Filed 9/19/16 LA Open Door Presbyterian Church v. Evangelical Christian Credit Union CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

LA OPEN DOOR PRESBYTERIAN CHURCH, Plaintiff and Appellant, v. EVANGELICAL CHRISTIAN CREDIT UNION, Defendant and Respondent.	B263647 (Los Angeles County Super. Ct. No. BC497940)

APPEAL from a judgment of the Superior Court of Los Angeles County, Malcolm Mackey, Judge. Affirmed in part, reversed in part, and remanded.

Esner, Chang & Boyer, Andrew N. Chang; Law Offices of Mary Lee, Mary Lee for Plaintiff and Appellant.

Sheppard, Mullin, Richter & Hampton, Michael D. Stewart and Isaiah Z. Weedn for defendant and Respondent.

INTRODUCTION

Plaintiff and appellant LA Open Door Presbyterian Church (LAOD) purchased real property in Los Angeles (the Property) on which it planned to build a sanctuary for its congregants (the Construction Project). To finance the Construction Project, it obtained a construction loan from defendant and respondent Evangelical Christian Credit Union (ECCU). When LAOD stopped making payments on the loan, ECCU foreclosed on the Property. LAOD then brought an action against ECCU and J.D. Diffenbaugh, Inc. (Diffenbaugh), its general contractor, asserting causes of action for fraud and deceit, wrongful foreclosure, conversion, breach of oral agreement, promissory estoppel, declaratory relief, and unfair and deceptive practices in violation of Business and Professions Code section 17200 (unfair business practices).[1]

The trial court granted ECCU summary adjudication on LAOD's fraud and deceit and wrongful foreclosure causes of action, a jury reached a verdict in favor of ECCU on LAOD's conversion cause of action,[2] and the trial court declined to exercise its discretion to grant LAOD declaratory relief and dismissed LAOD's unfair business practices cause of action. On appeal, LAOD claims the trial court abused its discretion when it denied LAOD's motion for leave to file a first amended complaint that added a breach of contract cause of action, erred when it summarily adjudicated LAOD's fraud and deceit and wrongful foreclosure causes of action, erred in "dismissing" LAOD's declaratory relief and unfair business practices causes of action, erred in excluding evidence that LAOD was the owner of personal property ECCU took when ECCU evicted LAOD, and exhibited bias during the jury trial of LAOD's conversion cause of action. We hold that the trial court erred in denying LAOD leave to amend its complaint to assert a breach of contract cause of action and in summarily adjudicating LAOD's fraud and deceit cause of

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[1] ECCU was named as a defendant in all causes of action except for the breach of oral agreement and promissory estoppel causes of action. Diffenbaugh is not a party to this appeal.

[2] The trial court granted ECCU's motions for a directed verdict as to certain aspects of LAOD's conversion cause of action, including a claim for punitive damages.

action and remand the matter for further proceedings.[3] We otherwise affirm the judgment.

BACKGROUND

In its complaint, LAOD alleged that it purchased the Property in 2001 and undertook efforts to design and construct a sanctuary on the Property large enough to accommodate its 5,000 congregants. In 2005, LAOD obtained a construction loan from ECCU. ECCU made the loan on the condition that LAOD hire Diffenbaugh as the general contractor. LAOD hired Diffenbaugh, which agreed to complete the Construction Project by November 28, 2007. Diffenbaugh failed to complete the Construction Project on time. LAOD informed ECCU that it wanted to terminate Diffenbaugh and replace Diffenbaugh with another general contractor. ECCU told LAOD that it would not permit LAOD to terminate Diffenbaugh.

In January 2008, ECCU advised LAOD that if LAOD did not terminate Diffenbaugh, ECCU would assume responsibility for Diffenbaugh completing the Construction Project by June 30, 2010, and would loan LAOD money to cover additional construction costs. If additional funds were needed, ECCU would provide them through an unsecured loan. Based on those representations, LAOD agreed not to terminate Diffenbaugh or to sue Diffenbaugh for breach of contract.

Diffenbaugh failed to complete the Construction Project by June 30, 2010, and promised to complete the Construction Project by December 29, 2010. In early December 2010, ECCU took steps to "'manufacture'" LAOD's default on the construction loan. LAOD was then current on its loan payments and ECCU retained over $2 million in funds to complete the Construction Project, yet ECCU stopped paying Diffenbaugh and demanded that LAOD make a payment of $1,524,832.33 by December

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[3] ECCU asserts that it is entitled to its attorney fees on appeal if it prevails and reserves the right to seek such fees following our opinion. It does not ask us to award such fees.

17. As of early January 2011, Diffenbaugh and its subcontractors had stopped all work on the Construction Project.

In January 2011, LAOD advised ECCU that it would bring an action against Diffenbaugh for specific performance of the Construction Project or damages. ECCU's representative advised LAOD that Diffenbaugh would soon file a petition for bankruptcy rendering any action against it pointless. The representative stated that ECCU would ensure that the Construction Project would be completed as soon as possible without Diffenbaugh and that LAOD was "not to worry" about ECCU's demand for the $1,524,832.33 payment.

In early 2011, ECCU advised LAOD that LAOD had to enter into a forbearance agreement with ECCU or ECCU would stop financing the Construction Project. LAOD acceded to the demand, and signed a forbearance agreement dated February 2, 2011 (Forbearance Agreement). Pursuant to the Forbearance Agreement, the construction loan maturity date was changed to December 2011, and ECCU agreed to advance LAOD up to $1.725 million to complete the Construction Project. In a separate letter to LAOD's Pastor, Hun Sung Park, ECCU represented that the $1.725 million potential advance was in addition to $2,000,099.73 that remained available to finance completion of the Construction Project. As of May 2011, ECCU had not fulfilled its promise to advance $1.725 million for completion of the Construction Project and continued to maintain control over the $2 million reserved for completion of the Construction Project.

Between January and May 2011, in compliance with the Forbearance Agreement, LAOD made payments to ECCU totaling over $800,000. During the same period, ECCU did not advance any money for the Construction Project and "prevented" LAOD from hiring a contractor of its choice to complete the project. In March 2011, ECCU contacted Wald Realty Advisors, Inc. to plan the foreclosure of the Property.

In May 2011, ECCU demanded that LAOD stipulate to the creation of a receivership, purportedly so that ECCU could release funds to the receiver to complete the Construction Project. LAOD signed the stipulation.

No construction was performed between January and August 2011. In about August 2011, LAOD discovered, among other things, that ECCU had an undisclosed partnership with Diffenbaugh, ECCU was engaged in a scheme to delay the Construction Project for its own financial benefit, and ECCU had caused LAOD to enter into the Forbearance Agreement and stipulate to the creation of the receivership to secure a release of LAOD's claims against ECCU and to "manufacture" LAOD's default. Upon its discovery, LAOD stopped making payments to ECCU. In December 2011, ECCU recorded a notice of default against LAOD for nonpayment of about $1 million.

In early February 2012, LAOD's Pastor Park and LAOD elder Choon Kyung Kim improperly attempted to transfer title to the Property through a quit claim deed. The party to whom the representatives attempted to transfer the property "returned" whatever interest had been transferred to a trust created for LAOD's benefit. Later that month, ECCU foreclosed on the Property. On about September 26, 2012, ECCU, through the Los Angeles County Sheriff's Department, took possession of the Property and removed LAOD from possession. ECCU refused for a time to allow LAOD access to the Property to recover personal property resulting in the theft of personal property.

DISCUSSION

I. LAOD's Motion for Leave to Amend Its Complaint

LAOD contends the trial court abused its discretion when it denied its motion to file a first amended complaint that added a cause of action for breach of contract—i.e., breach of the Forbearance Agreement. We agree.

A. Background

LAOD moved to file a first amended complaint that added a breach of contract cause of action. The proposed amendment asserted a breach of the Forbearance Agreement that alleged, in relevant part, as follows:

"On or about February 2, 2011, [LAOD] and Defendant ECCU entered into a written agreement entitled 'Forbearance Agreement' and a copy of the agreement is

attached as Exhibit 'A' to this complaint. ECCU, among others, agreed to make additional advances in an amount not to exceed $1,725,000.00 to [LAOD] in order to complete the construction of the subject project. ECCU confirmed, in writing, that the $1,725,000.00 is in addition to the $2,000,099.73 that remained available to finance the completion of construction of the subject project, subject to the terms and conditions of the Loan Documents. On or about March 24, 2011, Defendant ECCU breached the agreement by refusing to advance the promised 3.75 million dollars to [Diffenbaugh] for completion of the construction. Defendant ECCU continued to ignore [LAOD]'s request that ECCU perform its agreement to advance 3.75 million dollars for completion of the construction. [LAOD] has performed all obligations to ECCU except those obligations [LAOD] was prevented or excused from performing.

"As a direct and proximate result of Defendant ECCU's breach of the agreement to advance 3.75 million dollars to complete the construction of the subject project, [LAOD] sustained actual damages in an amount according to proof at trial, but in excess of $20,000,000.00. [LAOD] is entitled to attorney fees by an agreement according to proof."

In its motion, LAOD argued that the proposed amendment would not prejudice ECCU because the contract cause of action was based on the same factual allegations as the declaratory relief cause of action in LAOD's initial complaint. That declaratory relief cause of action alleged, in part, that there was an actual controversy between LAOD and ECCU "with respect to the validity, enforceability and interpretation of certain provisions of the Forbearance Agreement" and sought a "judicial determination of its rights, duties and obligations with respect to certain provisions of the Forbearance Agreement." The declaratory relief cause of action incorporated by reference the complaint's earlier allegations that pursuant to the Forbearance Agreement ECCU agreed to advance LAOD up to $1.725 million to complete the Construction Project; in a letter to LAOD, ECCU represented that an additional $2,000,099.73 remained available to finance completion of the Construction Project; and as of May 2011, ECCU had not fulfilled its promise to

advance $1.725 million for completion of the Construction Project and continued to maintain control over the $2 million reserved for completion of the Construction Project.

ECCU opposed LAOD's motion on the ground that LAOD was seeking to add a cause of action based on a theory that was diametrically opposed to LAOD's previous theory of the case—LAOD was claiming ECCU had breached the parties' Forbearance Agreement and was seeking damages whereas it previously claimed that the Forbearance Agreement was procured by fraud and sought to have the agreement rescinded. ECCU further argued that LAOD failed to explain its delay in seeking leave to amend. It claimed that it would be prejudiced if leave to amend were granted because trial was scheduled to start less than three weeks after the hearing date for LAOD's motion for leave to amend, the discovery cut-off date had passed, and the motion cut-off date would soon pass. ECCU argued that if the trial court granted LAOD's requested amendment, it also should continue the trial date one year to enable ECCU to file a demurrer or summary adjudication motion to the breach of contract cause of action.

The trial court denied LAOD's motion for leave to file a first amended complaint. It ruled that the motion, made "on the eve of trial," was too late—"We're all set on the issues going to trial." The trial court noted that LAOD had "another lawsuit. There's some game playing going on here . . . . Some game playing. This case has been set for trial and we're going to trial on the issue."[4]

B. Standard of Review

We review a trial court's ruling on a motion for leave to amend a complaint for an abuse of discretion. (*Board of Trustees v. Superior Court* (2007) 149 Cal.App.4th 1154, 1163.)

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[4] The other lawsuit to which the trial court appears to have referred included a breach of contract cause of action alleging in part a breach of the Forbearance Agreement. According to ECCU's counsel at a hearing during trial, one month later, LAOD had dismissed that lawsuit.

C. Application of Relevant Principles

Code of Civil Procedure section 473, subdivision (a)(1) provides, in relevant part: "The court may . . . , in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars . . . ." "It is well established that 'California courts "have a policy of great liberality in allowing amendments at any stage of the proceeding so as to dispose of cases upon their substantial merits where the authorization does not prejudice the substantial rights of others." [Citation.] Indeed, "it is a rare case in which 'a court will be justified in refusing a party leave to amend his [or her] pleading so that he [or she] may properly present his [or her] case.'" [Citation.]' (*Douglas v. Superior Court* (1989) 215 Cal.App.3d 155, 158, 263 Cal.Rptr. 473.) Thus, absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail. (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564, 176 Cal.Rptr. 704.)" (*Board of Trustees v. Superior Court, supra,* 149 Cal.App.4th at p. 1163.)

Despite the policy of great liberality in granting leave to amend, a trial court may deny an otherwise proper amendment if there was an unwarranted delay in bringing the motion to amend. (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761.) To deny leave to amend based on an unreasonable delay in moving for leave to amend, however, the opposing party must have been misled or prejudiced by the delay. (*Kittredge Sports Co. v. Superior Court* (1999) 213 Cal.App.3d 1045, 1048 ["Even [if a party unreasonably delayed in moving for leave to amend], it is an abuse of discretion to deny leave to amend where the opposing party was not misled or prejudiced by the amendment"].) "Moreover, it is irrelevant that new legal theories are introduced as long as the proposed amendments 'relate to the same general set of facts.' [Citation.]" (*Ibid.*)

LAOD argues that the trial court abused its discretion in denying LAOD's motion for leave to file a first amended complaint because ECCU did not show that the amendment would have prejudiced ECCU. LAOD contends that its proposed breach of contract cause of action was straightforward and based on the same facts alleged in

support of its declaratory relief cause of action. Moreover, LAOD argues, ECCU raised the Forbearance Agreement throughout the case as a defense to LAOD's action.

ECCU argues that LAOD's delay in moving for leave to amend was by itself a sufficient ground for denying the motion. It notes that California Rules of Court, rule 3.1324(b) (rule 3.1324(b)) requires a party seeking leave to amend to file a declaration specifying, among other things, "[w]hen the facts giving rise to the amended allegations were discovered" and "[t]he reasons why the request for amendment was not made earlier," and correctly argues that LAOD's supporting declaration did not comply with those parts of the court rule. ECCU cites no authority for its apparent claim that a trial court properly denies a motion for leave to amend a complaint when the moving party failed to comply fully with rule 3.1324(b). At most, LAOD's failure to explain when it obtained the facts supporting the amendment and any delay in requesting leave to amend established that the delay was without justification, which, as we discuss below, was an insufficient ground by itself to deny leave to amend.

The trial court denied LAOD's motion for leave to file a first amended complaint because the motion was brought too close to the trial date—i.e., not in a timely manner. As explained above, however, an untimely motion for leave to amend is not by itself a proper ground for denying leave to amend. Instead, the opposing party must also show it was misled or prejudiced by the amendment. (*Kittredge Sports Co. v. Superior Court, supra,* 213 Cal.App.3d at p. 1048.)

ECCU claims it would have been prejudiced if the trial court had permitted LAOD to add a breach of contract cause of action because the proposed amendment was diametrically opposed to the central theory of LAOD's case for the prior 30 months—i.e., LAOD previously had "zealously advocated" for the invalidation and rescission of the Forbearance Agreement as having been fraudulently induced but then belatedly changed course and, by its newly proposed breach of contract cause of action, sought to enforce the Forbearance Agreement. ECCU relies on *Falcon v. Long Beach Genetics, Inc.* (2014) 224 Cal.App.4th 1263, 1280-1281, *Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 652-653, *Richelle L. v. Roman Catholic Archbishop of San*

Francisco (2003) 106 Cal.App.4th 257, 282, and *Colapinto v. County of Riverside* (1991) 230 Cal.App.3d 147, 151-152 for the proposition that a trial court properly denies leave to amend when a plaintiff's proposed amended pleading is inconsistent with prior pleadings. Its reliance is misplaced, however, because those cases concern proposed pleadings that alleged new facts that were inconsistent with factual allegations in prior pleading—i.e., "sham" pleadings. (*Falcon v. Long Beach Genetics, Inc., supra,* 224 Cal.App.4th at pp. 1281-1282 ["Plaintiffs '"'may not discard factual allegations of a prior complaint, or avoid them by contradictory averments, in a superseding, amended pleading,'"' and 'must explain inconsistencies between the prior and proposed pleadings'"]; *Oakland Raiders v. National Football League*, *supra,* 131 Cal.App.4th at p. 653 [same]; *Richelle L. v. Roman Catholic Archbishop of San Francisco, supra,* 106 Cal.App.4th at p. 282 [a proposed amended pleading may not omit factual allegations in a prior pleading or avoid them by contradictory allegations]; *Colapinto v. County of Riverside*, *supra*, 230 Cal.App.3d at p. 151 ["If a party files an amended complaint and attempts to avoid the defects of the original complaint by either omitting facts which made the previous complaint defective or by adding facts inconsistent with those of previous pleadings, the court may take judicial notice of prior pleadings and may disregard any inconsistent allegations"].)

Moreover, LAOD's fraud and deceit and breach of contract theories were not inconsistent. In its fraud and deceit cause of action, LAOD admitted that it entered the Forbearance Agreement with ECCU, but claimed that ECCU induced it to enter the agreement by ECCU's intentional concealment of material facts. Contrary to ECCU's characterization, and as the trial court expressly found, LAOD's fraud and deceit cause of action did not seek rescission of the entire Forbearance Agreement, only the agreement's Release of Claims provision. LAOD's breach of contract cause of action did not seek to enforce the Release of Claims provision. Thus, LAOD's fraud and deceit and breach of contract causes of action were not inconsistent. Even if LAOD had sought rescission of the entire Forbearance Agreement as having been induced by fraud, however, such a

position was entirely consistent with the alternative argument that if the Forbearance Agreement was valid, then ECCU breached the agreement.

Finally, even if the theories were inconsistent, a party may plead inconsistent theories. "[T]here is no prohibition against pleading inconsistent causes of action stated in as many ways as plaintiff believes his evidence will show, and he is entitled to recover if one well pleaded count is supported by the evidence. [Citations.]" (*Grudt v. City of Los Angeles* (1970) 2 Cal.3d 575, 586; *Tanforan v. Tanforan* (1916) 173 Cal. 270, 273 ["[W]hen for any reason the pleader thinks it desirable so to do, as where the exact nature of the facts is in doubt, or where the exact legal nature of plaintiff's right and defendant's liability depend on facts not well known to the plaintiff, his pleading may set forth the same cause of action in varied and inconsistent counts with strict legal propriety"]; *Walton v. Walton* (1995) 31 Cal.App.4th 277, 292 ["A plaintiff may plead inconsistent, mutually exclusive remedies . . . in the same complaint"]; *Ramsden v. Western Union* (1977) 71 Cal.App.3d 873, 881 ["Plaintiffs are entitled to plead inconsistent causes of action, and to submit to the trier of fact any theory which is supported by the evidence"].)

ECCU does not otherwise explain how it would have been prejudiced if the trial court had permitted LAOD to assert a new legal theory 30 months into the case that was based on factual allegations made in the original complaint that were known to ECCU from the case's inception.

II. Summary Adjudication of LAOD's Fraud and Deceit and Wrongful Foreclosure Causes of Action

LAOD contends the trial court erred in granting summary adjudication of its fraud and deceit and wrongful foreclosure causes of action. We agree that the trial court erred in summarily adjudicating the fraud and deceit cause of action, but disagree that it erred in summarily adjudicating the wrongful foreclosure cause of action.

A. Standard of Review

"In reviewing an order granting summary adjudication, 'we apply the same standard of review applicable on appeal from a grant of summary judgment. [Citation.]'" (*Rehmani v. Superior Court* (2012) 204 Cal.App.4th 945, 950.) "We review the grant of summary judgment de novo. (*Szadolci v. Hollywood Park Operating Co.* (1993) 14 Cal.App.4th 16, 19 [17 Cal.Rptr.2d 356].) We make 'an independent assessment of the correctness of the trial court's ruling, applying the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law.' (*Iverson v. Muroc Unified School Dist.* (1995) 32 Cal.App.4th 218, 222 [38 Cal.Rptr.2d 35].)" (*Moser v. Ratinoff* (2003) 105 Cal.App.4th 1211, 1216.) We must consider all of the evidence and all of the inferences reasonably drawn therefrom, and must view such evidence and such inferences in the light most favorable to the party opposing summary judgment. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.)

B. Fraud and Deceit Cause of Action

In its fraud and deceit cause of action, LAOD alleged that ECCU intended to defraud and deceive LAOD to induce LAOD to enter into the 2011 Forbearance Agreement by concealing the following information:

1. Diffenbaugh was and had been ECCU's close business partner;

2. ECCU's CEO and/or other directors obtained illegal financial benefits from Diffenbaugh in exchange for not requiring a bond for the Construction Project;

3. The true purpose of the Forbearance Agreement was to cover up and insulate from liability Diffenbaugh's material breach of the construction contract and ECCU's vicarious liability for Diffenbaugh's material breach;

4. ECCU did not intend to assist LAOD in completing the Construction Project, but instead sought to prevent the project's completion; and

5. ECCU's true intention was to "manufacture" LAOD's "'default.'"

LAOD alleged that it was induced to enter into the Forbearance Agreement based on ECCU's intentional concealment of those material facts and it reasonably and justifiably relied on ECCU's suppression of the true material facts. Also, on about February 2, 2011, ECCU promised that it would advance $1.725 million to LAOD and would use the retained approximate $2 million to finance the Construction Project without any intention of performing.

ECCU relied on releases LAOD executed in 2009 and 2011 in order to defeat the fraud in the inducement claim. In 2009, LAOD entered a Loan Modification Agreement with ECCU. The Loan Modification Agreement contained a release of all known or unknown claims LAOD then had against ECCU.[5] LAOD separately signed the release.

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[5] The Loan Modification Agreement release provided, in relevant part:

"RELEASE OF LENDER. The Borrower agrees as follows:

"a. Except for the agreements of Lender set forth herein, the Borrower hereby fully, finally and completely RELEASES and FOREVER DISCHARGES Lender and its successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, servicers, attorneys, agents, consultants, representatives, and properties, past, present and future, and their respective heirs, successors and assigns (collectively and individually, 'lender Parties'), of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, debts, liens, actions and causes of action of any and every nature whatsoever, known or unknown . . . which the Borrower now have or may claim to have against the Lender Parties connected with or relating to the Loan evidenced by the Related Documents, the collateral properties, or relating to any other event, act, occurrence, or matter whatsoever in connection with (i) the transaction evidenced by the Related Documents and (ii) the construction project financed in part by the Loan evidenced by the Related Documents (the 'Construction Project') including, without limitation, any discussions between the Borrower and Lender Parties, any consent given or withheld by the Lender Parties and any conditions imposed on any such consent by Lender or any suggestion, recommendation, direction or advice given by the Lender Parties, in each case, relating to the Loan or the Construction Project.

"[¶] . . . [¶]

"e. Borrower waives the provisions of Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The 2011 Forbearance Agreement also included a release that LAOD separately executed. Like the release in the 2009 Loan Modification Agreement, the release in the Forbearance Agreement released all known or unknown claims LAOD then had against ECCU.[6]

ECCU moved for summary adjudication of LAOD's fraud and deceit cause of action arguing, as relevant here, that LAOD's fraud and deceit allegations were defeated by the "Release" affirmative defense in ECCU's answer where ECCU alleged that LAOD's allegations against it were "'barred by Civil Code Section 1542 and the releases

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"Lender has given Borrower material concessions regarding this transaction in exchange for Borrower agreeing to the provisions of this release. Borrower's principal has signed this release to further indicate its awareness and acceptance of each and every provision hereof."

6 The release in the Forbearance Agreement provided in relevant part:

"10. Release of Lender. The Borrower agrees as follows:

"a. Except for the obligations of ECCU set forth in this Agreement, Borrower and all of its respective predecessors, successors, heirs, personal representatives and assigns (individually and collectively, the 'Releasors') hereby fully, finally and completely RELEASES and FOREVER DISCHARGES ECCU . . . from any and all claims, controversies, offsets, losses, disputes, liabilities, obligations, demands, damages, debts, liens, actions and causes of action of any and every nature whatsoever, known or unknown . . . relating to, arising out of or in any way connected with or relating to the loan evidenced by the Loan Documents, the Property, the construction of the Project (including its cost, any construction schedule, delay and/or timing), any collateral properties, or relating to any other event, act, occurrence, or matter whatsoever in connection with the transaction evidenced by the Loan Documents, including the Construction Loan Agreement.

"[¶] . . . [¶]

"d. Each Releasor waives the provisions of Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

"e. ECCU has given Borrower material concessions and consideration regarding this transaction in exchange for Borrower agreeing to the provisions of this Section 10. Borrower's principal has signed this Section 10 to further indicate its awareness and acceptance of each and every provision hereof."

signed by [LAOD], including but not limited to the releases, recitals and representations set forth in the Loan Modification Agreement dated September 14, 2009, the Forbearance Agreement, and other Agreements.'" Relying on *Rosenthal v. Great Western Financial Securities Corp.* (1996) 14 Cal.4th 394, 419-420 (*Rosenthal*) ("California law supports [the defendant's] position that fraud does not render a written contract *void* where the defrauded party had a reasonable opportunity to discover the real terms of the contract"), ECCU also argued that LAOD could not rely on any verbal representations ECCU made because Pastor Park admitted he did not read the 2009 Loan Modification Agreement or the Forbearance Agreement prior to signing the agreements.

In support of its argument, ECCU relied in part on the following undisputed material facts: (1) "The 2009 Loan Modification Agreement included LAOD's comprehensive release of all claims, known or unknown, by LAOD against ECCU, including a waiver of California Civil Code § 1542," (2) "LAOD did not read the Loan Modification Agreement before signing the agreement," (3) "The Forbearance Agreement includes LAOD's comprehensive release of all claims, known or unknown, by LAOD against ECCU, including a waiver of California Civil Code § 1542," and (4) "LAOD did not read the Forbearance Agreement before signing the agreement and had the opportunity to consult LAOD's lawyers to explain the Forbearance Agreement."[7] The trial court granted summary adjudication, ruling "ECCU is granted summary adjudication as to LAOD's first cause of action for fraud because the claim is barred by LAOD's 2009 and 2011 releases of all claims against ECCU." The trial court also ruled that LAOD's claimed reliance on ECCU's alleged verbal misrepresentations was not justified because Pastor Park had not read the 2009 Loan Modification Agreement or the 2011 Forbearance Agreement.

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[7] In support of this last fact, ECCU cited Pastor Park's testimony that he did not read the Forbearance Agreement. LAOD "disputed" this fact on the basis that "Pastor Park is an individual and he is not [LAOD]"—i.e., it did not dispute that Pastor Park testified he did not read the Forbearance Agreement.

On appeal, LAOD relies on Civil Code section 1668 (section 1668) which provides, "All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law." LAOD argues that section 1668 invalidates the releases in the 2009 Loan Modification Agreement and Forbearance Agreement to the extent that the releases purported to exempt ECCU from a claim that it fraudulently induced LAOD to enter the Forbearance Agreement.[8]

"It is well-established in California that a party to a contract is precluded under section 1668 from contracting away his or her liability for fraud or deceit based on intentional misrepresentation." (*Manderville v. PCG & S Group, Inc.* (2007) 146 Cal.App.4th 1486, 1500 (*Manderville*).) "Citing section 1668 and numerous other authorities, Witkin explains that '[a] party to a contract who has been guilty of *fraud in its inducement* cannot absolve himself or herself from the effects of his or her fraud by any stipulation in the contract, either that no representations have been made, or that any right that might be grounded upon them is waived. Such a stipulation or waiver will be ignored, and parol evidence of misrepresentations will be admitted, for the reason that fraud renders the whole agreement voidable, including the waiver provision. [Citations.]' (1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 304, pp. 330-331, some italics added, some italics omitted.)" (*Id.* at pp. 1500-1501.)

"Quoting section 1668, another commentator explains that '"[a]ll contracts which have for their objective, directly or indirectly, to except anyone from responsibility for his own *fraud* . . . are against the policy of the law." A provision of a contract that unreasonably exempts a party from the legal consequences of a fraudulent . . . misrepresentation is unenforceable on grounds of public policy. Therefore, . . . a party

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8 Although LAOD concedes that it did not "directly" raise the application of section 1668 in the trial court, we exercise our discretion to consider the issue on appeal as it is "purely a matter of applying the law to undisputed facts." (*Brown v. Boren* (1999) 74 Cal.App.4th 1303, 1316.)

who has *induced the other party to enter into the contract based on . . . an intentional . . . misrepresentation* cannot be relieved of liability by any . . . *exculpatory clause,* or other clause waiving liability, contained in the contract. Because the fraud renders the entire contract voidable, the clause intended to absolve the seller from liability is also voidable.' (1 Miller & Starr, Cal. Real Estate, [3d ed. 2001], § 1:153, pp. 632-633, fns. omitted, italics added.)" (*Manderville, supra,* 146 Cal.App.4th at pp. 1500-1501.)

LAOD's fraud and deceit cause of action alleged that ECCU fraudulently induced it to enter into the 2011 Forbearance Agreement by material omissions and affirmative misrepresentations. Under section 1668, the releases in the 2009 Loan Modification Agreement and 2011 Forbearance Agreement were ineffective in shielding ECCU from a claim of fraudulent inducement. (*Manderville, supra.* 146 Cal.App.4th at pp. 1500-1501.)

Relying on *Rosenthal, supra,* 14 Cal.4th at pages 419-424, ECCU argues that LAOD could not justifiably rely on ECCU's alleged misrepresentations because it failed to read the written contract—the Forbearance Agreement—it was allegedly induced to sign. ECCU's reliance on *Rosenthal* is misplaced. The fraud claim at issue in that case was that the actual terms of the written contract were different than had been represented. (*Id.* at p. 419 ["The central disputed question is whether plaintiffs could justifiably rely on [the defendant]'s misrepresentations without themselves ascertaining the nature of the documents they signed. [The defendant] argues plaintiffs had a reasonable opportunity to know the terms of the client agreements, but failed through their own neglect to read them"].) Here, the misrepresentations alleged would not have been discovered by reading the contract. LAOD does not contend that ECCU committed fraud because the terms of the Forbearance Agreement varied from ECCU's representations about what those terms would be. Instead, LAOD contends that ECCU fraudulently induced LAOD to enter the Forbearance Agreement because ECCU did not intend to perform the agreement's terms.

C. Wrongful Foreclosure Cause of Action

In its wrongful foreclosure cause of action, LAOD alleged, in relevant part, that ECCU's February 10, 2012, foreclosure on the Property was wrongful because (1) the notice of default that ECCU recorded on the Property was false as LAOD had not defaulted on the Forbearance Agreement; (2) the loan on which the foreclosure was based was fraudulently procured; and (3) "[t]he loan on which the foreclosure was based was the product of ECCU's wrongful acts, including ECCU inducing [LAOD] not to terminate [Diffenbaugh] upon [Diffenbaugh]'s material breach of the construction contract; ECCU not requiring [Diffenbaugh] to post a construction bond for the multi-million dollar Construction Project in exchange for illegal rebates to [Diffenbaugh] made to ECCU's CEO and/or other directors; ECCU requiring that [LAOD] . . . agree to and rely on the additional unsecured loan that ECCU volunteered even though [LAOD] was ineligible for such a loan; the violation of state and/or federal statutes; and other wrongful conduct."

ECCU moved for summary adjudication on LAOD's wrongful foreclosure cause of action arguing that LAOD lacked standing to challenge the foreclosure because it had quitclaimed its interest to another entity one week prior to the foreclosure. In support of its argument, ECCU asserted as an undisputed material fact that "[o]n February 2, 2012, LAOD executed a quit claim deed, recorded on February 9, 2012, transferring LAOD's interest in the property to a company called Shana Tova, LLC." In support of that asserted undisputed fact, LAOD relied on, among other evidence, the quitclaim deed and the document recording that deed. LAOD disputed ECCU's claimed undisputed material fact on the ground that "Pastor Hun Sung Park, not [LAOD] gave the document to Shana Tova . . . ." The trial court granted summary adjudication, ruling, "On the date of the foreclosure, LAOD did not own the property that was foreclosed upon. As a matter of law, LAOD had no legal or equitable interest in the property at the time of the foreclosure."

In its opening brief on appeal, LAOD states, "Shortly before the ECCU's wrongful foreclosure, and believing it necessary to secure the funds to pay off its debt to the

ECCU, LAOD made a temporary transfer of the property to a third party who was going to obtain a loan and negotiate a payoff with the ECCU." By that statement, LAOD concedes that it transferred the Property prior to the foreclosure sale. It argues, however, that the transfer was void ab initio as it was in violation of the receivership order.[9] In October 2012, in a separate proceeding, LAOD filed a "Motion for Order re: Cancelation of Void Quit Claim Deeds" seeking, in part, to cancel its February 2, 2012, quitclaim deed as void ab initio for having "violated this Court's order"—presumably the receivership order. The trial court denied the motion, ruling that LAOD lacked standing, and the trial court was without jurisdiction.

"'A quitclaim deed transfers whatever present right or interest the grantor has in the property. [Citation.]' [Citations.]" (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 239.) Because LAOD quitclaimed the Property to Shana Tova, LLC on February 2, 2012, prior to ECCU's February 10, 2012, foreclosure sale, the trial court properly ruled that LAOD lacked standing to challenge the foreclosure sale and properly granted summary adjudication of LAOD's wrongful foreclosure cause of action.

III. LAOD's Causes of Action for Declaratory Relief and Unfair Business Practices

LAOD argues that the trial court erred in "dismissing" its causes of action for declaratory relief and unfair business practices without permitting it to present supporting evidence. The trial court properly declined to exercise its discretion to grant LAOD declaratory relief and properly dismissed LAOD's unfair business practices cause of action.

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9 On May 20, 2011, the trial court signed the parties' Stipulation and Order Appointing Receiver. Paragraph 40 of the Stipulation and Order Appointing Receiver barred LAOD from "Transferring, conveying, assigning, pledging, deeding, selling, renting, leasing, encumbering, changing ownership of, vesting of title to, or otherwise disposing of the Property . . . ."

A. Declaratory Relief Cause of Action

LAOD filed an offer of proof in the trial court concerning its declaratory relief cause of action. It stated that the trial court did not permit it to present evidence in support of its declaratory relief cause of action in the jury trial and requested to present that evidence. It stated that it would present its case for declaratory relief on two issues: "(1) Whether or not [ECCU] breached its obligation under the forbearance agreement to pay for the completion of that construction; [and] [¶] (2) Whether or not [LAOD] breached the forbearance agreement prior to ECCU's issuance of the notice of default."

At argument concerning LAOD's offer of proof, ECCU's attorney argued that LAOD had quitclaimed the Property to another party and ECCU then foreclosed on the Property and sold it to another church. Counsel asked if, by its declaratory relief cause of action, LAOD was attempting to get the Property back. LAOD's counsel responded, "No." ECCU's counsel then argued, "I don't understand what future . . . declaratory rights they need in the future for a church they haven't owned for two years." The trial court found that "there is no on-going contractual relationship," and declined to exercise its discretion to grant LAOD declaratory relief.

1. Standard of review

A trial court's decision to grant or deny declaratory relief is reviewed for an abuse of discretion. (*Osseous Technologies of America, Inc. v. Discovery Ortho Partners LLC* (2010) 191 Cal.App.4th 357, 364 (*Osseous Technologies*).)

2. Application of relevant principles

"Declaratory relief operates prospectively, serving to set controversies at rest. If there is a controversy that calls for a declaration of rights, it is no objection that past wrongs are also to be redressed; but there is no basis for declaratory relief where only past wrongs are involved. Hence, where there is an accrued cause of action for an actual breach of contract or other wrongful act, declaratory relief may be denied. (5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 869, p. 284; *Osseous Technologies*, *supra*, 191

Cal.App.4th at p. 364 [“‘“‘One test of the right to institute proceedings for declaratory judgment is the necessity of present adjudication as a guide for plaintiff’s future conduct in order to preserve his legal rights.’”’ [Citation.]”]; *Baldwin v. Marina City Properties, Inc.* (1978) 79 Cal.App.3d 393, 408 [“There is no allegation of a continuing relationship . . . . There does not appear to be any possibility of such a continued relationship . . . . In the present case, plaintiffs have a present accrued right as a secured party to foreclose on the collateral or to sue for an alleged impairment of the value of the collateral. There are no claims by plaintiffs that an actual controversy exists . . . concerning any future rights”]; *Travers v. Louden* (1967) 254 Cal.App.2d 926, 931 [“There is unanimity of authority to the effect that the declaratory procedure operates prospectively, and not merely for the redress of past wrongs. It serves to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs; in short, the remedy is to be used in the interests of preventive justice, to declare rights rather than execute them”].)

In its offer of proof in the trial court, LAOD stated that the issues on which it wanted a declaration were whether ECCU breached the Forbearance Agreement by failing to pay for completion of the Construction Project and whether LAOD had breached the Forbearance Agreement before ECCU issued its notice of default. In its opening brief on appeal, LAOD contends, among other things, that it made an “offer of proof as to the evidence supporting its claim for breach of the forbearance agreement and declaratory relief concerning that agreement . . . .” It further contends that it “proffered testimony that [it] ratified and substantially performed the terms of the forbearance agreement and that ECCU committed material breach by taking steps for foreclosure unknown to [LAOD]; and by rejecting its contractor, thus preventing [LAOD] from performing its obligations in the forbearance agreement.” It also contends that it “proffered testimony confirming that [ECCU] agreed to make additional advances in an amount not to exceed $1,725,000.00 to [LAOD] in order to complete the construction of the project, and that this amount was in addition to the $2,000,099.73 that remained

available to finance the completion of the construction of the Project, subject to the terms and conditions of the Loan Documents."

By its own description in its offer of proof in the trial court and in its opening brief on appeal, LAOD's declaratory relief cause of action sought a determination that ECCU previously had breached the Forbearance Agreement. LAOD did not and does not set forth any future right or obligation under the Forbearance Agreement about which it sought a judicial declaration. In fact, ECCU foreclosed on the Property in February 2012, and thus there was no ongoing contractual relationship between ECCU and LAOD. Accordingly, the trial court did not abuse its discretion in declining to grant LAOD declaratory relief. (*Osseous Technologies, supra,* 191 Cal.App.4th at p. 364; *Baldwin v. Marina City Properties, Inc., supra,* 79 Cal.App.3d at p. 408; *Travers v. Louden, supra,* 254 Cal.App.2d at p. 931.)

B. Unfair Business Practices Cause of Action

In its unfair business practices cause of action, LAOD alleged, in relevant part: "Business and Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, including any unlawful, unfair or fraudulent business act, or conduct which is likely to deceive and is fraudulent in nature. As more fully described above, ECCU's acts and practices were unlawful, fraudulent, and were intended to deceive and constitute 'unsafe and unsound' [']business practice' in violation of *Cal. Finance Code* § 14204, et. seq. ECCU's conduct in violation of the noted code sections is ongoing and continues to this day. [¶] The foregoing acts and practices have caused substantial harm to California consumers, including [LAOD]."

The claim thus was for a violation of Finance Code section 14204 which provides: "If the commissioner upon any examination, or from any report made to the commissioner, finds any credit union is violating the provisions of this division or the rules made pursuant to this division, or has impaired capital, or is insolvent, or is conducting its business in an unsafe or unauthorized manner, the commissioner may notify the credit union to, and the credit union shall, cease these practices. The

commissioner may notify the credit union to, and the credit union shall, temporarily suspend or entirely cease the transaction of any new business or the portion thereof as is ordered by the commissioner. Within 10 days from the date of a notification or order pursuant to this section, the credit union may request a hearing. Neither the request for a hearing nor the hearing itself shall stay the notification or order issued by the commissioner under this section."

LAOD filed an offer of proof in the trial court regarding its unfair business practices cause of action. In its offer of proof, it asked the trial court to decide whether the following conduct violated Finance Code section 14204: (1) "Whether or not the trade name 'Evangelical Christian' and the information on its website emphasizing 'Kingdom Impact' and 'partners'; ECCU's officers' repeated references to 'God,' 'Lord,' 'Kingdom Impact,' as well as their routine habit of praying together with borrowers or other members with whom they conduct business constitute 'unsound practice' causing substantial harm to [LAOD]"; (2) whether ECCU, as a fiduciary, "was obligated to require construction bonds for projects with values in excess of 20 million dollars"; (3) whether Robert Yi's conduct in 2008 and 2009 caused substantial harm to LAOD; and (4) whether ECCU had been "dishonest in handling the foreclosure."

At the hearing on LAOD's offer of proof, the trial court stated that it understood that the Commissioner—i.e., the Commissioner referred to in Finance Code section 14204—had not been involved in the case. ECCU's counsel represented that LAOD's counsel had submitted a complaint to the Commissioner but "it went nowhere." The trial court asked LAOD's counsel if the Commissioner took any action with respect to the complaint. Counsel responded that the Commissioner had taken no action, stating that the Commissioner deferred the matter to the court upon learning that there was pending litigation. The trial court ruled that LAOD failed to demonstrate a violation of Finance Code section 14204 and thus a violation of Business and Professions Code section 17200 because "there has been no Commissioner on this case, or the Commissioner has deferred to the Court of the issues in this case. The Court finds that the practice of 'praying' with

borrowers is not a violation under Section 17200. The Court finds under the UCL claim, there is no violation."

LAOD claims the trial court erred in dismissing LAOD's unfair business practices claim without allowing LAOD to present supporting evidence because the trial court erroneously believed it had adjudicated LAOD's unfair business practices cause of action in its prior ruling on ECCU's summary adjudication motion. Although the trial court referred to its summary adjudication ruling on LAOD's conversion cause of action, the trial court properly dismissed LAOD's unfair business practices cause of action because LAOD failed to demonstrate the alleged violation of Finance Code section 14204—i.e., LAOD failed to show the Commissioner had made a finding adverse to ECCU.

IV. Exclusion of Personal Property Evidence

LAOD contends the trial court relied on Code of Civil Procedure section 437c to preclude it from presenting evidence to the jury that it was the owner of personal property taken by ECCU when it was evicted. LAOD argues that the trial court based its ruling on an erroneous finding that it had ruled on the admissibility of the evidence in connection with ECCU's motion for summary adjudication. LAOD has forfeited review of this claim by failing to identify in the record the evidence it claims the trial court excluded or to cite to the trial court's purported ruling in the record.

An "appellate court is not required to search the record on its own seeking error." (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) Instead, "a party challenging a judgment has the burden of showing reversible error by an adequate record. [citations.]" (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) To do so, an appellant must provide citations to the record that support the appellant's argument. (See Cal. Rules of Court, rule 8.204(a)(1)(C); *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239.) An appellant who fails to support an argument with citations to the record forfeits the argument on appeal. (*City of Lincoln v. Barringer, supra,* at p. 1239; *Miller v. Superior Court* (2002) 101 Cal.App.4th 728, 743; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.)

As ECCU argues in its respondent's brief, LAOD did not provide record citations in its opening brief on appeal to the evidence it claims the trial court erroneously excluded or to the trial court's purported ruling. Despite ECCU's argument, LAOD did not attempt to cure its opening brief deficiencies in its reply brief. Because LAOD failed to support its argument with citations to the record, it forfeited this argument. (*City of Lincoln v. Barringer*, *supra*, at p. 1239; *Miller v. Superior Court*, *supra*, 101 Cal.App.4th at p. 743; *Duarte v. Chino Community Hospital*, *supra*, 72 Cal.App.4th at p. 856.)

V. Judicial Bias

LAOD argues that the trial court erred in conducting the jury trial on its conversion cause of action by demonstrating a predisposition to rule against it, as the trial court stated on the record, prior to the jury's verdict, that it found LAOD had committed fraud and engaged in excessive spending. Further, LAOD contends, the trial court displayed bias based on race, national origin, and religion when LAOD's Korean-speaking witnesses testified through an interpreter. LAOD's contentions are without merit.

A. The Trial Court Did Not Prejudge LAOD's Conversion Cause of Action

1. Background

ECCU moved for a directed verdict on LAOD's punitive damages claim with respect to LAOD's conversion cause of action. In ruling on the motion, the trial court, outside the presence of the jury, stated, "the Court doesn't find any fraud, oppression or malice. If there is fraud, oppression or malice I find it on [LAOD]. That's where the fraud, oppression or malice . . . ."

LAOD's counsel asked for clarification. The trial court responded, in part, "Well, you know, this was a house of cards, counsel. . . . [¶] The problem that [LAOD] had is the problem with money. They have a problem with donations. They weren't getting donations. And they suffered the consequence of their spending and they tried to cover up their sins. Tried to cover up their sins by transferring property to—[¶]-[¶]—Shana

Tova and various theories of claim transfers to parishioners to cover up ownership of goods and losses to bolster their claim against the lender. [¶] They have a lack of donation. There's a word called propagate. [*Sic*.] You know, the word propagate? [*Sic*.] It's a person who wildly, extravagantly, grossly spending self-indulgent expenditures and it would seem to apply in this case to [LAOD]."

LAOD's counsel asked if the trial court was making a finding that LAOD had engaged in fraud, malice, or oppression. The trial court responded, "I don't have to find that. I'm just finding—I'm finding there is no evidence of oppression, fraud or malice" by ECCU.

With respect to the trial court's observation that LAOD had engaged in excessive spending, LAOD's counsel stated that no evidence was adduced concerning the amount spent on the personal property that was the subject of the conversion cause of action. Thus, LAOD's counsel argued, the trial court could not rely on that amount to find that LAOD had engaged in excessive spending. The trial court stated that the issue was whether ECCU had engaged in fraud, oppression, or malice, and reiterated its ruling that ECCU had not engaged in such conduct.

2. Application of relevant principles

LAOD contends that the jury's verdict on the conversion cause of action must be reversed because the trial court demonstrated a predisposition to rule against LAOD. In support of this argument, LAOD relies on *McVey v. McVey* (1955) 132 Cal.App.2d 120 and *Murr v. Murr* (1948) 87 Cal.App.2d 511. Neither case is apposite because each case was a court trial and not a jury trial. (*McVey v. McVey*, *supra*, 132 Cal.App.2d at p. 123 ["When a trial judge sits as a trier of the facts he takes the place of a jury, and his conduct is subject to the same rules, one of which is that before the case is submitted to him he should not form or express an opinion thereon"]; *Murr v. Murr*, *supra*, 87 Cal.App.2d at pp. 520-521 ["The judge's comments, before the case was submitted to him, . . . clearly indicate that he had prejudged the case"].)

LAOD's conversion cause of action was tried to a jury and not to the trial court. The trial court made its comments in connection with its ruling on ECCU's motion for a directed verdict on LAOD's punitive damages claim, not in deciding LAOD's conversion cause of action. LAOD does not challenge the trial court's directed verdict on the punitive damages claim. Thus, even if the trial court prejudged any part of the case, LAOD has demonstrated no consequence from that prejudgment because the jury and not the trial court decided the conversion cause of action.

B. The Trial Court Did Not Display Bias Based on Race, National Origin, or Religion

1. Background

LAOD's contention that the trial court displayed bias based on race, national origin, and religion is based on the following excerpts from different parts of the reporter's transcript (in some instances, we have expanded the excerpts for context—in those instances, the expanded parts of the excerpts are in bold). According to LAOD, the trial court's interference with witness testimony in Excerpt Nos. 1 through 4 below displayed an appearance of bias against LAOD's witnesses based on their inability to testify in English.

a. Excerpt No. 1:

"The Court: Madam, interpreter, you have to interpret. You have to have her answer the questions directly. I don't know if we are getting into—

"The Interpreter: She is listing the items, your Honor."

b. Excerpt No. 2:

"The Court: Well, hold on a minute. You have to answer the question directly. [¶] And, translator, you must translate as she gives the information. Not wait. It has to be simultaneous translation so we can be aware of it. [¶] Okay. So—"

c. Excerpt No. 3:

"[LAOD's Counsel] Mr. Lee: Your Honor, I do need to note for the record she was testifying. It just wasn't translated.

"The Court: I don't know. There's a question. Let the witness know she has to answer the question directly.

"[LAOD's Counsel] Ms. Lee: Your Honor, there was one—

"The Court: No. Wait a minute. We have one attorney. We have Henry Lee handling the case.

"Mr. Lee: One, I do need to note for the record, your Honor, when you are speaking at the interpreter Ms. Ko is actually testifying in Korean and it hasn't been interpreted. So there is a few questions that haven't come out.

"The Court: We want questions answered. I don't know. It should be simultaneous interpretation by the translator.

"Mr. Lee: I understand that, your Honor.

"The Court: But we have to answer the question. So let's see where we are. Let's start all over.

"Mr. Lee: One thing is I need to object that she's actually been testifying in Korean but the Court is jumping in before the interpretation.

"The Court: No. Testify directly because there is a lot of conversation that does not seem to be answering the question."

d. Excerpt No. 4:

"The Court: No. Listen to the question.

"Mr. Lee: Actually, your Honor, he was testifying and I will attest that it was responsive.

"The Court: Well, counsel, no, you cannot—

"Mr. Lee: He has—

"The Court: No. We have an interpreter. We have an orderly fashion. [¶] And what was the question? Let's repeat the question.

"The Interpreter: It was coming, your Honor.

"The Court: It was coming?

"The Interpreter: Yes.

"The Court: Well, I don't know. I don't speak Korean. Maybe you do but I don't have any idea.

"Mr. Lee: And I have to object he was testifying in a responsive manner but it wasn't interpreted before your Honor interjected."

According to LAOD, Excerpt Nos. 5 and 6 below showed the trial court refusing to permit a translation of English language documents, thereby prejudicing the witness's ability to testify about pertinent documents.

e. Excerpt No. 5:

"Ms. Lee: I'm not going to highlight any portion, Pastor Park, but I'm going to have the translator translate for me the second paragraph.

"The Court: What is your question?

"Ms. Lee: Actually paragraph three, your Honor.

"The Court: The document speaks for itself, counsel. What's the—

"Ms. Lee: Okay. Because he has to refresh his recollection as to that before I ask any question about the document.

"The Court: Well, the document speaks for itself."

f. Excerpt No. 6:[10]

"By Ms. Lee:

"Okay. Pastor Park—

"A. Yes.

"Q. —this document provides that, it's your declaration,

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10 The first bolded part in Excerpt No. 6 separates Excerpt Nos. 5 and 6.

"'At no point in time prior to July 12, 2012 did I know should I have failed to file an answer to LAOD's newly complaint and as a result LAOD and (inaudible) has taken a default judgment.'

"Do you see that?

"The Interpreter: I'm sorry. Could I have the paragraph read again or have the paper enlarged?

"The Court: Well, it speaks for itself.

"Ms. Lee: No. The problem is the witness doesn't understand English.

"The Court: We are looking at a document. The document speaks for itself and—so what is your question?

"By Ms. Lee:

"My question is do you recall that a default judgment was entered in the unlawful detainer action?

"The Court: Do you recall that? [¶] I mean we can stipulate to some of these things.

"The Witness: Yes."

According to LAOD, in Excerpt No. 7 below, the trial court permitted defense counsel to cross examine Pastor Park about his English language skills which "clearly tainted the jury into believing that Pastor Park's use of an interpreter was somehow inappropriate, fraudulent, or dishonest."

g. Excerpt No. 7:

"By [Defense Counsel] Mr. Stewart:

"Q. Pastor Park, when I asked you how long you lived in the United States you said 29 years; correct?

"A. Yeah.

"Ms. Lee: Your Honor, it's not for impeachment. He didn't say anything.

"The Court: I don't know. This is preliminary I assume. If it's not then we can strike it.

"By Mr. Stewart:

"Q. You can read English; correct?

"A. I can read it but I cannot actually understand it.

"Q. Well, why couldn't you read the English on your declaration earlier?

"A. That's from an attorney. I was asked if I signed it. Then the attorney was going to make that set aside.

"Q. But you testified in that court proceeding that you can't read English; correct?

"A. No. I said, yes, I can read English but I cannot comprehend.

"Q. Okay. Didn't you receive a master's degree from a seminary in Jackson, Mississippi?

"A. Yes.

"Q. And didn't you receive a Ph.D. from the theological seminary in Indiana?

"A. Yes, but I studied in Korean.

"Q. Oh, that teaching was in Korean?

"A. In Jackson in English but my Ph.D. in Korean.

"Q. Okay so your master's degree the instruction was in English?

"A. Yes.

"Q. And you got a master's degree in English and you have been here 29 years?

"A. Yes.

"Q. Why are you testifying in Korean?

"Ms. Lee: Objection.

"The Court: No, that's a proper question. That's a good question. I don't know. [¶] Overruled.

"Ms. Lee: That's 352, your Honor.

"The Court: No, that's a good question. In don't know. [¶] Overruled.

"The Witness: Because Korean is more comfortable so in Korean.

"That Court: That's your answer

"By Mr. Stewart:

"Q. You are not testifying in Korean so it appears that you are sympathetic or don't understand English; correct?

"Ms. Lee: Objection. Argumentative.

"The Court: No, overruled. That's overruled.

"The Witness: No. No, nothing like that."

2. Application of Relevant Principles

California Code of Judicial Ethics, Canon 3B(5) provides, in part:

"A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias or prejudice, including but not limited to bias or prejudice based upon race, . . . religion, national origin, [or] ethnicity . . . ." "'Bias or prejudice consists of a "mental attitude or disposition of a judge towards [or against] a party to the litigation. . . .'" [Citation.] Neither strained relations between a judge and an attorney for a party nor '[e]xpressions of opinion uttered by a judge, in what he conceived to be a discharge of his official duties, are . . . evidence of bias or prejudice. [Citation.]' [Citation.]" (*Roitz v. Coldwell Banker Residential Brokerage Co.* (1998) 62 Cal.App.4th 716, 724.) A party claiming judicial bias has the burden of establishing facts that supports its position. (*Ryan v. Welte* (1948) 87 Cal.App.2d 888, 893; see *Betz v. Pankow* (1993) 16 Cal.App.4th 919, 926 [claim of arbitrator bias].)

LAOD's argument apparently is that it is a religious organization, its witnesses were Korean, its witnesses testified in Korean through an interpreter, and the trial court made rulings concerning the manner in which that testimony was to be presented that LAOD did not like, so the rulings must have been the product of improper bias. LAOD does not explain how any of the trial court's challenged comments or rulings was in any way the product of bias based on race, national origin, or religion. We have no reason to conclude that the rulings were based on bias.

DISPOSITION

The orders denying LAOD leave to amend its complaint to assert a breach of contract cause of action and summarily adjudicating LAOD's fraud and deceit cause of action are reversed and the matter is remanded for further proceedings. The judgment is otherwise affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

RAPHAEL, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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