

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LI QIN, et al.,

Plaintiffs and Appellants,

v.

99 CENTS ONLY STORES,
LLC,

Defendant and
Respondent.

B292445

(Los Angeles County
Super. Ct. No. BC543607)

APPEAL from a judgment of the Superior Court of Los Angeles County, Frederick C. Shaller, Judge. Affirmed.

Li Qin, in pro. per., for Plaintiff and Appellant Li Qin.

Zhixun Sun, in pro. per., for Plaintiff and Appellant Zhixun Sun.

Horvitz & Levy, Stephen E. Norris, and Melissa B. Edelson; Dolan & Associates and Michael A. Dolan, Jr., for Defendant and Respondent.

Li Qin and Zhixun Sun appeal from a judgment entered after a jury returned a verdict in favor of 99 Cents Only Stores (99). Qin and Sun have provided us with no record from which we might conclude the trial court’s judgment is flawed. We will, therefore, affirm the trial court’s judgment.¹

BACKGROUND

The record contains no information from which to develop a factual background. Nevertheless, the parties’ dispute appears from the briefing here to center on allegations that in May 2013 Qin slipped and fell while shopping at a 99 Cents Only store.

Qin and Sun filed a complaint on April 23, 2014.² The parties tried the matter to a jury beginning on August 16, 2018. On August 23, 2018, the jury returned its verdict, answering a single question:

“Question 1: Was 99 Cents Only Stores, LLC negligent in the use and maintenance of the property?

“Answer: No.”

On September 4, 2018, Qin and Sun filed their notice of appeal from a “[j]udgment after jury trial.” On September 14,

¹ Qin and Sun also purport to appeal from various other orders they claim the trial court entered. As we will discuss, the record contains no information demonstrating trial court error and no other appealable order.

² The record does not include a copy of a complaint. It does, however, include a copy of the judgment, which notes the date the complaint was filed.

2018, the trial court entered judgment for 99 based on the jury's verdict.³

In their notice designating the record on appeal, Qin and Sun opted to provide us with an appendix under California Rules of Court, rule 8.124 and elected to proceed without a reporter's transcript or settled statement. Along with their opening brief, the appellants filed an appendix containing the following documents:

- Tabs 1-12, 23-25, 27: Conformed copies of purported trial exhibits
- Tab 13: Report from a speech pathologist
- Tabs 14-19: Conformed copies of purported expert witness declarations
- Tabs 20-22: Excerpts of deposition transcripts
- Tab 26: Conformed copy of a declaration from Sun
- Tab 28: A conformed copy of a motion to quash a stipulation
- Tab 29: A copy of a document purporting to show a forged signature on another document
- Tab 30: Oppositions to 11 motions in limine, an objection to a notice of deposition and accompanying motion for a protective order, excerpts of the transcript from Qin's deposition, and a proposed order denying a motion in limine

³ We presume the notice of appeal was filed based on the jury verdict and in anticipation of a judgment reflecting the jury's determination. On that basis, we treat the notice of appeal as having been filed immediately after the trial court entered judgment. (Cal. Rules of Court, rule 8.104(d)(2).)

- Tab 31: A document entitled “Plaintiff’s Declaration re Designation of Expert Witness”
- Tab 32: A document listing exhibits filed in support of the document named in tab 31
- Tab 33: A conformed copy of a document purporting to be the parties’ joint trial exhibit list
- Tab 34: A document entitled “The Evidence Admitted to Jury”
- Tab 35: A conformed copy of the judgment
- Tab 36: A conformed copy of a document entitled “Plaintiff’s Request for New Trial,” together with a memorandum of points and authorities and accompanying exhibits
- Tab 37: A document entitled “Notice of Disqualification of Judge Frederick C. Shaller”
- Tab 38: A conformed copy of an “Order Striking Statement of Disqualification”
- Tab 39: A conformed copy of a document entitled “Plaintiff’s Request to Quash Judge Frederick C. Shaller’s [Order Striking Statement of Disqualification]” (brackets in original)
- Tab 40: A conformed copy of an “Order Striking and Prohibiting Further Repetitive Statements of Disqualification”
- Tab 41: A document that purports to be 99’s opposition to Qin’s and Sun’s motion for new trial
- Tab 42: A conformed copy of a document purporting to be exhibits filed in support of the motion for new trial

- Tab 43: A conformed copy of a declaration of Qin regarding trial exhibit 104, a sub rosa video of Qin that purports to have been filmed on August 19, 2018 (during trial)
- Tab 44: A copy of a document entitled “Plaintiff’s Verified Statement Objecting to the Hearing or Retrial before Judge Frederick C. Shaller”
- Tab 45: A document that purports to be a notice to the trial court to preserve evidence
- Tab 46: A trial court order entitled “Order Striking 3rd Statement of Disqualification and Setting OSC re Sanctions”
- Tab 47: A document purporting to be 99’s objection to evidence Qin and Sun filed in support of their motion for new trial
- Tab 48: A document purporting to be 99’s motion to include a reporter’s transcript in the record on appeal
- Tab 49: A document that purport’s to be the trial court’s tentative ruling on Qin’s and Sun’s motion for new trial and the trial court’s own order to show cause regarding sanctions
- Tab 50: A conformed copy of a document entitled “Plaintiff’s Declaration re ‘Ruling on Motion for New Trial’ ”

DISCUSSION

Qin and Sun contend the trial court erred in several ways and that each of those errors requires us to reverse the judgment or some other order Qin and Sun argue was incorrectly entered. The appellants’ primary challenge is that the evidence is insufficient to support the jury’s conclusion regarding 99’s

negligence. The appellants also challenge trial court rulings on motions in limine that they contend excluded evidence the jury should have heard. They argue the trial court erred by denying their request to continue the trial when they substituted new counsel, and erred by excluding the plaintiffs from the courtroom at a critical point in the trial. Qin and Sun further contend that the trial court improperly admitted a video that impeached Qin's credibility. Finally, Qin and Sun contend the trial judge should have been disqualified based on their repeated pleadings seeking to have him disqualified during the trial.

"[I]t is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment." (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608-609.) Qin's and Sun's briefing here urge us to conclude the trial court erred in a variety of ways. Based on the record before us, however, we can discern *no error*.⁴

For us to conclude the judgment was supported by insufficient evidence, we would need a means of determining

⁴ The record is not only substantively deficient. Some of the documents in the record purport to be conformed copies of documents filed in the trial court; others are unconformed, and we have no means to determine whether they were ever presented to the trial court. The record contains no register of actions, which would allow us to determine whether and when certain documents might have been filed. The record does not contain a copy of the complaint that was ultimately the basis of the jury trial. Consequently, we lack the means to determine what causes of action were at issue in the trial court.

what evidence was before the trial court. Without a reporter's transcript or settled statement that would allow us to determine what evidence was and was not before the jury, we cannot make a determination regarding the sufficiency of the evidence. It is, in fact, settled law that "where the appellant fails to produce a complete record of oral trial proceedings, a challenge based on the claim of evidence insufficiency will not be heard." (*In re Estate of Fain* (1999) 75 Cal.App.4th 973, 987.)

Without the reporter's transcript or a settled statement, we also have no means to determine how the trial court ruled on motions in limine. Moreover, the only documents we have about those motions in limine are conformed copies of several documents that appear to be Qin's and Sun's oppositions to those motions. Without more information about the motions, including copies of the motions and supporting and reply papers, a reporter's transcript, and any resulting orders (if any exist outside a reporter's transcript), we are not able to determine if the trial court erred, or even what the trial court *did*. (See Cal. Rules of Court, rules 8.124(b), 8.122(b).)

We are at a similar disadvantage in ruling on Qin's and Sun's remaining contentions. The record contains no information regarding Qin's and Sun's purported substitution of counsel, their purported exclusion from the courtroom at a critical point in the trial, or the admission or exclusion of the sub rosa video that we understand from the parties was taken during the trial. And while the record contains what purports to be the trial court's *tentative* ruling on Qin's and Sun's motion for new trial, the record does *not* contain an order denying that motion or any of the oral proceedings that would assist us to determine whether the trial court erred if it denied that motion.

Finally, the orders striking Qin’s and Sun’s repeated pleadings seeking the trial judge’s disqualification are not appealable orders. “The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding” on a specific and very tight timeline. (Code Civ. Proc., § 170.3, subd. (d).)

Qin and Sun have not provided us with a record demonstrating any trial court error.

DISPOSITION

The judgment is affirmed. Respondent is awarded costs on appeal.

NOT TO BE PUBLISHED

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.*

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