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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. WALEED SAAB, Defendant and Appellant.	B236679 (Los Angeles County Super. Ct. No. KA092815)

APPEAL from a judgment of the Superior Court of Los Angeles County. Douglas W. Sortino, Judge. Affirmed.

Law Offices of Christopher L. Hoglin and Christopher L. Hoglin for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, James William Bilderback II, Supervising Deputy Attorney General, and Sonya Roth, Deputy Attorney General, for Plaintiff and Respondent.

Defendant Waleed Saab appeals from the judgment entered following a jury trial in which he was convicted of felony vandalism and second degree burglary. Defendant contends his attorney provided ineffective assistance in conjunction with the restitution hearing. We affirm.

BACKGROUND

Defendant operated a restaurant in an historic building in La Verne. The lender foreclosed, and Ghassan Antaki and his partners bought the property at auction. They intended to operate a restaurant there. Defendant was extremely upset about the purchase and refused to cease operations or vacate the premises. In November 2010, Antaki obtained an order evicting defendant. (All date references pertain to 2010.) Thereafter, Antaki watched the property every day. Beginning on November 12, Antaki observed workers removing ceiling fans, outdoor heaters, light fixtures, iron gates securing the property, kitchen equipment, and supplies. Antaki phoned the police each day, but they did nothing, other than make the workers reinstall the gates. On the evening of November 14, Antaki heard loud banging coming from the restaurant and saw people removing toilets. He called the police again. Responding officers Travis Parke and Samuel Gonzalez heard the banging and saw people removing objects such as toilets, light fixtures, and an air conditioner from the building. Defendant told the officers he owned the restaurant and was removing his property because he had sold the building.

The officers testified that when they went into the building, it appeared to have been demolished from within. Stair rails had been broken away and lay in a pile of debris. Garden hoses attached to faucets outside the building had been brought inside to the second floor and left running, flooding the first floor. Walls and ceilings throughout the building had holes smashed into them. A wall in the kitchen had been demolished. The drains had been filled with cement. The officers and Antaki took numerous photographs depicting the damage to the property, which were admitted at trial. When Officer Gonzalez asked defendant about the damage, defendant said people had "'screwed'" him and he would pay for the damage.

Defendant testified that Antaki had defrauded him. After the eviction order, defendant attempted to remove everything he had put into the restaurant because those items belonged to him. He did not cause, authorize, or know of any damage other than widening a door in the kitchen to remove equipment and damage to the stair rail from removal of a desk from his second-story office.

The jury convicted defendant of felony vandalism and second degree burglary.

Antaki sought restitution for amounts his insurer, Farmers Insurance, had paid. He expressly waived any restitution for additional expenses he had incurred that were not covered by insurance. At a contested restitution hearing, Antaki testified that he contacted Farmers regarding the vandalism damage. Farmers sent two claims adjusters. Antaki then hired Alhilo to make the repairs and submitted claims for the cost of the repairs to Farmers. He also submitted a claim for loss of rental income of $10,000 per month, which he calculated using a base rent on the low end of the scale for comparable rents in the area. At the time of the hearing, Antaki had actually leased the property for $11,940 per month.

Gary Sherman, an executive general adjuster for Farmers Insurance, testified that he was responsible for commercial first party claims exceeding $100,000. He was familiar with Antaki's claim and with the way Farmers processed claims and kept records. He reviewed the exhibits, which were part of Farmers's file regarding Antaki's claim. Farmers sent adjuster Ryan Williams to view the damage to the building. Williams prepared a 53-page written preliminary repair estimate, which was admitted in evidence. Responsibility for the claim was then transferred to Timothy Bower, who prepared an estimate letter, followed by two letters stating revised, increased estimates, the last of which was $95,520 for lost business income and $405,182.89 for repairs to the building, excluding long term damage, such as dry rot, and most of the cost of upgrades required to comply with building codes. The revised estimate letters were also admitted in evidence.

Tony Alhilo, the contractor hired by Antaki to repair the damage, testified in detail on cross-examination by defense counsel regarding the nature, necessity, and cost of particular repairs he had made and was continuing to make pursuant to his written contract with Antaki, which was also admitted in evidence. The questioned repair expenses included over $10,000 in permit fees; $2,900 to replace rotted exterior wood fascia, eaves, and window frames; more than $4,475 for a fire suppression system; $29,450 to replace the roof, which had holes where air conditioning units had been removed; $1,450 for repair of gutters that had been damaged by ripping off downspouts; $1,650 to reinstall missing railings and paint all railings to match; $7,800 to replace the canvas patio cover, which had been cut away; $2,750 to replace the missing pump system for the waterfalls on the patio; $1,400 for new exterior doors to the basement, kitchen, and exterior storage area; $1,450 for new interior doors; $2,900 to replace tile on the exterior steps and landing, which was damaged by tearing out railings and could not be matched; $1,200 for missing exterior low-voltage lighting; $25,750 to replace the three missing air conditioning units and upgrade ducts to code; $7,850 to replace an electrical panel that had been stripped; $10,040 to replace missing interior light fixtures; $1,625 to replace missing exterior post lights; $12,000 to replace missing and water-damaged downstairs flooring; $16,000 to replace water-damaged flooring on the second and third stories; and $5,500 to repair broken windows, about half of which Alhilo attributed to vandalism. In addition, the underground plumbing replacement cost about $7,500. Alhilo had been paid about $280,000 and was owed between $20,000 and $25,000 on his original contract, not including change orders, and Antaki had paid some vendors and subcontractors directly.

Defendant testified that the building was smaller than Antaki claimed in estimating its rental value, there had been only two air conditioners and one of those was broken, and the property was in a very dilapidated state at the time of foreclosure because he had not been able to afford repairs. Defendant stipulated to restitution in the amount of $10,000 for loss of personal property.

The trial court continued the restitution hearing for 19 days to give defendant an opportunity to present his own experts, a "contractor expert" and one or more appraisers that counsel said he had retained. Defense counsel asked the court to order Antaki to allow the defense experts to inspect the building. The court declined to do so, stating that the damages defendant caused were well-documented in the exhibits admitted at trial and those introduced at the restitution hearing, and inspection of the repaired building would serve no purpose. When the hearing resumed, defendant did not call any expert witnesses.

After deducting the cost of certain repairs it concluded were not necessitated by defendant's conduct, the court ordered defendant to pay $506,952.89 to Antaki's business, Alanda Properties. The court sentenced defendant to the low term of 16 months in prison for burglary and stayed the sentence on the vandalism count pursuant to Penal Code section 654.

DISCUSSION

Defendant contends that his attorney rendered ineffective assistance in relation to the restitution hearing by (1) failing to call "an expert to show the true extent of damages caused" or "have an expert or appraiser review the estimates and invoices provided by the Farmers Insurance expert and compare that to the actual worked [*sic*] performed," and (2) failing to "object on hearsay grounds to testimony provided by Mr. Sherman . . . about statements clearly made by Mr. Bower."

A claim that counsel was ineffective requires a showing, by a preponderance of the evidence, of objectively unreasonable performance by counsel and a reasonable probability that, but for counsel's errors, the defendant would have obtained a more favorable result. (*In re Jones* (1996) 13 Cal.4th 552, 561.) The defendant must overcome presumptions that counsel was effective and that the challenged action might be considered sound trial strategy. (*Ibid.*) In order to prevail on an ineffective assistance of counsel claim on appeal, the record must affirmatively disclose the lack of a rational tactical

purpose for the challenged act or omission. (*People v. Majors* (1998) 18 Cal.4th 385, 403.)

Defendant has not satisfied his burden with respect to either alleged instance of ineffective assistance. Defense counsel told the court he had retained experts: a contractor and one or more appraisers. As far as the record reveals, defendant's assertion that these experts did not "review the estimates and invoices provided by the Farmers Insurance expert and compare that to the actual worked [*sic*] performed" is based only on speculation. The experts may have performed such a review and their opinions may not have benefited defendant. Similarly, the opinions rendered by the defense experts may not have been favorable to defendant. Thus, defendant has not shown objectively unreasonable performance by counsel. In addition, because the substance of the experts' opinions is not in the appellate record, defendant cannot demonstrate prejudice.

With respect to his claim regarding counsel's failure to object to Sherman's testimony, defendant fails to note that counsel objected on hearsay and foundational grounds when the prosecutor asked Sherman whether Bower considered documents supplied by Antaki and Antaki's contractor in determining replacement costs. The court overruled the objection, saying, "Given the broad discretion the court has to admit evidence at a restitution hearing, reliable hearsay, I believe, is included and it's appropriate. This testimony is appropriate under those circumstances." Accordingly, it is not reasonably probable that defendant would have obtained a more favorable result if counsel had objected more frequently because the trial court would not have excluded Sherman's testimony. Indeed, it appears the trial court acted within its discretion in considering it. (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1048; *People v. Cain* (2000) 82 Cal.App.4th 81, 87.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.