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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MICHAEL HERMAN,

Plaintiff and Appellant,

v.

TRANSCENDIGITAL, INC., et al.,

Defendants and Respondents.

B267911

(Los Angeles County
Super. Ct. No. BC530324)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Gregory Wilson Alarcon, Judge. Affirmed.

Haney & Young, Steven H. Haney and Gregory L. Young
for Plaintiff and Appellant.

Law Offices of Allan B. Gelbard and Allan B. Gelbard for
Defendant and Respondent Transcendigital, Inc.

Dermer, Behrendt and Jeffrey D. Dermer for Defendant
and Respondent Joel Tucker.

Plaintiff and appellant Michael Herman (Herman) appeals from the judgment against him after a five-day bench trial. Herman sued defendants and respondents Transcendigital, Inc. (TDI) and Joel Tucker (Tucker) (collectively respondents) seeking dissolution of TDI, an equitable accounting, and breach of fiduciary duty against Tucker. Herman raises numerous challenges to the judgment in his lengthy opening brief. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Background

In 1988, Tucker started a business manufacturing and selling adult products and fashions. He eventually incorporated the business as The Stockroom, Inc. (Stockroom). In 2007, Tucker wanted to step back from running the company and hired Herman as president of Stockroom to run the day-to-day operations. Herman was given 5 percent equity in Stockroom and Tucker retained the remaining 95 percent.

Formation of TDI

An opportunity arose to purchase the Domme.com and Fetbot.com domain names and related business for the price of \$75,000. According to Tucker, Herman wanted to form a new company to make the purchase because Herman “wanted to have the opportunity to launch, I guess, separate but related business units from within Stockroom . . . and he hoped to enjoy a larger stake in those units than the 5 percent that he already had in Stockroom.” In October 2008, TDI was formed, with Herman designated as TDI’s president and treasurer. Herman paid \$400 for a 40 percent share of TDI and Tucker paid \$600 for a 60 percent share. Herman supervised the day-to-day operations of both TDI and Stockroom. Tucker testified that Stockroom

would “advance resources to TDI” and would be entitled to repayment.

The Stockroom/TDI Contract

In 2010, the California State Board of Equalization levied Stockroom’s bank accounts for failure to make necessary tax payments. The taxing authorities agreed not to make further levies if Stockroom adhered to a payment plan. Tucker was concerned that the government’s automated systems might still levy Stockroom’s accounts. Herman suggested that Stockroom have its credit card processor deposit Stockroom’s revenues into TDI’s bank account. Tucker agreed, expecting that it would be a short term procedure for a few weeks. Herman, however, continued funneling millions of dollars in Stockroom’s revenues through TDI.

Immediately after the meeting with the taxing authorities, Tucker wanted to memorialize in writing his understanding with Herman that TDI was obligated to repay Stockroom the money advanced by Stockroom. A written contract called the “Stockroom TDI Engagement” (the STE contract) was executed by Herman as Secretary of TDI and Tucker as chief executive officer of Stockroom. Tucker testified that while the concern over tax levying “may have been a consideration [for the STE contract], . . . that was not the only one. [¶] . . . [¶] . . . As I said in my deposition, yet another inter-company transfer of money was about to start. And my opinion was something needed to be in writing. [¶] I don’t think anything was in [writing] prior to that to reflect the understandings and to try to cover what was going on between two different corporations.” Tucker testified that Stockroom would never have provided TDI operating funds

without an agreement that it would be repaid by TDI. The STE contract was backdated to 2008, the year TDI was formed.

The STE contract is a single page, informal document created by Tucker and Herman. It states, in part: “[TDI] employs [Stockroom] to manage and build portions of Domme.com and Fetbot[.com]. This includes but is not limited to design, development, writing copy, and Customer Service. [¶] Stockroom understands [TDI] may not be able to pay for a few years while it grows these newly re-launched websites. Therefore [Stockroom] will run a tab for [TDI]. [Stockroom] [m]ay charge annual interest of 3.8%. [¶] Stockroom may also employ [TDI] as a financial management resource. It may run revenue through [TDI] in order to get an accurate audit of its own merchant accounts and billing systems.”

Advancement of Funds

Stockroom advanced all of TDI’s expenses. Herman requested and authorized each transfer of funds. Between 2010 and 2011, more than \$3 million of Stockroom money was run through TDI. Tucker did not learn of this until “after the fact,” when a certified public accountant was hired in late 2012, Parson Vazan (Vazan),¹ while Herman was still working for Stockroom and TDI. Herman did not maintain any records or accounting for TDI. And he instructed third party vendors not to separate their bills, but to invoice Stockroom. Vazan did not even know that TDI existed until he found some TDI tax returns. TDI never had a positive cash flow. Herman had the only TDI credit and debit

¹ Respondents assert that Vazan’s name was misspelled as “Bazan” in the reporter’s transcript. We note that he is identified as Vazan in the parties’ joint witness list.

card, which he used for personal expenses. Herman purchased hundreds of internet domains with Stockroom's assets.

The Parties' Falling Out

After Tucker became aware of Stockroom's cash flow problems, poor profitability, excessive credit card bills and "expenditures that seemed to be kind of all over the place," he confronted Herman in June 2013. Herman responded "explosively" and resigned from both TDI and Stockroom. Tucker and Vazan then undertook the task of trying to recreate what should have been TDI's corporate records. When Tucker determined that TDI owed Stockroom more than \$300,000, he created an invoice in December 2013 in approximately that amount, and stopped working any further on the accounting records because he did not think TDI had that much in assets.

On December 17, 2013, at a noticed meeting of the shareholders, Tucker voted his majority interest to dissolve TDI. Herman attended the meeting and voted not to dissolve TDI, despite having filed his original verified complaint seeking dissolution five days earlier. Herman's attorney served the complaint at the meeting. The next day, TDI, through counsel, advised Herman that TDI had no funds to undertake a thorough accounting or to defend the action. TDI requested that Herman, as a 40 percent shareholder, post his pro rata share of TDI's anticipated litigation and accounting expenses. Herman refused. TDI then borrowed \$40,000 for its defense from Tucker as a secured creditor, executing a promissory note and financing agreement, signed by Tucker on behalf of himself and TDI.

Procedural History

Herman filed the operative first amended verified complaint in January 2014. Trial commenced in June 2015.

Herman took the position that the STE contract between TDI and Stockroom was a sham and that TDI owed no money to Stockroom. TDI did not contest being wound up or having an accounting conducted, but took the position that the STE contract was valid and that TDI owed Stockroom \$331,825.

In a seven-page statement of decision, the trial court found that the STE contract was valid and enforceable, ordered TDI dissolved and that its assets be sold to the highest bidder in a commercially reasonable manner, and also ordered that Herman return all internet domains plus \$23,999.29 in misappropriated funds to TDI. The court found that Tucker did not breach his fiduciary duty. In the subsequent judgment, the court also found valid and enforceable the \$40,000 promissory note and financing agreement between Tucker and TDI, as well as the December 2013 Stockroom invoice to TDI in the amount of \$331,825, and also found that the \$75,000 purchase price of the two domains—Domme.com and Fetbot.com—is a valid and enforceable obligation of TDI to Stockroom.

Herman timely filed this appeal.

DISCUSSION

Herman's lengthy opening brief contains at least 30 headings and subheadings in his argument section, raising numerous issues regarding the trial court's judgment. We largely address each issue in the order presented, attempting to consolidate where possible.

I. The STE Contract

In "Part One" of his opening brief, Herman essentially challenges the trial court's finding that the STE contract between Stockroom and TDI is valid and enforceable such that Stockroom is entitled to repayment from TDI for the monies it advanced to

TDI. As Herman points out, this finding has “the effect of draining funds from TDI, and reducing, if not eliminating, the value of TDI’s stock, thereby harming Herman who owns a 40% stake in TDI.” Herman challenges the trial court’s finding on several grounds.

A. Substantial Evidence

Herman argues the trial court’s finding that the STE contract is valid and enforceable is not supported by substantial evidence. The problem with this argument is that it ignores *all* of the evidence presented. “A party who challenges the sufficiency of the evidence to support a particular finding must *summarize the evidence* on that point, *favorable and unfavorable, and show how and why it is insufficient*. [Citation.]” (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409.) When an appellant’s opening brief states only the facts favorable to him and ignores evidence favorable to the respondent, we may treat the substantial evidence issue as waived and presume the record contains evidence to sustain every finding of fact. (*Arechiga v. Dolores Press, Inc.* (2011) 192 Cal.App.4th 567, 571–572.) Because Herman’s opening brief largely ignores the evidence in favor of the judgment, we conclude that Herman has failed to meet his appellate burden. We are therefore at liberty to disregard his substantial evidence challenge. But even were we to address it, we would conclude the trial court’s finding is supported by substantial evidence.

Tucker testified that after the tax audit of Stockroom in 2010, he wanted to memorialize in writing his agreement with Herman that TDI would repay monies loaned to it by Stockroom. Tucker explained that while the STE contract did not specifically use the word “loan,” the STE contract used the phrase “run a

tab,” which was language Herman had used in prior discussions to indicate that Stockroom would be repaid. Tucker also testified that Stockroom would never have provided TDI operating revenues without an agreement that it would be repaid by TDI.

Herman argues that Tucker’s testimony is “non-credible” and “fanciful.” But we are not allowed to reweigh the evidence or the credibility of witnesses. (*In re Marriage of Zaentz* (1990) 218 Cal.App.3d 154, 163 [“[A]ll issues of credibility are within the province of the trier of fact alone”].) “If the evidence gives rise to conflicting inferences, one of which supports the trial court’s findings, we must affirm.” (*Milton v. Perceptual Development Corp.* (1997) 53 Cal.App.4th 861, 867.) “*If such substantial evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.*” (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874.)

Additionally, the trial court admitted e-mails dated June 1 and 2, 2012, more than a year prior to the dispute between Herman and Tucker. These e-mails between Stockroom’s tax accountant, Tucker, and Herman, referred to the \$75,000 purchase price of the Domme.com and Fetbot.com domain names. In his e-mail, Tucker asked how the amount should be characterized and stated that TDI was running “a tab” for Stockroom. Tucker’s e-mail also referred to “a management contract” between Stockroom and TDI. Tucker testified that by using the words “management contract,” he was referring to the STE contract. A few days after the e-mail exchange, TDI’s amended tax returns, signed by Herman as president of TDI, reflected the \$75,000 as a liability of TDI.

B. Accounting Records

Herman argues the financial records of TDI and Stockroom prove that the STE contract was a mere sham because none of these documents reflect any loans from Stockroom to TDI. He argues that the trial court erred in ignoring these records and placing the blame on him for the accounting deficiencies in TDI's records. There is no merit to this argument.

First, the trial court did not ignore the financial records. Rather, it found, as did Herman's financial expert, that books and records for TDI simply did not exist, and "[t]hus, Stockroom's loans to TDI were untraceable."

Second, contrary to Herman's assertion, the trial court did not blame him for TDI's inadequate records based solely on its "mistaken[]" belief that Herman was the treasurer of TDI. Herman, in fact, was TDI's treasurer at its inception in October 2008. As Herman acknowledges, TDI's corporate bylaws stated it was the treasurer's obligation to "cause to be kept and maintained adequate and correct books and records of accounts of the properties and business Transactions of the corporation."

Herman points out that on TDI's "Statement of Information" filed with the Secretary of State on September 2, 2010, another employee, Craig Hall (Hall), was identified as TDI's chief financial officer, while Herman was listed as TDI's secretary. Regardless of whether Herman was officially replaced as treasurer two years after TDI was formed, the evidence showed, as the trial court noted, that Herman remained president of TDI, he ran TDI's day-to-day business, and he authorized every transfer of funds from Stockroom to TDI. The evidence also showed that Herman oversaw all the managers of TDI, including Hall. Herman admitted he was aware that Hall

was not properly tracking expenses. Herman also instructed third party contractors of TDI to bill Stockroom and not to segregate their charges between the two companies.

Herman also argues that because Tucker was his “superior,” Tucker was ultimately responsible for the accounting at TDI and Stockroom. But whether Tucker was Herman’s superior is irrelevant. The evidence showed that Herman ran the day-to-day operations at both companies. Moreover, Tucker testified that he would not have formed TDI if Herman had indicated he was unwilling to handle the accounting.

C. Parol Evidence

Herman argues the trial court erred in ruling that the parol evidence rule excluded him from proving that the STE contract was a sham. He points to the statement of decision where the trial court stated: “The parol evidence rule foreclosed Herman’s contention that Tucker exchanged the investment of his own money—without limit—for Herman’s sweat equity.” The court cited to *P.A. Smith Co. v. Muller* (1927) 201 Cal. 219, 222–223, which holds that the parol evidence rule permits oral evidence to establish that a contract was never intended to have force and effect.

The trial court’s statement is somewhat unclear. What is clear, though, is that the trial court did consider parol evidence. The court allowed both Herman and Tucker to testify about the formation and terms of the STE contract and their understanding of its validity. In this regard, the court simply found Tucker’s testimony to be more credible.

D. Exclusion of Evidence

Herman also complains that the trial court excluded from evidence Stockroom’s tax returns for 2008 through 2013

(Exhs. 25-29). He argues that the exclusion of this evidence prevented his financial expert from providing testimony that “would permit a complete accounting.”

Respondents point out that “the dispute regarding [Herman’s] financial expert’s review of Stockroom’s tax returns, and their admissibility, was resolved at trial through a stipulation between counsel as to their relevant contents.” Thus, admission of the exhibits would have been duplicative and unnecessarily time consuming. Moreover, based on our own review of the reporter’s transcript, it appears that Herman’s expert’s testimony was not improperly limited. Indeed, during his testimony, Herman’s expert looked at exhibit 26 and testified about its contents.

II. Promissory Note and Financing Agreement

Herman argues the trial court erred in finding that the promissory note and financing agreement in which Tucker loaned \$40,000 to TDI for litigation costs was a valid and enforceable agreement.

Corporations Code section 310, subdivision (a)(3) provides that “No contract or other transaction between a corporation and one or more of its directors, . . . is either void or voidable because such director . . . are parties . . . if [¶] . . . [¶] . . . the person asserting the validity of the contract or transaction sustains the burden of proving that the contract or transaction was just and reasonable as to the corporation at the time it was authorized, approved or ratified.”

Herman argues Tucker failed to meet this burden because respondents consented to the dissolution of TDI and an accounting, and because Tucker never presented evidence showing that TDI’s counsel incurred \$40,000 in fees representing

TDI, as opposed to representing Tucker or Stockroom. Herman argues that, at the very least, the trial court should “first make findings after a hearing that TDI’s counsel incurred proper legal fees representing TDI, prior to any finding that TDI’s counsel is owed funds under the Note. In other words, Herman should have an opportunity to oppose payment to TDI’s counsel for the frivolous motions he made during the course of the litigation.”

In making this argument, Herman fails to point to any place in the record showing that he asked the trial court to review fee statements and make these particular findings. Thus, there is no merit to the argument Herman makes later in his brief that the fees awarded under the security note and financing agreement were excessive. Given that this case involved 18 months of litigation, several motions, and a five-day trial, \$40,000 in legal fees seems entirely reasonable.

In any event, the evidence showed that Herman was asked to contribute his pro rata share of TDI’s legal and accounting expenses and refused to do so. The evidence also showed that TDI was insolvent. Tucker testified that TDI’s projects “were all over budget, late, inviable” and that TDI did not have the means to carry on unless he or Stockroom provided funds. There was no evidence to support the existence of any alternative financing for TDI other than Tucker’s loan.

III. Herman’s Access to TDI’s Records

Herman argues the trial court erred in finding that he had access to TDI’s books and records in December 2013. According to Herman, the court used this “mistake” as the basis for its finding that Herman failed to provide evidence contradicting the validity of the invoice created by Tucker in the amount of \$331,825 owing to Stockroom from TDI. Herman points out that

he stopped working for TDI and Stockroom in June 2013, and he asserts that thereafter his attempts to obtain company documents were thwarted by Tucker.

In support of this argument, Herman cites to his own testimony, in which he accused Tucker of “playing games,” and to a letter written by counsel for TDI (and for Stockroom in a separate lawsuit against Herman), in which counsel actually offers to make TDI’s records available on proposed dates, but insists that Herman not attend the inspection based on Herman’s “verbal and physical threats of violence against Mr. Tucker.” Herman’s one-sided evidence is insufficient and incomplete. Evidence not cited by Herman shows that Herman’s financial expert had access to the Stockroom records from which Tucker and Vazan determined TDI’s indebtedness to Stockroom, as well as TDI’s bank statements and tax returns. Herman also admitted that he had seen TDI’s statement of accounts from May 2009 through October 2013. We agree with respondents that Herman’s argument is circular; he blames TDI for not providing him with additional records, but ignores that the records do not exist because he never created them.

IV. Application of the STE Contract

In “Part Two” of Herman’s opening brief he argues that, assuming the STE contract is valid and enforceable, the trial court failed to properly interpret and apply it.

First, Herman complains that the “trial court failed to enforce the STE provision that would have required Stockroom to pay TDI tens of thousands of dollars” for holding Stockroom’s revenue. In this regard, Herman points to the third paragraph of the STE contract, which states: “Stockroom may also employ [TDI] as a financial management resource. It may run revenue

through [TDI] in order to get an accurate audit of its own merchant accounts and billing systems.” Herman also points to testimony by his financial expert that TDI would be expected to earn 2.5 to 3 percent of the amount Stockroom passed through TDI’s accounts, and Tucker’s testimony that between 2010 and 2011, more than \$3 million of Stockroom’s money was run through TDI accounts. But a plain reading of the STE contract shows that it does not state that Stockroom *will* pay TDI if Stockroom revenue is run through TDI.

Second, Herman complains that the STE contract should be applied in a limited scope such that TDI is only required to reimburse Stockroom for money advanced to manage and build Domme.com and Fetbot.com, rather than for all advanced funds. While the STE contract refers to these Web sites, it does not limit any indebtedness of TDI. Additionally, the trial court found that the STE contract “documented prior agreements between the corporations as to Stockroom’s capital advances to TDI.” This finding is supported by substantial evidence. Tucker testified that he and Herman had discussed Stockroom advancing resources to TDI to launch its ventures, and that such resources would include money, manpower, intellectual property, web traffic, and equipment, with the understanding that Stockroom would be repaid its advances. It is undisputed that Stockroom advanced all of TDI’s funds.

V. Accounting Issues

Also included in “Part Two” of Herman’s brief are several issues regarding the trial court’s accounting.

A. \$75,000 Purchase Price

Herman argues the trial court erred in finding that TDI must repay Stockroom for the initial \$75,000 advanced by

Stockroom for the purchase of the Domme.com domain name. Herman points to Tucker's testimony that Tucker did not recall the initial investment and "[t]he expenses going forward were . . . what we were running a tab for," as well as Tucker's acknowledgement that the \$75,000 amount was not listed on the \$331,825 invoice Tucker created for repayment of monies to Stockroom by TDI. But Tucker also testified that he recalled discussing with Herman that all development costs and financing for Domme.com would be a loan and that Stockroom would advance resources including money. Tucker also testified that Stockroom "paid for the acquisition of Domme. Com" pursuant to the STE contract and that Stockroom would not have provided funds to TDI without the agreement that it would be repaid by TDI. This specific debt is further supported by the June 2012 e-mails discussed above, after which Herman signed TDI's tax forms reflecting the \$75,000 payable. We "must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]" (*In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1452.)

B. Consideration of Herman's Evidence

Herman argues the trial court failed to consider his evidence regarding accounting by "mistakenly" finding in the statement of decision that "Herman failed to provide evidence contradicting the validity of the amounts in [the December 2013 invoice]." The fact that the court found Herman did not provide evidence contradicting the invoice does not mean the court failed to consider Herman's evidence. It simply means the court was not persuaded by his evidence. Herman testified that he never kept separate records of any of the following: transactions

between Stockroom and TDI; Stockroom expenditures on TDI; monies paid for work performed for TDI; time spent on TDI's projects; or software development costs. Herman also instructed third parties to bill Stockroom for all work done for TDI. Herman could not contradict Tucker's and Vazan's subsequent accounting because he repeatedly admitted he had not tracked any of the expenses being incurred by TDI at the time.

When Herman was asked at trial whether he had any proof that the specific line items on the \$331,825 invoice were incorrect, he answered "No." While he testified that he "feels" like he had proof, and in his "opinion" he had proof, he presented none. He claimed that he had "work product" but he presented none into evidence.

C. Proper Accounting

Herman argues the trial court did not make a proper accounting because it did not appoint a referee. But Herman acknowledges that a court may make an accounting itself. He also argues the court's accounting "did not properly dispose of the issues pertaining to the credits and debits of TDI" because "[t]he Judgment orders that the parties have further discussions in order to discuss what the credits of TDI might be." He then cites to the Judgment, at page 2, lines 8 through 9, which states that Herman is to provide a complete and accurate list of all internet domain names he purchased while employed at Stockroom, and that the parties shall cooperate as necessary to compile the list. But respondents point out that Herman has already turned over this information. Herman also cites to the Judgment, at page 2, lines 13 through 15, which states that all domains purchased by him while employed at Stockroom are assets of TDI, shall be transferred by him to a single TDI account, and liquidated as

provided in the judgment. Herman does not explain how these cited portions make the accounting incomplete.

D. Repayment by Tucker and TDI

Herman argues that “inexplicably” the trial court failed to order an accounting of Tucker’s personal use of Stockroom funds. According to Herman, “[t]his is relevant to an accounting for TDI because the accounting records of TDI and Stockroom were not separate.” We find no merit to this argument for two reasons.

First, the trial court found that the lack of separate and accurate books and records was the fault of Herman. As discussed above, this finding was supported by substantial evidence. Thus, Herman cannot be heard to complain on this issue.

Second, contrary to Herman’s assertion, Tucker did not testify that he used Stockroom’s funds to pay for his personal expenses. Herman’s cited portions of Tucker’s trial testimony reveal that Tucker testified that when Stockroom paid for Tucker’s personal debts, the expenses were charged back to Tucker personally.

Herman also argues the trial court failed to account for monies owed to TDI from the Domme.com and Fetbot.com assets. While Herman cites to Tucker’s testimony that Domme.com “generated some affiliate revenue,” Herman ignores the remainder of Tucker’s testimony that “I don’t think it was a lot” and that Herman failed “to set up systems to track” it separately.

E. Herman’s Labor

Herman argues the trial court’s accounting is also incomplete because it does not provide reimbursement for his uncompensated labor toward building TDI. But in making this argument, Herman points to no place in the record showing there

was any employment agreement or other obligation that he be paid for his labor. Nor does he point to any timesheets or records indicating his time spent or the amounts owed.

IV. Herman's Due Process Rights

Also included in "Part Two" of Herman's opening brief is his contention that his due process rights were violated by the trial court's judgment.

A. Internet Domains

Herman cites the following "mandatory injunction" in the judgment: "All domains purchased by Herman under Herman's account(s) while employed at Stockroom are assets of TDI; shall be transferred by Herman to a single TDI account; and liquidated as provided herein." He argues that a mandatory injunction requires in personam jurisdiction and that the "court had no jurisdiction to issue a mandatory injunction against Herman who was not put on notice that his personal property could be a part of the court's remedy regarding an accounting of TDI."

The problem with this argument is that Herman brought this action in equity. In his verified first amended complaint, he prayed for "such other and further relief as the court may deem proper." Likewise, TDI's and Tucker's joint verified answer specifically requests "such other relief as is just and proper." We agree with respondents that having brought an equitable action in the trial court, Herman cannot complain that the court granted it.

As the court stated in *Prince v. Harting* (1960) 177 Cal.App.2d 720, 732–733: "Equity does nothing by halves, but gives full relief in such cases. When it undertakes to adjust the differences between partners, it adjusts them all. "The whole subject matter in controversy between the parties, which includes

all the partnership transactions of each and all the partners, is the subject of the adjudication; and the account and decree must include all these matters, and leave nothing open for future litigation or controversy. Equity will not adjudicate causes piecemeal.” [Citation.]”

Moreover, while Herman claims that he purchased internet domains with his own funds, he cites to no place in the record identifying which of the hundreds of domains he purchased were his personal property. Instead, the record shows that Herman purchased internet domains with Stockroom assets advanced to TDI, that Herman testified he did not keep track of, and could not remember, which ones he registered in who’s name, and that Herman admitted many domains were “[TDI] and Stockroom domains.”

“An account is not required to be in any particular form. The requirement of any litigant is that he present the evidence of his claims in an orderly fashion. . . . If it can be intelligently ascertained from the record, the findings, the decree or even a bill of exceptions showing the controversy and the disposition thereof, the appellate court will uphold findings in accounting cases.” (*Ideal Packing Co. v. Brice* (1955) 132 Cal.App.2d 582, 587.)

Also under his due process heading, Herman argues the trial court’s ruling that “‘all domains purchased by Herman under Stockroom’s account(s) while employed at Stockroom are and shall remain the property of Stockroom,’ is beyond the scope of a proper remedy in an accounting action for TDI. Stockroom is not a party to this action.” Herman will not be heard to argue at one point in his opening brief that Stockroom’s debts and assets are relevant in an accounting of TDI, then later argue they are not. The entire point of the accounting was to square the assets

and debts of TDI vis-à-vis Stockroom and its officers. Furthermore, it goes without saying that domains purchased by Herman (Stockroom's president) under Stockroom's account are rightfully Stockroom's assets. Herman points to no evidence in the record from which to conclude that any such domains were purchased with anything other than Stockroom's assets.

B. Misappropriation of Funds

Herman argues the trial court's ruling that he "misappropriated" funds is incorrect for two reasons.

First, he points out that the statement of decision does not use the word "misappropriated." According to Herman, respondents added the word to the proposed judgment, hoping to use it against him in a related case. He asserts that he was never put on notice by any pleadings that such a ruling could be made. While Herman is correct that there was no cross-complaint against him for conversion, respondents' answer to the first amended complaint asserted the affirmative defense of unclean hands. We note that TDI's trial brief clearly identifies Herman's "theft of TDI[s] assets" as an issue to be litigated. Moreover, as respondents point out, Black's Law Dictionary defines "misappropriation" as "[t]he application of another's property or money dishonestly to one's own use." (Black's Law Dict. (10th ed. 2014) p. 1148, col. 2.) The trial court's finding in the statement of decision that "Herman used his company credit cards for non-business-related expenditures" and that "[t]hese payments were not disclosed to, known by, or authorized by, Tucker," clearly implies that the \$23,999.29 in charges owed by Herman to TDI were misappropriated. We therefore find no merit to Herman's first argument.

Second, Herman argues the trial court's finding of misappropriation is not supported by the evidence because his spending was transparent and his expenditures of TDI and Stockroom funds were appropriate. Once again, the problem with this argument is that it does not take into account all of the evidence presented. Herman relies primarily on his own testimony, as well as testimony by Vazan and a third party vendor that Herman never asked them to hide charges from TDI that related to Stockroom. But Herman fails to cite to Tucker's testimony that Tucker was unaware until "after the fact" of the amount of money Herman was expensing; that Herman never fully apprised Tucker of the amount of expenses; that when Tucker asked Herman about expenses, Herman gave answers that Tucker "no longer think[s]" were "accurate"; and that TDI bank statements "were not in my possession. They were not all kept in the accounting office. I didn't know where all of those were. I didn't have a login for TDI, and . . . when we started assembling that information after Mr. Herman left, I found . . . them in different places and found surprises."

C. Scope of the Judgment

Herman argues the judgment went beyond the statement of decision by making several rulings not included in the statement. Herman filed an objection to the proposed judgment on this ground. But Herman simply raises this argument without citing any authority as to why it may render the judgment improper. We therefore decline to address it. Moreover, the rulings in the judgment were necessary to fully address and resolve the dissolution and accounting claims.

VII. Required Findings

In “Part Three” of his opening brief, Herman argues the trial court failed to make required findings in its statement of decision regarding his accounting and breach of fiduciary duty claims. He further argues, that given the court’s other alleged errors, the proper remedy in this case is a new trial. There is no merit to this argument.

Code of Civil Procedure section 634 provides: “When a statement of decision does not resolve a controverted issue, or if the statement is ambiguous and the record shows that the omission or ambiguity was brought to the attention of the trial court . . . , it shall not be inferred on appeal . . . that the trial court decided in favor of the prevailing party as to those facts or on that issue.” As the court stated in *Duarte Nursery, Inc. v. California Grape Rootstock Improvement Com.* (2015) 239 Cal.App.4th 1000, 1012, “The statute applies only when there is an omission or ambiguity in the trial court’s decision, not when the party attacks the legal premises or claims the trial court’s findings are irrelevant or unsupported by evidence. [Citation.]” Moreover, “[a] court’s statement of decision need not respond to every point raised by a party or make an express finding of fact on each contested factual matter; it need only dispose of all basic issues and fairly disclose the court’s determination as to ultimate facts and material issues in the case.” (*Ibid.*)

Herman made 17 objections to the statement of decision. More than half of these objections simply disagreed with the trial court’s findings, which is not a cognizable basis for objections. The remaining objections asserted that the court failed to make sufficient findings on several issues. In all but one instance Herman is wrong, because the court did make findings on his

challenged issues in its statement of decision. The one exception is that the statement of decision did not address the promissory note and financing agreement. But the judgment addresses this issue and we have already concluded that the court's finding on this issue was supported by substantial evidence.

With respect to his breach of fiduciary duty claim, Herman objected that the statement of decision failed to address four alleged breaches by Tucker. The statement of decision found in favor of Tucker on Herman's breach of fiduciary duty claim and also found that "Herman failed to provide evidence he suffered injury from any actions taken by Tucker." "The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach." (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 483.) Having failed to prove damages, Herman's breach of fiduciary duty claim failed as a matter of law.

DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
HOFFSTADT

_____, J.*
GOODMAN

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