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**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA**

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of SOHEILA
HOSSEINI and ALI SHAJARI.

B255715, B260080

(Los Angeles County
Super. Ct. No. SD025527)

ABDOLFAZL SHAJARI,

Appellant,

v.

SOHEILA HOSSEINI,

Respondent.

APPEAL from judgments of the Superior Court of Los
Angeles County, Frederick C. Shaller, Judge. Affirmed.

Law Office of Herb Fox and Herb Fox for Appellant.

Law Offices of Edward A. Hoffman and Edward A. Hoffman for Respondent.

Abdolfazl (Abby) Shajari appeals from judgments against him as a claimant in a marital dissolution action between Soheila Hosseini and Abby's brother Ali Shajari, awarding to Soheila¹ a 50 percent interest in four properties that had been transferred to Abby by Ali, and awarding attorney fees and costs to Soheila. We affirm.

BACKGROUND

I. Trial court findings and judgments

We draw our statement of facts from the trial court's comprehensive 29-page statement of decision.

In 1998 in Iran, Ali married Soheila; he was 38 and she was 13. Ali moved to the United States and in 2000 Soheila joined him, with two infants born in 1998 and 2000. Ali and his brother Abby went into the business of servicing and selling brakes. Ali was in charge of the community assets and managed all the property and business transactions, as equal partners with Abby. When Soheila signed documents or otherwise participated in the businesses, she did so at the dictate of Ali, who was a controlling husband.

The brake repair businesses were at first very successful, and the brothers bought the real property on

¹ As did the trial court and the parties on appeal, we use the first names of the parties for clarity, intending no disrespect. We note that Abby's full first name is spelled differently throughout the record.

which the brake stores were located. Ali and Abby held the businesses and the property in one or both of their names, in Soheila's name, or in the names of entities owned by one or both of the brothers, shifting ownership in response to possible liabilities. Regardless of the formal deeds and corporate documents, Ali and Abby operated the businesses and properties as a unified operation and without corporate formalities, using the corporate structures as a shield against liability. Ali managed the businesses and the properties without informing Soheila of any details, excluding her from decisionmaking unless he needed her signature, in which case she signed at his direction.

When a franchisor threatened a lawsuit against the businesses, Ali and Abby put the businesses and real properties in Soheila's name. After the dispute settled, Abby requested that he be reinstated as joint owner, and Ali refused. Abby and his wife Shahroo sued Ali and Soheila. After mediation in 2006, the parties dismissed the lawsuit and signed a settlement agreement which made Ali and Abby equal partners in all the businesses, and co-owners (tenants in common) in all the parcels of real property.

Abby soon claimed that Ali breached the settlement agreement. This claim was a pretext to allow Ali to make a 2007 transfer of his and Soheila's community property 50 percent interest to limited liability companies formed by Abby, without Soheila's consent or participation, in exchange for Abby's interest in some property in Iran (the transfer was

not supported by any documentation and the value of the Iranian property was uncertain).

In the summer of 2007, Ali took Soheila and the children back to Iran on what she believed was a visit. The children were enrolled in school in Santa Monica in the fall, and Soheila had been accepted to attend UCLA. Instead, Ali returned to Los Angeles without Soheila and the children. Ali and Abby set about completing the transfer of the community interest in the four properties² to Abby's limited liability companies, all without Soheila's knowledge or consent.

Ali left Soheila and the children stranded in Iran, and refused to give Soheila any money. After visiting many government offices, five Iranian attorneys, and various religious offices, Soheila managed to obtain some money and permission to leave Iran.³ She retained a lawyer in Santa Monica (with borrowed funds), and she filed for dissolution from Ali on October 23, 2007. Soheila returned to the United States in November 2007.

² The real properties were in Tarzana, Lawndale (Inglewood Avenue), Los Angeles, and Lawndale (Manhattan Beach Boulevard).

³ Soheila successfully applied to a court in Iran for the payment of the second portion of a "mehrieh," an agreement at the time of marriage to make a payment of alimony and a "marriage portion." The trial court rejected Ali's argument that the mehrieh had been fulfilled, and Soheila therefore had no further claims to the marital property.

Soheila filed a complaint in joinder against Abby, his wife Shahroo, and various entities as claimants so that the court could resolve the claims to the properties. The trial court granted the motion on September 11, 2008.

The dispute over the properties went to trial in late 2011. After delays caused by Abby's personal bankruptcy filing, and after Ali permanently relocated to Iran, the trial court issued a January 15, 2014 statement of decision, concluding that "Ali and Abby perpetrated a fraud upon Soheila in order to divest her of her interest in American real properties and to cause her to be stranded in Iran whereby she would be forced to live under her husband's rule."

The court determined that the four properties were acquired during the marriage, and Ali and Soheila's half-interest was community property. Ali's transfers of the community interests to Abby were without notice to Soheila and without obtaining her consent, in violation of Family Code section 1102, subdivision (a)⁴, and Ali intentionally breached his fiduciary duty to Soheila. (*Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 40.) Soheila had the right to bring an affirmative action against Abby, who was joined in the dissolution action, had full notice and opportunity to defend against Soheila's claims, and was subject to the court's equitable jurisdiction. (*Babcock v.*

⁴ All further statutory references are to the Family Code unless otherwise indicated.

Superior Court (1994) 29 Cal.App.4th 721, 725–726.) Ali’s failure to obtain Soheila’s consent to the transfers to Abby breached Ali’s fiduciary duty to Soheila, and Abby “does not amount to a purchaser acting in good faith and without knowledge of the marriage.”

As Ali and Soheila’s marriage was not yet terminated, the court set aside the four transactions in their entirety, and awarded Ali’s and Soheila’s entire community interest (50 percent) in the properties to Soheila as a sanction due to Ali’s “fraudulent and intentional breach of his fiduciary duty to Soheila.” Clear and convincing evidence showed that Ali conspired with Abby, and “the brothers worked together to operate a fraud upon Soheila to deprive her of her [community] interest in these four properties.” Soheila was also entitled to “an award of reasonable attorney’s fees.”

The court acknowledged its equitable power to restore any consideration Abby paid for the real property, but “such equitable orders are inappropriate due to [Abby’s] lack of standing as an innocent purchaser without knowledge of the marital relationship and his active participation in the fraud that has led to [Soheila’s] loss of her interests in the four real properties.”

A partial judgment entered on February 21, 2014 stated: “Clear and convincing evidence establishes that Ali (Respondent) breached his fiduciary duty to Soheila (Petitioner) in violation of Civil Code § 3294, as her undivided 50% interest in the community asset was lost due to Ali and Abby’s (Claimant’s) fraud and intentional

misconduct. No tort damages for fraud or intentional misconduct are awarded.” The partial judgment ordered the entire community interest in the four properties transferred to Soheila with no offset or return of consideration to Abby. The judgment ordered Soheila to prepare grant deeds establishing cotenancy title in the four properties, with Soheila’s “interest described as an undivided 50% co-tenancy interest and [Abby’s] interest as an undivided 50% co-tenancy interest.” The court ordered Soheila, Ali, and Abby “to cooperate to prepare, execute appropriately, and record new deeds on each of the properties,” and to file a copy of each recorded deed with the court to demonstrate compliance with the order. The court retained jurisdiction over attorney fees and costs. Abby filed a timely notice of appeal from the partial judgment.

In a statement of decision filed September 15, 2014, the trial court awarded Soheila a total of \$85,000 in attorney fees against Abby, based on her need and Abby’s financial condition and limited to the fees and costs necessary to maintain the action on the issues against Abby.⁵ “It is the conclusion of this court that Soheila has no ability to pay her

⁵ “The court orders that Abby pay needs-based attorney’s fees and costs as follows: \$5,000 to Mr. Park; \$20,000 fees to Ms. Honey Kessler Amado, and \$40,000 to Mr. I-Iadjian and costs to White Zuckerman in the amount of \$20,000. Total fees and costs awarded as against Abby Shajari is \$85,000. Payment is to be made directly to each attorney.”

fees and costs and that this condition is directly attributable to the fraudulent and other wrongful conduct by Respondent and Claimant Abby Shajari who worked in concert with Soheila's husband . . . to attempt to deprive Soheila of her portion of the community property of the business and property interests." The court filed a further judgment on October 23, 2014, and Abby filed a timely notice of appeal.

Ali did not appeal from either judgment. We consolidated Abby's appeals.

II. Motion to dismiss the appeal

We granted multiple extensions of time to Abby to file his opening brief. On May 14, 2015, Soheila filed a motion to dismiss, conditionally dismiss, or stay the consolidated appeals, represented by her appellate attorney Honey Kessler Amado. The motion argued that the award of attorney fees and costs was to enable Soheila to secure appellate counsel. Abby had not paid any of the money due to Soheila as a cotenant in the properties, and had not paid her any part of the fee award, leaving Soheila without funds to enforce the judgments or to pay Amado to prepare her respondent's brief on appeal. Under the theory of appellate disentitlement, Soheila argued that this court should use its inherent power to dismiss the appeal, conditionally dismiss the appeal in 30 days of the order if Abby failed to pay, or stay the appeal until Abby paid the full amount of fees and costs.

Abby filed his opening brief on May 18, 2015, and filed an opposition to the motion to dismiss the appeal on May 29.

Abby did not dispute the “factual content” of the motion to dismiss, and requested a 60-day stay to provide the parties an opportunity to settle. If the parties did not settle in 60 days, he would attempt to pay the attorney fee award. Soheila did not oppose the stay. On June 10, 2015, we stayed the appeal for 60 days, and later we extended the stay to September 24, 2015.

Amado filed a motion to be relieved as counsel on February 5, 2016, stating that Soheila did not communicate with her or answer emails, reopened settlement discussions with Abby without counsel and without notifying Amado, and had not paid Amado pursuant to the retainer agreement, or taken steps to secure the balance due. We granted the motion to relieve Amado, and extended the time for Soheila to file a respondent’s brief to April 18, 2016.

After we granted four additional requests by Soheila for extensions of time, on November 7, 2016 Soheila filed a substitution of attorney. On February 2, 2017, Soheila’s new counsel Edward Hoffman filed a “renewed motion to dismiss or stay appeal,” arguing that in August 2015 the parties (with their counsel) held settlement talks without reaching an agreement, and Abby paid \$42,500 (half of the attorney fee award) via a check made out to Amado and Soheila. All the listed payees in the attorney fee award received half of the sums awarded. After the court granted Amado’s motion to be relieved as Soheila’s attorney in March 2016, Soheila was in pro. per. for eight months, during which at least 10 appellate attorneys declined to represent her. She hired

Hoffman for the limited purpose of bringing the motion to dismiss; any additional fees would exhaust her resources. Abby still had not transferred Soheila's interest in the properties, and Abby had not paid any rental profits to Soheila. Abby and Soheila had agreed to sell the fourth property on March 26 for \$1.86 million, but Abby took \$50,000 of the profit that should have gone to Soheila. The renewed motion asked that we dismiss the appeal because Abby "has yet to reform the deeds as the trial court ordered him to do," and had paid only half of the fee award, "financially strangling Soheila" and preventing her from defending the appeal.

In an attached declaration, Soheila stated that the property in Los Angeles had been foreclosed on in 2016, and the two properties in Lawndale were facing foreclosure. She and Abby sold the Tarzana property in March 2016, and Abby cheated her out of her share of the equity of \$62,550 which had been deposited in a joint bank account Abby and Soheila created for that purpose but which Abby controlled, leaving her with only \$10,000 from the sale (she did not have records of the account transactions).

In opposition to the renewed motion to dismiss, Abby disputed the facts in Soheila's motion and pointed out that he paid the entire \$10,100 fee for the failed mediation, after which the parties continued to negotiate and cooperate by jointly retaining a real estate attorney. That attorney handled the foreclosure on one property, sold the Tarzana

property,⁶ and registered a jointly owned LLC to hold the two remaining properties, but in the summer of 2016 Soheila had refused to execute the related settlement agreement. After she renewed the motion to dismiss the appeal, Soheila filed her first effort to enforce the more than two-year-old judgment, an ex parte application in the trial court asking the trial court to execute deeds to the two remaining properties (which were in imminent threat of foreclosure). The trial court denied the motion, and Abby executed and lodged the two deeds in superior court. Abby claimed he had more than satisfied the attorney fee award by a combination of direct payments and credits to Soheila.

On March 8, 2017, we informed the parties we would consider the motion to dismiss with the appeal.

In a seven-page “informal reply” on March 9, 2017, Soheila disputed all Abby’s arguments (“Soheila can refute all of Abby’s charges, and will do so if he raises them in the trial court where she can have a proper evidentiary hearing”). Soheila also filed a letter containing fourteen separate “evidentiary objections” to Abby’s declaration and to related exhibits.

Soheila’s new counsel filed a respondent’s brief on May 5, 2017, after a total of eight extensions of time. Abby filed his reply brief on June 26, 2017.

⁶ Abby’s opposition places this property in Woodland Hills.

DISCUSSION

I. We deny Soheila's renewed motion to dismiss.

“An appellate court has the inherent power, under the ‘disentitlement doctrine,’ to dismiss an appeal by a party that refuses to comply with a lower court order.”

(*Stoltenberg v. Ampton Investments, Inc.* (2013) 215 Cal.App.4th 1225, 1229 (*Stoltenberg*).) Such a discretionary dismissal does not require a formal finding of contempt, but is a “ “discretionary tool that may be applied when the balance of equitable concerns make it a proper sanction” ’ ” for willful disobedience or obstructive tactics. (*Id.* at p. 1230.) The merits of the appeal are irrelevant in considering whether to dismiss an appeal when appellant refuses to comply with trial court orders. (*Ironridge Global IV, Ltd. v. ScripsAmerica, Inc.* (2015) 238 Cal.App.4th 259, 265.)

Soheila argues that we should dismiss because Abby is defying the judgment by failing to transfer to her 50 percent of the value of the commercial properties and by failing to pay in full the attorney fee award of \$85,000. Abby responds that he has paid half of the attorney fee award (as he said he would in his opposition to the initial motion to dismiss, which did not dispute the factual content of the initial motion), paid for mediation, and jointly retained an attorney to broker a settlement after mediation failed, only to have Soheila refuse to execute the settlement agreement. The parties agree that one property has already been sold (although they dispute the fairness of their division of the

profit), and that the remaining properties have been foreclosed or are facing foreclosure. Soheila first attempted to enforce the 2014 judgment in 2017 (after filing the renewed motion to dismiss) with an ex parte motion asking the trial court to execute two deeds to the two properties facing foreclosure. When the trial court denied her motion, Abby executed and lodged the deeds to the two properties. The parties disagree, however, on a number of factual issues related to their postjudgment conduct, with Soheila making many evidentiary objections and claiming she could refute Abby's contentions in an evidentiary hearing in the trial court, and with Abby claiming he has been negotiating in good faith to satisfy the judgment.

After Abby responded to the initial motion to dismiss (which was based on his failure to pay the attorney fee award), at his request we stayed the appeal for more than three months to allow the parties to attempt to settle. Abby represented he would attempt to pay the attorney fee award if settlement discussions failed, and he paid half of the fees when discussions proved fruitless. Soheila's first appellate attorney received half of what she was entitled to under the award before we granted her motion to withdraw as counsel to Soheila. Soheila's new attorney filed a renewed motion to dismiss. The parties had continued to attempt to reach an agreement about the transfer of the properties, although one had been sold, one foreclosed, and two others were facing foreclosure.

This is not a clear cut example of blatant disobedience of a trial court order that would justify us in applying the disentitlement doctrine. In *Gwartz v. Weilert* (2014) 231 Cal.App.4th 750, 752, 758, the judgment debtors appealing a large fraud verdict did not deny that they violated the lower court order forbidding them from transferring assets by making 47 such transfers while the appeal was pending. In *Stoltenberg, supra*, 215 Cal.App.4th 1225 the appellants were under a postverdict subpoena to produce financial documents but refused to do so even after they were found in contempt. (*Id.* at p. 1232.) Another appellate court dismissed the appeal of a former trustee after she disobeyed two court orders to provide an accounting and to quitclaim some real property, and “was utterly dishonest with the [trial] court.” (*Blumberg v. Minthorne* (2015) 233 Cal.App.4th 1384, 1391–1392.) In those cases the appellate court did not have to examine reams of exhibits or determine which party was most credible to decide whether to dismiss the appeal. Here, Soheila and Abby robustly dispute each other’s version of the facts, attach numerous exhibits to their motions and oppositions, and Soheila even asserts that she can refute all of Abby’s contentions in an evidentiary hearing. We are not finders of fact and will not resolve factual disputes.

The judgment in this case required Soheila to prepare grant deeds establishing cotenancy in the four properties, and ordered the parties to cooperate in executing and recording the deeds and filing the deeds with the court. The

parties attempted to cooperate after we stayed the appeal to allow mediation, and failed after multiple attempts. Abby has not fully complied with the attorney fee order, but that alone does not justify dismissal of the appeal. Soheila has received a share of the proceeds from the sale of one property. Although no contempt order is required for dismissal, we believe some lower court enforcement action should have preceded Soheila's renewed request for dismissal, filed more than two years after the second appeal was filed.

Given the parties' ongoing negotiations to satisfy the judgment, the multiple factual disputes regarding the properties, and our disposition of this appeal, we deny Soheila's motion to dismiss.

II. Abby's appeal is without merit.

Abby argues that because Soheila did not state a fraud or conspiracy cause of action against him, the trial court erred in finding that he and Ali conspired to defraud Soheila, and erred in denying him a return of consideration and reimbursement of expenses related to the four properties.

Soheila did not allege that Abby committed fraud or conspiracy, and the trial court did not find Abby liable in tort for fraud or conspiracy. Abby's trial counsel raised an objection to the statement of decision, arguing that the court had improperly found that he had conspired with Ali to commit fraud. The court overruled the objection, stating that it referred to fraud and conspiracy by Abby and Ali only as a necessary part of its determination that Abby was not a

bona fide purchaser for value of the properties. Abby's trial counsel then filed an objection to the proposed judgment requesting that the judgment specifically state that no fraud damages were awarded, and the court inserted Abby's requested language in the partial judgment, which states that although Ali breached his fiduciary duty to Soheila through Ali's and Abby's fraud and intentional misconduct, "[n]o tort damages for fraud or intentional misconduct are awarded." At Abby's request, the court *clarified* that it did not find Abby liable for fraud.

Abby argues that the trial court should have returned to him the consideration paid for the properties. The trial court acted within its power in refusing to restore consideration to Abby. That is an equitable remedy the court may grant to an innocent purchaser or encumbrancer "who acts without knowledge of the community status of the property." (*Lezine v. Security Pacific Fin. Services, Inc.* (1996) 14 Cal.4th 56, 71 [construing predecessor to § 1102].) The trial court found that Abby was not a bona fide purchaser, and instead worked with his brother Ali to deprive Soheila of what Abby knew was her rightful community interest in the businesses and properties. Abby was not entitled to a return of his consideration or reimbursement.

Abby also argues that the trial court denied him the right to present closing argument regarding fraud and the denial of reimbursement. Abby made a general objection to the court's issuance of the draft statement of decision

without closing argument, and made other objections regarding the absence of causes of action for fraud or conspiracy. The court denied the objection, finding after reviewing the evidence and reading the trial transcripts that further argument was unnecessary, and that the parties had the opportunity to present their arguments in their objections to the statement of decision. The court also addressed in full Abby's objections related to fraud and conspiracy.

"[H]ow much time parties may be allowed for argument in a trial before a court sitting without a jury, or whether they are to be allowed any at all, are matters within the discretion of the court before whom the hearing is had." (*Gunn v. Superior Court* (1946) 76 Cal.App.2d 203, 205; *Gillette v. Gillette* (1960) 180 Cal.App.2d 777, 781–782.) The trial court did not abuse its discretion when it did not allow closing argument. The court had prepared an extensive statement of decision and reviewed all the evidence and testimony, and did not believe that closing argument would be helpful. The court also carefully considered all the parties' objections to the statement of decision and responded in a detailed eight-page written ruling. Abby does not demonstrate how oral argument would have yielded a more favorable result on the issues which he argues on appeal.

Finally, Abby argues that he had no fiduciary duty to his sister-in-law Soheila, and therefore could not be liable for conspiring to breach such a duty. He cites cases holding that

a cause of action for civil conspiracy does not arise if the conspirator was not personally bound by the duty violated by the alleged wrongdoing. (See *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 514.) As we explained above, the court did not find Abby liable in tort for fraud or conspiracy. Further, Abby held the properties as tenants in common with Soheila and Ali, and as a cotenant in the properties Abby did “stand in [a] confidential relationship” with Soheila, with a corresponding fiduciary duty not to undermine her community interest. (*Wilson v. S.L. Rey, Inc.* (1993) 17 Cal.App.4th 234, 242; *Lee v. Yang* (2003) 111 Cal.App.4th 481, 500, fn. 7 (conc. opn. of Rivera, J.).)

DISPOSITION

The judgments are affirmed. Soheila Hosseini is awarded her costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

LUI, J.