of the trial court, `it shall not be inferred on appeal . . . that the trial court decided in favor of the prevailing party as to those facts or on that issue.' [Citations.]" (*Thompson v. Asimos, supra,* 6 Cal.App.5th at p. 981.)

Even where the proper procedures related to the request for a statement of decision have been followed, "`[t]he trial court is not required to respond point by point to the issues posed in a request for statement of decision. The court's statement of decision is sufficient if it fairly discloses the court's determination as to the ultimate facts and material issues in the case.' [Citations.] `When this rule is applied, the term "ultimate fact" generally refers to a core fact, such as an essential element of a claim.' [Citation.] `Ultimate facts are distinguished from evidentiary facts and from legal conclusions.' [Citation.] Thus, a court is not expected to make findings with regard to `detailed evidentiary facts or to make minute findings as to individual items of evidence.' [Citation.] In addition, `[e]ven though a court fails to make a finding on a particular matter, if the judgment is otherwise supported, the omission is harmless error unless the evidence is sufficient to sustain a finding in favor of the complaining party which would have the effect of countervailing or destroying other findings.' [Citations.]" (*Thompson v. Asimos, supra,* 6 Cal.App.5th at p. 983.)

B. The Breach of Contract Claim

As noted above, the trial court found in favor of van Leeuwen on the breach of contract claim on two grounds: that collateral estoppel barred the claim, and that the December 2, Agreement was illusory. We first address Leeds's challenges to these findings.

1. Collateral Estoppel

Leeds argues the trial court erred in applying collateral estoppel for a variety of reasons, including that his deposition testimony was not properly before the court. Leeds contends his deposition testimony was not a judicial admission because that testimony was attached to his trial brief, not a pleading like a complaint or answer. Even if his deposition testimony could otherwise be treated as evidence, Leeds asserts it was fundamentally unfair for the trial court to consider it because he was not given the opportunity to clarify or explain his testimony.

"Judicial admissions may be made in a pleading, by stipulation during trial, or by response to [a] request for admission." (*Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 746.) "Not every document filed by a party constitutes a pleading from which a judicial admission may be extracted. Code of Civil Procedure section 420 explains that pleadings serve the function of setting forth `the formal allegations by the parties of their respective claims and defenses, for the judgment of the Court.' [Citation.] `The pleadings allowed in civil actions are complaints, demurrers, answers, and cross-complaints. [Citation.] When these pleadings contain allegations of fact in support of a claim or defense, the opposing party may rely on the factual statements as judicial admissions. [Citation.]" (*Ibid.*)

Leeds's deposition testimony was not attached to his complaint. We assume from the court's reference to the deposition transcript as "Exhibit 3," which was the exhibit number used for portions of the transcript attached to Leeds's post-trial brief addressing the issue of collateral estoppel, that the error was inadvertent. While attachment of a deposition transcript to a trial brief may not qualify as a judicial admission, there is a significant question whether the doctrine of invited error bars Leeds's claim that the trial court wrongly considered his deposition testimony. "The doctrine of invited error prevents a party from asserting an alleged error as grounds for reversal when the party through its own conduct induced the commission of the error." (*County of Los Angeles v. Southern Cal. Edison Co.* (2003) 112 Cal.App.4th 1108, 1118.) Here, Leeds invited the court to consider his deposition testimony in connection with the collateral estoppel issue by submitting it as part of his briefing.

All that being said, we need not address the various issues raised by Leeds's collateral estoppel argument. The trial court held that, regardless of any application of collateral estoppel, paragraph 7 of the December 2 Agreement gave van Leeuwen "the right to choose Tob[e]roff instead of Leeds" to finance the film without breaching the agreement. As we explain next, we agree with that alternative conclusion.

2. The Interpretation of Paragraph 7

Paragraph 7 of the December 2 Agreement provides, "[i]t is understood and agreed that [van Leeuwen] will not enter into any transaction with respect to Piranha that she does not choose so to do." Leeds argues that notwithstanding van Leeuwen's express right as set forth in paragraph 7 to decline to enter into any particular transaction with regard to Piranha, paragraph 5 of the agreement[10] mandated that Leeds would be attached as a producer if

the project went forward under any circumstances—even circumstances where van Leeuwen declined to have Leeds involved, and Leeds performed no services worthy of recompense or a producer credit.

When interpreting a contract, we must give effect to the mutual intention of the parties, so long as their intention is ascertainable and lawful. (Civ. Code, § 1636.) To determine the parties' mutual intent, the contract's language governs if it is clear and "does not involve an absurdity." (Civ. Code, § 1638.) Here, the term "any" in paragraph 7 is ambiguous. It could mean van Leeuwen had no obligation to enter into any transaction with respect to the Piranha property, including any transaction involving Leeds or giving him credit as a producer. Or "any" could mean van Leeuwen had authority not to enter into any particular transaction with regard to Piranha, but that if she did, Leeds got a producer credit if the film was made regardless of whether he was involved or provided any services.

"If the contract language is determined to be ambiguous and conflicting extrinsic evidence was admitted on the meaning of that language, `any reasonable construction will be upheld as long as it is supported by substantial evidence.' [Citation.]" (*Horath v. Hess* (2014) 225 Cal.App.4th 456, 464.) Here, the trial court's interpretation of the December 2 Agreement was supported by substantial evidence. "A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates." (Civ. Code, § 1647.) Furthermore, when "the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it." (Civ. Code, § 1649.)

At the time of the December 2 Agreement, van Leeuwen's two-year option with Toberoff was about to expire. She approached Medavoy about making a sequel. Medavoy indicated interest, and told van Leeuwen she should talk to Leeds. Paragraph 7 permitted van Leeuwen not to enter into any transaction with respect to Piranha, and van Leeuwen's testimony regarding her intent and understanding was clear: she only intended for Leeds to receive credit as a producer if he obtained financing for the film. Leeds never did. The trial court was entitled to credit van Leeuwen's understanding over that of Leeds, and interpret the term "any" in paragraph 7 as permitting van Leeuwen to enter into a financing deal with Toberoff that did not include a producer credit for Leeds.

The trial court's interpretation of the December 2 Agreement is further supported by the doctrine of *contra proferentem.* To the extent contractual language is uncertain, "the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." (Civ. Code, § 1654.) Here, Leeds drafted the December 2 Agreement and any ambiguities in it must be construed against him.

3. Implied Covenant of Good Faith and Fair Dealing

Leeds further argues the implied covenant of good faith and fair dealing supports his interpretation of the December 2 Agreement. (*Third Story Music, Inc. v. Waits* (1995) 41 Cal.App.4th 798, 805-806). While we agree the implied covenant of good faith and fair

dealing requires a party vested with discretionary power to affect the rights of another to use that power in good faith (see *Leuras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 77), we part company with Leeds when he concludes van Leeuwen's conduct was "hardly in good faith." As discussed above, the trial testimony demonstrated the parties did not have a shared understanding of what van Leeuwen was obligated to do. While Leeds believed he was permanently attached to the property if the film was produced, van Leeuwen believed she did not have to give Leeds credit as a producer on Piranha 3D if he did not obtain financing for the film. The evidence showed van Leeuwen initially tried to work through Leeds, but Leeds then proceeded to get into a heated argument with the primary source of financing (Toberoff) that threatened the picture's future prospects. As the trial court noted, the trial evidence was "consistent with the notion that [Leeds] nearly derailed the Toberoff deal." It was only when Barab got involved that discussions with Toberoff got back on track. Given Leeds conduct, it was not a breach of the covenant of good faith and fair dealing for van Leeuwen to decide she no longer wanted to work with Leeds.

4. *Damages*

Finally, putting aside the trial court's resolution of the ambiguity in the December 2 Agreement, Leeds failed to demonstrate any damages from the alleged breach. The trial court credited the testimony of Roger Corman, who testified as an expert, that there is no customary industry practice for compensating producers because every project is different. It further rejected Leeds's testimony to the contrary that he was monetarily damaged. This led the trial court to conclude that Leeds failed to meet his burden of proof as to any damage from the alleged breach of the agreement. We are not empowered to second guess this factual finding, which is fatal to Leeds's breach of contract claim. (*Behnke v. State Farm General Ins. Co.* (2011) 196 Cal.App.4th 1443, 1468 ["Damages are an essential element of a breach of contract claim"].)

C. The Quantum Meruit Claim

Leeds asserts the trial court erred in denying his claim for quantum meruit because van Leeuwen benefitted from his work. "`Quantum meruit refers to the well-established principle that "the law implies a promise to pay for services performed under circumstances disclosing that they were not gratuitously rendered." [Citation.] To recover in quantum meruit, a party need not prove the existence of a contract [citations], but it must show the circumstances were such that "the services were rendered under some understanding or expectation of both parties that compensation therefor was to be made" [citations].' [Citation.]" (*Unilab Corp. v. Angeles-IPA* (2016) 244 Cal.App.4th 622, 642.)"'

The measure of recovery in *quantum meruit* is the reasonable value of the services rendered *provided* they were of direct benefit to the defendant.' [Citations.] [¶] The underlying idea behind quantum meruit is the law's distaste for unjust enrichment. If one

has received a benefit which one may not justly retain, one should `restore the aggrieved party to his [or her] former position by return of the *thing* or its *equivalent* in money.' [Citation.] [¶] The idea that one must be *benefited* by the goods and services bestowed is thus integral to recovery in quantum meruit; hence courts have always required that the plaintiff have bestowed some benefit on the defendant as a prerequisite to recovery. [Citation.]" (*Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 449.)

Leeds argues he was entitled to recovery in quantum meruit because van Leeuwen ultimately benefitted from his work. In Leeds's view, van Leeuwen "went from having an option agreement which had no financial terms whatsoever and had expired, to receipt of a proposal from Toberoff/IPW which provided for a $75,000 payment for a further 6-month option term, a $750,000 purchase price to exercise the option (which she subsequently received), and, by incorporation of the Fox Family Films Option/Assignment, a right to producer's credit and 5% of net profits."

Leeds's description, however, ignores the differences between the deal points Leeds proposed and those ultimately agreed upon between van Leeuwen and IPW because of Barab's intervening work. As an initial matter, the evidence showed that Leeds merely sent a letter listing eight "proposed additions" to a prior option agreement with Fox. Toberoff replied with a full draft option agreement that contained only some of Leeds proposed additions. The agreement van Leeuwen ultimately reached with IPW contained few, if any, of Leeds's proposed additions. For instance, IPW agreed to pay van Leeuwen $85,000 for the first six-month option term, not $75,000 as proposed by Leeds. The final agreement provided that no deduction of any commission would be made from the term payment to van Leeuwen, a matter not even addressed by Leeds. Finally, while Leeds argues van Leeuwen benefitted from a right to receive a producer's credit and 5 percent of the net profits, that term was not part of his proposed additions and he concedes it was "incorporate[ed from] the Fox Family Films Option/Assignment."

In sum, substantial evidence supported the trial court's finding that Leeds failed to demonstrate he bestowed some benefit on van Leeuwen. (*Conservatorship of Maria B.* (2013) 218 Cal.App.4th 514, 532-533 ["the appellant bears the burden to make an `affirmative showing' the trial court committed error that resulted in a miscarriage of justice"]; *Fundamental Investment etc. Realty Fund v. Gradow* (1994) 28 Cal.App.4th 966, 971 [the appellant has the burden of demonstrating reversible error].) The court's denial of the quantum meruit claim was not erroneous.

D. The Fraudulent Inducement Claim

Leeds lastly argues that the trial court's omission of certain findings in its statement of decision as to his claim of fraudulent inducement was reversible error. In particular, Leeds asserts the trial court failed to make specific findings as to certain elements of fraud in the inducement: "falsity, intent, materiality, [and] reliance." He contends the error was

prejudicial because he introduced sufficient evidence to entitle him to at least nominal damages.

We have examined the statement of decision filed by the trial court and find that it adequately explains "the factual and legal basis for [the court's] decision as to each of the principal controverted issues at trial." (Code Civ. Proc., § 632.) To the extent Leeds claims the statement of decision is lacking in some material respect, he has not demonstrated that evidence is sufficient to sustain a finding on fraud in his favor. (*Hellman v. La Cumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224, 1230.)

The elements of fraud are (a) misrepresentation; (b) knowledge of falsity; (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) "`Promissory fraud' is a subspecies of the action for fraud and deceit. A promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud." (*Ibid.*) "An action for promissory fraud may lie where a defendant fraudulently induces the plaintiff to enter into a contract." (*Ibid.*) "To establish a claim of fraudulent inducement, one must show that the defendant did not intend to honor [her] contractual promises when they were made." (*Food Safety Net Services v. Eco Safe Systems USA, Inc.* (2012) 209 Cal.App.4th 1118, 1131.) Damage is an essential element of the claim. "`"`Misrepresentation, even maliciously committed, does not support a cause of action unless the plaintiff suffered consequential damages.'" [Citation.]" (*Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1064.)

As discussed above, van Leeuwen's testimony at trial confirmed that she only intended for Leeds to receive credit as a producer if he obtained financing for the film. Van Leeuwen's testimony does not support a finding that she had no intent to honor her contractual promise; the parties simply disagreed on what van Leeuwen promised to do and the court credited van Leeuwen's understanding over that of Leeds. Furthermore, the trial court expressly found that Leeds failed to prove any damage from the alleged fraudulent inducement, and Leeds provides no basis for challenging that finding other than citing to his own testimony, which the court rejected as unpersuasive. Such credibility assessments are for the trial court, and we defer to its determinations. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.)

DISPOSITION

The judgment is affirmed. Leeds is to bear his own costs on appeal.

CHANEY, Acting P. J. and BENDIX, J., concurs.

[*] Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

[1] CFI's default was entered on June 16, 2016, and it is not a party to this appeal.

[2] Although he acted as van Leeuwen's lawyer during the production of Piranha, Leeds characterizes his work during that time as more akin to a producer.

[3] Leeds alleged in the operative complaint and testified at trial that, prior to the commencement of the action, Arthur Leeds Productions, Inc. assigned all of its rights and obligations under the December 2 Agreement to Leeds.

[4] Van Leeuwen did not produce the purported one-page deal memo in discovery or at trial. She claimed she lost her copy of the document and, although she gave either the original or a copy to third parties, she never attempted to recover a copy during the litigation.

[5] The February 2 letter did not address van Leeuwen's claim, made 12 years later in the trial of this action, that her signature on the December 2 Agreement was forged.

[6] Leeds fell short of his duty to provide this court with a complete picture of the underlying proceedings. (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187 [appellant has the burden of providing an adequate record].) Among other documents, Leeds neglected to designate TWC's memorandum of points and authorities in support of its motion for summary judgment or its reply papers even though these pleadings are critical to his arguments regarding collateral estoppel. We take our recitation of the summary judgment proceedings from the trial court's order on TWC's summary judgment motion.

[7] Judge Lisa Hart Cole ruled on the summary judgment motion. By the time the matter reached trial, the case had been transferred to Judge Craig Karlan.

[8] Van Leeuwen's written motion to reopen evidence was not included in the record. We take our summary of the motion from the court's January 10, 2018 tentative ruling.

[9] As explained below, this finding was mistaken. Leeds did not attach any deposition transcript to his complaint; the transcript at issue was attached as an exhibit to a trial brief.

[10] Paragraph 5 provides that "[i]f Piranha [3D] is actually made, [Leeds] shall serve as one of the Producers and shall receive a shared credit, both on and off screen, as `Producer.'"