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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

FRANCISCO FLORES, Plaintiff and Appellant, v. CITY OF SOUTH GATE et al., Defendants and Respondents.	B253962 (Los Angeles County Super. Ct. No. VC057573)

APPEAL from a judgment of the Superior Court of Los Angeles County. Margaret Miller Bernal, Judge. Affirmed.

Nicholas Weimer for Plaintiff and Appellant.

AlvaradoSmith and Raul F. Salinas for Defendants and Respondents.

Francisco Flores sued the City of South Gate (City) and Angel Colon alleging violations of his constitutional right to equal protection (42 U.S.C. § 1983) and the Political Reform Act of 1974 (Gov. Code, § 87100 et seq.). The trial court granted the City and Colon's motion for summary judgment and Flores appealed. We agree with the City and Colon that Flores has failed to establish error and affirm.

FACTUAL AND PROCEDURAL SUMMARY

1. *Flores's Allegations*

In a third amended complaint, Flores alleged the following. Flores was the owner of Niki's Soccer Center.[1] Colon owned a competing business, Shoe Port, located at 3606 Tweedy Boulevard (3606 Tweedy). Colon was a member of the City's planning commission and on the board of directors of the Tweedy Mile Association.

As to the equal protection cause of action, Flores alleged that, on February 2, 2010, the City cited him for violating an ordinance that requires paint on buildings conform to a particular color palette. Flores sought a variance from the ordinance, which the City denied. He appealed to the City's planning commission. At the hearing on the appeal, Colon informed Flores "that 'he was not going to allow [Flores] to have the variance.'" After his appeal was denied, Flores painted his building to comply with the ordinance. Flores learned that other buildings within the Tweedy Mile Association, including Colon's building, did not conform to the required color palette, yet were not subject to enforcement of the ordinance. Indeed, Colon painted a sign in the same ordinance-offending blue that Flores had originally used, then waved at Flores from across the street, "intimating that he had the power to defy the rules." Colon also violated an ordinance mandating the number of parking spaces a building owner must provide. The City and Colon also discriminated against Flores by not allowing him to use balloons to promote a sale and telling him to take down a sign because it had lights, not to advertise in his window, and not hold a sale in a parking lot. Flores averred that these

[1] In his declaration in opposition to the motion for summary judgment, Flores explained that he incorporated his business as Soccer Center, Inc. in 2004, and that it was "inactive" between 2008 and June 2013.

incidents established a pattern of bad faith conduct that violated Flores's federal constitutional rights to equal protection.

In his cause of action for violation of the Political Reform Act, Flores incorporated the foregoing allegations and alleged the following additional facts: Colon used his positions on the City's planning commission and the board of directors of the Tweedy Mile Association to influence others to discriminate against Flores; in violation of conflict of interest laws, Colon did not disqualify himself on matters that affected his and Flores's businesses (Gov. Code, § 87100)[2]; the City and Colon engaged in "corrupt practices," including selling 3606 Tweedy to Colon at "far below fair market value" and exempting Colon from compliance with ordinances "while enforcing them [against Flores] to the letter and beyond in an attempt to destroy [Flores's] business and gain unfair advantage in competing with [Flores's] business"; and Colon did not file a statement of economic interest and failed to disclose fully his economic interest in 3606 Tweedy in violation of the Government Code.

Flores sought general, statutory, and punitive damages, various injunctions, and the removal of Colon from the City's planning commission and the Tweedy Mile Association.

2. *Motion for Summary Judgment*

In June 2013, the City and Colon filed a motion for summary judgment. The motion was supported by declarations from numerous City officials and employees, voluminous documents, and Flores's discovery responses.

Flores's opposition to the motion for summary judgment was supported by his and his counsel's declaration, and numerous documents. In his opposition papers, Flores asserted for the first time that the City's sale of 3606 Tweedy to Colon violated

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[2] Under Government Code section 87100, "[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

Government Code section 1090.[3] That statute bars city officers and employees from (1) having a financial interest in a contract made by the city, and (2) being a purchaser or vendor in any sale made by the city officer or employee in his or her official capacity. A contract made in violation of the statute "may be avoided at the instance of any party except the officer interested therein." (Gov. Code, § 1092, subd. (a).)

In their reply, the City and Colon pointed out that Flores had not alleged a violation of Government Code section 1090 in his third amended complaint and argued that any claim under that statute was barred by the four-year statute of limitations applicable to such claims. (See Gov. Code, § 1092, subd. (b).) Flores responded to the statute of limitations argument in a supplemental brief in which he asserted that the statute of limitations had been tolled by the City's and Colon's alleged fraud and concealment.

After a hearing, the trial court granted the motion. In its written order, the court determined that Flores did not have standing to assert the equal protection cause of action because the alleged damages were suffered, if at all, by Soccer Center, Inc., the corporate entity that received the citations about which Flores complained. In addition, even if Flores was the proper plaintiff, summary resolution of the claim was proper because of Flores's "lack of evidence of discriminatory conduct." The court determined that the Political Reform Act cause of action was barred by the four-year statute of limitations applicable to violations of the Act. (Gov. Code, § 91011, subd. (b).) The Government Code section 1090 claim, the court further explained, was not alleged in the third amended complaint and thus not properly before the court and, in any event, Flores had failed to carry his burden to establish any triable issue of material fact with respect to the claim.

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[3] Government Code section 1090, subdivision (a) provides: "Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity."

Flores thereafter filed a motion for reconsideration, which the court denied. This appealed followed.

DISCUSSION

A motion for summary judgment is "a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute. [Citation.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) A trial court properly grants summary judgment when there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).)

Although we review a summary judgment de novo, we presume the judgment is correct, and the "appellant has the burden of showing error, even if he did not bear the burden in the trial court." (*Claudio v. Regents of University of California* (2005) 134 Cal.App.4th 224, 230 (*Claudio*).) City and Colon contend that Flores has not satisfied this burden because he "failed to cite evidence or logically appl[y] case law to the facts at hand." We agree.

The rules governing appellate briefs require appellants to "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Cal. Rules of Court, rule 8.204(a)(1)(C).) In an appeal from a summary judgment, "[a]s with an appeal from any judgment, it is the appellant's responsibility to affirmatively demonstrate error and, therefore, to point out the triable issues the appellant claims are present by citation to the record and any supporting authority. . . .' [Citation.]" (*Claudio, supra,* 134 Cal.App.4th at p. 230.) A reviewing court "'cannot be expected to search through a voluminous record to discover evidence on a point raised by [a party] when his brief makes no reference to the pages where the evidence on the point can be found in the record.' [Citations.]" (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 113.) Thus, although our standard of review of the grant of summary judgment is de novo, this "'does not obligate us to cull the record for the benefit of the appellant in order to attempt to uncover the requisite triable issues.'" (*Claudio,* at p. 230.)

Here, throughout his appellate briefs, Flores repeatedly fails to support his arguments with references to the record on critical points. For example, regarding the trial court's ruling on the applicability of the statute of limitations to the Political Reform Act cause of action, Flores states the following in his opening brief: "Plaintiff's Opposition to Summary Judgment provides proof through documentation of events showing concealment and when it was discovered, which was during this lawsuit. These facts toll the statute of limitations or defendants are 'equitably estopped from asserting the statute of limitations defense based upon defendants' concealment of the facts. Plaintiff provided further facts clarifying and detailing when plaintiff discovered the concealment in his motion for reconsideration." Conspicuously absent from this argument is any citation to the record of the referenced "proof through documentation" or the "further facts clarifying and detailing when plaintiff discovered the concealment." We are told only that such proof and facts are to be found somewhere in Flores's opposing papers.

At another point in his opening brief, Flores refers vaguely to "many documents" attached to his counsel's declaration, "including deposition testimony showing concealment, yearly disclosure statements showing concealment not acknowledging financial interest in real estate, and letter to [an] agent of plaintiff's counsel[] showing when plaintiff obtained documents showing concealment, and many others . . . ." Attached to Flores's counsel's declaration were 28 exhibits encompassing approximately 100 pages. Yet Flores does not provide a single citation to any particular document or page.

Unsupported or incorrect references to other potentially material facts are scattered throughout Flores's briefs, including: Colon established Shoe Port, but claimed his parents started the business; according to the City Clerk, the City Council had to approve the decision to sell 3606 Tweedy; the City's website and Colon's deposition testimony "make clear that the sale of 3606 Tweedy . . . was under the jurisdiction of the Planning Commission" when the contract was awarded (boldface omitted); Colon was a member of the City's planning commission when the sale of 3606 Tweedy was awarded to Colon;

the City turned down cash offers from third parties for 3606 Tweedy and provided "a great deal of assistance to Shoe Port," including favorable payment terms; Colon's interest in Shoe Port was concealed by putting Colon's parents on the grant deed; Colon's economic disclosure form stated Colon had a 50% interest in Shoe Port; Colon did not claim a financial interest in 3606 Tweedy; the City allowed Shoe Port to not provide a disabled parking space for more than 10 years; Colon did not provide the number of parking spaces required by ordinance or his development agreement, and the City did nothing to correct this breach; the City code enforcement manager ignored Colon's alleged color palette violation and could not name another business she had cited for that violation; Flores's color palette violation was improperly referred to the Tweedy Mile Association, where Colon was a board member; the Tweedy Mile Association performed the duties of the City's planning commission; and "City employees committed most of the direct wrongs against [Flores] referred to throughout the opposition to summary judgment brief."

Although the deficiencies in Flores's opening brief are prominently raised in the City and Colon's respondents' brief,[4] Flores's reply brief fares no better. Flores states, for example: "Mr. Colon was a member of the Planning Commission when the sale was awarded to Mr. Colon. The final papers were not signed until months later, approximately 5 days after the award, Mr. Colon resigned as Planning Commissioner. He later rejoined the Planning Commission." Flores's only citation for these facts is: "See detail, appellant's opening brief and opp[osition] sum[mary] judgment motion." Similar references to his opening brief (without page numbers to either the opening brief or to the record) are given for such facts as: the City delegated the hearing regarding Flores's variance to the Tweedy Mile Association; Colon did not claim an interest in 3606 Tweedy; and the City submitted a false document regarding the date a development

[4] The City and Colon devote four pages of their respondents' brief to the argument that Flores has not overcome the judgment's presumption of correctness because he fails to proffer a reasoned argument and adequate citations to the record.

agreement was signed. Many other facts asserted in the reply brief are offered without any citations whatsoever.

The problems with Flores's briefs are not limited to the failure to provide record cites. As the City and Colon point out, the 65-page opening brief is, at times, "virtually impossible to decipher." Flores's opening brief begins, for example, with a rambling and largely incoherent eight-page introduction that digresses on matters such as Flores's unsuccessful attempt to file a fourth amended complaint, the existence of a second lawsuit that may be affected by our decision in this case, and a history of discovery efforts. The substantive discussion that follows is often irrelevant, unsupported by legal authority, and without cogent argument.

Because of the pervasive failure to provide citations to the record on essential factual points and other deficiencies in Flores's briefs, we conclude that Flores has failed to satisfy his burden to overcome the presumption of correctness and to establish error.

DISPOSITION

The judgment is affirmed. The City and Colon shall recover their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

MOOR, J. *

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