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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ROBIN OSHITA, as Special
Administrator, etc.,

Plaintiff and Respondent,

v.

ARIEL CHAZANAS,

Defendant and Appellant.

B269526

(Los Angeles County
Super. Ct. No. BC543563)

APPEAL from an order of the Superior Court of Los Angeles County, Richard L. Fruin, Jr., Judge. Affirmed.

Law Offices of David L. Brault, David L. Brault and Mark S. Faulkner for Defendant and Appellant.

The Altman Law Group, Bryan C. Altman, Joel E. Elkins and Gary H. Klein; Benedon & Serlin, Gerald M. Serlin, Kelly R. Horwitz and Judith E. Posner for Plaintiff and Respondent.

Defendant and appellant Ariel Chazanas (Ariel) appeals an order denying his petition to compel arbitration of claims asserted against him in a lawsuit filed by his grandmother, Mindlea Chazanas (Mindlea).^{1 2 3} The operative first amended complaint (FAC) included a cause of action against Ariel for breach of contract and sought an accounting.

Ariel contends the trial court erred in denying his petition to compel arbitration because two operating agreements relevant to this litigation contained arbitration provisions and he never waived his right to compel arbitration of Mindlea's claims against him.

We conclude Ariel has failed to meet his appellate burden to show error. We therefore affirm the order denying the petition to compel arbitration.

FACTUAL AND PROCEDURAL BACKGROUND

1. Pleadings; the operative FAC.

In April 2014, Mindlea, who was then 94 years old, and her son Alejandro Chazanas (Alejandro) filed suit against Mindlea's other son, Gregory Chazanas (Gregory), and her grandson Ariel, alleging that Gregory and Ariel had misappropriated funds from jointly owned properties that they managed.⁴

¹ We refer to the parties by their first names for purpose of clarity and not out of disrespect. (*Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 990, fn. 1.)

² Mindlea is now deceased and her interests are represented by Robin Oshita, as special administrator for her estate.

³ The order denying the petition to compel arbitration is appealable. (Code Civ. Proc., § 1294, subd. (a).)

⁴ Alejandro and Gregory are not parties to this appeal.

The operative FAC was filed in November 2014. In this pleading, as against Ariel, Mindlea pled a cause of action for breach of contract (second cause of action) relating to a rental property located at 217 Columbia Place in Los Angeles (the Columbia property); Mindlea alleged Ariel had engaged in self-dealing and had deprived her of her right to receive one-third of the net income from the Columbia property. The FAC also pled two causes of action against Ariel for an accounting: in the third cause of action, Mindlea sought an accounting with respect to the Columbia property; in the fourth cause of action, she requested an accounting with respect to two limited liability companies of which she was an owner, namely, 1476 Shenandoah Street, LLC (Shenandoah LLC), which owned a 16-unit apartment building, and 5757 La Mirada, LLC (La Mirada LLC), which owned a 20-unit rental property.

2. *Denial of leave to file a second amended complaint (SAC).*

On September 30, 2015, 47 days before trial was scheduled to begin, Mindlea filed a motion for leave to file a SAC. The proposed SAC omitted the FAC's cause of action against Ariel for breach of contract with respect to the Columbia property, and added a new cause of action against Ariel for breach of contract, alleging breaches of the operating agreements governing Shenandoah LLC and La Mirada LLC.

On October 27, 2015, the trial court denied the motion to file the SAC, primarily because "we're two weeks before trial" and Mindlea was entitled to calendar preference.

3. *Ariel's petition to compel arbitration.*

On October 27, 2015, the same day the trial court denied Mindlea leave to file a SAC, Ariel filed the subject petition to

compel arbitration, pursuant to arbitration provisions in the Shenandoah LLC and La Mirada LLC operating agreements. Ariel contended the proposed SAC “makes clear that Plaintiff is abandoning all claims against me with regard to the Columbia property, and is now making direct claims against me personally for the first time arising out of the operating agreements for both LLCs, including a claim for Breach of Contract based upon both of said operating agreements.”

The petition to compel included an admission by Ariel that the allegations of the FAC did not implicate the two operating agreements. The petition to compel arbitration stated in relevant part at paragraph 8: “The FAC specifically seeks, for both the La Mirada and Shenandoah properties, an accounting of the income and expenses and profits generated by each of said properties. [Citation.] This accounting action, on its face, is therefore solely directed to the information exclusively in the custody and control of Lotus West Properties, Inc. and not the 5757 La Mirada Ave., LLC, nor the 1476 Shenandoah Street LLC, because neither LLC manages said properties and therefore does not maintain such information. As such, the FAC, on its face, does not seek to impose any accounting rights Plaintiff may have as to said LLCs’ expenses, but only the information that is related to the actual management of said properties by Lotus West Properties, Inc. *As such, the FAC appears on its face to not implicate any rights or duties either Plaintiff or Defendant ARIEL CHAZANAS may have arising out of the controlling operating agreements for said LLCs.*” (Italics added.)

4. *Mindlea's opposition to the petition to compel arbitration.*

In opposition, Mindlea argued Ariel had waived arbitration by failing to request it in a timely fashion; instead, Ariel allowed 18 months to elapse, and waited until a mere 21 days before trial, to seek arbitration. Further, during that time, Ariel had participated in the litigation, including case management conferences, trial setting conferences, hearings on motions, and had prosecuted discovery, “all without mention of his intent to compel Plaintiff to arbitration.”

Mindlea further contended the petition to compel arbitration was moot because it was predicated entirely on the allegations of the proposed SAC; however, the court had already denied Mindlea leave to file the SAC and had ordered the parties to proceed to trial on the operative FAC, which did not implicate the two operating agreements on which Ariel based his petition to compel arbitration.

5. *Trial court's ruling denying petition to compel arbitration.*

On December 14, 2015, the trial court denied Ariel's petition. The trial court did not base its ruling on Ariel's delay in seeking arbitration. Rather, the trial court focused on the nature of the claims pled in the operative FAC. The trial court stated:

“Here, the two agreements that contain the arbitration provisions in question are titled ‘Operating Agreement for 1476 Shenandoah Street LLC’ and ‘Operating Agreement for 5767 [sic] La Mirada Ave., LLC’ respectively (collectively the ‘Operating Agreements’). . . . While these agreements contain broad arbitration provisions, they do not cover the claims alleged in the [FAC] which is the operative pleading in this Action.

“In the FAC, [Mindlea] alleges three causes of action against Ariel for Breach of Contract, Accounting (regarding the Columbia property), and Accounting (regarding the Shenandoah and La Mirada properties). The first two claims are based on Defendant Ariel’s alleged breach of a Real Estate Investment Contract (‘Contract’), and the last claim is based on his role as either manager or co-manager of the limited liability companies, which own the properties in dispute. . . . As stated in the instant Petition [to Compel Arbitration], ‘the FAC appears on its face to not implicate any rights or duties either Plaintiff or Defendant [Ariel] may have arising out of the controlling operating agreements for said LLCs.’ (Petition, [¶] 8.) Moreover, there is no mention of the Operating Agreements in the FAC. Therefore, the terms of the Operating Agreement arbitration clauses do not cover the dispute of [Mindlea’s] claims alleged in the FAC.

“Defendant Ariel argues that the Operating Agreement arbitration provisions apply to [Mindlea’s] claims because of the claims alleged in the proposed [SAC]. However, whatever claims Plaintiff wished to assert in her proposed SAC are of no concern in ruling on the instant Motion because the SAC is not the operative pleading; the FAC is the operative pleading. The Court denied [Mindlea’s] request for leave to file the SAC on October 27, 2015. ‘[T]here is but one complaint in a civil action’ [Citation.]

“In addition, Defendant Ariel argues that [Mindlea’s] counsel’s admissions in open court and on the record show that the dispute is covered by the Operating Agreement[s]’ arbitration provisions. . . . During the October 27, 2015 hearing, Plaintiff’s counsel admitted that [Mindlea] always intended to assert her claims against Defendant Ariel based on the Operating

Agreements. . . . Plaintiff's counsel also thinks that [Mindlea's] claims based on the Operating Agreements are 'encompassed by the [FAC].' . . . However, what Plaintiff's counsel believes and what is actually alleged in the FAC are two different things. Again, the claims in the FAC control.

"Therefore, for the reasons stated above, Defendant Ariel Chazanas' Petition to Compel Arbitration and for Stay is DENIED."

This timely appeal followed.

CONTENTIONS

Ariel contends, in conclusory fashion, that reversal is required under either the substantial evidence standard or the independent review standard.

DISCUSSION

1. *Ariel's failure to provide legal analysis or argument in support of his contentions results in a waiver of the issues.*

It is settled that " '[a]ppellate briefs must provide argument and legal authority for the positions taken. '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.] "We are not bound to develop appellants' arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived." ' (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.)" (*Holguin v. Dish Network LLC* (2014) 229 Cal.App.4th 1310, 1322–1323, fn. 5.)

Here, the legal argument in Ariel's opening brief consists of two paragraphs, at pages 19 and 20. In the first paragraph, Ariel asserts, without elaboration, that reversal is required under the substantial evidence rule. In the next paragraph, Ariel asserts

“[f]or the same reasons indicated in the preceding paragraph,” reversal is required under the independent review standard.⁵

We are not required to search the record to ascertain whether it contains support for Ariel’s contentions. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545.) Further, it is not this court’s function to serve as Ariel’s backup appellate counsel and to develop arguments on his behalf. (*Id.* at pp. 545–546.) Given Ariel’s failure to present an intelligible legal argument, we treat his contentions as waived. (*Ibid.*)

Finally, leaving aside Ariel’s appellate forfeiture, the record readily supports the trial court’s denial of the petition to compel arbitration. In the petition to compel arbitration, Ariel conceded that the operative FAC did not “implicate any rights or duties either Plaintiff or Defendant ARIEL CHAZANAS may have arising out of the controlling operating agreements for [the two] LLCs.” (*Italics added.*) Consequently, irrespective of whether the proposed SAC implicated the two operating agreements, as the trial court observed, “whatever claims Plaintiff wished to assert in her proposed SAC are of no concern . . . because the SAC is not the operative pleading.”

Because the FAC admittedly did not implicate the operating agreements that contained the arbitration provisions relied on by Ariel, the trial court properly denied Ariel’s petition to compel arbitration.

⁵ In the reply brief, Ariel attempts to expand the arguments which were undeveloped in his opening brief. However, we do not consider arguments raised for the first time in the reply brief. (*Singh v. Southland Stone, U.S.A., Inc.* (2010) 186 Cal.App.4th 338, 362, fn. 18.)

DISPOSITION

The order denying Ariel's petition to compel arbitration is affirmed. Respondent shall recover costs on appeal.

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EDMON, P. J.

We concur:

LAVIN, J.

CURREY, J.*

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