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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

VANESSA MARSOT, Plaintiff, Cross-defendant and Respondent, v. CHARLOTTE OSTERDAL, Defendant, Cross-complainant and Appellant.	B232226 (Los Angeles County Super. Ct. No. BC 410481)

APPEAL from a judgment of the Superior Court of Los Angeles County, Yvette M. Palazuelos, Judge. Affirmed.

Bryan R.R. Whipple for Defendant, Cross-complainant and Appellant.

Law Office of Adam C. Thiel and Adam C. Thiel for Plaintiff, Cross-defendant and Respondent.

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In 2005, appellant Charlotte Osterdal and respondent Vanessa Marsot entered into a business relationship in which they co-invested in two residential real estate properties. After the relationship deteriorated, Marsot brought suit against Osterdal in 2009, and Osterdal cross-complained. Following a bench trial, the court entered judgment in favor of Osterdal on all causes of action in the complaint, and in favor of Marsot on all causes of action in the first amended cross-complaint. Osterdal contends that the trial court committed reversible error in failing to provide a tentative decision before entering judgment, thereby depriving the parties of an opportunity to request a statement of decision. We hold that Osterdal has forfeited the issue on appeal and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Prior to the parties' business relationship, Marsot had experience as a real estate investor in renovating and renting out houses. In early 2005, Osterdal advised Marsot that she had a sum of money to invest in the real estate market. The parties entered into an oral agreement to invest together and purchased their first home as joint tenants in July 2005. Each contributed 50 percent of the down payment. Osterdal took out a home equity line of credit (HELOC) of $54,000 on that home, but she gave the money to Marsot as a personal loan. The arrangement between Marsot and Osterdal regarding the HELOC was also an oral agreement. In December 2005, the parties purchased a second home, though legal title was taken solely in Osterdal's name because Marsot did not have any money to contribute to the down payment at the time. On or about February 7, 2007, Osterdal executed and delivered a quitclaim deed conveying the second house to herself and Marsot as joint tenants, but the deed was never recorded because the notary's stamp was blurred.

Beginning in September 2006, Osterdal was traveling back and forth to her native Sweden to tend to family matters. Osterdal gave Marsot a limited power of attorney to manage the properties during Osterdal's absences from September 2006 through May 2008. Osterdal returned from Sweden in the summer of 2008 and began requesting an accounting and complete records of the money spent by Marsot to manage the properties. Marsot provided some records and asked that Osterdal redo the quitclaim

deed on the second house so that it could be recorded. She also inquired whether Osterdal would agree to sell both houses. Osterdal became dissatisfied with what Marsot had produced as an accounting and refused to discuss the quitclaim deed or selling the houses until their "existing internal affairs" (underscoring omitted) could be sorted out. In response, Marsot expressed frustration and declared that she was pulling out of the business relationship, including by quitclaiming her share of the first house to Osterdal.

The business relationship between Marsot and Osterdal thus became troubled. In addition to the disputes over accounting, adding Marsot as a joint tenant on the second property, and whether to sell the houses, both properties were "underwater," the rental income from them did not cover the costs of maintenance and debt service, and Marsot had been unable to repay the HELOC debt. Marsot filed a complaint against Osterdal on March 26, 2009, for fraud, breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, quantum meruit, account stated, and conversion. Osterdal filed a first amended cross-complaint on May 7, 2009, for breach of fiduciary duty, breach of contract, constructive fraud, dissolution of partnership, and accounting. The bench trial was conducted over seven sessions from October 4 to October 14, 2010.

On the final day of trial, Osterdal's counsel asked the court whether, "[w]ith respect to the eight-hour rule for statements of decisions," the proceedings had gone over eight hours. The court replied in the affirmative that the proceedings had gone over eight hours. The court then asked counsel, "So you're requesting one [a statement of decision]?" Counsel replied, "If I do, it will be in writing within ten days."

Marsot and Osterdal submitted closing arguments in writing on November 12 and November 29, 2010, respectively. Without issuing a tentative decision, the court entered a judgment on February 9, 2011, in favor of Osterdal on all causes of action in the complaint, and in favor of Marsot on all causes of action in the cross-complaint. Osterdal filed a timely notice of appeal.

DISCUSSION

"On the trial of a question of fact by the court, the court must announce its tentative decision by an oral statement, entered in the minutes, or by a written statement

filed with the clerk." (Cal. Rules of Court, rule 3.1590(a).) "Within 10 days after announcement or service of the tentative decision, whichever is later, any party that appeared at trial may request a statement of decision to address the principal controverted issues."[1] (Rule 3.1590(d); see also Code Civ. Proc., § 632.) The statement shall explain the factual and legal basis for the court's decision on each of the principal controverted issues. (§ 632.)

Osterdal contends that the trial court committed reversible error by failing to issue a tentative decision, but she has forfeited the right to present this argument on appeal. The forfeiture rule applies generally in all civil and criminal proceedings. (*Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 264.) Thus, we will not consider procedural defects or erroneous rulings when an objection could have been but was not raised in the trial court by some appropriate method. (*Children's Hospital & Medical Center v. Bontá* (2002) 97 Cal.App.4th 740, 776.) The purpose of the doctrine is to encourage a party to bring errors to the attention of the trial court, so that they may be corrected or avoided. (*Keener v. Jeld-Wen, Inc.*, *supra*, at p. 264.) In the midst of a trial court's crowded docket, things may be overlooked that could have been easily rectified, had attention been called to them. (*Ibid.*) "'"'"'"The law casts upon the party the duty of looking after his legal rights and of calling the judge's attention to any infringement of them. If any other rule were to obtain, the party would in most cases be careful to be silent as to his objections until it would be too late to obviate them, and the result would be that few judgments would stand the test of an appeal."'" [Citation.]'" (*People v. Simon* (2001) 25 Cal.4th 1082, 1103.)

This case demonstrates the soundness of the forfeiture rule. Osterdal had postjudgment procedural vehicles to bring to the court's attention the failure to issue a

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[1] Though not pertinent here, if "the trial is concluded within one calendar day or in less than eight hours over more than one day[,] . . . the request must be made prior to the submission of the matter for decision." (Code Civ. Proc., § 632.) There is no dispute that the trial below consumed more than eight hours or one calendar day.

tentative decision -- for example, a motion to set aside and vacate the judgment, or an ex parte motion. But she did not attempt to bring this issue to the trial court's attention and instead filed an appeal directly. If she had raised the issue in a timely manner in February 2011, the court could have addressed the issue while the facts of the case and proceedings were still fresh in the trial judge's mind. Any error in failing to issue a tentative decision could have been easily corrected at that time. At this point, the trial of the matter concluded over a year ago, and assuming the court erred and would have to issue a tentative decision and statement of decision on remand, it would be required to refamiliarize itself with the record. "It is unfair to the trial judge and to the adverse party to take advantage of an alleged error on appeal where it could easily have been corrected at trial." (*Children's Hospital & Medical Center v. Bontá*, *supra*, 97 Cal.App.4th at p. 776.). Accordingly, by not preserving this issue in the trial court, Osterdal has forfeited the right to argue the issue on appeal.

DISPOSITION

The judgment is affirmed. Respondent is to recover costs on appeal.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.