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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FIVE

NADAV IBI, Plaintiff and Respondent, v. HAVA SAGI et al., Defendants and Appellants; MGOLDA LLC, Intervener and Respondent.	B276268 (Los Angeles County Super. Ct. No. LC100164)

APPEAL from judgments of the Superior Court of Los Angeles County, Rick S. Brown (Ret.), Judge. Affirmed.

Robert F. Smith, for Defendants and Appellants.

No appearance for Plaintiff and Respondent.

Law Offices of Moses S. Bardavid and Moses S. Bardavid, for Intervener and Respondent.

Defendants and appellants Zeev Sagi and Hava Sagi appeal from two judgments following a bench trial in favor of plaintiffs and respondents Nadav Ibi and MGolda, LLC in this action for fraud and conversion.[1] The Sagis contend the trial court should not have stricken Hava's answer for failure to appear at trial, discovery admissions were not admitted into evidence or read into the record, and no evidence supports the judgments against Hava. We conclude the record is inadequate to review the Sagis' contentions on appeal without any of the relevant pleadings, including the complaints, answers, orders, and any of the discovery motions or rulings.[2] We therefore affirm the judgments.

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[1] Because some of the parties share the same last name, we refer to them by their first names for ease of reference. Ibi has not filed a respondent's brief on appeal.

[2] Pursuant to Government Code section 68081, we invited the parties to file letter briefs addressing whether the record was adequate to review the issues raised on appeal. We have received no letter brief in response.

FACTS AND PROCEDURAL HISTORY

The appellate record consists of the trial court case summary (docket), an order following the Sagis' former attorney's request to be relieved as counsel, a reporter's transcript of the trial proceedings, and the judgments entered against the Sagis. No other trial court documents have been designated in the record on appeal.

The docket reflects that Ibi filed a complaint on April 12, 2013, against several defendants, including the Sagis and ASAF, LLC, Matan Real Estate, LLC, and Sharon Apartments, LLC. An answer was filed May 22, 2013. MGolda filed a complaint in intervention August 5, 2013. An answer following the complaint in intervention was filed September 13, 2013. None of these documents identified from the docket are part of the appellate record.

The docket indicates that on July 16, 2015, MGolda filed 18 discovery motions, including motions to compel responses to requests for production of documents, and motions to deem requests for admissions admitted against defendants Zeev and Hava. None of these motions are part of the appellate record. Nor has a reporter's transcript of any hearings on the discovery motions been made part of the record. A notice of ruling filed October 1, 2015, is referenced on the docket, but the trial court's ruling is not contained in the appellate record. On December 30, 2015, the court granted the Sagis' former attorney's motion to be relieved as

counsel. The order states that trial was set for May 16, 2016, the next hearing on discovery sanctions was scheduled for February 26, 2016, and the final status conference was scheduled for May 6, 2016. The order was accompanied by a proof of service on Zeev and Hava. A notice of an order to show cause regarding contempt was filed March 11, 2016.

Trial commenced on May 16, 2016. Zeev appeared in propria persona, but Hava did not appear. Prior to calling witnesses, the court first considered plaintiffs' five motions in limine. The motions in limine are not part of the record on appeal. In connection with one of the motions in limine, plaintiffs provided the court with numerous requests for production and requests for admission (as part of a joint trial exhibit list, which is also not part of the record on appeal), and argued that defendants should be precluded from offering certain evidence or argument at trial based on their failure to respond to the requests. Ibi and MGolda also argued that matters were deemed admitted by the court as sanctions because Zeev and Hava failed to respond to discovery. Following argument, the court noted that "[t]here will be certain facts in this case deemed admitted because of failure to respond" to requests for admissions and requests for production of documents.[3]

[3] The docket also includes entries for motions filed several months before trial to deem admitted Zeev and Hava's respective requests for admissions. Those motions are not included in the record on appeal, nor are any of the

Ibi then requested to strike Hava's answer for failing to appear for trial after being served with notice to appear. MGolda indicated that it would be making the same motion. The court inquired, "And you're going to provide a default judgment packet? . . . [A packet or by] declaration there in court with the reporter at least to support the 585 part of it. Then you'll do the formal judgment form and so forth." Counsel for MGolda replied, "Absolutely," while counsel for Ibi replied, "Right. Thank you, your honor." The trial court then added, "You're moving to strike the answer and move for default now because there is no answer? All right. Later by testimony there will be a prove up." Counsel for Ibi replied, "Correct[.]" The court then inquired of counsel their intentions with respect to the case against Zeev, whom the court referred to as "our remaining defendant," and then Ibi and MGolda proceeded to present their cases.

During trial, Ibi testified that a third party gave $300,000 to Zeev "[t]o invest and buy properties in Michigan" pursuant to an agreement. Zeev agreed to transfer title to the properties to a company that belonged to the parties, manage the properties, and make a profit for them. Zeev received the $300,000, bought the properties and kept them for himself. Zeev never returned the $300,000. The third party assigned his rights to Ibi in a written document, which was received into evidence at trial. The exhibit is not included as part of the record on appeal.

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notices of rulings on subsequent dates (which may have dealt with those deemed admissions).

MGolda's witnesses testified that MGolda provided $420,000 to Zeev for investing in the same Michigan properties under the same terms. The parties to the transaction were to hold an interest in the properties. None of the money was used for the specified purpose. Although requested by MGolda, Zeev never returned the money. Zeev took the properties "either in his name or in companies that he solely owns and control[s] and also admits as to alter ego." MGolda did not receive an interest in the properties. Zeev, "alone with Hava," kept the properties and the money

The court noted that payment of the money was deemed admitted, precluding Zeev from examining the circumstances surrounding his receipt of the payments. At the close of trial, Ibi and MGolda moved for judgment. The court found in favor of both parties on causes of action for fraud and conversion in the amount of $300,000 and $420,000 respectively.

The court entered judgment in favor of MGolda on May 24, 2016, and for Ibi on June 27, 2016. Both judgments were entered in favor of Ibi and MGolda against Zeev, Hava, and the corporate defendants.[4] The May 24, 2016 judgment on MGolda's complaint in intervention indicates it is a judgment "after court trial" and includes a specific finding that Hava and the other non-appearing corporate defendants were properly served with notice of trial. The June 27, 2016

[4] Judgment for Ibi was entered against Zeev and Hava jointly and severally. Judgment for MGolda makes no reference to joint or several liability.

judgment on Ibi's complaint states "defendants Hava Sagi [and the corporate entities] . . . having failed to appear for trial having been properly served with notice of trial, and the default of said defendant having been duly entered," but also indicates that the court considered the evidence at trial in finding for Ibi against Zeev and Hava on causes of action for fraud and conversion. The Sagis filed a timely appeal.

DISCUSSION

Striking Hava's Answer

The Sagis contend the trial court should not have stricken Hava's answer at trial because there was no evidence that she was provided notice to appear at trial, and striking the answer was not the proper procedure for failing to appear. They have not, however, provided an adequate record on appeal to demonstrate error.

"It is well settled, of course, that a party challenging a judgment has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) "'A judgment or order of the lower court is *presumed correct.* All intendments and presumptions are indulged to support it on matters as to which the record is silent . . . .' (Orig. italics.) [Citation .]" (*Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712.) In the absence of a proper record on appeal, the judgment is presumed correct and must be affirmed. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–

1296 (*Maria P.*).) "It is axiomatic it is the appellant's responsibility to provide an adequate record on appeal. (See *Maria P.*[, *supra*,] 43 Cal.3d [at pp.] 1295–1296 [to overcome presumption on appeal that an appealed judgment or order is presumed correct, appellant must provide adequate record demonstrating error]; *Estrada v. Ramirez* (1999) 71 Cal.App.4th 618, 620, fn. 1 [burden on appellant to provide accurate record on appeal to demonstrate error; failure to do so 'precludes adequate review and results in affirmance of the trial court's determination']; see also Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2005) ¶ 4:43, p. 4–10.1 [appellate record inadequate when it 'appears to show *any* need for *speculation or inference* in determining whether error occurred'].)" (*Lincoln Fountain Villas Homeowners Assn. v. State Farm Fire & Casualty Ins. Co.* (2006) 136 Cal.App.4th 999, 1004, fn. 1.)

The Sagis' "status as a party appearing in propria persona does not provide a basis for preferential consideration. A party proceeding in propria persona 'is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.' [Citation.]" (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1; *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985.)

1. Notice of Trial

Other than the judgments, which expressly include a finding that Hava was served with notice of trial, the Sagis have not provided a single document referenced in the trial court's docket: no pleading, motion, ruling, notice, order, or other item listed. Without these documents, and in particular without the numerous documents identified in the docket as some form of "Notice," there is no basis to challenge the court's express findings. Regardless of the court's findings in the judgments, the record here is so inadequate that we cannot review whether Hava was provided notice to appear, or whether she was properly served with notice to appear at trial.[5]

2. Striking of Answer

The Sagis have also failed to the meet their burden of showing reversible error by providing an adequate record with respect to the trial court striking Hava's answers to Ibi's complaint and MGolda's complaint in intervention. The record on appeal does not include the complaints, the

[5] The sparse record before us demonstrates Hava did have notice of the date and location of trial. MGolda has provided the lower court's order granting the Sagis' former attorney's motion to be relieved as counsel. The order, which was served by mail on Hava four months prior to trial, includes the trial date and location. Approximately one month prior to trial, the defendants filed two ex parte applications to continue trial. Hava's husband appeared at trial and argued his case in propria persona.

answers appellants claim were stricken, or any written order of the court striking her pleadings. The reporter's transcript of the trial proceedings indicates that Ibi and MGolda may have moved to strike the answers, but there is no clear ruling on the record, and neither of the judgments subsequently entered mention striking the answers. The judgment involving MGolda does not mention default at all. Although the judgment involving Ibi notes that Hava was in default, it does not indicate the reason for such default, and in any event appears to include rulings based on the evidence at trial. Particularly given the absence of an answer in the file, the numerous issues raised during the litigation with respect to discovery sanctions, and the absence of an express order relating to striking Hava's answer to the Ibi complaint, we cannot understand how the trial court took to enter default and/or default judgment against Hava, and we cannot hold the court committed reversible error.

Discovery Admissions Utilized at Trial

The Sagis contend the case against them rested on discovery that was not admitted into evidence or read into the record. The record on appeal is inadequate to demonstrate error.

The record does not contain any discovery request, response, motion, ruling, or order. Without these documents, we cannot determine if the trial court abused its

discretion when it ruled on the "scope and effect of the admission[s]" from which defendants take issue. (See *Milton v. Montgomery Ward & Co., Inc.* (1975) 33 Cal.App.3d 133, 137–138 [in reviewing whether the "scope and effect of the admission" was an abuse of discretion, reviewing court required to examine each request for admission and responses thereto].)

Defendants also misconstrue the purpose and effect of the court's ruling on the motions in limine. Parties who abuse the discovery process may be subject to evidence sanctions, including matters being admitted or deemed against them. (Code Civ. Proc., § 2023.030, subd. (b).) "Matters that are admitted or deemed admitted through RFA discovery devices are conclusively established in the litigation and are not subject to being contested through contradictory evidence." (*St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 775.) "Like many evidentiary rulings, orders on motions in limine are generally reviewed for abuse of discretion." (*McMillin Companies, LLC v. American Safety Indemnity Co.* (2015) 233 Cal.App.4th 518, 529.) Defendants have not provided authority to support their contention that a trial court is required to admit as evidence or read into the record any discovery request or response when it rules on a motion in limine.[6] (See Cal. Rules of

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[6] Defendants' reliance on *In re Jayson T.* (2002) 97 Cal.App.4th 75, disapproved by *In re Zeth S.* (2003) 396, 413–414, is misplaced. *In re Jayson T.* does not pertain to discovery or trial proceedings, and the full quotation utilized

Court, Rule 8.204(a)(1)(B); *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 ["We are not bound to develop appellants' arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived"].)

Substantial Evidence to Support the Judgments Against Hava

Defendants contend there is no substantial evidence to support the judgments against Hava. We are again unable to review this contention for the lack of an adequate record on appeal.

"An appellant challenging the sufficiency of the evidence to support the judgment must cite the evidence in the record supporting the judgment and explain why such evidence is insufficient as a matter of law. [Citations.] An appellant who fails to cite and discuss the evidence supporting the judgment cannot demonstrate that such evidence is insufficient. . . . An appellant . . . who cites and discusses only evidence in her favor fails to demonstrate any error and waives the contention that the evidence is insufficient to support the judgment. [Citations.]" (*Rayii v. Gatica* (2013) 218 Cal.App.4th 1402, 1408 (*Rayii*).) "We are

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by defendants states: "Nowhere has the Legislature said that the Court of Appeal (or the Supreme Court for that matter) is a potted plant whose job it is to rubber-stamp every order terminating parental rights in some kind of pantomime of due process." (*Id.* at p. 89)

not required to search the record to ascertain whether it contains support for [plaintiffs'] contentions." (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545.)

Without the complaints, we do not know what theories of liability were alleged against Hava. The Sagis have not included the discovery requests, responses, sanctions, or joint trial exhibit list or trial exhibit(s) in the record on appeal. We do not know what facts were established prior to the trial, so we cannot determine the extent of Hava's involvement in the fraudulent investment scheme. The Sagis assert that Hava was treated as a marginal defendant at trial, which may be true, but there was testimony that she and Zeev were the parties who held title to the Michigan properties. Without an adequate record on appeal for this court to examine the facts, and without legal authority or citations to the record to demonstrate error, the Sagis' last claim on appeal fails. (*Rayii*, *supra*, 218 Cal.App.4th at p. 1408; see *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979 [appellate court not required to consider points not supported by citation to authorities].)

DISPOSITION

The judgments are affirmed. Respondent MGolda, LLC is awarded its costs on appeal.

MOOR, J.

We concur:

BAKER, Acting P.J.

KIN, J.*

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