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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

EDEN NOVELO, Plaintiff, Cross–Defendant and Appellant, v. VULCAN SIECLES, INC., Defendant, Cross–Complainant and Respondent.	B265376 (Los Angeles County Super. Ct. No. YC069299)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stuart M. Rice, Judge. Affirmed.

Eden Novelo, in pro. per., for Plaintiff, Cross–Defendant and Appellant.

Ritt, Tai, Thvedt & Hodges and Warren O. Hodges, Jr., for Defendant, Cross–Complainant and Respondent.

This appeal arises from a contract dispute between plaintiff, cross-–defendant and appellant Eden Novelo (Novelo), and defendant, cross–complainant and respondent Vulcan Siecles, Inc. (Vulcan). Following a four–day bench trial, the court entered judgments on the complaint in favor of Novelo for approximately $17,500, and on the cross-complaint for approximately $14,300 in favor of Vulcan, resulting in a net award of about $3,150 in favor of Novelo, who appeals. We conclude that Novelo's claims fail on the merits, and that he has forfeited his claims of trial court error for failing to provide an adequate appellate record or to adhere to standards of appellate procedure. Therefore, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

We have attempted to glean the relevant facts from the reporter's transcript and the trial court's "Ruling on Submitted Matter (Ruling)."[1]

Novelo is a contractor. In 2012, Vulcan, a real estate brokerage, accepted Novelo's bid to perform the "build out" of a first floor office

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[1] As discussed in detail below, Novelo failed to provide an adequate appellate record. As a result, we have no pleadings, briefs, declarations or trial exhibits before us. Although Novelo did designate 135 trial exhibits as a part of the record he did not arrange to have any exhibits (which the court returned to the parties at the close of trial) transmitted to this court. We have reviewed the record and, in certain instances, sufficient reference was made in trial testimony so as to make clear at least some of the bases of the parties' disputes and evidence on which the court relied in making its findings. (*Zikratch v. Stillwell* (1961) 196 Cal.App.2d 535, 544.)

suite on a multi–story mixed–use property in Redondo Beach. Vulcan had recently purchased the unimproved building and intended to relocate its offices there by February 2013, when its current lease expired.

Magaly Gutierrez, the Secretary of Corporation for Vulcan, conducted discussions and negotiations with Novelo on behalf of Vulcan.[2] Gutierrez wanted the office suite, which has a 10–foot ceiling, to have the "modern, open" look commonly seen in downtown lofts, with painted concrete floors and an "open concept ceiling" (exposed and painted pipes, sewer lines and ducts). An engineer prepared an initial set of plans (bid plans) which included an open ceiling. The bid plans were approved by the City of Redondo Beach Building Department (City) in May 2012. David Tsai, a contractor with whom Vulcan had worked before, prepared a design plan that Gutierrez liked. Tsai bid on the project but his bid of $107,000 was too high for Vulcan, as was the unspecified bid of a third contractor.

Novelo reviewed the bid plans and Tsai's design. At Gutierrez's request, he visited several business sites to ensure that he understood the design concept Gutierrez wanted executed. Novelo assured Gutierrez that he understood and was familiar with this type of construction, and was an experienced contractor who could deliver the

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[2] Novelo also had discussions with Alicia Mongalo, Vulcan's President, and Gutierrez's mother. Novelo sued Mongalo as an individual in this action, but she was subsequently dismissed. Her discussions with Novelo are not relevant.

project on time and at a more reasonable (residential) rate. Vulcan accepted Novelo's bid of $54,000.[3] The parties signed a contract in July or October 2012.

In summer 2012, corrections required by the City and various plan changes Vulcan wanted significantly increased the cost of the construction project. The engineer prepared and submitted new plans, which the City approved in mid–October or November 2012 (approved plans). Based on these revisions, the parties signed the (new) contract relevant here, for $74,000. The contract required written approval for alterations to the construction plan.

Vulcan obtained a construction loan from the Small Business Administration to fund the project. Shortly before beginning work on the project, Novelo requested and received from Vulcan an advance of $11,000, which he never repaid. Construction, which was supposed to take 10 weeks (but was not completed until April 2013), began in November 2012. Although it is impossible to ascertain their precise nature or scope from the meager appellate record, it is clear that significant disputes arose between Novelo and Vulcan regarding the scope, quality and timeliness of Novelo's work.

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[3] Although this was a commercial project, Novelo's initial bid, which Vulcan accepted, was calculated based on his "residential" rate. According to Novelo, commercial contractors "normally [charge] two to three times what residential contractors charge" per square foot. Novelo testified that he never told Vulcan he calculated his initial bid based on his residential rate, or that he later raised the fee to his commercial rate for the additional work, and he did not "think it was necessary" to tell Vulcan.

In mid–December 2012, Novelo, who had recently begun campaigning in earnest to have Gutierrez abandon the "ugly" open ceiling concept, installed a "drop ceiling" without Vulcan's permission. Novelo falsely claimed a design change was necessary because the City would not approve an open ceiling, and that installation of the ceiling T–bar structure was necessary to enable a subcontractor to complete work. Also without Vulcan's authorization, Novelo had an engineer prepare a revised set of plans containing the drop ceiling, which the City ultimately approved (final plans). Vulcan, which could not afford to hire another contractor to replace Novelo, ultimately approved the drop ceiling in March 2013.

In early March 2013, Novelo submitted multiple invoices to Vulcan, purportedly listing change orders for extra work he had performed. Vulcan had approved only one of the items on Novelo's lengthy list, and some of the items listed were for work included in the parties' contract or–like the drop ceiling–work Vulcan had disapproved. Vulcan, whose lease expired at the end of January 2013, remained unable to move into the property for several months and incurred additional expense paying both rent and a mortgage. In addition, Vulcan claimed it incurred additional expense after Novelo left the job site because, among other things, Vulcan had to pay other contractors to redo, repair or complete work that Novelo had contracted competently to perform.

Novelo sued Vulcan for breach of contract to recover approximately $7,000 owed him under the terms of the contract, plus

additional compensation (of an unknown sum) based on a list of at least 28 itemized tasks of extra work. Vulcan filed a cross–complaint for breach of the covenant of good faith and fair dealing, and fraud based on Novelo's (1) failure to complete the project according to Vulcan's specifications and (2) having misled Vulcan at the outset regarding his capacity to perform the scope and type of work. Vulcan sought to recover, among other things, funds advanced to Novelo before the construction began, additional rental expenses the company incurred due to delay, and funds it paid directly to a vendor for which Novelo had billed.

At the conclusion of trial, the court found that had Novelo "severely underbid the contract." It also found that Vulcan "had unrealistic expectations about the scope of work to be completed for the $74,000 contract price." The court observed that, although there was no evidence Novelo committed fraud, Vulcan had reason to be wary from the outset in light of Novelo's request for an $11,000 loan just to start the project, and the fact that Tsai's bid exceeded Novelo's by more than 30 percent. Finally, the court found that, despite Vulcan's initial objections to the drop ceiling, it "ultimately approved this aspect of the project and [Novelo] should be appropriately compensated." Vulcan's damages were calculated to be $14,288 on the cross–complaint ($11,000 for the advance to Novelo, plus $3,288 for a direct payment Vulcan made to a vendor for which Novelo billed Vulcan). Novelo was awarded damages of $17,437.08 ($6,945, the remainder due under the $74,000

contract, plus $10,492.08 for all or part of specific extra tasks), for a net recovery of $3,149.08. Novelo appeals.

DISCUSSION

Novelo's case has two interrelated, fatal flaws.

First, Novelo failed to demonstrate there is no substantial evidence to support the judgment. Under the substantial evidence standard our review begins and ends with a determination as to whether there is any substantial evidence, contradicted or not, to support the findings.[4] The test is not whether there is a substantial evidentiary conflict. The question is simply whether the record contains substantial evidence in favor of the respondent, no matter how slight. If so, the judgment will be upheld. (*Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892, 917.) We do not reweigh evidentiary conflicts or redetermine witness credibility. (*Citizens Business Bank v. Gevorgian* (2013) 218 Cal.App.4th 602, 613 (*Gevorgian*).) The testimony of a one witness is sufficient if believed by the factfinder (Evid. Code, § 411), who may believe some parts of a witness' testimony but disbelieve others. (*Gevorgian, supra*, 218 Cal.App.4th at p. 613.) To the extent we are able to ascertain Novelo's specific contentions of error, we

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[4] The "threshold issue" in every appeal is the controlling standard of review. (*Clothesrigger, Inc. v. GTE Corp*. (1987) 191 Cal.App.3d 605, 611.) Although he fails to mention, let alone tailor his arguments to, the applicable standard of review, Novelo's claim of error pivots on his challenge to the sufficiency of the evidence supporting the judgment.

conclude that, as illustrated by our factual recitation, the record contains sufficient evidence to support the court's factual conclusions.

Second, a necessary corollary to the presumption of correctness is that an appellant must provide an adequate appellate record to establish error, and his failure to do so requires that the issue be resolved against him. (See *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; *Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435.) The appellant must summarize all significant evidence in the record (and only in the record) that bears on an issue–not just evidence that favors him–and demonstrate how it falls short of supporting the challenged finding. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881 (*Foreman & Clark*); *Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738; Cal. Rules of Court, rule 8.204(a)(2)(C).) Assertions of error must be supported with accurate record references. (*American Indian Model Schools v. Oakland Unified School Dist*. (2014) 227 Cal.App.4th 258, 284; Cal. Rules of Court, rule 8.204(a)(1)(C).) Failure to comply with these requirements and to present an accurate evidentiary record forfeits an appellate challenge to the sufficiency of the evidence. (*Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 52–53.) Novelo failed to satisfy these rules in every respect.[5]

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[5] Although we are mindful that Novelo is self–represented, no different result is warranted. Except in circumstances not present here, the rules of civil procedure apply equally to parties represented by counsel and those who choose to forego such representation. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) Pro. per. litigants are entitled to the same, but no greater, consideration as other litigants and attorneys and must adhere to

Where Novelo does refer to evidence introduced at trial (without an appropriate record citation), his focus is almost exclusively on evidence that supports his position (or would have done so had the court believed him). By doing so, Novelo ignores the trial court's implicit adverse credibility rulings. The minimal and incomplete record Novelo chose to present contradicts his claims. Novelo's failure to identify all relevant evidence is particularly important given that his contract claim seems to be premised primarily on a list of about 30 uncompensated change orders. The court devoted several full trial days to parsing the items on this list, one–by–one. It reviewed documentary evidence and heard testimony from multiple witnesses, including Novelo, Vulcan's representatives and the engineer who prepared all three sets of plans. The court evaluated Novelo's contention that Vulcan owed him the balance of the $74,000 contract and the change order tasks, and assessed his defense to the cross–complaint. The court found both parties were owed some of what they sought, necessarily rejecting the remainder as factually unsupported.

Novelo takes issue with these factual findings. However, he chose not to or neglected to include in the appellate record any documents relevant to the dispute regarding these matters (including the very list of items as to which he sought recovery and to which the majority of

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the same restrictive procedural rules. (See *Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210.) The record Novelo has presented fails these requirements almost entirely.

trial time was devoted), and chose not to transmit exhibits on which the court expressly predicated its factual findings. Although trial exhibits are deemed part of the appellate record (Cal. Rules of Court, rule 8.124(b)(4)), Novelo did not transmit them to this court. A party relying on trial exhibits must arrange to have them transmitted to the appellate court. (See Cal. Rules of Court, rule 8.224(a)(1), (b)(1).) Failure to do so may doom an appeal. (See *Brown v. Copp* (1951) 105 Cal.App.2d 1, 9.) At the very least, when trial "'exhibits are missing we will not presume they would undermine the judgment.' [Citation.]" (See *Hiser v. Bell Helicopter Textron Inc.* (2003) 111 Cal.App.4th 640, 657.) We disregard briefing that relies on them. Simply put, an appellate record that lacks information relevant to the resolution of matters at issue is not adequate for review. (See *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.)

The fundamental deficiency of a lack of a record fatally hampers Novelo's appeal. Apart from the court's Ruling and a reporter's transcript that is frequently unintelligible, we have nothing to show what the parties presented at trial by way of evidence.[6] As we have said, the judgment is presumed correct. An appellant may not make a claim of insufficiency of the evidence to support a finding where he has failed to provide an adequate appellate record upon which to assess his

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6 Even if it might be possible to glean more evidence from the trial transcript, it is not the duty of this court "'to search the record to ascertain whether it contains support for [Novelo's] contentions.' [Citation.]" (*Salas v. Department of Transportation* (2011) 198 Cal.App.4th 1058, 1074.)

contention. (*Aguilar v. Avis Rent A Car System, Inc*. (1999) 21 Cal.4th 121, 132.) Statements by an appellant in a brief will not suffice.

Novelo's contention of insufficiency of the evidence lacks legal and evidentiary support, an adequate record and adequate (or any) record citations. His failure to adhere to these requirements effects a forfeiture to his challenge based on insufficiency of the evidence. (*Foreman & Clark, supra*, 3 Cal.3d at p. 881; *County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1443-1444.)

DISPOSITION

The judgment is affirmed. Vulcan is awarded costs on appeal.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

COLLINS, J.