

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

PIUS OKAFOR et al.,

Plaintiffs and Respondents,

v.

ALLISON ANADI et al.,

Defendants and Appellants.

B265874

(Los Angeles County  
Super. Ct. No. BC497264)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rafael Ongkeko, Judge. Affirmed.

Tepper Law Firm and Nicholas Tepper for Defendants and Appellants.

Neufeld Marks, Timothy L. Neufeld and Yuriko M. Shikai for Plaintiffs and Respondents.

---

Plaintiffs are members of a California nonprofit public benefit corporation. They filed a derivative action against several corporate officers for conversion of corporate funds and related claims. Following a bench trial, the court entered judgment for plaintiffs and ordered defendants to reimburse the funds owed to the corporation. The court also issued an injunction requiring defendants to relinquish their positions with the corporation; cease acting as officers or directors of the corporation; turn over the books, records, and financial accounts necessary to manage the corporation; and cease interfering with the lawful operation of the corporation.

In this appeal from the judgment, defendants contend plaintiffs lack standing, the judgment is not supported by substantial evidence, and the trial court erred by failing to honor a settlement agreement entered by the parties before judgment was entered. Finding no error, we affirm. The motion for sanctions on appeal is denied.

## **FACTS AND PROCEDURAL BACKGROUND**

The Ananbra State Association USA (ASA/USA or association) provides humanitarian aid, primarily medical care, in Ananbra, Nigeria.<sup>1</sup> ASA/USA has over 15 local chapters throughout the United States.

ASA/USA began as an unincorporated association and adopted a written constitution in 2002. Five years later, ASA/USA sought status as a tax exempt charitable corporation. It filed articles of incorporation in California under the California Nonprofit Public Benefit Corporation Law (Corp. Code, § 5110 et

---

<sup>1</sup> In December 2014, ASA/USA moved to intervene in this case. The trial court denied the motion in February 2015.

seq.) and adopted bylaws in accordance with that statute in 2007. ASA/USA applied for tax exempt status with the Internal Revenue Service (IRS) (26 U.S.C. § 501(c)(3)) and the California Franchise Tax Board (FTB) (Rev. & Tax. Code, § 23701, subd. (d)), and submitted the 2007 articles and bylaws to the IRS and FTB. Tax exempt status was granted by IRS in 2007, and by FTB in 2008.

In 2010, ASA/USA's corporate status was suspended. At considerable expense, the association managed to have its corporate status, thus its tax-exempt status, revived in November or December 2010.

In 2012, plaintiffs Christopher Ikeanyi, then assistant secretary of the ASA/USA board,<sup>2</sup> and Pius Okafor, then chairman of that board,<sup>3</sup> received information of financial improprieties. Plaintiffs were informed that a \$60,000 donation to ASA/USA had been deposited into the personal account of Dr. Allison Anadi, then president of the national board, and the association's assets were not being properly preserved and accounted for by the association's treasurer, Olisa Oraleosi, and financial secretary, Victor Nwanso. Plaintiffs requested a complete accounting of the finances of the association, but their request was denied.

---

<sup>2</sup> Ikeanyi became a member of the Southern California chapter of ASA/USA in 2004, and was elected assistant secretary of the national board of directors in October 2010.

<sup>3</sup> Okafor became a member of a local chapter of ASA/USA in 2006, and was elected chairman of the national board of directors in 2011.

Plaintiffs filed the present lawsuit against defendants Anadi, Oraleosi, Nwanso, and Jonathan Okafor, then secretary of ASA/USA,<sup>4</sup> in December 2012. None of the defendants is a California resident: Anadi lives in Louisiana; Oraelosi is from Georgia; Nwanso resides in Tennessee; and defendant Okafor lives in Virginia.

Plaintiffs sought relief in the form of “Enforcement of Corporate By-Laws,” “Enforcement of Inspection Rights re Association Books, Records, and Materials,” and “Preliminary and Permanent Injunction.” In essence, they sought to have defendants step down from the board and turn over the association’s financial records and accounts, and to have the association conduct new elections.

The remaining causes of action—a claim for declaratory relief and a derivative claim for damages for conversion—sought to recover the \$60,000 donation that had been deposited into Anadi’s personal account. Arguing they had done nothing wrong, defendants cited the broad powers granted to the president in the 2002 constitution under which they claimed the president had authority to act with little oversight by or accountability to the board, and hence no conversion of funds had occurred.

Plaintiffs argued that Anadi had wrongfully taken funds from the association in violation of the 2007 articles and bylaws, and that by doing so he had jeopardized the association’s tax exempt status. In the derivative cause of action for conversion, plaintiffs sought the return of misappropriated funds.

---

<sup>4</sup> Plaintiff Pius Okafor and defendant Jonathan Okafor are not related. To avoid confusion, we will refer to them as plaintiff Okafor and defendant Okafor.

The court conducted a bench trial over the course of two days in August 2014. The record on appeal does not contain a reporter's transcript of the trial proceedings. Plaintiffs submitted numerous pieces of correspondence, corporate documents, and emails. Plaintiffs and three other witnesses testified in court. Defendants presented no trial witnesses.

After the matter had been taken under submission, defendants filed a "Memorandum of Understanding" signed by plaintiff Okafor and Anadi. The memorandum stated in relevant part that, "[b]oth parties agree to mutually resolve all pending litigation issues between them and others and issues relating to legal fees." The next day, plaintiffs filed an objection, stating the memorandum should not have been filed with the court, and that it did not constitute a settlement, but was merely an agreement to "try to resolve the case."

The trial court issued an order to show cause as to whether the case should proceed to judgment or be reopened in light of the memorandum. Later, both parties informed the court in separate documents that there had been no settlement. The trial court then issued its statement of decision and judgment.

The court's decision resolved the following issues relevant to this appeal.

*Standing.* The court found that both plaintiffs had standing to bring the action as members of the association under section 5121, subdivision (d)<sup>5</sup> and section 5056<sup>6</sup> of the

---

<sup>5</sup> Subdivision (d) of section 5121 provides: "Upon the change of status of an unincorporated association to a corporation pursuant to subdivision (a), the property of the association becomes the property of the corporation and the members of the

Corporations Code. It also found that both plaintiffs had been members of the association prior to and following its incorporation.

*The 2007 Articles and Bylaws.* The court found the articles and bylaws had been duly adopted by the corporation's board in 2007, and would remain the governing documents of the association until some further action is taken pursuant to the articles and bylaws.

The court summarized the testimony as follows: "Dr. Anakwenze testified that he was instrumental in incorporating ASA USA in California as of August 8, 2007. This is the date when ASA USA's articles of incorporation were filed with the California Secretary of State as a 501(c)(3) nonprofit public benefit corporation. (Ex. 1.) Dr. Anakwenze testified that after its incorporation, for the first time, ASA USA became a tax-exempt organization and was able to receive tax-deductible donations through its own taxpayer identification number, having received formal exemption letters from the IRS and Franchise Tax Board. (Exs. 3 and 4.)

---

association who had any voting rights of the type referred to in Section 5056 become members of the corporation."

<sup>6</sup> Subdivision (a) of section 5056 provides in relevant part: "‘Member’ means any person who, pursuant to a specific provision of a corporation’s articles or bylaws, has the right to vote for the election of a director or directors . . . . ‘Member’ also means any person who is designated in the articles or bylaws as a member and, pursuant to a specific provision of a corporation’s articles or bylaws, has the right to vote on changes to the articles or bylaws."

“Pursuant to the articles and bylaws, Dr. Anakwenze and his Inglewood, California office were designated as the agent for service of process and principal office, respectively. Dr. Anakwenze testified that the bylaws were adopted at a meeting of ‘my team,’ the board of directors, held on August 20, 2007. (Ex. 2, p. 26.) . . . . Dr. Anakwenze testified that the articles and bylaws were approved at the October, 2007 national convention, and again made known in the next convention in October, 2008. It is noteworthy that there is no evidence of any further amendments to the 2002 constitution after the 2005 convention. The evidence regarding the adoption of the bylaws preponderates in favor of Plaintiffs.”

*Tax Exempt Status.* The court found it significant that the board had adopted the 2007 articles and bylaws in order to comply with the requirements of the California Nonprofit Public Benefit Corporation Law. Following the suspension of ASA/USA’s corporate status in 2010, efforts made to reinstate the association’s tax exempt status reflected the board’s desire to maintain that status. The court found that after Anadi took office, “it became a top priority of the new administration to make sure the association was and is in compliance with IRS rules.’ (Ex. 34.)” “The evidence is overwhelming that the members wanted, even at great expense, to remain a tax-exempt corporation pursuant to the 2007 filing and therefore are deemed to have ratified its incorporation and all governing documents.”

*The 2002 Constitution.* The court rejected the defense theory that the 2002 constitution conferred such broad authority to the president that the claim of conversion must fail. The court found that defendants had violated several applicable provisions of the 2002 constitution. These prohibited misappropriation of

funds, and required proper handling and record keeping, detailed financial reports, and joint signatures for financial withdrawals, endorsements, negotiations, or cashing of the association's funds and bank accounts.

*Statutory Violations.* The trial court also found that defendants had violated several statutes as a result of their improper distribution of funds without adequate explanation and controls (Corp. Code, § 5410), the inadequate maintenance of books and records (*id.*, §6320, subd. (a)(1)), and the denial of requests to inspect records (*id.*, §§ 6333, 6334). It concluded that each of these statutory violations also constituted a violation of the 2002 constitution and the 2007 bylaws.

*Conversion.* The court found for plaintiffs on the derivative claim for conversion. It stated that “[r]egardless of which governing document applies, the California nonprofit public benefit corporation statutes apply to Plaintiffs’ derivative cause of action (5th) for conversion (or improper corporate distribution to defendants). Thus, on their conversion cause of action, the court also finds for the Plaintiffs. The evidence regarding unauthorized expenditure and improper check disbursements (one signatory only) made out to cash without proper receipts or vouchers speak for themselves. (Ex. 96.) There is an absence of proof of the maintenance of books and records and accurate financial statements. Plaintiffs have complied with Corporate Code section 5710(b) by alleging they were members of ASA USA during the time of the Anadi administration and gave proper notice to the corporation of its claims made in the complaint, showing that further efforts were futile as they were either ignored or rebuffed by the Anadi adminsitraiton. Given ASA USA’s corporate status under California law, the defendants and



the nominal corporate defendant ASA/USA cannot hide behind the 2002 constitution and the ‘dismiss the case’ resolution to override Plaintiffs’ derivative claim.”

*Calculation of Damages.* The court found that in violation of the California Nonprofit Public Benefit Corporation Law, the 2002 constitution, and the 2007 articles and bylaws, defendants had engaged in “unauthorized expenditures and improper check disbursements (one signatory only) made out to cash without proper receipts or vouchers.” Defendants did not keep proper books, records, and financial statements. The association’s cash balance in April 2011 was \$62,436.59, but fell to \$1,590 by the end of 2011 when Anadi’s administration took office.

The court found that because the financial documents necessary to compute damages were within the exclusive knowledge and possession of defendants, plaintiffs were not required to prove the amount of damages with absolute certainty. (Citing *GHK Associates v. Mayer Group, Inc.* (1992) 224 Cal.App.3d 856, 873 [“Where the *fact* of damages is certain, the amount of damages need not be calculated with absolute certainty. [Citations.]”].)

Based on the “calculations, cross-referencing (Exs. 37, 59, and 96), and testimony given by Pius Okafor,” the trial court concluded that defendants were liable to the corporation for the following amounts:

Anadi	\$81,502.00
Oraelosi	\$47,494.00
J. Okafor	\$ 1,800.00
Nwanso	\$ 1,362.00

*Judgment.* The court entered judgment for plaintiffs on May 15, 2015.

As to the first cause of action for enforcement of corporate bylaws, the court stated that the 2007 bylaws are to be followed and enforced; that the association must take all steps required to elect a new board in accordance with the bylaws and California law; that defendants have vacated their positions on the board and are not permitted to make any decisions or take any action on behalf of the association; that defendants are no longer entitled to maintain control of the books, records, financial accounts and other materials necessary to manage the association.

As to the second cause of action for enforcement of inspection rights, the court directed that the books, records, and other materials of the association be turned over to plaintiffs.

On the third cause of action, the court entered a declaratory judgment establishing that the 2007 bylaws are the governing document of the association; that defendants are not lawful or authorized representatives of the association, nor are they directors or officers of the association; that defendants do not hold any office or position within the association, and are not permitted to make decisions or take actions on behalf of the association; and that the association is to immediately conduct new elections pursuant to the bylaws and California law.

As to the fourth cause of action, the court issued a permanent injunction that enjoined defendants from acting, or purporting to act, as officers or directors of ASA/USA; making any decisions or taking any action on behalf of the association; maintaining control of the books, records, financial accounts and other materials necessary to manage ASA/USA; using or authorizing the use of any monies of the association, property, or assets for any purpose; engaging in any further violations of the

bylaws and California law with regard to the association; and interfering with the lawful operation of the association in accordance with the bylaws and California law.

On the fifth cause of action for conversion, the court ordered defendants to pay damages to the nominal defendant, ASA/USA, in the amounts previously stated.

Following the denial of their motion for new trial, defendants filed a timely notice of appeal from the judgment.

### DISCUSSION

“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.]” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

Defendants have not provided a reporter’s transcript of the trial proceedings nor a settled statement. The absence of a reporter’s transcript or settled statement hampers our ability to review the record, and because we are required to presume the judgment is correct, defendants face an uphill battle in establishing the existence of prejudicial error. (See *Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039; *Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435.)

#### I

Based on a purported finding that the 2007 bylaws “were never utilized or implemented,” defendants argue it is reasonable to infer that the bylaws were repealed through their continued nonusage, and thus they are unenforceable. Defendants are incorrect.

The purported finding—that the 2007 bylaws “were never utilized or implemented”—does not exist. Defendants have taken a passage in the statement of decision out of context. After referring to Dr. Anakwenze’s testimony that he did not “‘have enough knowledge’ to implement [the bylaws] ‘completely’ during his term,” the trial court went on to state that even assuming the bylaws had been “ignored or used infrequently,” they remained enforceable because they had not been amended or repealed. The court further stated that even without the bylaws, it would reach the same result under the provisions of the California Nonpublic Public Benefit Corporations Law and the 2002 constitution. Defendants have made no effort to explain how or why the trial court’s reasoning is incorrect.

## II

Defendants contend the trial court erred by failing to enforce the memorandum of understanding, which constituted “a binding contract replete with mutual consideration and binding effects.” The contention is incorrect, for several reasons.

First, the memorandum of understanding did not create a binding settlement agreement. By its terms, it simply created an agreement to try to settle the case. Second, both sides later informed the court that they had tried but failed to reach a settlement. That ended the settlement negotiations, and the trial court properly concluded the trial.

Because the matter had not been settled, there was no loss of jurisdiction, and defendants are incorrect in their assertion that the trial court “had no jurisdiction” to enter judgment. Having informed the trial court that the parties had failed to reach a settlement, defendants are precluded from taking the opposite position on appeal. ““The doctrine of judicial estoppel,

sometimes referred to as the doctrine of preclusion of inconsistent positions, is invoked to prevent a party from changing its position over the course of judicial proceedings when such positional changes have an adverse impact on the judicial process. . . . ‘The policies underlying preclusion of inconsistent positions are “general consideration[s] of the orderly administration of justice and regard for the dignity of judicial proceedings.” . . . Judicial estoppel is ‘intended to protect against a litigant playing “fast and loose with the courts.”’” [Citation.] ‘It seems patently wrong to allow a person to abuse the judicial process by first [advocating] one position, and later, if it becomes beneficial, to assert the opposite.’ [Citation.]’ (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181.)

### III

The trial court found that plaintiffs had standing to bring the action under sections 5121 and 5056 of the Corporations Code. Defendants seek to challenge that finding on appeal, stating: “The only evidence of the Plaintiffs’ membership related to before formal incorporation. There was no evidence supporting the court’s conclusion these two particular Plaintiffs were ever members after formal ASA/USA incorporation. As such they each lacked standing to sue and the subject judgment is void.”

As previously discussed, the record does not include a reporter’s transcript of the trial proceedings. The contention therefore fails. “It is the appellant’s affirmative duty to show error by an adequate record. [Citation.] ‘A necessary corollary to this rule [is] that a record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may

provide grounds upon which the decision of the trial court could be affirmed.’ [Citation.]” (*Osgood v. Landon, supra*, 127 Cal.App.4th at p. 435.)

#### IV

As to damages for conversion, defendants contend there is “no evidence” that they “personally benefitted or took the money as determined by the trial court.” Because it is impossible to review the trial record without a reporter’s transcript or settled statement, defendants have failed to establish reversible error.

#### V

Finally, we turn to plaintiffs’ motion for sanctions against defendants and their attorney for filing a frivolous appeal. In their motion, plaintiffs argued that the appeal was filed solely to delay the enforcement of judgment. They argued that defendants were trying to “delay the Judgment so that they do not have to turn over ASA USA’s books and records, or to pay to ASA USA the damages for conversion that they have caused.”

We issued an order to show cause and requested written opposition. In their opposition, defendants deny the appeal was filed to delay the enforcement of the judgment. According to defendants, there is no stay in effect and the appeal does not preclude the enforcement of the judgment. Anadi provided a declaration in which he stated that his attorney had informed him that the appeal would not preclude the enforcement of the judgment, and that “[w]hile many of the legal arguments presented on appeal are a bit beyond my grasp, I fully understand the four issues presented in the AOB. I fully agree that each of them has merit and that each of them should be reversed on appeal. [¶] . . . There were no ulterior motives in filing this appeal. The only thing we wanted was for this Court

to review the trial court's decisions and the supporting evidence, if any, and to either confirm it or overturn it. That is the only reason we filed this appeal."

Because no bond was posted, the judgment for payment of damages remains enforceable. (Code Civ. Proc., § 917.1, subd. (a) [judgment for payment of money is not stayed on appeal unless an undertaking is given].) The same also is true as to the injunction requiring defendants to turn over the books and financial records of the association. (Code Civ. Proc., § 917.2 [judgment requiring transfer of personal property, including documents, is not stayed pending appeal].)

Although the appeal lacked merit, we are not persuaded it was filed solely for purposes of delay. The request for sanctions is denied.

#### **DISPOSITION**

The judgment is affirmed. The motion for sanctions is denied. Plaintiffs are entitled to recover their costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.