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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

ADRIAN HERLING WAWORUNTU, Plaintiff and Respondent, v. LEE H. DURST et al., Defendants and Appellants.	B236904 (Los Angeles County Super. Ct. No. BC303692)

APPEAL from a judgment of the Superior Court of Los Angeles County, Charles F. Palmer, Judge. Affirmed.

Lee H. Durst, in pro. per.; Larry Rothman & Associates and Larry Rothman for Defendants and Appellants.

Law Offices of Christopher Norgaard and Christopher Norgaard for Plaintiff and Respondent.

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In this appeal, appellants raise numerous challenges to a $12 million judgment but essentially ignore the trial court's findings made following a bench trial. The judgment was based on four causes of action – fraud, fraud by concealment, negligent misrepresentation, and breach of contract. In each cause of action, respondent sought to recover his $12 million investment in a project to develop land adjacent to the Queen Mary in the City of Long Beach (sometimes referred to as the Project). Appellants demonstrate no error, and we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Parties

Plaintiff and respondent Adrian Herling Waworuntu is a citizen of Indonesia and, at the time of trial, was incarcerated for committing a felony.[1]

Defendants and appellants Bandero, LLC (Bandero) and Cheng Cheng USA, LLC (CCUSA) purported to own development rights in the Project. Appellants Lee H. Durst and Phillip Pisano were found to be alter egos of Bandero and CCUSA.[2]

Bandero and CCUSA's purported ownership of the Project stemmed from Queen's Seaport Development, Inc. (QSDI), an entity that actually owned the rights through a lease with the City of Long Beach (City). QSDI purported to transfer its interest in the Project to Bandero, a company comprised of the Melanie Balustra Trust (1 percent), Emerald Bay Capital, LLC (Emerald; 49.5 percent), and Lee Durst Irrevocable Charitable Trust (Durst Trust; 49.5 percent). The sole member of Emerald was Joanne Pisano, the wife of appellant Phillip Pisano.

After the purported transfer to Bandero, Bandero purported to sell a portion of the Project to CCUSA, of which Bandero was also a member. The purported transfers from QSDI to Bandero and from Bandero to CCUSA were ineffective. The trial court found

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[1] Waworuntu's deposition testimony was introduced at trial after the court found he was unavailable.

[2] Other defendants including Westar Investments and Development Group, LLC (Westar) were either dismissed in the trial court or judgment was entered in their favor.

that a lease between QSDI and the City required the City's approval of any transfer.[3] No such approval was obtained.[4] Therefore, Bandero never acquired rights to the Project and never transferred them to CCUSA.

2. Waworuntu's Investment in the Project

Waworuntu heard about the potential investment in the Project from Endang Mokodompit. Prior to committing to the investment, Waworuntu attended a meeting at the Queen Mary to discuss the Project with Durst, Pisano and others. At that meeting, Durst represented that CCUSA "would have the right to develop the land adjacent to the Queen Mary all the way from the parking structure near the pier where the Carnival Cruise Line ships dock to the park at the other end of the property." Durst told Waworuntu that the environmental impact report was embedded in the master lease, which meant that the City had already approved the Project. Durst further represented that the development rights were fully entitled and approved by the various governmental agencies, including the City. Durst told Waworuntu "that [Waworuntu's] investment would go to CCUSA which would buy half of the development rights to the project, with the other half held by Bandero." In a later meeting, when asked by Waworuntu's agent Helen Wong, Durst reiterated that no further authorization was necessary. Wong testified that Durst represented CCUSA had all necessary approvals to develop the Project and also represented that CCUSA had purchased the development rights from QSDI.

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3 Section 17.1 of the lease between the City and QSDI required QSDI to obtain the City's "written consent before entering into or permitting any Transfer."

4 That same issue was considered in the bankruptcy court, overseeing QSDI's bankruptcy. The bankruptcy court concluded "as a matter of law . . . the transfer to CCUSA of QSDI's rights to develop under the Lease required written consent by the City Manager to be binding against The City" and "neither QSDI nor Bandero attempted to obtain written consent from the City Manager of any of the transfers made . . . and therefore, The City, did not consent to the transfer to Bandero of any of QSDI's rights under the Lease." We need not consider appellants' argument that this court cannot rely on the bankruptcy court's findings because the trial court in this case reached the identical conclusion. In a related case, we previously held that the bankruptcy court's findings were res judicata as to Bandero. (*Bandero, LLC v. Klein* (June 23, 2010, B214432) [nonpub. opn.].)

After Waworuntu attended the meeting at the Queen Mary with Durst and Pisano, Waworuntu signed an agreement with CCUSA (Agreement) in July 2003. The Agreement stated that Waworuntu would invest $12 million into CCUSA and receive 25 percent of the shares of CCUSA. The Agreement further stated that "CCUSA has been established as the company charged with the comprehensive redevelopment of the Queen Mary . . . . CCUSA has purchased from Bandero LLC exclusive rights to develop the following: 1) a minimum of twenty-four acres out of a total available land site of forty-four acres of the Queen Mary project, which have not previously been developed; and 2) all the undeveloped water development rights at the Queen Mary site . . . . CCUSA will also have the redevelopment rights of the Queen Mary, the ship. Bandero, the majority shareholder of CCUSA hereby warrants that those development rights as set forth above are fully entitled according to the laws and regulations of California and approved and endorsed by the relevant authorities including the City." Waworuntu insisted on the foregoing quoted provision.

Waworuntu invested $12 million in the Project. Waworuntu testified that the $12 million consisted of $2 million from his personal funds and $10 million from funds he borrowed from his sister's finance company. Waworuntu's $12 million payment was placed in Melanie Balustra's trust fund account, and none of it remained at the time of trial. At trial, appellants argued that Mokodompit not Waworuntu was the actual investor, but the trial court rejected that argument.

3. CCUSA's Ownership Representation Was False

Durst admitted that he knew QSDI's lease with the City required the City's approval prior to any transfer of development rights. Durst knew this before Waworuntu executed the Agreement.

The trial court found Durst's representation that CCUSA had the development rights to the Project was false because the City had not approved the transfer of the development rights. The court further found Durst and Pisano, and through them Bandero and CCUSA, knew the representation was false as both reviewed QSDI's lease with the City prior to making the representation. The court found that the representation CCUSA had been charged with the comprehensive redevelopment of the Queen Mary

site was false. The court found appellants intended for Waworuntu to rely on their representations as they were made in order to obtain his investment in the Project. The court found Waworuntu reasonably relied on the representations and was harmed by such reliance. Finally, the court found that Waworuntu wired $12 million, performing his obligations under the contract. CCUSA and Bandero breached the contract by failing to purchase the development rights.

4. Durst and Pisano Were Alter Egos of Bandero and CCUSA

Melanie Balustra (also known as Melanie Goodman) was the managing member of both Bandero and CCUSA and both companies were housed in Balustra's home. According to Balustra, both CCUSA and Bandero held membership meetings and gave verbal notice of these meetings. But the court found this testimony not credible. Although Balustra signed the Agreement purporting to sell a portion of Bandero's rights to CCUSA on behalf of both Bandero and CCUSA, Bandero's members did not meet to approve the sale.

After receiving Waworuntu's funds, CCUSA distributed $600,000 to Emerald (whose sole member was Pisano's wife) and $300,000 to Durst or the Durst Trust. Subsequently, both Durst and Emerald received additional funds for what Durst and Pisano described as consulting services. The trial court found no evidence "why Emerald and the Durst Trust received these payments or that they were ever approved by the managing committee of Bandero or the managing committee of CCUSA." Durst testified that CCUSA did not have a management committee or board and the only funds it received was the $12 million from Waworuntu. Bandero and CCUSA had no business activities other than the Project.

The court found that "there is such a unity of interest between Bandero, CCUSA, Durst, and Pisano that their separate personalities ceased to exist and that an inequitable result would follow if the purported separateness is not set aside."

5. Judgment

The court entered judgment in favor of Waworuntu and against appellants on the causes of action for fraud, fraud by concealment, negligent misrepresentation, and breach of contract. The court found Waworuntu abandoned the causes of action for conversion,

rescission, and money had and received. The court imposed a constructive trust in favor of Waworuntu for $12 million.

DISCUSSION

Appellants raise the following arguments, none of which has merit: (1) the court erred in not dismissing the case because it was not prosecuted within five years; (2) Waworuntu lacked standing to bring this case; (3) the court erred in finding Durst and Pisano to be alter egos of Bandero and CCUSA; and (4) the evidence was insufficient to support the judgment.

1. Five-year Rule

Appellants first claim the trial court was required to dismiss the lawsuit because Waworuntu failed to prosecute it within five years as required by Code of Civil Procedure section 583.310 (section 583.310). Section 583.310 provides: "An action shall be brought to trial within five years after the action is commenced against the defendant."

A. Background

Additional background is necessary to address appellants' contention. The case summary sheet indicates that the original complaint was filed on October 6, 2003. On February 7, 2011, the first day of trial, appellants orally argued that the five-year rule barred prosecution of the lawsuit. The court stated that appellants' motion was untimely. On the second day of trial, appellants filed a written motion to dismiss, which the court did not immediately consider. Appellants did not request a dismissal that day or challenge the continued trial either in the trial court or in this court. After trial, in its statement of decision, the trial court concluded that appellants were estopped from raising section 583.310 because they stipulated to a three-year stay. That conclusion was supported by a stipulation dated January 8, 2007, stating that the case had "been stayed in [its] entirety from June 28, 2005 through the present by consent of the parties and order of this Court" and had been stayed against QSDI (a defendant who is not an appellant) because of its status as a debtor in the bankruptcy proceeding. In March 2010, the parties stipulated to extend the time period from March 22, 2010, through the trial date.

B. Analysis

According to appellants, Waworuntu was "required to bring this action to trial [either] by October 6, 2008," or by January 2009, about two years prior to the date of trial. Their argument is based on numerous unsupported factual assertions.

Appellants fail to demonstrate reversal is warranted under the five-year rule. Appellants ignore the trial court's conclusion that their stipulation to a stay of all proceedings estopped them from invoking the five-year rule. Appellants therefore fail to show the trial court erred in reaching this conclusion. A defendant's conduct may "lull[] the plaintiff into a false sense of security resulting in inaction, and . . . estoppel must be available to prevent defendant from profiting from his deception." (*Borglund v. Bombardier, Ltd.* (1981) 121 Cal.App.3d 276, 281.)

2. Standing

Appellants argue that Waworuntu lacks standing to bring this lawsuit because he was merely an advisor to Mokodompit not an investor in the Project. This argument is specious. Ample evidence supported the finding that Waworuntu was the investor. Both Waworuntu and his agent Wong testified that Waworuntu was the investor. Additionally, the Agreement was signed by Waworuntu, not Mokodompit. Although Pisano presented contrary testimony, the court rejected that evidence concluding: "Pisano's testimony was in response to extremely leading questioning, and evidenced little actual recollection by Pisano. Based on these factors and Pisano's manner and demeanor while testifying, the court finds Pisano's testimony in this regard not credible." It is well-established this court will not reweigh the trial court's credibility determinations. (*Beckman Instruments, Inc. v. County of Orange* (1975) 53 Cal.App.3d 767, 775-776 ["it is not the function of a reviewing court to reweigh the evidence, [or] judge credibility of witnesses . . ."].) Thus, Waworuntu was the investor and had standing to bring this lawsuit.

3. Alter Ego

Appellants argue the record lacks evidence to show that Durst and Pisano were alter egos of Bandero, CCUSA, and codefendant Westar. Appellants' argument with

respect to Westar is irrelevant as Westar was dismissed, and no judgment was rendered against Westar.[5]

Appellants have forfeited their claim with respect to the remaining entities because appellants fail to summarize the evidence in the light most favorable to the judgment. "'It is well established that a reviewing court starts with the presumption that the record contains evidence to sustain every finding of fact.' [Citations.] [Appellants'] contention herein 'requires [appellants] to demonstrate that there is *no* substantial evidence to support the challenged findings.' . . . [Citations.] A recitation of only [appellants'] evidence is not the 'demonstration' contemplated under the above rule. [Citation.] Accordingly, if, as [appellants] here contend, 'some particular issue of fact is not sustained, they are required to set forth in their brief *all* the material evidence on the point and not *merely their own evidence*. Unless this is done the error assigned is deemed to be waived.' . . . [Citations.]" (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881 (*Foreman*).) Thus, Durst and Pisano were the alter egos of Bandero and CCUSA.

Assuming appellants' argument were preserved, the trial court's findings were supported by substantial evidence. The two requirements for application of the alter ego doctrine are """(1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow." [Citations.]' [Citations.]" (*Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220, 1249.) The doctrine of alter ego is an equitable doctrine and "for that reason is particularly within the province of the trial court." (*Stark v. Coker* (1942) 20 Cal.2d 839, 846; see also *Las Palmas, supra,* at p. 1248.)

The following evidence supports the judgment. Bandero and CCUSA did not observe corporate formalities. CCUSA conducted business without holding meetings and without keeping Waworuntu apprised of the dealings. Pisano and Durst, either directly or through other corporations, were paid from Waworuntu's funds without any evidence of a CCUSA corporate resolution to make such payments. Durst directed the disbursements

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5 Waworuntu sued Westar but dismissed it after learning its interest, if any, in the Project had been transferred to Bandero.

of those funds. Merrill Butler, a consultant to Bandero hired by Pisano, worked on the Project for two years beginning in 2004 but never heard of CCUSA. Sufficient evidence supported the trial court's alter ego conclusion. (See *NEC Electronics Inc. v. Hurt* (1989) 208 Cal.App.3d 772, 777; *Claremont Press Pub. Co. v. Barksdale* (1960) 187 Cal.App.2d 813, 817.)

4. Sufficiency of the Evidence

Appellants argue the record lacks sufficient evidence to support the causes of action for fraud, fraud by concealment, negligent misrepresentation, and conversion.

Appellants have forfeited this argument because they fail to summarize the evidence in the light most favorable to the judgment. (*Foreman, supra*, 3 Cal.3d at p. 881.)

Even if the issue had not been forfeited, appellants' challenge to the sufficiency of the evidence lacks merit. First, the court found in favor of appellants on the conversion cause of action, and therefore we need not further consider that cause of action.

Second, the fraud, fraud by concealment, and negligent misrepresentation causes of action were supported by the following substantial evidence. Durst represented to Waworuntu that CCUSA owned all development rights to the Project and that the relevant authorities had approved the Project. Durst confirmed to Wong that all approvals had been received and that CCUSA had purchased the development rights from QSDI. Pisano admitted being at that meeting and never corrected Durst's misrepresentations. The City had not approved the transfer of rights and therefore no transfer occurred. The representation that all approvals had been obtained was material as it was the basis for Waworuntu's investment in the Project and Waworuntu insisted the Agreement so state. Waworuntu detrimentally relied on the representation because he invested $12 million in the Project. When he made these statements, Durst was aware that the lease between the City and QSDI required the City to approve any transfer of development rights.

5. Appellants' Remaining Arguments Lack Merit

We do not consider appellants' argument regarding rescission or money had and received because the court awarded judgment in appellants' favor on those causes of

action. Appellants argue that the cause of action for breach of contract fails because only CCUSA is a party to the Agreement, but as we previously explained the court found Durst and Pisano were CCUSA's alter egos and that finding was supported by substantial evidence. Lastly, appellants' argument that no conspiracy existed does not address any basis for the trial court's judgment and is therefore irrelevant.

DISPOSITION

The judgment is affirmed. Waworuntu is entitled to costs on appeal.

FLIER, J.

We concur:

BIGELOW, P. J.

RUBIN, J.