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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

RANDALL SENTER, Cross-complainant and Respondent, v. SPINDLER ENGINEERING, INC. et al., Cross-defendants and Appellants.	B269377 (Los Angeles County Super. Ct. No. LC094927)

APPEAL from a postjudgment order of the Superior Court of Los Angeles County, Frank J. Johnson, Judge. Affirmed.

Tisdale & Nicholson, Guy C. Nicholson, Michael D. Stein; Browne George Ross and Guy C. Nicholson, for Cross-defendant and Appellant.

Lyden Law Corporation and Christine C. Lyden, for Cross-complainant and Respondent.

Spindler Engineering, Inc., appeals from a postjudgment order adding it as a judgment debtor on a money judgment against SEC Civil Engineers, Inc. (SEC). Respondent Randall Senter[1] obtained the judgment against SEC. Senter moved to amend the judgment to add Spindler Engineering as a judgment debtor on the basis that Spindler Engineering was merely a continuation of SEC, formed for the purpose of avoiding payment of the judgment against it. Spindler Engineering contends the trial court abused its discretion in granting the motion because respondent failed to introduce evidence, substantial or otherwise, in support of the motion.

The record on appeal contains the motion to amend the judgment, the opposition, the reply, and the trial court's order granting amendment. Spindler Engineering fails to provide a reporter's transcript of the hearing on the motion,

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[1] Senter also filed a cross-complaint against SEC as trustee of the Senter/Prince Trust 2002 (the trust). Judgment on the cross-complaint was in favor of Senter as an individual, but in favor of SEC against the trust. The trust is not a party to this appeal.

or suitable substitute such as a settled statement or agreed statement, as authorized by California Rules of Court, rules 8.134 and 8.137. The minute order for the hearing on the motion to amend is also absent from the record. We asked the parties to brief the question of whether appellant's failure to provide a suitable substitute for a reporter's transcript of the hearing warrants affirmance based on the inadequacy of the record. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296; *In re Kathy P.* (1979) 25 Cal.3d 91, 102.) Spindler Engineering contends that the record is adequate because the facts and the parties' positions are contained in the moving papers and attached declarations. We conclude that the record on appeal is inadequate to demonstrate reversible error, and therefore affirm.

DISCUSSION

"Under Code of Civil Procedure section 187, 'the trial court has jurisdiction to modify a judgment to add additional judgment debtors.' [Citation.] The decision to modify the judgment is consigned to the trial court's discretion. [Citation.]" (*Wolf Metals Inc. v. Rand Pacific Sales, Inc.* (2016) 4 Cal.App.5th 698, 703, fn. omitted (*Wolf Metals*); see *Danko v. O'Reilly* (2014) 232 Cal.App.4th 732, 745.) "To the extent the exercise of that discretion relies on factual findings, we review those findings for the existence of substantial evidence." (*Wolf Metals*, *supra*, at p. 703.)

A judgment may be amended to add a party as a judgment debtor under a "successor corporation" theory of liability. (*McClellan v. Northridge Park Townhome Owners Assn.* (2001) 89 Cal.App.4th 746, 751–754.) "'[I]f a corporation organizes another corporation with practically the same shareholders and directors, transfers all the assets but does not pay all the first corporation's debts, and continues to carry on the same business, the separate entities may be disregarded and the new corporation held liable for the obligations of the old. [Citations.]' [Citation.] [¶] The general rule is 'where one corporation sells or transfers all of its assets to another corporation, the latter is . . . liable for the debts and liabilities of the former [where] (1) the purchaser expressly or impliedly agrees to such assumption, (2) the transaction amounts to a consolidation or merger of the two corporations, (3) the purchasing corporation is merely a continuation of the selling corporation, or (4) the transaction is entered into fraudulently to escape liability for debts. [Citations.]' [Citations.]" (*Id.* at pp.753–754, fn. & italics omitted.)

The Judgment is Presumed Correct

We begin with the presumption that the trial court has properly performed its judicial duty. (Evid. Code, § 664; *People v. Coddington* (2000) 23 Cal.4th 529, 644 (*Coddington*), overruled on other grounds in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13.) We

presume that the court "[knew] and [applied] the correct statutory and case law [citation] . . . ." (*Coddington*, *supra*, at p. 644.) "[A] judgment or order of the trial court is presumed correct and prejudicial error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) 'In the absence of a contrary showing in the record, all presumptions in favor of the trial court's action will be made by the appellate court. "[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented.'" (*Bennett v. McCall* (1993) 19 Cal.App.4th 122, 127.)" (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187 (*Foust*).)

An Adequate Record is Required for Review

"'"A necessary corollary to th[e] rule [that the trial court's judgment is presumed correct] is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed."' (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) 'Consequently, [appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant].' (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.)" (*Foust*, *supra*, 198 Cal.App.4th at p. 187.)

"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 one of the following: [¶] (1) A reporter's transcript under rule 8.130; [¶] (2) An agreed statement under rule 8.134; or [¶] (3) A settled statement under rule 8.137." (Cal. Rules of Court, rule 8.120(b).) Where, as here, the standard of review is substantial evidence or abuse of discretion, a reporter's transcript or an agreed or settled statement is usually "indispensible" to appellate review. (*Southern California Gas Co. v. Flannery* (2016) 5 Cal.App.5th 476, 483; *Barak v. The Quisenberry Law Firm* (2006) 135 Cal.App.4th 654, 660.)

Motion and Order

Senter moved to amend the judgment on the basis that Spindler Engineering was a continuation of SEC, formed for the purpose of avoiding the money judgment against it. The motion further argued that, to the extent that Spindler Engineering represented that it purchased SEC's assets and was not liable for its debts, it failed to comply with California's Bulk Sales Law (Cal. U. Com. Code, § 6101 et seq.), which requires that notice of sale be given to creditors. The motion included the declaration of respondent's counsel, stating counsel had personal knowledge that: (1) numerous attempts to collect the judgment, serve SEC president Ronald Spindler with debtor examination documents, and

obtain responses to postjudgment discovery had been unsuccessful; (2) following an attempt to install a keeper in SEC, the Los Angeles County Sheriff's Department informed Senter that SEC was not operating at its business address but that Spindler Engineering was operating at the address; (3) Spindler Engineering was formed after the money judgment against SEC had been obtained; and (4) Spindler Engineering and SEC shared the same business address and telephone number, and appeared to be operating under the same business license number, which was registered to Ronald Spindler. Supporting documentation was also attached to the motion, including the Los Angeles County Sheriff's Department Notice of Not Found/No Service, results of a License Search for Ronald W. Spindler, and a plot plan prepared by SEC referencing Ronald Spindler's license number.

Spindler Engineering opposed the motion. Ronald Spindler's attached declaration stated that: (1) Spindler Engineering had been incorporated a year or more after the judgment was entered against SEC and did not begin doing business until the following year; (2) SEC never sold any assets to Spindler Engineering; (3) Ronald Spindler personally "absorbed" some of SEC's equipment in satisfaction of a prejudgment debt, specifically unpaid rents on the building Ronald Spindler owned; (4) SEC and Spindler Engineering were wholly different corporations with different presidents; (5) Spindler Engineering did not employ most of SEC's former employees; (6) Spindler

Engineering operated in SEC's former location using the same telephone number and business license for convenience; (7) SEC's president made the decision to provide Ronald Spindler a bill of sale for the equipment, which had a value of $20,000; and (8) Ronald Spindler gave the value of the equipment to Spindler Engineering in exchange for stock and paid additional cash for the stock.[2]

Senter replied, contesting the veracity of the facts as represented by Spindler Engineering in Robert Spindler's declaration and reasserting its position in the motion to amend. It attached additional documents to demonstrate that Spindler Engineering misrepresented the facts, including counsel's affidavit and documents indicating that SEC and Spindler Engineering both employed a person named Larry Gray as a senior managing principal and senior principal and project manager, respectively.

Following a hearing on the matter, the trial court issued an order granting the motion to amend, based on the parties' filings and oral argument. The order did not set forth the reasons for the trial court's ruling.

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[2] No further supporting documentation was attached to the opposition.

Analysis[3]

Spindler Engineering offers no explanation for its failure to secure a reporter's transcript or suitable substitute of the hearing on the motion to amend the judgment. It instead contends that the record "is complete in all material respects [because] [t]he arguments and evidence advanced in support of and in opposition to Respondent's Motion are contained in the moving papers and opposition papers . . . in particular, two declarations of Respondents' counsel . . . and one declaration submitted by Ronald W[.] Spindler on Appellant's behalf." We are not persuaded.

In its order, the trial court stated that it based its decision on the briefing and oral argument at the hearing. The declarations at issue were executed prior to the hearing and do not purport to reflect the proceedings. Moreover, they contain conflicting statements, which the trial court had the authority to weigh and resolve. We have "no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn from the conflicts." (*Wells*

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[3] Citing one sentence out of Senter's moving papers, Spindler Engineering consistently argues on appeal that Senter's lone argument was that SEC changed its name to Spindler Engineering, Inc. This is an unduly narrow reading of the moving papers, which raised specific legal and factual issues beyond a mere change of name.

Fargo Bank, N.A. v. Weinberg (2014) 227 Cal.App.4th 1, 8; *Orange County Employees Assn. v. County of Orange* (1988) 205 Cal.App.3d 1289, 1293; *Pleasant Hill v. First Baptist Church* (1969) 1 Cal.App.3d 384, 429 ["The question of the weight and sufficiency of the affidavits and the credence to be given them [i]s for the trial court"].) We have no way to determine what arguments were made to the trial court at the hearing, or if any concessions were made by the parties. There is no record of the trial court's oral findings for us to evaluate. Absent the reporter's transcript of the hearing on the motion to amend or some other suitable substitute, no prejudicial error can be shown and we presume the trial court's order is correct. (*Fredrics v. Paige* (1994) 29 Cal.App.4th 1642, 1647 [""""where there is a substantial conflict in the facts stated, a determination of the controverted facts by the trial court will not be disturbed""""].)

DISPOSITION

The order is affirmed. Respondent Randall Senter is awarded costs on appeal.

KRIEGLER, Acting P.J.

I concur:

DUNNING, J.*

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

BAKER, J., Concurring

I agree the majority opinion reaches the correct result and does so for the right reasons. I write separately to note a relatively minor point on which I do not fully share my colleagues' view.

The majority cites *Southern California Gas Co. v. Flannery* (2016) 5 Cal.App.5th (*Flannery*) for the proposition that the absence of a reporter's transcript or an adequate substitute is "usually" indispensible for appellate review when a deferential standard of review applies. I joined the court's opinion in *Flanner*, and I agree the absence of a reporter's transcript likely will be required, as we said there, in "many cases" where our review of a trial court's decision is deferential. (*Id.* at p. 483.) But I continue to believe that the consequences of a missing reporter's transcript must be evaluated on a case-by-case basis.

BAKER, J.