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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ARDAS (ALEX) YANIK et al., Plaintiffs and Appellants, v. SUNRISE FINANCIAL LLC et al., Defendants and Respondents.	B275189 (Los Angeles County Super. Ct. No. LC093329)

APPEAL from a judgment of the Superior Court of Los Angeles County. Huey P. Cotton, Judge. Affirmed.

Anna Topuzoglu and Ardas (Alex) Yanik, in pro. per., for Plaintiffs and Appellants.

Ervin Cohen & Jessup, Geoffrey M. Gold and Jason L. Haas for Defendants and Respondents Sunrise Financial, LLC and William Mahanian.

Law Office of John Wilson and John D. Wilson for Defendants and Respondents Mehrdad Ebrahimpour, Saeed Ebrahimpour, David Ebrahimpour, Jacklin Ebrahimpour, Pars, Inc., and CBS Auto Body Shop, Inc.

Ardas (Alex) Yanik (Alex) and Anna Topuzoglu Yanik (Anna) (appellants) appeal from a judgment of dismissal entered after the trial court granted a motion for judgment on the pleadings brought by respondents Sunrise Financial, LLC, William Mahanian, Mehrdad Ebrahimpour, David Ebrahimpour, Jacklin Ebrahimpour, Pars, Inc. and CBS Auto Body Shop, Inc.[1] (collectively respondents). Appellants have failed to show error, therefore we affirm the judgment.

BACKGROUND

On May 16, 2011, appellants filed their first amended complaint (FAC) against respondents, including causes of action for breach of contract; breach of implied covenant of good faith and fair dealing; negligence; civil conspiracy; negligent infliction of emotional distress; intentional infliction of emotional distress; misrepresentation; fraud; unlawful, unfair and fraudulent business practice; elder abuse; abuse of process; specific performance; and declaratory relief.

The FAC alleged that it was an action to enforce a contract to sell certain real property described as "116 East Whittier Boulevard, in the city of Montebello, state of California 90640" (the property). The FAC further alleged that appellants and respondents entered into the contract to purchase the "remaining Fifty (50) percent of the subject property." Respondents, who owned 50 percent of the property, would "grant their entire interest to [appellants] for $200,000.00 and [appellants] made a deposit of $100,000.00 into the escrow." However, the

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[1] Saeed Ebrahimpour was not a party to the motion for judgment on the pleadings but is named as a respondent in this appeal. Although he is not a proper respondent in this appeal, the term "respondents" includes Saeed Ebrahimpour unless otherwise noted.

transaction was never completed and respondents refused to return the $100,000.

Appellants attached to the FAC a copy of a commercial property purchase agreement. The contract contained an arbitration clause indicating that "Buyer and Seller agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration." The contract displayed the signature of Anna, signed by Alex, as buyer, and the signature of Saeed Ebrahimpour as seller.

Respondents brought a motion to compel arbitration, which the trial court granted on July 29, 2011. The motion was granted as to "the contracting parties, Saeed Ebrahimpour and Anna [Topuzoglu] Yanik only." In the interest of judicial economy, "and given the fact that the arbitration of the contract dispute is central to the other causes of action in this case," the court ordered the remaining portion of the action stayed pending the arbitration.

On October 27, 2011, Anna and Saeed Ebrahimpour stipulated to the appointment of the Honorable Gabriel Gutierrez, retired, as arbitrator.

An arbitration award dated August 19, 2015, denied Anna any damages, and granted Saeed Ebrahimpour liquidated damages of $100,000 plus damages of $310,000 on his cross-complaint for breach of contract.

On October 30, 2015, the trial court entered judgment on the arbitration award, awarding Saeed Ebrahimpour the $100,000 plus $310,000 in damages.

On March 14, 2016, the remaining respondents' motion for judgment on the pleadings was granted. The court entered a judgment of dismissal. Sunrise Financial, LLC and William

Mahanian were awarded $23,415.18 in attorney fees and costs, and Mehrdad, David, and Jacklin Ebrahimpour, Pars, Inc. and CBS Auto Body Shop, Inc. were awarded $8,428.01 in attorney fees and costs.

Notice of entry of judgment was filed on March 25, 2016.

On May 24, 2016, appellants filed their notice of appeal from the order entered March 25, 2016.

DISCUSSION

I. We have no jurisdiction to review the judgment confirming the arbitration award

Appellants attack the authority of the trial court to order arbitration in this matter, arguing that appellants never knowingly or intelligently submitted to arbitration. Appellants further argue that they never agreed to be bound by arbitration. We have no jurisdiction to consider these issues.

"An order to compel arbitration is an interlocutory order which is appealable only from the judgment confirming the arbitration award, or in certain exceptional situations is reviewable by writ of mandate. [Citations.]" (U*nited Firefighters of Los Angeles v. City of Los Angeles* (1991) 231 Cal.App.3d 1576, 1581.)

The judgment confirming the arbitration award was entered on October 15, 2015. Notice of entry of the judgment was filed and served on November 2, 2015. Pursuant to California Rules of Court, rule 8.104(a), appellants had 60 days from the date of service of the notice of entry of judgment to file their notice of appeal. Appellants' notice of appeal, filed on May 24, 2016, was therefore untimely as to the judgment confirming the arbitration award. (See *Reisman v. Shahverdian* (1984) 153 Cal.App.3d 1074, 1086 [finding it appropriate to dismiss appeal from judgment confirming arbitration award where notice of

entry of judgment was mailed on March 31, 1981, and notice of appeal was not filed until August 14, 1981].)

"'A party who fails to take a timely appeal from a decision or order from which an appeal might previously have been taken cannot obtain review of it on appeal from a subsequent judgment or order. [Citations.]' [Citation.]" (*Dakota Payphone, LLC v. Alcaraz* (2011) 192 Cal.App.4th 493, 509.) Thus, appellants may not obtain review of issues related to the arbitration award in this appeal from the later dismissal of the remaining respondents. The appellate court is without jurisdiction to consider an appeal which has been taken subsequent to the expiration of the statutory period. (*Estate of Hanley* (1943) 23 Cal.2d 120, 123.)

Because appellants did not file a timely appeal from the judgment confirming the arbitration award, this court is without jurisdiction to consider issues arising from that judgment, and will not discuss them further.

II. Appellants failed to show error in the trial court's ruling granting the motion for judgment on the pleadings

After the entry of judgment affirming arbitration award between Anna and Saeed Erahimpour, the trial court granted the remaining respondents' motion for judgment on the pleadings and dismissed the lawsuit with prejudice.

A. Standard of review

A motion for judgment on the pleadings is appropriate if the complaint does not state facts sufficient to constitute a cause of action against a particular defendant. (Code Civ. Proc., §438, subd. (c)(3)(B)(ii).) "A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review. [Citations.]" (*Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672.) "All properly pleaded, material facts are deemed true, but not contentions, deductions, or

conclusions of fact or law; judicially noticeable matters may be considered. [Citations.]" (*Ibid.*)

A judgment or order of the lower court is presumed to be correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "All intendments and presumptions are indulged to support it on matter as to which the record is silent, and error must be affirmatively shown." (*Ibid.*)

We note that litigants appearing in pro. per. are "restricted to the same rules of procedure as . . . required of those qualified to practice before our courts. [Citation.]" (*Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1055.) Pro. per. status affords a litigant no special treatment. (*Id.* at p. 1056.)

B. Appellants have provided an inadequate record for review

Appellants argue that the trial court erred by entering judgment against Alex because he was not subject to the arbitration agreement. Appellants argue that Alex was not given the opportunity to present his case. Appellants claim that the trial court erred in granting the remaining respondents' motion for judgment on the pleadings because Alex had a right to be heard.

The record on appeal is insufficient for de novo review of the court's order granting the motion for judgment on the pleadings. It does not contain a complete record of the pleadings and evidence that the trial court considered in granting the motion.[2]

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[2] The record contains a copy of the judgment of dismissal dated March 14, 2016. The judgment indicates that the court considered "moving, opposition and reply papers," as well as "evidence submitted including declarations," and allowed oral argument. The court indicated that "for the reasons set forth in the papers and in the notice of ruling and the Court minutes and

It is the appellant's burden to provide an adequate record on appeal. Appellants must "present an adequate argument including citations to supporting authorities and to relevant portions of the record. [Citations.]" (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 557.) To the extent that the record is inadequate, we make all reasonable inferences in favor of the judgment. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296 ["Because they failed to furnish an adequate record . . . defendants' claim must be resolved against them"]); *Amato v. Mercury Casualty Co.* (1993) 18 Cal.App.4th 1784, 1794 [finding that where record is insufficient to address the errors raised, "we indulge all presumptions in favor of the judgment"]); *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712 ["The plaintiff must affirmatively show error by an adequate record"].) (*Yield Dynamics, supra*, at p. 557 ["where the record is silent the reviewing court will indulge all reasonable inferences in support of the judgment"].)

Appellants have not met their burden of providing an adequate record on appeal. Appellants have failed to provide all of the pleadings, evidence, declarations and arguments the trial court considered in rendering its decision on the motion for

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as stated at the hearing," it was ruling in favor of respondents. Appellants have not provided this court with the moving or reply papers, evidence, declarations, minutes, or a reporter's transcript of the proceedings.

Respondents have filed a request to augment the record including the motion for judgment on the pleadings and a concurrently filed request for judicial notice. Appellants have filed a request to augment the record to include appellants' opposition to the motion for judgment on the pleadings. We grant both requests, but the record remains inadequate for this court to undertake de novo review of the trial court's ruling granting the motion for judgment on the pleadings.

judgment on the pleadings. In the absence of a complete record, de novo review is impossible. Instead, we presume the judgment was correct.

III. Appellants have failed to show that the trial court erred in awarding respondents attorney fees

Appellants argue that the trial court abused its discretion when it awarded respondents attorney fees in the amount of $23,415.18. Appellants include no legal argument to support this contention, nor do appellants cite to the record.[3] In their reply brief, appellants contend that the fee award was "in violation of Appellants' Constitutional rights under the 5th and 14th Amendment." Appellants provide no further legal authority or reasoned argument in support of their position.

"An appellant must provide an argument and legal authority to support his contentions. This burden requires more than a mere assertion that the judgment is wrong." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) "It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citation.]" (*Ibid.*, fn. omitted.)

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[3] Appellants request, both in their opening brief and their reply brief, that this court take judicial notice of "the minute order dated 6/56/2016 [*sic*]." Appellants have not provided a copy of any minute order in connection with this request, and the date reference, repeated twice in appellants' briefs, is invalid. Thus, appellants' request for judicial notice is denied.

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs of appeal.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT