Calif. Decision Shows Limits Of Self-Serving Testimony

By **Tyler Palmer** (October 9, 2026)



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In Buchheim v. Anaya, the Court of Appeal of the State of California, Second Appellate District, on Aug. 25 addressed whether a party opposing summary judgment can overcome undisputed documentary evidence with "self-serving testimony." The decision reaffirms a fundamental principle: At summary judgment, a party cannot defeat such evidence with bare, self-serving assertions of belief.

Background

For 20 years, Mark Buchheim and Gustavo Anaya made money together flipping houses. Buchheim supplied the capital through his company, Prima Impresa LLC. Anaya used the loans to purchase and renovate homes through his company, United Home Buyers of America Inc., according to court documents.

Buchheim received 20% annual interest on the loan, and Anaya received the increased value upon selling the renovated home. The arrangement was straightforward and, by all accounts, profitable until the two sides disagreed over a single property.

In 2017, the parties had turned their attention to a rundown home in West Los Angeles they called the Rose property. Buchheim again financed Anaya's acquisition of the property, and the parties consolidated outstanding loan balances into a single promissory note for $424,928, secured by a deed of trust.

Then the relationship apparently fractured. Buchheim wanted a modest remodel, but Anaya pushed for a full tear-down and new construction. When Buchheim refused to fund the larger vision, the project stalled. Then, the lender of Anaya's construction loan, a nonparty, filed a notice of default, and foreclosure loomed.

After months of negotiations, Buchheim and Anaya reached a deal: Buchheim would buy the Rose property from Anaya for $1,550,000, according to court documents.

The sale closed in January 2018. Buchheim deposited $1,550,000 into escrow to purchase the Rose property. In the ordinary course, that sum would have been disbursed to Anaya as the seller. But Anaya owed Buchheim $471,381.46 on the consolidated promissory note. So the title company wired $471,381.46 back to Buchheim.

This reverse flow of funds to the buyer was, as the court observed, unusual but effective: It cleared Anaya's debt in full. Buchheim walked away with both the Rose property and $471,381.46 in cash. By any objective reading of the financial record, Anaya's debt was paid out of Anaya's own sale proceeds, not Buchheim's pocket.

But Buchheim pressed in deposition that the escrow transfer was made with "his money." He argued that because he had put $1,550,000 into escrow, the $471,381.46 that came back to him was simply his own funds returning, not a real payment by Anaya.

He did not include the fact that the $471,381.46 was money Anaya would otherwise have received as seller; and by diverting it to Buchheim to pay off the outstanding loan, the escrow transfer effectively made Anaya the source of the repayment.

After Buchheim filed suit, the Superior Court of the State of California, County of Los Angeles, granted Anaya's motion for summary judgment, finding that undisputed evidence established full repayment.

On appeal, Buchheim's opening brief focused on two claims made in deposition: first, his own unexplained and unelaborated assertion that Anaya's company had not repaid all of his loans; and second, his former wife's deposition testimony that "[w]e never received any money. We never got our money back."

The Second Appellate District found these self-serving claims to be wholly insufficient, as neither statement was accompanied by factual explanation or supporting documentation. The court emphasized that Buchheim had repeatedly admitted in his own deposition that he received the $471,381.46 escrow transfer.

Takeaways

Buchheim v. Anaya offers several practical lessons for litigators.

First, it's a reminder that counsel must raise all arguments in the trial court; new theories cannot be advanced for the first time on appeal.

Here, on appeal, Buchheim argued for the first time that he did not actually receive the full $471,381.46 due on the loan because he was saddled with escrow expenses, closing costs, late fees and unpaid property taxes. The Second Appellate District held that because Buchheim had not presented these arguments to the trial court, the issue was forfeited.

Second, anticipatory preparation is key ahead of depositions. Effective preparation requires more than mastering the exhibits and outlining the examination. The practical lesson is anticipatory preparation.

Counsel must not only know the client's side of the case, but also the arguments likely to be made by opposing counsel. With each of these in mind, counsel must prepare the client to understand the significance of the documents and be able to give complete, accurate answers.

This client preparation is not an invitation to evade a direct question or to give false testimony. It is simply a means of ensuring accuracy of the deposition testimony.

A client who answers only "yes" or "no" may inadvertently concede the premise embedded in the question. Counsel should prepare the client to answer directly as well as provide further clarification where necessary to make the answer complete, particularly when that nuance may determine whether an admission is dispositive.

In this case, Buchheim repeatedly conceded that he received the $471,381.46 escrow transfer. But his arguments did not include whether or how the gross transfer differed from the benefit he actually realized after fees, escrow expenses, closing costs, late fees, unpaid property taxes or other monetary outlays. The lesson is that such testimony might have raised a triable issue of material fact, potentially precluding summary judgment.

Third, the court articulated a useful distinction between impermissible credibility determinations and the threshold requirement of evidentiary sufficiency at summary judgment.

Relying on the Third Appellate District's 2007 findings in King v. United Parcel Service Inc., the court held that where there is undisputed documentary and testimonial evidence, bare assertions of belief cannot manufacture a triable issue. Invoking the oft-quoted principle that "[s]ummary judgment is the time to put up or shut up," the court held that subjective beliefs, standing alone, do not create a genuine issue of fact.

The court's reasoning rested on a critical distinction between credibility determinations, which are impermissible at the summary judgment stage, and the threshold requirement of evidentiary sufficiency.

As Justice John Shepard Wiley wrote, "This result is not a credibility determination, which is forbidden at summary judgment. Rather it is a matter of procedural fairness: you must explain your inchoate belief that the other side's accounting does not add up."

The court characterized the assertions as "unexplained and fallacious declarations of personal conviction" and held that when there is stipulated evidence to the contrary, opaque assertions of belief do not create disputed fact issues, any more than a party can change its story to avoid summary adjudication.[1]

A party opposing summary judgment must identify facts from which a genuine dispute can be found.

Expenses including escrow expenses, closing costs, late fees and unpaid property taxes were apparently not discussed in the settlement negotiations that resulted in Buchheim's buying the property from Anaya. However, after completing renovations, he sold the Rose property for $2,018,000 in November 2018.

Conclusion

In summary, Buchheim v. Anaya highlights several practical considerations for counsel: (1) preserving issues for appellate review by raising them in the trial court, (2) ensuring clients are well prepared for depositions, and (3) as most directly addressed in the case, where there are admissions or undisputed documentary evidence, using more than self-serving testimony to overcome summary judgment.

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[1] See Wawrzenski v. United Airlines, Inc. (2024) 106 Cal.App.5th 663, 686.