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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

JULIE TING,

Plaintiff, Cross-defendant
and Appellant,

v.

STEVEN P. CHANG,

Defendant, Cross-complainant
and Respondent.

B280926

Los Angeles County
Super. Ct. No. BC479280

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

Crawford Law Group and Daniel A. Crawford for Plaintiff, Cross-defendant, and Appellant.

Gene H. Shioda for Defendant, Cross-complainant, and Respondent.

INTRODUCTION

Plaintiff and cross-defendant Julie Ting (Ting) appeals from the trial court's judgment entered in favor of her former attorney, Steven P. Chang (Chang), who is one of five defendants and a cross-complainant in a legal malpractice action brought by Ting. Specifically, Ting challenges the court's pretrial ruling that Chang could not have raised a usury defense on Ting's behalf in a prior lawsuit against one of Ting's former clients. Because Ting has not supplied an adequate record to review her claims of error on appeal, we affirm the court's judgment.

BACKGROUND

In February 2012, Ting sued Chang and four other defendants (collectively, defendants) for negligence based on attorney malpractice, breach of contract, and money had and received. The malpractice claim was based on defendants' alleged failure to represent Ting in a "reasonably competent manner" in three cases: an underlying state court action (*Ting v. Chen* (Super. Ct. Los Angeles County, No. BC383295)) and two bankruptcy cases filed in federal court. Specifically, Ting alleged she suffered damages in excess of \$500,000 due to defendants' failure to develop critical evidence, failure to prepare required schedules, statements and plans, and failure to raise a usury defense to invalidate a promissory note executed by Ting in favor of Carol Chen. As for her contractual claims, Ting alleged the value of defendants' legal services "was zero" or "worthless;" Ting therefore sought a return of all money paid by her to defendants. Defendants filed a cross-complaint for monies owed by Ting for their legal services.

Before trial, Ting and two of the five defendants, Chang and the Law Offices of Steven P. Chang, asked the trial court to determine whether Ting had a usury defense in the underlying state court case. On February 8, 2016, the court found that Ting could not “assert usury in the underlying [state court] case to avoid her obligations to Chen under the [promissory] note.” Because Ting was a licensed securities broker-dealer when she signed the promissory note, the court determined that defendants’ failure to assert a usury defense in the state court case could not “serve as a basis for Ting’s malpractice cause of action.”

After a bench trial on May 16, 2016, the court entered judgment in favor of Chang and against Ting for \$42,506.40.¹ Notably, the court entered judgment in favor of Chang in his capacity as a defendant *and* as a cross-complainant. Ting timely appeals from the judgment entered in Chang’s favor.

DISCUSSION

Ting contends that the court’s February 8, 2016 pretrial ruling “deprived Ting of the chance to try the claim that Chang could and should have raised a usury claim in Ting’s lawsuit against Carol Chen.” Specifically, Ting argues that this appeal raises a strictly legal issue—whether a securities broker (Ting) is exempt from the usury law when she executes a promissory note to secure a client’s (Chen’s) investment. We are unable to

¹ Although the judgment states that the case was tried on May 16, 2016, Ting asserts that the case was tried from May 17, 2016 through May 20, 2016.

evaluate this argument, however, because Ting failed to provide this court with an adequate appellate record.²

The most fundamental rule of appellate review is that the judgment or order challenged on appeal is presumed to be correct, and “it is the appellant’s burden to affirmatively demonstrate error.” (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) “ ‘All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.’ ” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Failure to provide an adequate record requires that the issue be resolved against the appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295 (*Maria P.*); see *Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.)

“In numerous situations, appellate courts have refused to reach the merits of an appellant’s claims because no reporter’s transcript of a pertinent proceeding or a suitable substitute was provided. ([*Maria P.*, *supra*,] 43 Cal.3d [at pp.] 1295–1296 [attorney fee motion hearing]; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574–575 (lead opn. of Grodin, J.) [new trial motion hearing]; *In re Kathy P.* (1979) 25 Cal.3d 91, 102 [hearing to determine whether counsel was waived and the minor consented to informal adjudication]; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447 [trial transcript when attorney fees sought];

² In his respondent’s brief, Chang notes that Ting does not challenge the trial court’s factual findings or the judgment entered after trial. Although Chang responds to Ting’s legal claim on the merits, we decline to do so in light of the inadequacy of the appellate record. (See *S.M. v. Los Angeles Unified School Dist.* (2010) 184 Cal.App.4th 712, 722 [deeming issue waived even though respondent had addressed issue on the merits].)

Estate of Fain (1999) 75 Cal.App.4th 973, 992 [surcharge hearing]; *Hodges v. Mark* (1996) 49 Cal.App.4th 651, 657 [nonsuit motion where trial transcript not provided]; *Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1532 [reporter's transcript fails to reflect content of special instructions]; *Buckhart v. San Francisco Residential Rent etc., Bd.* (1988) 197 Cal.App.3d 1032, 1036 [hearing on Code Civ. Proc., § 1094.5 petition]; *Sui v. Landi* (1985) 163 Cal.App.3d 383, 385–386 [motion to dissolve preliminary injunction hearing]; *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 713–714 [demurrer hearing]; *Calhoun v. Hildebrandt* (1964) 230 Cal.App.2d 70, 71–73 [transcript of argument to the jury]; *Ehman v. Moore* (1963) 221 Cal.App.2d 460, 462 [failure to secure reporter's transcript or settled statement].)” (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186–187.) This is such a case.

The only materials provided to us in the appellant's appendix are the summons, complaint, briefing on Ting's and Chang's motions regarding the availability of a usury defense, the court's pretrial ruling on the availability of a usury defense, and the judgment and notice of appeal in this case. Although Ting frames the issue on appeal as a “strictly legal issue,” none of these materials allow us to determine whether, as alleged in Ting's complaint, Chang committed legal malpractice by failing to raise a usury defense in three underlying proceedings, or whether the judgment in Chang's favor was supported by substantial evidence. At a minimum, the record on appeal is missing the following key materials:

- Chang's cross-complaint;
- The transcript from the February 8, 2016 hearing;

- The transcript and exhibits from the May 16, 2016 trial; and
- The complete transcripts and all the exhibits from the three underlying cases that support Ting’s legal malpractice cause of action.

In short, we do not know whether the court’s February 8, 2016 pretrial ruling disposed of Ting’s entire cause of action for legal malpractice, or whether the court’s ruling was limited to just one of the three underlying proceedings.³ And without all the transcripts and exhibits from the underlying state court case, or the two bankruptcy cases, we cannot determine if the court’s February 8, 2016 interlocutory ruling was prejudicial. (*Century Surety Co. v. Polisso* (2006) 139 Cal.App.4th 922, 963.) “[W]e cannot presume prejudice and will not reverse the judgment in the absence of an affirmative showing there was a miscarriage of justice. [Citations.] Nor will this court act as counsel for appellant by furnishing a legal argument as to how the trial court’s ruling was prejudicial. [Citations.]” (*Ibid.*)

Finally, as we noted, the judgment entered in Chang’s favor was based on his status as a defendant *and* as a cross-complainant. And Ting did not provide us with Chang’s cross-complaint or a record of how the court determined he was entitled to more than \$42,000 in damages. “Where no reporter’s

³ Ting concedes “[t]he issue raised on appeal arises from an interim, non-appealable ruling by the trial court issued February 8, 2016.” California, however, is governed by the one final judgment rule which provides interlocutory or interim orders are not appealable, but are only reviewable on appeal from the final judgment. (*Rao v. Campo* (1991) 233 Cal.App.3d 1557, 1565.)

transcript [or settled statement] has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary matters*. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error.” (*Estate of Fain, supra*, 75 Cal.App.4th at p. 992; see also Cal. Rules of Court, rules 8.130, 8.137.)

DISPOSITION

The judgment is affirmed. Chang shall recover his costs on appeal.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.