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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

EDRIS ISSAGHOLIAN,

Plaintiff and Respondent,

v.

RICHARD AVAKYAN,

Defendant and Appellant.

B268976

(Los Angeles County
Super. Ct. No. PC051734)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Stephen P. Pfahler, Judge. Affirmed.

Shaghzo & Shaghzo Law Firm, Armen Shaghzo for
Defendant and Appellant.

Law Offices of Michael J. Peng and Michael J. Peng for
Plaintiff and Respondent.

Edris Issagholian and Richard Avakyan, former business partners who jointly operated two Sprint cellular telephone stores, sued each other after a falling out. Following a three-day bench trial, the court awarded Issagholian \$35,000 for damages arising from Avakyan's misconduct and \$18,304 to Avakyan for wrongfully withheld commissions from the business. Avakyan appeals, arguing the court erred in finding him liable for \$8,700 in misspent company funds and failing to award him additional profits. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Because there was no court reporter at trial and, therefore, no reporter's transcript on appeal, our understanding of the evidence must be based on the exhibits admitted at trial¹ and the trial court's final statement of decision, in which the court specifically noted that "credibility was a significant factor in this case" and found particularly compelling the testimony of two third party witnesses, the Sprint manager who oversaw the stores and the owner of the subdealer who administered the agreements between Sprint and the parties.

In 2006 Issagholian and Avakyan entered into an oral partnership to own and operate two retail Sprint cellular telephone stores in Chatsworth and Granada Hills. The two men agreed that Issagholian would assume principal responsibility for the Chatsworth store and Avakyan would take responsibility for

¹ In the absence of a reporter's transcript, we asked Avakyan's counsel to lodge the trial exhibits with this court to assist us in understanding the factual basis for the court's decision. We found no contradiction between the exhibits and the facts as recited in the statement of decision.

the Granada Hills store. The parties agreed to share equally the workload and net profits generated by the stores. Issagholian alone, however, personally guaranteed the dealer agreements and the partnership's bank and credit card accounts. In 2009 Issagholian and Avakyan incorporated the business under the name Topanga Wireless, Inc.

By 2011 Issagholian and Avakyan were having numerous arguments about the operation of the business, including disputes about Avakyan's use of the company credit card for personal expenses. In February 2011 Sprint terminated the Granada Hills store because of Avakyan's misconduct² and notified Issagholian it would terminate the Chatsworth store if Avakyan were to be involved in its management. In August 2011 Issagholian locked Avakyan out of the Chatsworth store because his continuing interference threatened that store's relationship with Sprint. In October 2011 Issagholian filed this lawsuit alleging multiple causes of action arising from Avakyan's breach of his fiduciary duty to Issagholian. Issagholian also unilaterally dissolved the corporation in November 2011, which the court found terminated the partnership between the two men. Avakyan in turn filed a cross-complaint against Issagholian alleging he had been wrongfully shut out of the business.

Trial began on June 30, 2015. In its October 13, 2015 statement of decision the court ruled that Avakyan had breached his fiduciary duty to Issagholian and the parties' oral agreement

² According to the third amended complaint, Avakyan engaged in "altercations with customers" and made "threats of a physical nature against individuals [affiliated with Sprint] or the landlords of both the Granada Hills and Chatsworth store locations."

by causing Sprint to terminate the Granada Hills store, making unauthorized credit card purchases on the partnership's credit card and overpaying himself. The court awarded Issagholian \$35,000, including \$8,700 for the improper credit card charges.³

On Avakyan's cross-complaint the court found Issagholian had failed to pay Avakyan his portion of the partnership commission for the month of November 2011, which the court calculated to be \$18,304. Judgment was entered on October 13, 2015, from which only Avakyan has appealed.

DISCUSSION

1. *General Principles of Appellate Review*

"It has long been the general rule and understanding that 'an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration.' [Citation.] This rule reflects an 'essential distinction between the trial and the appellate court . . . that it is the province of the trial court to decide questions of fact and of the appellate court to decide questions of law.'" (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.) We are required to presume the trial court's judgment or order is correct and must draw all inferences in favor of the trial court's decision. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) "Thus, even if there is no indication of the trial court's rationale for [its ruling], the court's decision will be upheld on appeal if reasonable justification for it can be found. 'We uphold judgments if they are correct for any reason, "regardless of the correctness of the

³ The improper charges included payment of gambling debts, auto loan installments, personal gifts and an airline ticket to Armenia for Avakyan's wife.

grounds upon which the court reached its conclusion.”” (*Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443.)

“[E]rror must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; see *In re Marriage of Dellaria & Blickman-Dellaria* (2009) 172 Cal.App.4th 196, 204-205 [“the appellant bears the duty of spelling out in his brief exactly how the error caused a miscarriage of justice”]; Cal. Const., art. VI, § 13.)

Of necessity our review is governed by the appellate record. “Appellate inquiry into prejudice is not a process of subtracting the invalid elements to ascertain whether the remaining record is adequate to sustain [the judgment]. Rather, the process entails scrutiny of the entire record to determine the error’s influence.” (*People v. Hopper* (1969) 268 Cal.App.2d 774, 778.) California Rules of Court, rule 8.120 requires a litigant to prepare a record of the written and oral proceedings at trial, including a clerk’s transcript or appendix and a reporter’s transcript, agreed statement or settled statement. Failure to provide the appellate court with an adequate record of oral proceedings ordinarily bars a contention the evidence was insufficient to support the judgment or the trial court abused its discretion. (See *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186-187; *In re S.C.* (2006) 138 Cal.App.4th 396, 406-407; *Estate of Fain* (1999) 75 Cal.App.4th 973, 992; Cal. Rules of Court, rule 8.204(a)(1)(C) [“Each brief must . . . [¶] . . . [¶] . . . [s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears”].)

2. The Lack of an Adequate Record Is Fatal to Avakyan's Claims of Error

Avakyan raises two issues on appeal, each of which is premised on findings of fact made by the court after a three-day bench trial. First, Avakyan attacks the court's finding the partnership was terminated in November 2011, thus limiting his claim for a share of the profits to one month. Avakyan contends he should have been awarded a share of the profits through July 2012 when the Chatsworth store finally closed. Second, Avakyan contends the court erred by awarding Issagholian \$8,700 as reimbursement for personal expenses Avakyan paid with the business credit card. Avakyan does not dispute the charges were personal in nature but contends they were debts to the corporation, not Issagholian individually, and had been repaid. The lack of a reporter's transcript effectively precludes our review of these issues on appeal.

a. The post-dissolution profits

The California Revised Uniform Partnership Act (RUPA) applies to the dispute between Issagholian and Avakyan. (Corp. Code, § 16111, subd. (b).)⁴ RUPA defines a partnership as “an association of two or more persons to carry on as coowners a business for profit” (§ 16101, subd. (9).) A “[p]artnership at will” is one “in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.” (§ 16101, subd. (11).) While dissociation does not necessarily lead to the dissolution of a partnership under RUPA, it does when a partner of a two-person partnership dissociates: “[B]y definition, a partnership must

⁴ Statutory references are to this code.

consist of at least two persons.” (*Corrales v. Corrales* (2011) 198 Cal.App.4th 221, 227, citing § 16101, subd. (9).) Accordingly, the dissociation of a partner from a two-person partnership leads to dissolution by operation of law. (*Ibid.*) “When that happens, the dissolution procedures take over” and “[t]he partnership is wound up, its business is completed, and the partners make whatever adjustments are necessary to their own accounts after paying the creditors.” (*Ibid.*, citing § 16807.)

The trial court found Issagholian terminated the partnership in November 2011. (See § 16601, subd. (1) [“[a] partner is dissociated from a partnership upon the occurrence of . . . : [¶] (1) The partnership’s having notice of the partner’s express will to withdraw as a partner . . .”].) Avakyan has provided no evidence to suggest this finding was incorrect; he simply asserts that the continued operation of the Chatsworth store yielded profits subject to the partnership agreement. We have no basis to question the court’s finding; and, if the partnership terminated, the agreement to share profits terminated as well. Having found Avakyan had breached his fiduciary duty to Issagholian through misconduct that caused the closure of the Granada Hills store and prompted Sprint’s directive barring Avakyan from the Chatsworth store, the court had ample evidence from which to conclude the right to operate the Chatsworth store was no longer a partnership asset and could be excluded from the accounting.

b. *The personal expenses*

According to Avakyan, the \$8,700 in personal expenses were made on the Topanga Wireless credit card and should have been reimbursed to the corporation rather than to Issagholian. There are two problems with Avakyan’s argument. First, the

corporation no longer existed at the time of trial. As the sole guarantor on the account from which the card was issued, Issagholian bore the financial burden of unreimbursed expenses.⁵ Second, credit card statements show that some of the losses were sustained before the corporation was formally established, suggesting “Topanga Wireless” was a fictitious business name for the partnership throughout its existence. Indeed, there are several factual scenarios that would support the court’s award of the expenses to Issagholian. Absent a proper record, we have no means of detecting error in its ruling.

DISPOSITION

The judgment is affirmed. Issagholian is to recover his costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

SMALL, J.*

⁵ Avakyan cited to Exhibit 28 in support of his contention he had previously repaid the personal expenses. The exhibits transmitted to us, however, do not contain Exhibit 28.

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