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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

THELMA MELENDEZ DE SANTA ANA, as Trustee, etc., Plaintiff and Respondent, v. BENEFIT & LIABILITY PROGRAMS OF CALIFORNIA, Defendant and Appellant.	B291829 (Los Angeles County Super. Ct. No. BC584657)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dalila C. Lyons, Judge. Affirmed.

Law Offices of Eric Bathen, Eric J. Bathen and Richard D. Brady for Defendant and Appellant.

Willoughby & Associates and Anthony Willoughby for Plaintiff and Respondent.

Benefit & Liability Programs of California (the Authority), a joint powers authority (Gov. Code, § 6500) of which Inglewood Unified School District (Inglewood) was a member, appeals from the judgment in favor of Thelma Melendez de Santa Ana as Inglewood's trustee in a breach of contract action tried on stipulated facts and exhibits. (Inglewood and its trustee, which sued the Authority on Inglewood's behalf, are referred to in this opinion as the District.[1]) The Authority argues the trial court committed reversible error in awarding the District $192,711 in interest on retained funds, which accrued for the period July 1, 2013 to July 12, 2018, and in ruling the Authority is not entitled

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[1] Inglewood is the named party to the agreement at issue in this breach of contract action and was the original plaintiff in the action. However, in 2012, as a result of Inglewood's budget negative certification, Senate Bill No. 533 was enacted, authorizing an emergency loan to Inglewood by the State of California and providing for the Superintendent of Public Instruction to appoint a state administrator to exercise authority over the school district. (Sen. Bill No. 533 (2011-2012 Reg. Sess.).) After the Authority successfully demurred on the basis Senate Bill No. 533 divested Inglewood of standing to bring the action, Thelma Melendez de Santa Ana, Inglewood's state administrator, replaced Inglewood as plaintiff, suing in her capacity as its trustee.

The Authority stated to the trial court in its briefing, "For all intents and purposes, [Inglewood] does not exist because it is now being totally controlled by the State Superintendent"; and the trial court and plaintiff's counsel at times referred to Inglewood and the trustee plaintiff using the same name. Unless otherwise indicated, for purposes of this opinion any distinction between Inglewood and the trustee plaintiff is immaterial; and we refer in this opinion to both Inglewood and Melendez de Santa Ana as Inglewood's trustee as the District.

to its attorney fees and costs incurred in the litigation. We modify the judgment to correct minor clerical errors but in all other respects affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Joint Powers Agreement, Amended Agreement, the Bylaws and the Resolution*

On July 1, 1987 the Bellflower Unified School District (Bellflower), Lynwood Unified School District (Lynwood) and Paramount Unified School District (Paramount) entered into the Benefit & Liability Programs of California Joint Powers Agreement (Joint Powers Agreement) creating the Authority to establish, operate and maintain the members' workers' compensation insurance program. On March 1, 2002 Lynwood withdrew as a member, and Paramount withdrew in 2006. On July 2, 2002 the District became a member; it abided by the Joint Powers Agreement, paying a specific funding rate of $100 per payroll.

The Joint Powers Agreement as amended and restated December 10, 2010 (Agreement) required, at section 5(a), the Authority to be governed by bylaws attached as an exhibit to, and incorporated by reference into, the Agreement. The bylaws set forth the manner of disposition of property and funds in the event of a member's withdrawal or termination of membership: Article XI, section B of the bylaws required the Authority to pay a withdrawing member its "Positive Share" of the total tangible assets; "Positive Share" was defined as the difference between (1) the member's total contributions, plus its cumulative pro rata share of investment income (that is, accrued interest) during the period of membership to the date of the member's withdrawal, and (2) the withdrawing member's obligations. The bylaws also

required the Authority to discharge its obligation to make this payment to the withdrawing member "within a reasonable period" following the date of withdrawal.

Section 7(a) of the Agreement permitted any party that had completed three consecutive years as a member to voluntarily rescind the Agreement and terminate its membership; termination of membership and rescission of the Agreement were to be effective subject to the conditions, and in the manner and means, set forth in the bylaws. Sections 9(a) and (b) of the Agreement similarly provided, in the event a member withdrew from the Agreement, any of that member's property interest remaining in the Authority following a discharge of the member's legal or contractual obligations and costs had to be disposed of as provided by the bylaws. The Agreement, at section 13, authorized its enforcement by the Authority; in the event the Authority brought suit upon the Agreement and recovered judgment against a member, the member was to pay all of the Authority's costs, including reasonable attorney fees.

On January 22, 2013 the District provided written notice of its withdrawal from membership; it provided a second written notice on February 27, 2013. On May 24, 2013 the Authority and the interim state administrator of the District, La Tanya Kirk-Carter, signed a resolution regarding the District's withdrawal (Resolution). According to the Resolution the Authority's governing board permitted the District to withdraw from the Authority on certain conditions, including a requirement that the District enter into an agreement with the Authority providing full and complete reimbursement of all fees and costs incurred by the Authority, directly and through its attorneys or other advisors, "in acting upon, processing, approving and

implementing" the District's withdrawal request. On June 30, 2013 the District's withdrawal became effective.

2. *The Litigation*

On June 9, 2015 Inglewood filed its complaint against the Authority alleging a variety of claims, including breach of contract based on the Authority's failure to pay funds owed to the District under the Agreement within a reasonable period of the District's withdrawal from, or termination of, membership. On May 26, 2016 the Authority paid $4 million to the District pursuant to an interim agreement between the parties. Prior to that date an accounting had determined the Authority owed the District $6,351,792. The remaining balance of $2,351,792 was the subject of the litigation.

Inglewood filed a first amended complaint in August 2015 and a second amended complaint on March 7, 2017; the Authority demurred to each pleading, arguing Inglewood lacked standing to bring the action after Senate Bill No. 533 brought the school district under state control. The trial court sustained the Authority's demurrer to the second amended complaint with leave to amend; on October 3, 2017 Inglewood's state administrator Melendez de Santa Ana, in her capacity as its trustee, filed the operative third amended complaint, which alleged the same underlying breach of contract claim as the initial complaint.

On May 10, 2018 the Authority and the District agreed trial would be limited to the following two issues: (1) whether "[i]nterest on retained funds from July 1, 2013 to July 12, 2018 should be paid to [the District]"; and (2) "[a]ttorneys fees and costs recoverable by [the Authority]." The parties also agreed the two issues would be decided by the trial court "based on the briefs

and evidence submitted by the parties" and stated there were "no other issues outstanding between the parties."

The parties stipulated accrued interest on the retained funds of $2,351,792 between July 1, 2013 and July 12, 2018, the date of the trial, was $192,711, and the Authority had incurred $50,000 in attorney fees and costs to defend the litigation. On May 15, 2018 the Authority, at the direction of the Authority's counsel, sent to the State Superintendent, Tom Torlakson, a Los Angeles County Department of Education warrant in the amount of $2,301,792 ($50,000 short of the $2,351,792 due). The District's counsel did not accept the warrant.

On June 6, 2018 the District filed its trial brief, which attached four trial exhibits: (1) the Agreement; (2) the Authority's bylaws; (3) a May 15, 2018 letter from the Authority's attorney to Torlakson; and (4) a document(s) containing charts with, or columns of, various numerical figures, including information pertaining to interest earnings.

In its brief the District argued it was entitled to prejudgment interest pursuant to Civil Code section 3287, subdivision (a), which provides for an award of prejudgment interest to a plaintiff entitled to recover damages that are certain, or capable of being made certain by calculation. The District contended, pursuant to the Authority's bylaws, a withdrawing member was entitled to the return of its total contributions, less the amount of obligations owed to the Authority, within a reasonable time of withdrawal; however, the Authority still had not paid the District the full amount owed despite the District having withdrawn in 2013 and an accounting having previously determined the specific amount owed to the District. Because the Authority's delay in payment was not

reasonable, the District argued, the Authority's continued retention of the District's funds was not lawful, and the District was entitled to interest on the funds unlawfully withheld.

In challenging the Authority's entitlement to attorney fees, the District referred to section 13 of the Agreement, which authorized the Authority to recover attorney fees incurred to enforce the Agreement, and argued this contractual right was made reciprocal by Civil Code section 1717, subsection (a). The District implicitly contended it was the prevailing party entitled to attorney fees, and argued it would be inequitable to award the Authority fees incurred in litigating and losing a case based on its own breach of contract.

On June 19, 2018 the Authority filed its trial brief. The Authority attached to its brief five trial exhibits: (1) a warrant, dated May 9, 2018, in the amount of $2,301,792 from the Authority to "CA Dept. Of Ed. – Tom Torlakson"; (2) a September 14, 2012 news release from the California Department of Education, with the headline, "State Schools Chief Tom Torlakson Comments on State Takeover of Financially Troubled Inglewood Unified School District"; (3) the May 26, 2016 interim agreement between the Authority and "Dr. Vincent Matthews . . . as the California State Administrator on behalf of [the District]," which provides that the Authority will pay the District $4 million; (4) the Resolution; and (5) a June 28, 2013 news release from the California Department of Education, with the headline, "State Schools Chief Tom Torlakson Appoints State Trustee for Inglewood Unified School District."

In its brief the Authority argued the District was not entitled to interest on retained funds that accrued after its withdrawal because the bylaws provided the formula for

calculation of the amount to be returned to a member and under this formula a member was only entitled to interest accrued to the date of withdrawal. The Authority's arguments also included the contention it was entitled to attorney fees pursuant to the Resolution, which provided for all attorney fees and costs incurred in processing the District's withdrawal.

On July 12, 2018 the parties stipulated to the admissibility at trial of certain facts, described above, and all trial exhibits attached to their trial briefs. The stipulation also provided the District was proceeding only on its cause of action for breach of contract.

That same day the trial court issued its written decision. The court found the District was entitled to interest on retained funds from July 1, 2013 to July 12, 2018 in the amount of $192,711. It also found the Authority was not entitled to recovery of attorney fees and costs incurred in the litigation. Accordingly, judgment was entered in favor of the District and against the Authority in the amount of $2,544,503, comprising $2,351,792 plus interest in the amount of $192,711.

DISCUSSION

1. *Standard of Review*

The parties dispute the applicable standard of review. The District urges us to apply deferential substantial evidence review to the trial court's findings; the Authority contends its appeal presents questions of law subject to de novo review because the trial was conducted on stipulated facts. (Compare *Nguyen v. Calhoun* (2003) 105 Cal.App.4th 428, 437-438 [case presented question of law where it was submitted on stipulated facts, and the inquiry required "'critical consideration, in a factual context, of legal principles and their underlying values'"]; *Oliver &*

Williams Elevator Corp. v. State Bd. of Equalization (1975) 48 Cal.App.3d 890, 893-894 ["normal . . . rule that appellate courts are bound by findings of fact by a trial court if they are supported by substantial evidence" is subject to an exception; where the case was submitted on a stipulation of facts with documents, there was no conflict in the evidence, no oral evidence was introduced and there was no need to assess credibility of witnesses, the issue to be resolved on appeal becomes a question of law]; with *Axis Surplus Ins. Co. v. Glencoe Ins. Ltd.* (2012) 204 Cal.App.4th 1214, 1221-1222 [substantial evidence review of the trial court's findings where the parties had agreed upon a record for trial comprising stipulated facts, exhibits and deposition testimony]; *McKinney v. Kull* (1981) 118 Cal.App.3d 951, 955-956 ["unless the parties stipulate to an ultimate fact, which is tantamount to the elimination of an issue from the case, agreed facts or events provide only the basis for an inference of other facts"; factual inference to be drawn from stipulated facts "is not per se a question of law"].)

An appeal with more than one issue, of course, may require more than one standard of review. The determination whether there was a breach of contract is ordinarily a question of fact reviewed for substantial evidence. (*Ash v. North American Title Co.* (2014) 223 Cal.App.4th 1258, 1268.) When, however, "the decisive facts are undisputed, we are confronted with a question of law and are not bound by the findings of the trial court." (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.) We review de novo the interpretation of contracts and stipulations between the parties where there was no conflicting extrinsic evidence presented at trial, even when conflicting inferences may be drawn from uncontroverted evidence. (*Johnson v. Greenelsh*

(2009) 47 Cal.4th 598, 604; *Garcia v. Truck Ins. Exchange* (1984) 36 Cal.3d 426, 439; *Union Pacific Railroad Co. v. Santa Fe Pacific Pipelines, Inc.* (2014) 231 Cal.App.4th 134, 156.)

The trial court's judgment or order "is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal . . . . 'This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.'" (*Jameson v. Desta* (2018) 5 Cal.5th 594, 609; accord, *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "'No form of civil trial error justifies reversal and retrial, with its attendant expense and possible loss of witnesses, where in light of the entire record, there was no actual prejudice to the appealing party.' [Citation.] Accordingly, errors in civil trials require that we examine 'each individual case to determine whether prejudice actually occurred in light of the entire record.'" (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 801-802; accord, *Kim v. Konad USA Distribution, Inc.* (2014) 226 Cal.App.4th 1336, 1352.) An error is prejudicial if it is reasonably probable a result more favorable to the appealing party would have been reached in the absence of the error. (*Cassim*, at pp. 800-802.)

2. *The Trial Court Did Not Commit Reversible Error in Awarding the District $192,711 in Interest*

Footnote 1 of the trial court's decision after bench trial states, "The parties in effect stipulat[ed] to liability and the only dispute is the amount of the damages resulting from the breach of the [Agreement]." Not so, the Authority asserts. Not only did it not stipulate to its liability to the District but also, as it had argued in the trial court, there was no breach of contract because

it was only obligated by the Agreement and bylaws to pay interest through the date of the member's withdrawal. Without a breach, there can be no damages; and the District was not entitled to an award of prejudgment interest pursuant to Civil Code section 3287, subdivision (a).[2]

Although the court's footnote may have been somewhat imprecise, any possible error in that regard was unquestionably harmless; the full decision of the court demonstrates it independently determined the Authority had breached the Agreement. The court began its analysis by quoting article XI, section B of the bylaws: "The Board of Directors shall determine whether the obligation to pay a Member's Positive Share shall be discharged through a transfer of property or through a payment of funds. Said transfer or payment shall be made within a reasonable period following the date of withdrawal or termination." Relying on this provision, the court found the Authority was obligated to pay the $6,351,792 it owed to the District, less any obligations owed by the District,[3] within a

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[2] Civil Code section 3287, subdivision (a), provides: "A person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day, except when the debtor is prevented by law, or by the act of the creditor from paying the debt. . . ."

[3] The record does not indicate the Authority claimed the District owed it any obligation other than the $50,000 in attorney fees and costs incurred by the Authority to defend the litigation—fees and costs to which it claimed entitlement pursuant to the Resolution, not the Agreement and bylaws. Moreover, the parties stipulated, prior to the May 2016 interim agreement, an

"reasonable time" of the District's withdrawal. Although the Authority had paid $4,000,000 in 2016 pursuant to the interim agreement, a balance of $2,351,792 remained outstanding. The court found, "Two years is not a reasonable time," and stated the Authority "deprived [the District] of the benefit of the use of the funds and of earning interest on such funds." Thus, the trial court essentially ruled the Authority had breached the Agreement by failing to timely pay the full amount due the District[4] and determined the District was therefore entitled to prejudgment interest on the withheld funds pursuant to Civil Code section 3287, subdivision (a).

That the Agreement does not require the Authority to pay interest that accrued after the District's withdrawal is irrelevant. The District's entitlement to post-withdrawal interest is

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accounting had determined the Authority owed the District $6,351,752.

[4] What constitutes a reasonable time for performance of a contract is ordinarily a question of fact, which depends on the circumstances of the case. (*Wagner Construction Co. v. Pacific Mechanical Corp.* (2007) 41 Cal.4th 19, 30; *Kotler v. PacifiCare of California* (2005) 126 Cal.App.4th 950, 956.) The standard of reasonableness is "derived from 'the situation of the parties, the nature of the transaction, and the facts of the particular case' [citation], and its establishment does not require further proof." (*Kotler*, at p. 956.) The Authority in its appellate briefing does not dispute the trial court's finding a delay of two years to pay the amounts owed under the Agreement was not a reasonable time under the circumstances of this case; in any event, it forfeited any argument that a two-year delay was reasonable by failing to raise it in its opening brief. (See *Kelly v. CB&I Constructors, Inc.* (2009) 179 Cal.App.4th 442, 452 ["point not raised in opening brief will not be considered"].)

authorized by statute as prejudgment interest on the sum improperly withheld by the Authority, not the parties' contract.

Substantial evidence, including the parties' stipulated facts, supports the trial court's finding of breach. Moreover, the Authority has identified no legal principles suggesting the trial court erred as a matter of law in finding the Authority breached the Agreement by failing to pay the District the full amount owed within a reasonable time of its withdrawal. (See *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 ["[w]hen 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"].) Accordingly, even were we to apply a de novo standard of review, we would affirm the trial court's determination.

3. *The Trial Court Did Not Commit Reversible Error in Denying the Authority Its Attorney Fees and Costs*

The Authority contends the trial court erred by failing to award it attorney fees under the misunderstanding it sought those fees as taxable litigation costs, rather than under the express terms of the parties' contract. Specifically, the Authority points to paragraph 2 of the Resolution, which provided, "As a material condition to and prerequisite for withdrawal, [the District] . . . shall be further required to enter into an agreement with the [Authority] providing for [the District's] full and complete reimbursement for all fees and costs incurred by the [Authority], directly and through its attorneys, accountants, actuaries, current claim administrators or other advisors, in acting upon, processing, approving and implementing the withdrawal request by [the District] from the [Authority]." The $50,000 in fees and costs incurred to defend the litigation were

properly charged to the District as amounts incurred in implementing the District's withdrawal, the Authority asserts; and the amount sought was reasonable in light of the District's failures to bring the action through the proper plaintiff.

Whatever the merit of the Authority's contention the Resolution was an enforceable contract binding on the District, and not solely a unilateral resolution by the governing board of the Authority (of which the District was a member), the trial court did not err in denying the Authority its attorney fees and costs. The trial court's decision reflects it did not misconstrue the Authority's fee arguments; to the contrary, the court expressly found the Authority was not entitled to its attorney fees "under the [Agreement], Bylaws, Resolution or the law." The court quoted verbatim the same provision (that is, numbered paragraph 2) of the Resolution relied upon by the Authority and concluded the "$50,000 fees [the Authority] incurred in this litigation cannot be construed as 'acti[ng] upon, processing, approving and implementing the withdrawal request'"; it further stated, "Defending this lawsuit is not the same as 'processing' [the District's] withdrawal. The language of the Resolution is clearly contemplated towards administrative and ancillary fees and costs incurred . . . . Said language cannot reasonably b[e] construed as allowing for recovery of attorney's fees incurred in defending this litigation to enforce the [Agreement]."

The Authority, in asserting the trial court misconstrued its fee argument as premised solely on statutory authority authorizing a fee award as litigation costs, does not address in its appellate briefs the reasonableness of the trial court's interpretation of the Resolution. Accordingly, the Authority has forfeited any contention the trial court erred in its interpretation

of the Resolution. (See *Benach v. County of Los Angeles, supra,* 149 Cal.App.4th at p. 852; see also *Kelly v. CB&I Constructors, Inc.* (2009) 179 Cal.App.4th 442, 452.) In any event, based on our independent review,[5] we agree with the trial court's interpretation of the Resolution.[6] The provision at paragraph 2 of the Resolution that the District reimburse the Authority's fees in acting upon, processing, approving and implementing the District's withdrawal request cannot reasonably be interpreted as requiring the District to pay the Authority's attorney fees and costs incurred while unsuccessfully defending an action arising from the Authority's own breach of the parties' agreement. To find otherwise would be to effect the absurd, and unjust, result of penalizing the District for the Authority's wrongful actions against it. That could not have been the parties' intent.

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[5] The parties did not identify any conflicting extrinsic evidence in the record relevant to interpreting the Resolution on the issue of the Authority's entitlement to attorney fees and costs; as discussed, de novo review thus applies.

[6] The fundamental goal of contract interpretation is to give effect to the mutual intention of the parties as it existed at the time they entered into the contract. (*Hartford Casualty Ins. Co. v. Swift Distribution, Inc.* (2014) 59 Cal.4th 277, 288; *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264; see Civ. Code, § 1636.) That intent is interpreted according to objective, rather than subjective, criteria. (*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1126.) The "language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity." (Civ. Code, § 1638.)

4. *The District's Entitlement to Additional Interest Amounts and Modification of the Judgment*

The District requests we modify the judgment to award it the full amount of interest actually accrued during the entire period of the Authority's wrongful retention of the balance owed. We decline to modify the judgment to award more than $192,711 in prejudgment interest. The parties stipulated the only issue for the trial court's decision, other than attorney fees and costs recoverable by the Authority, was the District's entitlement to interest from July 1, 2013 to July 12, 2018; they also stipulated $192,711 was the amount of interest accrued on the retained funds during this period. To the extent, rather than additional prejudgment interest, the District seeks postjudgment interest on the money judgment, the trial court, at footnote 2 of its decision, observed, once it entered judgment, the District may be able to recover postjudgment interest until the judgment is paid in full in accordance with the law. (See Code Civ. Proc., § 685.010 et seq.) The District has not explained why or in what manner modification of the judgment would be necessary to preserve any such entitlement to postjudgment interest.

In any event, regardless of the type of interest it seeks, the District did not file a cross-appeal and thus is not entitled to the requested relief. (See *Celia S. v. Hugo H.* (2016) 3 Cal.App.5th 655, 665 [""[t]o obtain affirmative relief by way of appeal, respondents must themselves file a notice of appeal and become cross-appellants""]; *In re Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439 [a respondent who has not filed a cross-appeal cannot seek a change in the judgment].)

We, however, independently observe the existence of the following typographical errors in the judgment's references to the

plaintiff: the spelling of Melendez de Santa Ana's first name as "Themla" rather than "Thelma," and the extraneous addition of the word "Judgment" after "Inglewood Unified School District." We thus modify the judgment for the limited purpose of correcting these clerical errors. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 185 ["Courts may correct clerical errors at any time," and they may correct such errors on their own motion]; *Gravert v. DeLuse* (1970) 6 Cal.App.3d 576, 581-582 [entry of judgment generally is a clerical act, and an order may be made to correct a clerical error, including misspelling of a name, nunc pro tunc]; see also *People v. Baines* (1981) 30 Cal.3d 143, 150 [review court's modification of judgment to correct clerical error].)[7]

DISPOSITION

The judgment is modified to reflect the references to plaintiff as Thelma Melendez de Santa Ana as Trustee on Behalf of Inglewood Unified School District. As modified, the judgment is affirmed. The District is to recover its costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J. FEUER, J.

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[7] We modify the judgment to correct the typographical errors out of an abundance of caution. (Cf. *Orr v. Byers* (1988) 198 Cal.App.3d 666, 670, 672-673 [finding no constructive notice of judgment lien where judgment creditor misspelled judgment debtor's name in the written judgment].)