Filed 8/30/18 Mitchell v. Brandon CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THOMAS MITCHELL, Plaintiff and Appellant, v. DAVID BRANDON, Defendant and Respondent.	B284175 (Los Angeles County Super. Ct. No. BC512372)

APPEAL from a judgment of the Superior Court of Los Angeles County, Maureen Duffy-Lewis, Judge. Affirmed.

Law Office of Louis A. Lipofsky and Louis A. Lipofsky for Plaintiff and Appellant.

Sandler and Rosen and Charles L. Birke for Defendant and Respondent.

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After defendant David Brandon purchased an apartment building (the Memorial Trails property) in Texas from No Mas Tomas, LLC, he defaulted on a promissory note he owed the LLC for part of the purchase price (the seller financing addendum). Plaintiff Thomas Mitchell, a principal of the LLC, sued defendant in his individual capacity for breach of contract, seeking contract damages of $253,974.99, and on common counts.

Following a court trial on stipulated facts, the court found for defendant, reasoning that plaintiff lacked standing because the contract was between defendant and the LLC, and there was no proof the LLC had assigned its rights to plaintiff. Plaintiff appeals, arguing the trial court erred by not issuing a statement of decision, and by finding the money was not owed to him. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff and defendant entered into a Stipulation Re Conduct of Trial, by which they agreed that plaintiff's claims would be tried to the court based upon stipulated facts, and the parties would not be permitted to offer oral testimony, or any documentary evidence other than the purchase agreement, the seller financing addendum, and copies of checks written by defendant to plaintiff for installment payments under the seller financing addendum, which the parties jointly submitted into evidence. The stipulation acknowledged "[t]he court may draw inferences from the Stipulated Agreed Facts, and [documentary evidence], as permitted by law." The parties' Stipulation Re Conduct of Trial also requested a statement of decision pursuant to Code of Civil Procedure section 632.

As is relevant here, the stipulated facts provided as follows: Plaintiff sought to recover contract damages of $200,000, interest, and attorney fees, based upon the seller financing addendum.

The seller financing addendum was executed as part of a real estate transaction, whereby the LLC sold the Memorial Trails property in Texas to defendant. The seller financing addendum noted that the purchase price for the property was $3,950,000, and that defendant was taking the property subject to a first and second deed of trust. The seller financing addendum provided that "[i]n addition to the purchase price and first and second loan amounts . . . , Buyer shall owe Seller an amount of two hundred thousand dollars ($200,000) as follows: [¶] Seller shall carry back [this amount], in addition to the purchase price, that shall be evidenced by a promissory note. . . . Said note shall bear interest at the fixed rate of ten percent (10%) per year . . . ."

The seller financing addendum was negotiated by plaintiff and his wife, Katherine Demopoulos, on behalf of the LLC. At the time the seller financing addendum was executed, plaintiff and Ms. Demopoulos were the only members of the LLC. The seller of the property was the LLC, and plaintiff and Ms. Demopoulos signed the seller financing addendum on behalf of the LLC, and not in their individual capacities.

No deed of trust was executed to secure the indebtedness, and the seller financing addendum was kept out of escrow for the sale of the property. Nevertheless, the parties understood that the agreement "created a right in No Mas Tomas, LLC to have a lien placed against the property at the close of escrow."

The escrow for the sale closed on November 6, 2009, and the proceeds were paid to the LLC. After the close of escrow, plaintiff "received from Katherine Demopoulos an assignment of rights under [the seller financing addendum], pursuant to divorce

proceedings" between plaintiff and Ms. Demopoulos in Los Angeles County Superior Court. The stipulated judgment of dissolution was signed on November 11, 2009, and entered on March 1, 2010. Paragraph 4(a) of the judgment of dissolution provided that Ms. Demopoulos transferred to plaintiff "all right, title, claim and interest . . . 'to receive payment pursuant to the Note Secured by Deed of Trust on the property . . . executed by the Purchasers of the property.' "

Pursuant to instructions defendant received after the close of escrow, defendant mailed interest payments under the seller financing agreement to plaintiff at a California address. The checks were signed by defendant, and reflected that the payments were for "Mortgage—Mem. Trails."

In November 2010, the holder of the first deed of trust on the property foreclosed, eliminating defendant's interest, and any junior security interests in the property. After the foreclosure, defendant stopped making interest payments under the seller financing addendum.

The LLC was a Delaware LLC. When the seller financing addendum was negotiated, the LLC had its offices in California. When plaintiff filed his complaint, the authority of the LLC to do business in the state of Texas was suspended.

Copies of the checks, which were submitted into evidence, showed defendant made 12 monthly payments to plaintiff, starting in January 2010, and ending in January 2011.

Prior to trial, defendant lodged a request for statement of decision, and a proposed statement of decision, requesting that the court make findings of fact and conclusions of law, including whether plaintiff had standing to sue on the seller financing addendum. Plaintiff also lodged a proposed statement of decision prior to trial.

The court trial was held on April 17, 2017, based on the stipulated facts, with the parties offering argument. Defendant argued the LLC is the only party entitled to enforce the seller financing addendum, and there was no evidence the LLC had assigned its rights to plaintiff. Plaintiff argued that Ms. Demopoulos assigned her rights under the addendum to plaintiff, and no formal assignment from the LLC was required. The trial court took the matter under submission.

On April 27, 2017, the trial court issued a minute order, captioned "Ruling on Submitted Matter – Tentative Verdict (Court Trial)." The court found that plaintiff had failed to carry his burden of proof to establish that an assignment of rights under the seller financing addendum was made by the seller, No Mas Tomas, LLC, to Ms. Demopoulos or plaintiff. The court ordered defendant to prepare a proposed judgment and serve it upon opposing counsel "for approval as to form and content," and to lodge the proposed judgment with the court within 10 days. The court also set an order to show cause regarding the entry of judgment for May 15, 2017.

The proposed judgment was served on plaintiff on May 8, 2017, lodged with the court on May 9, 2017, and was entered on May 31, 2017. Plaintiff never objected to the court's tentative verdict, and the only objection to the proposed judgment was that it provided defendant was entitled to recover costs and attorney fees. Plaintiff timely appealed.

DISCUSSION

1. Statement of Decision

Plaintiff contends the trial court erred by not issuing a statement of decision. He does not argue that he was prejudiced, but instead asks us to remand the case for the trial court to issue a statement of decision, reasoning it would be "better to have the matter fully analyzed by the trial court, and allow the parties the

opportunity to make their objections, before this Court is required to consume its valuable time." We are not persuaded.

Code of Civil Procedure section 632 provides that "[t]he court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial." (*Ibid.*, see also Cal. Rules of Court, rule 3.1590.) "[T]he trial court's statement of decision need do no more than give reasons which state the grounds upon which the judgment rests." (*Republic Indem. Co. v. Empire Builders Corp.* (1985) 167 Cal.App.3d 1163, 1167.) The court is not required to address all of the legal and factual issues raised by the parties. It is required only to set forth ultimate findings, such as an element of a claim or defense, without which the claim or defense must fail. (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 559 (*Yield Dynamics*); see also *Dallman Co. v. Southern Heater Co.* (1968) 262 Cal.App.2d 582, 595.)

Here, the trial court's tentative verdict satisfied the requirements of Code of Civil Procedure section 632. The verdict concluded that plaintiff lacked standing to enforce the contract on which his claims were based, and stated the reasons for this conclusion. Moreover, plaintiff never objected to the tentative verdict, or to the proposed judgment provided by defendant, on the basis that they failed to resolve a material controverted issue. Therefore, plaintiff has waived any claim that the court's findings were not sufficiently specific. (Code Civ. Proc., § 634; *Shanahan v. Macco Constr. Co.* (1964) 224 Cal.App.2d 327, 333; see also *Yield Dynamics*, *supra*, 154 Cal.App.4th at p. 558.)

And, in any event, a trial court's failure to issue a statement of decision is subject to harmless error review, and plaintiff has

failed to demonstrate prejudice. (*F.P. v. Monier* (2017) 3 Cal.5th 1099, 1108-1109.)

2. Substantial Evidence Supports the Judgment

Plaintiff contends the trial court erred when it concluded that an assignment from the LLC was necessary to confer standing. He contends Evidence Code sections 631 and 632 created the presumption that the money was owed to plaintiff, since defendant made payments under the seller financing addendum to plaintiff, and there was no evidence to rebut this presumption.[1]

Issues of standing, contract interpretation, and statutory interpretation generally present questions of law which we review de novo. (*Applera Corp. v. MP Biomedicals, LLC* (2009) 173 Cal.App.4th 769, 786.) To the extent the trial court's findings turn on the resolution of disputed facts, the court's factual findings are reviewed under the deferential substantial evidence standard of review. (See, e.g., *San Luis Rey Racing, Inc. v. California Horse Racing Bd.* (2017) 15 Cal.App.5th 67, 73.) Even when the parties agree to stipulated facts, if those facts support competing inferences, we defer to the trial court's findings of fact. (*McKinney v. Kull* (1981) 118 Cal.App.3d 951, 955.)

Evidence Code section 631 provides that "[m]oney delivered by one to another is presumed to have been due to the latter." Section 632 similarly provides that "[a] thing delivered by one to another is presumed to have belonged to the latter." These are

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[1] Defendant argues that any claim of error based on these provisions of the Evidence Code has been forfeited, as plaintiff did not rely on these provisions in the trial court. We will consider plaintiff's argument on appeal, to the extent that the proper interpretation of these provisions presents a pure question of law. (*Barnes v. Department of Corrections* (1999) 74 Cal.App.4th 126, 129-130.)

presumptions affecting the burden of producing evidence. Their effect "is to require the trier of fact to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption. Nothing in this section shall be construed to prevent the drawing of any inference that may be appropriate." (§ 604.)

Although defendant's payment of installments owed under the seller financing addendum to plaintiff created a rebuttable presumption that the money was owed to plaintiff, the trial court was free to reach a different conclusion in the face of competing evidence. (Evid. Code, § 604; *Bonzer v. City of Huntington Park* (1993) 20 Cal.App.4th 1474, 1480-1481.) Here, the contract was between the LLC and defendant. The LLC, and not plaintiff, owned the apartment building that defendant bought, and received the proceeds of the sale. Plaintiff stipulated that he signed the seller financing addendum on behalf of the LLC. The damages he sought by his lawsuit were contract damages under the addendum.

Plaintiff's wife assigned *her* interest in the seller financing addendum to plaintiff, but there was no evidence the LLC assigned its interest to plaintiff or his wife. (See, e.g., *Denevi v. LGCC, LLC* (2004) 121 Cal.App.4th 1211, 1214, fn. 1 [the assets of an LLC belong to the entity, and not its members].) Plaintiff contends an assignment may be oral, but the stipulated facts on which the case was tried did not include evidence that the LLC assigned its interest in the addendum to plaintiff, orally or in writing. Defendant made payments to plaintiff, as instructed, but that may have been because the LLC had been suspended. There was no evidence the LLC had been formally dissolved, and that plaintiff had succeeded to the rights and obligations of the LLC.

"If there is substantial evidence from which more than one reasonable inference may be drawn, we are without power to substitute our deductions for those of the trier of fact." (*Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 710.) Because the evidence supports the conclusion that plaintiff's claims belonged to the LLC, and not plaintiff, we must affirm the judgment.[2]

DISPOSITION

The judgment is affirmed. Respondent is awarded his costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.

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[2] Plaintiff asks us to augment the record on appeal to include the trial court's February 16, 2018 order awarding defendant costs and attorney fees of $196,572, arguing that in the event we vacate the judgment, this order must be vacated as well. In light of our findings upholding the judgment, we deny the request.