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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TIMOTHY ANDREW ROPER,
Plaintiff,
v.
PHILIP YANNI,
Defendant.

Case No.: 18-cv-0489-WQH-KSC

ORDER

HAYES, Judge:

The motion before the court is the Motion for Summary Judgment filed by Defendant Philip Yanni. (ECF No. 8).

BACKGROUND

On March 7, 2018, Plaintiff Timothy Roper initiated this action against Defendant Philip Yanni by filing a Complaint for fraudulent concealment, fraudulent misrepresentation, and breach of express warranty. (ECF No. 1). On March 26, 2018, Plaintiff filed the First Amended Complaint. (ECF No. 4). On April 11, 2018, Defendant filed the Motion for Summary Judgment. (ECF No. 8). On May 5, 2018, Plaintiff filed a Motion in Opposition to Defendant’s Motion for Summary Judgment. (ECF No. 12).

FACTUAL BACKGROUND

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2 Defendant Philip Yanni was the third owner of the car at issue, a 1971 Porsche 911S
3 (“the Car”) (Declaration of Philip Yanni, ECF No. 10-3, at ¶ 1). Yanni sold the Car to
4 Plaintiff Timothy Roper in September 2017 through the Bring A Trailer (“BAT”) auction
5 website for \$102,000. (Declaration of Timothy Roper, ECF No. 12 at 20). Yanni shipped
6 the Car to Roper on September 16, 2017. (Yanni Decl. at ¶ 17). On November 8, 2017,
7 the Car was picked up by a driver from Williams Crawford from the Southampton docks
8 in the United Kingdom. (Roper Decl. at ¶ 4). The Car was taken directly to a mechanic
9 for initial inspection. *Id.* After inspection, Roper was notified that the Car had extensive
10 damage presumably from a massive frontal accident. (Roper Decl. at ¶ 5).

11 Yanni is a classic car collector and “generally own[s] and maintain[s] 15 and 20
12 [cars].” (Yanni Decl. at ¶ 7). Yanni owned the car for a period of approximately two and
13 a half years prior to the sale of the Car. (Yanni Decl. at ¶¶ 1, 17). During this time, Yanni
14 commissioned a “bare metal” restoration of the Car. (Yanni Decl. at ¶ 4). During this
15 restoration process, the Car was in and out of the possession of two individuals. *Id.* at 5.
16 The first individual is William Losee, a Porsche mechanic. (Declaration of William Losee,
17 ECF No. 10-7, at ¶ 1). Losee was hired by Yanni “to perform any mechanical work
18 necessary to restore [the Car].” (Losee Decl. at ¶ 3). The second individual, Eric Bishop,
19 is a body repair, restoration, and paint restoration professional. (Declaration of Eric Bishop,
20 ECF No. 10-9, at ¶ 2). Bishop performed the paint work on the Car. (Yanni Decl. at ¶ 5).
21 Bishop and Losee declare that they reviewed Roper’s allegations and throughout their work
22 on the Car, they did not see any evidence of the damage that Roper alleges. (Bishop Decl.
23 at ¶¶ 13, 14; Losee Decl. at ¶ 8).

24 Roper had the initial inspection of the Car performed at Williams Crawford, a
25 business specializing in Porsche maintenance, restoration, and collision repairs in the UK.
26 (Declaration of Adrian Crawford, ECF. No. 12 at 61). Adrian Crawford, a Co-Director of
27 Williams Crawford, performed the initial inspection and wrote a report of his findings.
28 (Crawford Decl. at ¶¶ 2, 3). Crawford states in the report that the Car has “major damage”

1 and repairing the damage would be uneconomical. (Crawford Decl. at 64). Roper sent the
2 Car to Jeffrey Moyes, an experienced mechanical engineer, for a second opinion. (Roper
3 Decl. at ¶ 23). Moyes declared the Car has “severe damage” that is sufficient to render the
4 car financially unviable for repair. (Declaration of Jeffrey Moyes, ECF No. 12, at ¶ 7).

5 On March 7, 2018, Roper filed a complaint for fraudulent concealment, fraudulent
6 misrepresentation, and breach of express warranty against Yanni. (ECF No. 1).

7 **LEGAL STANDARD**

8 A party may move for summary judgment, identifying each claim or defense or the
9 part of each claim or defense on which summary judgment is sought. Fed. R. Civ. P. 56(a).
10 A court shall grant summary judgment if the movant shows that there is no genuine dispute
11 as to any material fact and the movant is entitled to judgment as a matter of law. *Id.* A
12 material fact is one that is relevant to an element of a claim or defense and whose existence
13 might affect the outcome of the suit. *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio*
14 *Corp.*, 475 U.S. 574, 586–87 (1986). The materiality of a fact is determined by the
15 substantive law governing the claim or defense. *See Anderson v. Liberty Lobby, Inc.*, 477
16 U.S. 242, 248 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–24 (1986).

17 The moving party has the initial burden of demonstrating that summary judgment is
18 proper. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 153 (1970). The burden then shifts
19 to the opposing party to provide admissible evidence showing that summary judgment is
20 not appropriate. *See Anderson*, 477 U.S. at 256; *Celotex*, 477 U.S. at 322, 324. The
21 opposing party’s evidence is to be believed, and all justifiable inferences are to be drawn
22 in its favor. *See Anderson*, 477 U.S. at 255.

23 **ANALYSIS**

24 **1. FRAUDULENT CONCEALMENT**

25 Yanni contends that he did not conceal any material fact because the Car was not
26 damaged when he sold it to Roper. Yanni contends that he had no duty to disclose any
27 damage to Roper. Yanni further contends that because Roper did not take the opportunity
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1 to inspect the car before purchasing it any reliance Roper placed on Yanni's representations
2 was unreasonable.

3 Roper contends that the Car had extensive damage when Roper received it from
4 Yanni. Roper contends that the damage is from a major frontal accident that was poorly
5 repaired and concealed by Yanni. Roper contends that Yanni had a duty to disclose the
6 damage to the Car because Yanni knew that the damage existed and that the damage was
7 not known to or reasonably discoverable by Roper. Roper contends that Yanni had to have
8 known of the damages given the severity of the damage and Yanni's extensive knowledge
9 of classic cars. Roper contends that Yanni must have become aware of the damage during
10 the restoration of the car in which the car was stripped down to a bare shell.

11 To state a claim for fraudulent concealment under California law, the plaintiff must
12 establish five elements: "1) the defendant concealed or suppressed a material fact; 2) the
13 defendant was under a duty to disclose the fact to the plaintiff; 3) the defendant
14 intentionally concealed or suppressed the fact with the intent to defraud the plaintiff; 4) the
15 plaintiff was unaware of the fact and would not have acted as he did had he known of the
16 concealed or suppressed fact; and 5) the plaintiff was damaged by the concealment." *Jones*
17 *v. Conoco Phillips*, 198 Cal. App. 4th 1187, 1198 (2011). A duty to disclose may arise in
18 three circumstances: "(1) the defendant makes a representation but does not disclose facts
19 which materially qualify the facts disclosed, or which render his disclosure likely to
20 mislead; (2) the facts are known or accessible only to defendant, and defendant knows they
21 are not known to or reasonably discoverable by the plaintiff; (3) the defendant actively
22 conceals discovery from the plaintiff." *Warner Constr. Corp. V. City of Los Angeles*, 2
23 Cal. 3d. 285, 294 (1970).

24 Yanni submits photographs of the Car that were posted on the BAT website and the
25 declarations of two mechanics, William Losee and Eric Bishop, to prove that the car was
26 not damaged prior to selling it to Roper. (ECF No. 10-3, Exhibit 1). Losee and Bishop
27 both declare they saw no damage while working on the Car. (Losse Decl. at ¶ 8; Bishop
28 Decl. at ¶ 14). Roper's assertion that the Car was damaged is supported by the declarations

1 of two professionals, Adrian Crawford and Jeffrey Moyes, who conclude that the Car was
2 involved in a frontal collision that damaged its frame. (Moyes Decl. at ¶ 7; Crawford Decl.
3 at Exhibit A). Roper has attached photographs of the alleged damage juxtaposed with
4 photographs of an undamaged Porsche 911. (Roper Decl., Exhibits A–H). The evidence
5 in the record presents a genuine issue of a material fact regarding whether the car was
6 damaged before Yanni sold it to Roper.

7 Roper has submitted evidence that supports the conclusion that Yanni intentionally
8 concealed the damage. (Crawford Decl. at 62, “heavy textured material has been applied
9 to disguise the damage.”) (Moyes Decl. at ¶ 7, “Although the car outwardly looks
10 presentable...the severity of the damage is sufficient to render the car financially unviable
11 to properly repair.”). The evidence in the record is sufficient to support an inference that
12 Yanni knew of the damage and actively concealed discovery of the damage by Roper.

13 Yanni has not met his burden to establish that he is entitled to summary judgment as
14 a matter of law on Roper’s claim for fraudulent concealment.¹

15 2. FRAUDULENT MISREPRESENTATION

16 Roper brings a claim against Yanni for fraudulent misrepresentation based on the
17 statement posted on the Auction website, “Bring A Trailer,” that the “donor” used for
18 restoration was “sound” and “rust free with solid floors.” (ECF No. 12 at 44). Yanni
19 asserts that he did not make any misrepresentation concerning damage to the Car because
20 the Car was not damaged when Yanni sold it to Roper. Yanni contends that Roper’s
21 reliance on the misrepresentation was unreasonable because Roper did not inspect the Car
22 before purchasing it.

23 The elements of fraudulent concealment are “1) a misrepresentation, 2) with
24 knowledge of its falsity, 3) with the intent to induce another’s reliance on the
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27 ¹ Yanni asserts that Roper did not take the opportunity to have the car inspected prior to making his
28 purchase. (ECF No. 9 at 5). However, plaintiff is not required to prove reliance in order to recover on a
fraudulent concealment claim. *See Jones*, 198 Cal. App. 4th at 1198 (2011) (listing the elements plaintiffs
are required to prove for a fraudulent concealment claim).

1 misrepresentation, 4) justifiable reliance, and 5) resulting damage.” *Conroy v. Regents of*
2 *University of California*, 45 Cal. 4th 1244, 1255 (2009) (citing *Small v. Fritz Companies,*
3 *Inc.*, 30 Cal. 4th 167,173 (2003)). “Justifiable reliance is an essential element of a claim
4 for fraudulent misrepresentation, and the reasonableness of the reliance is ordinarily a
5 question of fact.” *Guido v. Koopman*, 1 Cal. App. 4th 837, 843 (1991) (citing *Seeger v.*
6 *Odell*, 18 Cal. 2d 409, 414–415 (1941)); *see also Blankenheim v. E.F Hutton & Co.*, 217
7 Cal. App. 3d 1463, 1475 (1990) (citing *Arthur L. Sachs, Inc. v. City of Oceanside*, 151 Cal.
8 App. 3d 315, 323 (1984)) (“Except in the rare case where the undisputed facts leave no
9 room for a reasonable difference of opinion, the question of whether a plaintiff’s reliance
10 is reasonable is a question of fact.”).

11 The court has concluded that there is a genuine issue of fact concerning whether or
12 not the Car was damaged when Yanni sold it to Roper. Roper bought the Car on the BAT
13 auction website. (Roper Decl. at ¶ 2). Roper purchased the Car from Yanni, who is an
14 experienced car collector. (Yanni Decl. at ¶ 7). Roper then shipped the Car from California
15 to the United Kingdom where Roper resides. (Roper Decl. at ¶ 4). Roper relied on the
16 statements made on the BAT website in making his decision to purchase the car. (Roper
17 Decl. at ¶ 3). The court concludes that this is not the case where “undisputed facts leave no
18 room for a difference of opinion” as to whether Roper’s reliance on Yanni’s alleged
19 misrepresentation was reasonable. *Blankenheim*, 217 Cal. App. 3d at 1463. Yanni is not
20 entitled to summary judgment on Roper’s claim for fraudulent misrepresentation.²

21 3. BREACH OF EXPRESS WARRANTY

22 Roper contends that the “Bring A Trailer” website stated “the body used was rust
23 free with solid floors.” (ECF No. 12 at 52). Roper contends that this statement created an
24 express warranty and Yanni breached this warranty by supplying a car that had several
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27 ² Yanni contends that, even if the Car was damaged, Yanni had no duty to disclose the damage to
28 Roper. *Id.* However, a duty to disclose is not an element of a fraudulent misrepresentation claim. *See*
Conroy, 45 Cal. 4th at 1255 (2009) (listing elements for fraudulent misrepresentation).

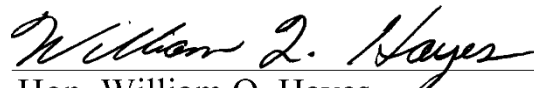
1 rusty areas repaired. *Id.* Yanni contends that Roper’s breach of express warranty claim
2 fails as a matter of law because the California Uniform Commercial Code does not apply
3 to this transaction because Yanni “is not in the business of selling cars.” (ECF No. 9 at 7).

4 Section 2313(1)(b) of the California Commercial Code states “Express warranties
5 by the seller are created as follows: Any description of the goods which is made part of the
6 basis of the bargain creates an express warranty that the goods shall conform to the
7 description.” The term “seller” is defined as “a person who sells or contracts to sell goods.”
8 Cal. Com. Code § 2103. The facts in the record are sufficient to infer that Yanni is a person
9 who sold and contracted to sell goods.

10 Yanni further contends that Roper’s express warranty claim fails because the
11 contract which Roper signed “expressly disclaims any warranties.” (ECF No. 9 at 7). The
12 California Uniform Commercial Code states, “[a] clause generally disclaiming ‘all
13 warranties, express or implied’ cannot reduce the seller’s obligation with such respect to
14 such description and therefore cannot be given literal effect under Section 2-316.” Cal.
15 Com. Code § 2313 cmt. 4. *See also Hauter v. Zogarts*, 14 Cal. 3d 104, 119 (1975) (citing
16 *Wilson Trading Corp. v. David Ferguson, Ltd.*, 23 N.Y.2d 398, 405 (1968)) (“Because a
17 disclaimer or modification is inconsistent with an express warranty, words of disclaimer or
18 modification give way to words of warranty...”). Therefore, Yanni is not entitled to
19 summary judgment on Roper’s claim for breach of express warranty.

20 IT IS HEREBY ORDERED that the Motion for Summary Judgment filed by
21 Defendant Philip Yanni is denied.

22 Dated: July 26, 2018

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24 Hon. William Q. Hayes
25 United States District Court
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