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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

NAYRIE TARPINIAN et al., Plaintiffs and Respondents, v. LEVON ISADZHANYAN, Defendant and Appellant.	B284020 (Los Angeles County Super. Ct. No. EC064685)

APPEAL from a judgment of the Superior Court of Los Angeles County, Laura A. Matz, Judge. Affirmed.

Levon Isadzhanyan, in pro. per., for Defendant and Appellant.

Law Office of Cliff Dean Schneider and Cliff Dean Schneider for Plaintiffs and Respondents.

I. INTRODUCTION

Plaintiffs Nayrie and Gary Tarpinian[1] sued defendant Levon Isadzhanyan for trespassing on and damaging their property during construction at a neighboring property and for assaulting Nayrie. They sought damages for trespass and emotional distress. The jury returned a verdict against defendant and in favor of plaintiffs, awarded Nayrie $1 for trespass and $112,500 for mental suffering, and awarded Gary $3,200 for mental suffering.[2]

While defendant asserts a laundry list of errors, he focuses on two exhibits he contends contained hearsay and should not have been admitted. Because defendant has not provided an adequate record, we cannot properly access the alleged errors. We note that based on the limited record presented, defendant has not shown the two exhibits were improperly admitted hearsay. Accordingly, we affirm.

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[1] Plaintiffs share the same last name. We will refer to them by their first names for clarity.

[2] Plaintiffs also sued Gregory Basilyan, the owner of the neighboring property, and obtained damages awards against him as well. He is not a party to this appeal.

II. DISCUSSION

The lack of an adequate record is an obstacle.[3] Error is never presumed on appeal. Instead, the judgment is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) An appellant has the burden of overcoming the presumption by providing an adequate appellate record demonstrating the error. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; *Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.)

"'A necessary corollary to this rule [is] that a record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed.'" (*Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435.) For example, an appellant cannot challenge the sufficiency of the evidence to support a judgment without a reporter's transcript or other adequate statement of the evidence such as an agreed or settled statement. (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187-188.) The California Rules of Court are explicit about this: "If an appellant intends to raise any issue that requires consideration of the oral proceedings in the superior court, the record on appeal must include a record of these oral proceedings in the form of" a reporter's transcript, agreed

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[3] Nothing in the record indicates that defendant received a fee waiver in the trial court proceedings, and so the recent decision in *Jameson v. Desta* (2018) 5 Cal.5th 594, regarding the availability of an official court reporter for fee waiver recipients, is not applicable.

statement, or settled statement. (Cal. Rules of Court, rule 8.120(b).)

The record here contains the judgment, several minute orders, the disputed exhibits 18 and 19 among other exhibits, a sheet of jury questions and the responses, some trial briefs and motions about the disputed exhibits, and a transcript from the hearing on defendant's motion for a new trial. There is no reporter's transcript or settled or agreed statement from the trial, and the jury instructions, including the disputed limiting instruction, are missing. These deficiencies sink defendant's appeal. Without an adequate record of what happened at trial, including how the disputed exhibits were used at trial and the text of the limiting instruction, we cannot determine whether the court erred in admitting the exhibits and whether sufficient evidence supports the award. For this reason alone, defendant's appeal fails.

Finally, we note that based on what has been presented, we are not persuaded the trial court erred in admitting the two disputed exhibits. Exhibit 18 is a contractor estimate of the cost to repair damage to plaintiffs' property allegedly caused by defendants. Exhibit 19 is an Order to Comply from the City of Los Angeles to Nayrie regarding code violations on the property. At trial codefendant Gregory Basilyan objected that the exhibits were hearsay.

Hearsay is an out-of-court statement offered for its truth. (Evid. Code, §1200, subd. (a).) If a statement is not offered for the truth, it is not hearsay. An example is a statement offered for its effect on the hearer. "'The statement is *not* hearsay, since it is the hearer's reaction to the statement that is the *relevant* fact sought to be proved—*not* the truth of the matter asserted in the

statement.'" (*Holland v. Union Pacific Railroad Co.* (2007) 154 Cal.App.4th 940, 947.) Defendant has not shown that the exhibits were offered for the truth of the matter asserted. Rather, the record indicates they were offered for their effect on plaintiff and therefore are not hearsay.

III. DISPOSITION

The judgment is affirmed. Plaintiffs Nayrie Tarpinian and Gary Tarpinian are entitled to recover their costs on appeal.

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SEIGLE, J.*

We concur:

BAKER, Acting P.J.

MOOR, J.

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