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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CYDNEY SANCHEZ,

Plaintiff and Appellant,

v.

EL MONTE INVESTMENTS, LLC,

Defendant and Respondent.

B268717

(Los Angeles County
Super. Ct. No. SC115881)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lawrence Cho and Richard Stone, Judges. Affirmed.

Kaplan, Kenegos & Kadin, Jerry Kaplan and David Scott Kadin, for Plaintiff and Appellant.

Law Offices of Wayne M. Abb and Wayne M. Abb for Defendant and Respondent.

After a fire destroyed the structure on real property owned by Cydney Sanchez (Sanchez), her insurer, AMCO Insurance Company (Insurer), issued two checks jointly to Sanchez and her lender, El Monte Investments, LLC (EMI). After a dispute arose over rights to the second check, EMI filed a declaratory relief action. AMCO interpleaded the sum of \$39,727.45, in that action, and the court ordered the clerk to distribute the interpleaded funds to EMI. Sanchez then filed this action, asserting a claim for conversion against EMI in connection with the \$39,727.45 that the trial court had awarded to EMI in the declaratory relief action. Following a trial on the conversion claim, the court granted judgment in favor of EMI. We are asked to decide whether the trial court properly concluded that EMI was not liable for wrongfully converting the funds because the funds had been awarded to EMI in the earlier lawsuit.

I. BACKGROUND

Sanchez obtained two loans from EMI, each secured by a deed of trust on real property she owned at 1364 West 30th Street (the Property). The first deed of trust was in the amount of \$430,000, and the second was in the amount of \$45,000. Both deeds of trust required Sanchez to “provide, maintain and deliver to [EMI] fire insurance satisfactory to and with loss payable to [EMI],” and Sanchez obtained such a policy from Insurer. Several months after Sanchez received the loans, the structure on the Property burned down.

Insurer agreed to pay for damage on the Property and issued a check in the amount of \$77,809.52 made payable jointly to Sanchez and EMI. Sanchez endorsed this check to EMI and agreed that it could be used to pay off part of her balance due on

the loans, as authorized under the deeds of trust, and to pay a contractor for work at the Property. Thereafter, Sanchez defaulted on the loan secured by the junior deed of trust and EMI began foreclosure proceedings.¹ EMI submitted a full credit bid at the foreclosure sale and acquired the Property.

Insurer then issued a second check, this one in the amount of \$39,727.45, also made payable jointly to Sanchez and EMI. EMI filed an action for breach of contract and declaratory relief seeking a determination of Sanchez and Insurer's obligations to EMI under the junior deed of trust and the insurance policy (the Declaratory Relief Action). Insurer interpleaded the funds pursuant to a stipulation with EMI. Sanchez did not appear in the action and EMI was successful in having default entered against her. After Sanchez unsuccessfully moved to have the default set aside, and pursuant to EMI's ex parte application, the court entered an order distributing the full amount of the interpleaded insurance proceeds to EMI. Two days later, Sanchez filed a notice of appeal, but she later abandoned the appeal. Final judgment has not been entered in the Declaratory Relief Action.

Sanchez next filed this lawsuit against EMI with causes of action for accounting, conversion, money had and received, and unfair business practices. Several months later, Sanchez assigned her interest in these causes of action to the law firm that represented her, Kaplan, Kenegos & Kadin (plaintiff); the firm took the matter to trial.

¹ Sanchez had transferred her interest in the property to a third-party before foreclosure proceedings began.

In its trial brief, plaintiff advised the court it was proceeding only on the cause of action for conversion. At trial, 20 exhibits were introduced and admitted into evidence, and EMI called Ronald Perlstein, its principal, as the sole witness. The proceedings were not reported, however, and no agreed or settled statement was made part of the appellate record.

Following the trial, the court ordered a series of closing briefs. In its two briefs, EMI argued: (1) plaintiff had not met its burden of proving the elements for conversion, (2) the full credit bid did not preclude recovery of the insurance proceeds, and (3) the distribution of the insurance proceeds to EMI in the Declaratory Relief Action precluded the trial court from finding EMI had converted the funds. Plaintiff, on the other hand, argued: (1) Sanchez was entitled to the insurance proceeds because she was the owner of the Property at the time the insured damage occurred; (2) EMI's full credit bid precluded recovery of the insurance proceeds; and (3) the distribution of the insurance proceeds to EMI in the Declaratory Relief Action did not preclude the trial court from awarding it damages for conversion.

The trial court found in favor of EMI and memorialized its ruling in a minute order. The trial court found, based on the ruling in the Declaratory Relief Action, that "the defendant in this action, EMI, had legal justification to the funds. Accordingly, there was no wrongful exercise of dominion over the interpleaded funds by EMI, and the claim for conversion fails." The trial court went on to state it was "bound by Judge Hess' prior rulings in the declaratory relief action," citing *In re Alberto* (2002) 102 Cal.App.4th 421 for the proposition that it is error for "one superior court judge, no matter how well intended, even if

correct as a matter of law, to nullify a duly made, erroneous ruling of another superior court judge” The trial court concluded “[i]f the Plaintiff, who represented . . . Sanchez [in the Declaratory Relief Action], believed the order releasing the funds to EMI was incorrect, the proper method of addressing that ruling was by [w]rit or [a]ppeal.”

II. DISCUSSION

Plaintiff asserts the trial court erred in granting judgment for EMI on its conversion cause of action because the trial court should have reached the merits of its claim to the funds and ruled that EMI’s successful full credit bid on the Property precluded it, as a matter of law, from recovering the insurance proceeds. We hold to the contrary. The trial court properly determined the Declaratory Relief Action court’s distribution of the insurance proceeds to EMI defeated a necessary element of plaintiff’s cause of action for conversion. Specifically, once the court in the Declaratory Relief Action ordered the insurance proceeds distributed to EMI, plaintiff could not prove that EMI took possession of the funds wrongfully.

A. *Standard of Review*

“[W]here the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations omitted.]” (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 279.) We do not presume error on appeal; rather, the opposite is true: we presume the judgment is correct unless the party challenging it demonstrates otherwise. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [“A

judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown’ [Citations.]”]; *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1201.)

B. Plaintiff Failed to Prove EMI Wrongfully Exercised Dominion over the Insurance Proceeds, a Fact Necessary to Prevail on Conversion

““Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages”” [Citation omitted.]” (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240.) Plaintiff failed to prove at trial the second element—namely that EMI had taken possession of the insurance proceeds by a *wrongful* act or disposition.

EMI took possession of the insurance proceeds pursuant to a court order in the Declaratory Relief Action. That order required the clerk to disburse to EMI the insurance proceeds interpleaded by Insurer. EMI’s acceptance of the insurance proceeds cannot have been wrongful where it was authorized by a lawful order of a court. (See *Greka Integrated, Inc. v. Lowrey* (2005) 133 Cal.App.4th 1572, 1581 [where employer instructed defendant to take documents home, cause of action for conversion fails because possession of the documents was not “wrongful”]; *Newhart v. Pierce* (1967) 254 Cal.App.2d 783, 792-793 [where the plaintiff authorized defendant to remove 661 head of cattle, the defendant did not wrongfully convert those cattle].) Plaintiff’s

claim for conversion fails because it cannot demonstrate EMI obtained the insurance proceeds through a wrongful taking.

Plaintiff notes the operative Second Amended Complaint alleges conversion of more than just the insurance proceeds. In its trial brief, plaintiff also claimed \$2,373 related to funds it believes were not paid to the contractor from the first check. However, due to the incomplete record provided by plaintiff, it is unclear whether it presented evidence on this issue to the trial court or whether the trial court addressed the question.

Appellant has the burden of providing an adequate record for review and demonstrating reversible error. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575; *Hearn v. Howard*, *supra*, 177 Cal.App.4th at p. 1200.) Where, as here, an appellant fails to provide a sufficient record on a particular point relevant to our disposition of the appeal, we necessarily resolve that point in respondent's favor. (*Denham v. Superior Court*, *supra*, 2 Cal.3d at pp. 564-565; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296 ["Because they failed to furnish an adequate record . . . defendant's claim must be resolved against them"].) In the absence of an adequate record of the proceedings at trial—or even any mention of the claim in the trial court's minute order—we cannot assume plaintiff presented evidence of the \$2,373 it claims EMI converted from the first jointly payable check. Because the record is inadequate on this question, we reject plaintiff's claim with respect to the additional \$2,373 amount and uphold the trial court's judgment.

DISPOSITION

The judgment is affirmed. Respondent is to recover its costs on appeal.

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BAKER, J.

We concur:

TURNER, P.J.

KIN, J.*

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