Filed 10/16/14 Huynh v. Lo CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

DANNY T. HUYNH, Plaintiff and Respondent, v. LANDON MENG LO, Defendant and Appellant.	B247577 (Los Angeles County Super. Ct. No.BC444869)

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

Law Offices of Joel F. Tamraz, Joel F. Tamraz for Defendant and Appellant.

Law Offices of Kenneth I. Gross & Associates, Kenneth I. Gross and Thomas D. Shambaugh for Plaintiff and Respondent.

INTRODUCTION

Defendant Landon Lo (Lo) appeals from a judgment against him following a bench trial. The trial court found that the parties, former partners in a wholesale seafood business, entered into an oral separation agreement under which Lo agreed to pay plaintiff Danny Huynh (Huynh) for the value of Huynh's half of the business, minus certain credits for items taken by Huynh. Lo appeals the award of $2.86 million, including an award of prejudgment interest at 10 percent per annum. We affirm.

FACTUAL AND PROCEDURAL HISTORY

A. Seacrest Seafood

Huynh and Lo worked together in the seafood industry for more than 20 years, initially as co-owners of a wholesale seafood business called Country Flavor Corporation. In 2007, they each incorporated a separate business to be used in the event they decided to shut down Country Flavor. Huynh formed Seafood Avenue Corporation (Seafood Avenue) and Lo formed Seacrest Seafood Corporation (Seacrest). In 2009, they closed Country Flavor, but agreed to become co-owners of Seacrest (Lo's company), along with their business associate, Tomson Wai. Huynh became the CEO and received 40 percent of the ownership interest in Seacrest, Lo became CFO and received 50 percent, and Wai became Secretary and received 10 percent. Country Flavor's operations then became Seacrest, using the same facilities in El Monte and most of the same employees. In early 2010, Seacrest opened an additional facility in the City of Industry.

In mid-2010, Huynh and Lo decided to part ways. Wai assigned his 10 percent ownership interest in Seacrest to Huynh on June 12, 2010. Huynh and Wai left Seacrest on July 10, 2010 and Huynh immediately began operating Seafood Avenue out of Seacrest's El Monte facility. Lo continued to operate Seacrest out of the City of Industry facility through the end of 2010. Lo formed a new corporation, Seaquest Seafood Corporation (Seaquest), in August of 2010 and transitioned Seacrest's business and employees into Seaquest in January of 2011. After the split between Huynh and Lo, each

accused the other of stealing from Seacrest and of breaching their fiduciary duties to the corporation by setting up their new separate corporations. This action followed.

B. Complaint and Cross-Complaint

Huynh filed his complaint against Lo on September 2, 2010, alleging causes of action for an accounting, fraudulent inducement, and injunctive relief. According to Huynh, he decided to leave Seacrest because he suspected that Lo was pocketing proceeds from sales of Seacrest seafood. Huynh alleged that on July 8, 2010, he and Lo reached an oral agreement that: (1) they would cease doing business together in Seacrest and Lo would continue to operate Seacrest independently; (2) Huynh would begin to operate Seafood Avenue; (3) Lo would provide some inventory from Seacrest to Huynh for use in Seafood Avenue; (4) Huynh and Lo "would agree on the value" of Huynh's and Wai's interest in Seacrest and Lo would buy out their interests based on that value; and (5) Lo's purchase price of Huynh's and Wai's shares would be reduced by the value of the inventory transferred from Seacrest to Seafood Avenue. Huynh claimed that Lo initially acted in accordance with this agreement, by arranging for the transfer of inventory from Seacrest to Huynh. However, thereafter, Huynh alleged that Lo blocked his access to Seacrest's records and facilities and began diverting funds from Seacrest. Lo also refused to buy out Huynh's interest in Seacrest.

Lo filed an answer and a cross-complaint on October 8, 2010, alleging claims against Huynh for breach of fiduciary duty, self-dealing, and removal of director.[1] Lo alleged that Huynh improperly diverted customers and inventory from Seacrest to his new business, Seafood Avenue, without Lo's or Seacrest's knowledge or consent. Lo also claimed that Huynh wrote himself a check for $105,000 using funds from Seacrest's

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[1] The caption of the cross-complaint lists the above-referenced three causes of action. However, the body of the cross-complaint titles the second cause of action as "Self Dealing - Removal of Director" and seeks removal of Huynh as a director, while the third cause of action is titled "Self Dealing - Damages" and seeks an accounting and damages.

bank account. Lo filed a first amended cross-complaint with the same causes of action on October 12, 2010.

Huynh filed a first amended complaint on March 10, 2011 and a second amended complaint (SAC) on July 8, 2011, following the filing of a demurrer by Lo. The SAC named Lo, Seacrest, Seaquest and another corporation as defendants and included the following claims: (1) accounting; (2) conversion; (3) breach of contract; (4) breach of fiduciary duties; (5) fraud and misrepresentation; (6) fraudulent conveyance; (7) trademark infringement; (8) dilution by tarnishment; (9) unfair business competition; (10) unjust enrichment; and (11) removal of director. The SAC alleged additional details regarding the oral agreement between Huynh and Lo, including that Lo offered Huynh $2 million for Huynh's shares, Huynh countered with $3 million, and the parties then agreed that the price would be determined "by an accountant's calculation of the value of the company."

C. Trial

The court held a bench trial of this matter from December 17 to December 20, 2012. On the first day of trial, the court and counsel for the parties held a discussion on the record regarding a stipulation narrowing the issues for trial:

> "THE COURT: The complaint and cross-complaint both allege a number of causes of action for equitable relief and a variety of theories, but I understand now that we are focusing on a much more limited presentation of the issues. . . .
>
> "MR. GROSSMAN [Huynh's counsel]: Yes, your honor. Mr. Tamraz and I have conferred, and we agree despite the pleadings, this case comes down to . . . what was Mr. Huynh's interest in Seacrest Seafood Corporation worth at the time he left the company . . . . then we agree on whatever that value is, there's certain credits that the defendant is entitled to. [¶] And this does not limit Mr. Tamraz's right to question Mr. Huynh

about the business and about things that occurred at the business, but the issue that the court is to decide is what was Mr. Huynh's interest worth.

"THE COURT: And I understand that the pleadings present a conflict as to whether there is a duty to pay when his interest (sic) that existed as of July 2010. There's evidence which could be presented to establish that duty, but plaintiff is not presenting any of that evidence because the issue that you have described assumes that duty and there's no dispute as to that duty. . . .

"MR. TAMRAZ [defendants' counsel]: Yes, your honor. That is correct. We are not going to be concentrating on duty. We are going to, of course, attack the value based upon what Mr. Huynh did and how he did it, but that's - - - that's going to be one of the issues in the case. And whatever the figure comes out to be is what the figure comes out to be.

"THE COURT: Right. And I further understand that there has been alleged in the cross-complaint and through discovery a number of allegations that Mr. Lo has that Mr. Huynh engaged in certain acts of misconduct at the time the two parties split up in July 2010 and while those claims are not going to be litigated, Mr. Tamraz may still question Mr. Huynh and pursue that as it relates to the valuation of Mr. Huynh's interest as of July 2010 and the value of the company at the time the two parties split up.

"MR. TAMRAZ: Correct, your honor."

The trial then proceeded as stipulated. Huynh testified on his own behalf and also presented witness testimony from Wai, another Seacrest employee, and Lo as an adverse witness. Lo presented his own testimony as well as that of one of his Seaquest employees. Three experts also testified at trial: Thomas Neches, retained by Huynh, who concluded that Huynh's interest was worth $3.45 million, Karl Schulze, jointly retained by the parties, who valued Huynh's interest at $2.73 million, and Michael Cordova,

retained by Lo, who testified that Huynh's interest was worth $760,000. Schulze and Neches based their calculation on a 50 percent interest share in Seacrest, while Cordova assumed a 45 percent interest.[2]

D. Statement of Decision

The trial court issued a tentative decision and statement of decision on February 8, 2013. The court found that "Huynh and Lo entered into an oral separation agreement, in which Lo agreed to pay Huynh for the value of his interest in Seacrest as of the time of Huynh's departure, less the value of the Seacrest inventory, equipment and property taken by Huynh." At the time that Huynh left Seacrest, on July 10, 2010, the court found that he had a 50 percent interest in the corporation, consisting of his original 40 percent interest plus the 10 percent interest Wai transferred to him. Huynh and Lo did not determine the value of Huynh's interest at that time, but "agreed to do so later." In July 2010, Lo gave Huynh a spreadsheet valuing Huynh's net interest in Seacrest (which he claimed was 45 percent) at approximately $1.6 million. Huynh claimed that his interest was valued at $3 million. Lo responded with an offer of $2 million, which Huynh rejected. The court also concluded that the parties "understood that they would be operating seafood wholesale businesses that would directly compete with each other in the future."

Once Seafood Avenue began operating, the court found that Lo cooperated with transfers of seafood inventory between Seacrest and Seafood Avenue, per the parties' agreement. The court found Wai's testimony and written documents showing the value of these transfers to be "credible and persuasive," and rejected Lo's testimony, which lacked supporting documentation, claiming a much higher balance owed to Seacrest.

With respect to the experts, the court found Schulze, the joint expert, to be the most credible, noting that "[h]is analysis was thorough and followed generally accepted

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[2] The 45 percent calculation was based on Lo's claim that Wai never truly owned 10 percent of the company, and therefore that Lo owned 55 percent and Huynh owned 45 percent.

valuation standards and methodologies" and that he was the "most objective" of the three. The court therefore accepted Schulze's valuation of Huynh's interest in Seacrest of $2.7 million. The court then adjusted that amount as follows:

- Added $206,606, the amount of a loan from Huynh to Seacrest, plus interest, that had not been repaid;
- Offset $550,377, the net amount due to Seacrest for seafood inventory, per evidence supplied by Wai;
- Offset $12,500, the value of a truck and forklift taken by Huynh, per Lo's testimony; and
- Offset $105,000 for the withdrawal from the Seacrest bank account made by Huynh, which the court found was not authorized by Lo.

The court rejected Huynh's claim that he loaned an additional $400,000 to Seacrest, finding it unsupported by the evidence.

The court also rejected Lo's arguments that he had no personal duty to pay Huynh for 50 percent of Seacrest as contrary to the stipulation reached at the start of the trial and contrary to the evidence. The court refused Lo's attempts to reassert his cross-claims as affirmative claims for relief for the same reasons, finding that these claims were "expressly abandoned at trial" and noting that Lo's arguments about Huynh's misconduct were considered only "as part of the general background of the case and as factors that could affect the value of Seacrest." However, the court found that Huynh's conduct was consistent with the agreement he and Lo had reached and that "[d]espite competition by Seafood Avenue and Huynh, Seacrest and Seaquest have remained successful and profitable companies."

Finally, the court awarded prejudgment interest to Huynh pursuant to Civil Code sections 3287and 3289, subdivision (a) at a rate of 10 percent per annum starting on July 10, 2010, the date Huynh left Seacrest.

Lo filed objections to the tentative statement of decision on February 20, 2013. The court overruled Lo's objections and adopted its tentative statement as the final

statement of decision. The court entered judgment on February 22, 2013, and Lo timely appealed.

DISCUSSION

A. Standard of Review

When a party contends insufficient evidence supports a judgment following a bench trial, we apply the substantial evidence standard of review. "[T]he power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination. . . ." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) The substantial evidence standard has two components: "First, all conflicts in the evidence must be resolved in favor of the prevailing party; second, all reasonable inferences from the evidence (all conflicts already having been properly resolved) must be drawn in favor of the prevailing party. [Citation.]" (*Tien Le v. Lieu Pham* (2010) 180 Cal.App.4th 1201, 1205-1206.)

B. Judgment for Huynh

Lo contends on appeal that the judgment for Huynh was not supported by the pleadings or by the evidence at trial. First, Lo claims that the court awarded damages to Huynh "without a single cause of action being brought in the complaint setting forth a basis for liability in Lo." Not so. Huynh's SAC contains a cause of action for breach of contract and alleges therein that the parties agreed Lo would purchase Huynh's interest in Seacrest, that Lo breached that agreement, and that Huynh was damaged in an amount "equal to the value of plaintiff's interest in Seacreast as of July, 2010." The damages awarded by the trial court were expressly based on its finding of an oral agreement between Huynh and Lo.

Second, Lo claims that the judgment is not supported by substantial evidence. Based on our review of the record, Lo cannot meet this burden. As the trial court noted, Huynh offered evidence that he and Lo entered into an oral separation agreement and that Lo expressly agreed to pay Huynh the value of his interest in Seacrest. Lo acted in

accordance with that agreement by providing a valuation of Huynh's interest in July 2010, by negotiating with Huynh regarding that value, and by transferring inventory from Seacrest to Seafood Avenue. The fact that Lo can point to evidence to contradict some of these facts is immaterial, as we are required to resolve all evidentiary conflicts in Huynh's favor as the prevailing party. (*Tien Le v. Lieu Pham*, *supra*, 180 Cal.App.4th at p. 1206.)[3]

Lo's arguments are also in direct contravention of the parties' stipulation narrowing the issues for trial. The parties expressly agreed that they would assume the duty to pay for Huynh's interest, and would focus only on the valuation of that interest. Lo repeatedly confirmed his understanding on that point when asked by the trial court. Lo cannot now contend that Huynh failed to establish a duty to pay when he previously stipulated that Huynh would not have to prove that claim. Lo similarly claims that the trial court misinterpreted the parties' stipulation by treating the cross-complaint as "abandoned." But his own papers, citing to statements made by his counsel at trial, demonstrate Lo's express agreement to introduce evidence of Huynh's alleged misconduct not as proof of his cross-claims but as "factors that would fall into evaluating the company." As Lo's counsel put it in his opening statement at trial, "we are here today, your honor, basically to determine what is the valuation of whatever it was that Mr. Huynh left that Mr. Lo inherited."

While in his opening brief Lo argued that the trial court had misinterpreted or acted outside of the parties' stipulation , in his reply brief, Lo claims there was no valid stipulation at all. Instead, Lo argues that the stipulation was an "incomprehensible

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[3] Lo claims in his reply brief that the oral contract between the parties was, at most, an "'agreement to agree'" and therefore unenforceable. Arguments raised for the first time in an appellant's reply brief are deemed forfeited, and we therefore decline to address this issue. (See, e.g., *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1292, fn. 6 ["[a]rguments presented for the first time in an appellant's reply brief are considered waived"]; *Holmes v. Petrovich Development Co*. (2011) 191 Cal.App.4th 1047, 1064, fn. 2 ["argument is forfeited" where "it is raised for the first time in [appellant's] reply brief without a showing of good cause"].)

colloquy" between counsel and the court, was too ambiguous to be enforced, and that he did not have the authority to limit his client's claims by stipulation in this manner. Lo's lengthy argument and citation to authority on this point was raised for the first time in his reply, thus allowing no opportunity for Huynh to respond. Lo has therefore waived this argument and we decline to address it. (See, e.g., *Habitat & Watershed Caretakers v. City of Santa Cruz, supra*, 213 Cal.App.4th at p.1284, fn.2.)

Finally, Lo claims the trial court improperly ignored his evidence regarding Huynh's alleged misconduct, including theft of Seacrest property and breaches of fiduciary duty, which Lo claims should have been considered in reducing the value of Huynh's interest in Seacrest. As an initial matter, it should be noted that the court did allow Lo to question witnesses and introduce evidence on this topic and expressly discussed that evidence in the statement of decision. And given that the court found that the parties had entered into an oral separation agreement, it follows that the court disregarded Lo's contrary evidence that Huynh stole inventory from Seacrest and started a competing business without Lo's knowledge, concluding that such evidence was not credited as to the amount owed to Huynh. Similarly, Lo complains that Mr. Neches, Huynh's retained expert, was allowed to consider the value of Seaquest as part of his analysis but did not include any information about Seafood Avenue. Putting aside the issue of the accuracy of that claim, the argument is moot, as the court did not rely on Mr. Neches's valuation. Rather, the court accepted the opinion and valuation of the joint expert, Mr. Schulze, about whom Lo makes no complaint.

In sum, Lo has failed to meet his burden to establish that the judgment here was supported by insufficient evidence. Judgment in favor of Huynh is affirmed.

C. Award of Prejudgment Interest

The trial court also awarded prejudgment interest to Huynh pursuant to Civil Code section 3287, subdivision (a), which 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. . . ." Two competing policies provide the framework for an award of prejudgment interest under the statute. "First, interest traditionally has been denied on unliquidated claims because of the general equitable principle that a person who does not know what sum is owed cannot be in default for failure to pay." (*Chesapeake Industries, Inc. v. Togova Enterprises, Inc*. (1983) 149 Cal.App.3d 901, 906 [citing *Cox v. McLaughlin* (1888) 76 Cal. 60, 67] (*Chesapeake*).) "Thus, no prejudgment penalty is assessed against a litigant for failing to pay a sum which is unascertainable prior to judgment. [Citation.]" (*Ibid*.) On the other hand, the countervailing policy instructs that parties should be compensated for the loss of the use of their money during the period between the accrual of a claim and the rendition of judgment, resulting in a "generally liberal construction of 'certainty' under section 3287." (*Ibid*. [citations omitted].) As a result, the test for recovery under this section focuses on "'whether *defendant* actually know[s] the amount owed or from reasonably available information could the defendant have computed that amount. [Citation.]'" (*Children's Hospital and Medical Center v. Bontá* (2002) 97 Cal.App.4th 740, 774 (*Children's Hospital*).) Interest may not be awarded under this section "where the amount of damage, as opposed to the determination of liability, 'depends upon a judicial determination based upon conflicting evidence and it is not ascertainable from truthful data supplied by the claimant to his debtor.' [Citations.]" (*Ibid*.)

Lo contends that he could not have calculated the amount of damages owed prior to the judgment in this matter, and points to the fact that the three testifying experts reached three different values. The experts' valuation, however, reflects their use of different methodologies, rather than disputed facts concerning Seacrest's financial condition. Indeed, the financial information for Seacrest was at all times available to Lo, as Seacrest's CFO, as evidenced by the fact that Lo himself calculated the value of the business in July 2010. The Seacrest financial data used by Lo in his July 2010 calculation was the same data supplied to, and relied upon by, the three experts. Where the data needed to compute the amount of damages is reasonably available to defendant,

as here, the existence of alternate methods to perform that calculation does not render the claim uncertain. (See *Children's Hospital*, *supra*, 97 Cal.App.4th at p. 774.)

Lo relies on *Children's Hospital* in support of his claim that the value of Seacrest was uncertain, but the court in that case affirmed prejudgment interest. (*Children's Hospital*, *supra*, 97 Cal.App.4th at p. 774.) None of Lo's other cited cases compels a different result. In *Chesapeake*, the court denied prejudgment interest where the lessor alleged in its pleading that it "did not know and could not calculate the amount of [the lessee's] liability" under a lease agreement and where the court found that "much of the critical data was in the sole possession" of the plaintiff. (*Chesapeake*, *supra*, 149 Cal.App.3d at pp. 907, 911.) And in *Conderback*, the court reversed an award of prejudgment interest where the defendant could not determine the amount owed until it received information from the plaintiff. (*Conderback, Inc. v. Standard Oil Co. of Cal., Western Operations* (1966) 239 Cal.App.2d 664, 690.) Here, Lo fails to point to any information that was unavailable to him as of July 2010 that would render the value of Seacrest uncertain as of that date.

Additionally, Lo challenges the trial court's award of interest starting on July 10, 2010, the day Huynh left Seacrest. Lo argues that any interest should not begin until the date of the judgment.[4] We disagree. Civil Code section 3289, subdivision (b) provides that interest on a contract may be charged "at a rate of 10 percent per annum after a breach." Here, the parties stipulated to the fact that Lo had a duty to pay Huynh for his interest as of July 10, 2010. In accordance with that agreement, Huynh's counsel did not seek to establish the elements of his contract claim, including exactly when the breach occurred. Because Lo stipulated to July 10, 2010 as the date on which the duty to pay arose, he cannot now claim that it was in fact another date. Accordingly, we affirm.

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[4] Lo alternatively claims that interest should start no earlier than September 2, 2010, when the complaint was filed. That argument is premised on Civil Code section 3287, subdivision (b), applicable to damages for contract claims that are not sufficiently certain to qualify for section 3287, subdivision (a). Because we find that section 3287, subdivision (a) applies, this argument is moot.

DISPOSITION

Judgment is affirmed. Costs on appeal are awarded to Huynh.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.