Filed 7/16/18 New Life Oasis Church v. Central Korean Evangelical Church CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

NEW LIFE OASIS CHURCH, Plaintiff and Respondent, v. CENTRAL KOREAN EVANGELICAL CHURCH et al., Defendants and Appellants.	B281703 (Los Angeles County Super. Ct. No. BC576279)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark V. Mooney, Judge. Affirmed.

Law Offices of Steven C. Kim & Associates, Steven C. Kim and Gabriel Colorado, for Defendants and Appellants.

Law Offices of Timothy V. Milner, Timothy V. Milner, for Plaintiff and Respondent.

This appeal arises out of a protracted dispute regarding the ownership of real property located at 1035 South Oxford Avenue, in the Koreatown neighborhood of Los Angeles. In two prior cases—one appeal and one mandamus proceeding—we adjudicated issues related to the ownership of the subject property and an order appointing a partition referee. (*Pacific Southwest District of Church of Brethren v. Church of the Brethren, Inc.* (June 23, 2014, B247729) [nonpub. opn.] (*Pacific Southwest*); *Central Korean Evangelical Church v. Superior Court* (July 15, 2015, B260831) [nonpub. opn.] (*CKEC v. Superior Court*).)

This case involves the interpretation of a purchase option contained in a lease agreement between respondent, New Life Oasis Church (NLOC), and appellants the Central Korean Evangelical Church (CKEC) and its pastor, Jang Kyun Park. The trial court found that the parties entered into a valid lease with an option to purchase the subject property, that NLOC properly exercised this option, and that CKEC breached the agreement. Accordingly, judgment was entered in favor of NLOC on its cause of action for breach of contract, ordering specific performance of the lease option. The court found in favor of CKEC with respect to NLOC's remaining causes of action.

Appellants appeal from that judgment, contending (1) the court's statement of decision was deficient, (2) CKEC did not breach the lease because it was impossible to comply with the purchase option after this court held, in a prior opinion, that there was no basis for a partition sale, (3) the court improperly reformed the terms of the purchase option, (4) specific performance was an inappropriate remedy for the breach, and (5)

the court erroneously accepted an expert witness report and his testimony regarding the value of the property. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

The Church of the Brethren is a Protestant church with a national office in Illinois. Local churches are subordinate to the district in which they are geographically located. Pacific Southwest District of the Church of Brethren (PSWD) is the district controlling local churches in California. CKEC is incorporated as an independent church in the State of California.

The subject property consists of two adjoining parcels. Parcel 1 is comprised of lot 44, on which the church parking lot is located. Parcel 2, on which the church building stands, consists of lots 48 and 49. In 1985, Park purchased lots 48 and 49, holding it in trust for CKEC. Starting in 1985, Park initiated conversations with various Church of the Brethren leaders about establishing a relationship between the two churches. CKEC ultimately joined the denomination in 1989.

The following year, PSWD paid $250,000 and one-half of the closing costs for the purchase of lot 44, and was listed as its sole title owner. Lot 44 was used as a parking lot for the church. In 1992, PSWD transferred lot 44 to itself and CKEC, and the three lots were consolidated. That same year, CKEC executed a "Covenant and Agreement to Hold Property as One Parcel" (Covenant), in which it was agreed that the three lots shall be held as one parcel, and not be sold separately. In December 1992, PSWD transferred lot 44 to itself and CKEC. CKEC voted to disassociate from the Church of the Brethren in 2007.

In 2011, NLOC and CKEC entered into a lease agreement for the subject property, with a purchase option. The option

permitted NLOC to purchase the property for $2,550,000 within 120 days prior to the end of the lease term. The lease and option to purchase was for an initial seven-month term, but it was extended "until the opening of the escrow date" in a subsequent addendum. NLOC attempted to exercise the option to purchase, but the sale did not occur.

Prior Proceedings

In 2011, PSWD sued CKEC for breach of trust, and sought injunctive and declaratory relief. PSWD took the position that the Church of the Brethren's Manual (Manual) impressed a trust on local church property in favor of the general church. CKEC cross-complained for partition by sale, arguing that it and PSWD each owned a 50 percent undivided interest in parcel 1 based on the 1992 deed, which transferred title to both.

The trial court entered judgment in favor of CKEC. It determined that Park owned parcel 2 (lots 48 and 49) in trust for the benefit of CKEC, and that CKEC and PSWD owned parcel 1 (lot 44) as tenants in common. The court also determined that a sale of the church property and division of the proceeds would be more equitable than division in kind, and ordered the property to be sold to NLOC for $2.5 million, unless PSWD obtained a better offer within 90 days.

On appeal, we held that the Manual created an enforceable trust in favor of the Church of the Brethren in lot 44, but not in lots 48 and 49. Thus, we affirmed the judgment as to lots 48 and 49, reversed as to lot 44, and remanded the case to the trial court for redetermination of PSWD's and CKEC's respective shares in the proceeds from the sale of the property.

On remand, the court issued an interlocutory judgment of partition and ordered the appointment of a partition referee.

Meanwhile, CKEC and Park filed a petition for writ of mandate with this court arguing the trial court improperly appointed a partition referee and reopened issues resolved in the prior judgment, which we had partially affirmed on appeal. We concluded a partition action could not be maintained since, in the prior appeal, we held that the parties do not have a common undivided interest in the church property. Accordingly, we issued a writ of mandate directing the court to vacate all judgments and orders related to partition or approving a partition sale, and to enter a judgment declaring PSWD to be the sole owner of lot 44, and CKEC to be the sole owner of lots 48 and 49.

Instant Proceedings

Three months prior to the issuance of our writ of mandate, NLOC filed a complaint alleging breach of contract and seeking declaratory relief. NLOC alleged appellants failed to honor the exercise of the purchase option. Among other prayers for relief, NLOC sought specific performance of the option.

The trial court conducted a non-jury trial. It found that NLOC properly exercised its option to purchase parcel 2 from CKEC under the lease agreement, that CKEC breached that agreement, and that NLOC is entitled to specific performance of the purchase option in exchange for $820,000.[1] The court found in favor of CKEC as to NLOC's remaining causes of action for

[1] The purchase price for all three lots was $2.55 million. The court determined that the fair market value of lot 44 was $1.33 million. Thus, after deducting the value of lot 44 from the purchase price, along with NLOC's $400,000 down payment, the remaining sum to be paid for lots 48 and 49 was $820,000.

fraud and fraud in the inducement. NLOC was deemed to be the prevailing party.[2] Appellants filed a timely notice of appeal.

DISCUSSION

I

Appellants contend the trial court did not address disputed issues of fact in its statement of decision, thus precluding our deference on appeal under Code of Civil Procedure section 634.[3]

"In reviewing a judgment based upon a statement decision following a bench trial, we review questions of law de novo. [Citation.] We apply a substantial evidence standard of review to the trial court's findings of fact. [Citation.] Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings. [Citation.]" (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981.)

---

[2] CKEC separately appealed the subsequent award of costs and attorney fees. That matter is pending before this court in case No. B284456.

According to NLOC's brief, CKEC sold lots 48 and 49 to NLOC during the pendency of this appeal. The parties do not address whether the sale moots appellants' claims. We presume this appeal is not moot since material questions remain regarding the validity of the attorney's fees award. (See *Viejo Bancorp, Inc. v. Wood* (1989) 217 Cal.App.3d 200, 205 [appeal will not be dismissed as moot if "any material question remains to be determined"].)

[3] Further undesignated statutory references are to the Code of Civil Procedure.

"'A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.' [Citation.] Specifically, '[u]nder the doctrine of implied findings, the reviewing court must infer, following a bench trial, that the trial court impliedly made every factual finding necessary to support its decision.' [Citation.]" (*Thompson v. Asimos*, *supra*, 6 Cal.App.5th at p. 981.)

"When a proper request for a statement of decision has been made, the scope of appellate review may be affected. [Citation.] Under section 632, upon a party's request after trial, the court must issue a statement of decision 'explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial.' And under section 634, if the statement of decision does not resolve a controverted issue or is ambiguous, and the omission or ambiguity was brought to the attention of the trial court, 'it shall not be inferred on appeal . . . that the trial court decided in favor of the prevailing party as to those facts or on that issue.' [Citations.]" (*Thompson v. Asimos*, *supra*, 6 Cal.App.5th at p. 981.)

However, the court's failure to find on an immaterial issue is not error. (*Hellman v. La Cumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224, 1230.) "The trial court need not discuss each question listed in a party's request; all that is required is an explanation of the factual and legal basis for the court's decision regarding the principal controverted issues at trial as are listed in the request. [Citation.]" (*Ibid.*)

Following trial, the court issued a joint tentative and proposed statement of decision.[4] (Cal. Rules of Court, rule 3.1590.) Appellants filed their objections to the proposed statement of decision, listing various deficiencies. (Cal. Rules of Court, rule 3.1590(g).) Pertinent here, appellants asserted the statement failed to address (1) how they breached the option agreement, (2) their defense of impossibility of contractual performance, and (3) whether appellants satisfied a condition precedent to the sale. The trial court subsequently entered judgment in favor of NLOC and issued a final statement of decision, which did not address appellants' objections.

The trial court was not obligated to specifically address each of appellants' affirmative defenses. (See *Golden Eagle Ins. Co. v. Foremost Ins. Co.* (1993) 20 Cal.App.4th 1372, 1380 ["statement of decision is sufficient if it fairly discloses the court's determination as to the ultimate facts and material issues in the case"]; *Nunes Turfgrass, Inc. v. Vaughan-Jacklin Seed Co.* (1988)

---

[4] This approach did not comply with the Rules of Court. First, the trial court is to announce its tentative decision. (Cal. Rules of Court, rule 3.1590(a).) Second, either party may request a statement of decision, identifying the principal controverted issues to be addressed. (Cal. Rules of Court, rule 3.1590(d).) Any party may make proposals as to the content of the statement of decision. (Cal. Rules of Court, rule 3.1590(e).) Third, the court shall prepare and serve a proposed statement of decision and a proposed judgment. (Cal. Rules of Court, rule 3.1590(f).) Fourth, any party may object to the proposed statement of decision or judgment. (Cal. Rules of Court, rule 3.1590(g).) The court may, but is not required to order a hearing on proposals or objections to a proposed statement of decision. (Cal. Rules of Court, rule 3.1590(k).) Finally, the court issues its judgment. (Cal. Rules of Court, rule 3.1590(l).)

200 Cal.App.3d 1518, 1525 ["the trial court need not address each question listed"].) Although the trial court did not identify how appellants breached the option contract, the breach was evident because CKEC refused to honor the purchase option.

Moreover, any arguable error based on the court's failure to address the breach was harmless. Appellants do not challenge the sufficiency of the evidence supporting the judgment. In fact, they urge us to apply the de novo standard of review to the entire appeal.

"'Without a statement of decision, the judgment is effectively insulated from review by the *substantial evidence rule*,' as we would have no means of ascertaining the trial court's reasoning or determining whether its findings on disputed factual issues support the judgment as a matter of law. [Citation.]" (*Thompson v. Asimos*, *supra*, 6 Cal.App.5th at p. 982, emphasis added.) De novo is the appropriate standard when our review is limited to the construction of the express terms of a written instrument. (*Singh v. Singh* (2004) 114 Cal.App.4th 1264, 1293.) Appellants do not expressly challenge the sufficiency of the evidence supporting the judgment, thus, any purported deficiencies in the statement of decision are harmless.

II

Appellants contend they did not breach the contract because it was impossible to comply with the purchase option after this court determined, in *Central Korean*, *supra*, B260831, that there was no basis for a partition. We disagree. The lease gave New Life the option to purchase "the Leased Premises" with written notice. The "Leased Premises" are defined as the real and personal property located at 1035 South Oxford Avenue, Los Angeles, CA 90006. The option set the purchase price at

$2,550,000. The lease included a security deposit of $400,000, which was to be converted into a down payment if NLOC purchased the property from CKEC.[5] However, the lease option expressly stated that "Lot 44 is co-own[ed] with Pacific Southwest District of the Church of Brethren," and that if the option is exercised, "title must free and clear at the close of escrow."

Appellants contend it was impossible to comply with the purchase option because the parties agreed the three lots were to be sold as a single parcel. They cite no legal authority in support of their position. (Cal. Rules of Court, rule 8.204(a)(1)(B).) "[A]n appellant must do more than assert error and leave it to the appellate court to search the record and the law books to test his claim. The appellant must present an adequate argument including citations to supporting authorities and to relevant portions of the record. [Cjitations.]" (*Yield Dynamics, Inc. v. TEA Systems Corp*. (2007) 154 Cal.App.4th 547, 557.) In any event, the argument is incorrect as a matter of law. In 1992, CKEC executed a "Covenant and Agreement to Hold Property as One Parcel" (covenant), in which they agreed that lots 44, 48, and 49 "shall be held as one parcel and no portion shall be sold separately." The covenant was executed for the purpose of "creating on building site." The covenant runs with the land, meaning it binds all future assignees. (Civ. Code, § 1460; *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal.4th 345, 353.)

In our 2015 opinion, we explained: "The covenant was not and cannot be the basis for the partition action because it does not create undivided co-ownership interests in all three lots. . . . Unless released by the City of Los Angeles, the covenant binds

---

[5] CKEC acknowledged receipt of the $400,000 security deposit/down payment.

CKEC, but on its face it does not bind PSWD." (*CKEC v. Superior Court*, *supra*, B260831.) Our prior opinion did not address the first line of the covenant, in which CKEC certified that it was the legal owner of lot 44. It was not. (*Ibid.* [declaring that PSWD is the sole owner of lot 44].) The covenant is therefore invalid with respect to lot 44, and it did not render the lease option impossible to perform.

Second, appellants contend that the sale was barred because "free and clear" title, an essential condition of the option, was not satisfied. Paragraph 14(c) of the purchase option states: "Lot 44 is co-own[ed] with Pacific Southwest District of the Church of the Brethren, . . . If purchased by Tenant, title must free and clear at the close of escrow." Appellants maintain they were not obligated to sell the property because this precondition did not occur. Appellants forfeited this argument by failing to raise it as an affirmative defense in their answer. (*California Academy of Sciences v. County of Fresno* (1987) 192 Cal.App.3d 1436, 1442.)

Third, appellants contend the lease option was not exercised prior to its expiration. The lease was executed on October 21, 2011, with an "Initial Term" of seven months.[6] The purchase option was to be exercised "at least 120 days prior to the end of the Lease Term." On November 29, 2011, NLOC submitted a proposed purchase agreement to CKEC. Two days later, CKEC's counsel sent a letter to PSWD requesting that it accept the proposed sale.

---

[6] On February 17, 2012, the parties executed an addendum extending the "initial term and option to purchase [] until the opening of the escrow date from the execution date."

Again, appellants forfeited this argument by failing to raise it as an affirmative defense in their answer. (*California Academy of Sciences v. County of Fresno*, *supra*, 192 Cal.App.3d at p. 1442.) On the merits, we conclude NLOC validly executed its purchase option by submitting the proposed purchase agreement. (See *Rollins v. Stokes* (1981) 123 Cal.App.3d 701, 712 [a letter expressing intent to exercise an option contract is sufficient when a contract does not positively require a particular means of communication.) An exercise of the option only required "written notice." NLOC exercised this option well within 120 days prior to the end of the term.

III

Appellants assert "in ordering the sale of parcel 2 only, the trial court improperly reformed the terms of the option, in an attempt to conform the option to circumstances that did not exist at the time the lease was executed." As a basis for their claim, appellants contend "Lot 44 is owned jointly by CKEC and PSWD." This is not correct.

In *CKEC v. Superior Court*, *supra*, B260831, we concluded "CKEC has no ownership interest in lot 44 (parcel 1)." We ordered the trial court to enter a judgment declaring PSWD to be the sole owner of lot 44, and CKEC to be the sole owner of lots 48 and 49. (*Ibid.*) If appellants wished to challenge the validity of our opinion, their remedy was to file a petition for rehearing (Cal. Rules of Court, rule 8.268), request for modification (Cal. Rules of Court, rule 8.264(c)), or petition for review to the Supreme Court (Cal. Rules of Court, rule 8.500). They did not do so.

The trial court found NLOC properly exercised its right to purchase lots 48 and 49 under the lease option. It further concluded, "[t]he insertion of paragraph 14(c) regarding the co-

ownership of lot 44 did not make the cont[r]act impossible to perform. Indeed, the subsequent appellate court decision in the related case renders the paragraph factually inaccurate and legally irrelevant. CKEC was not a co-owner of lot 44 and lot 44 was not CKEC's to sell."

Appellants contend the trial court improperly severed parcel 1 from parcel 2, but it did not. The court merely acknowledged that, in accordance with our 2015 opinion, CKEC has no ownership interest in lot 44. (*Central Korean*, *supra*, B260831.) The court then applied the Restatement of the Law of Contracts, which provides: "A vendor of land who can not perform as agreed by reason of a shortage in area or a defect in title may be decreed to transfer all that is within his power, with compensation or indemnity for the partial breach. The court has wide discretion in the character of the remedy given for the shortage or defect." (Rest., Contracts, § 365, subd. (c), p. 660.) This rule was cited approvingly in *D-K Investment Corp. v. Sutter* (1971) 19 Cal.App.3d 537, 547.

The court correctly found that CKEC was obligated to sell all that was within its power to sell, and it did not abuse its discretion in crafting a remedy for the defect in ownership of lot 44. The court's remedy (offsetting the purchase price with the value of lot 44) effectuated the parties' contractual intent.

IV

Appellants contend specific performance was an inappropriate remedy for their breach of the purchase option because it was not just and reasonable, and the requisite mutuality of remedy was not present. We first note that appellants do not state each point under a separate subheading summarizing the point. (Cal. Rules of Court, rule 8.204(a)(1)(B).)

"'This is not a mere technical requirement; it is 'designed to lighten the labors of the appellate tribunals by requiring the litigants to present their cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass.' [Citations.]" (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) Although we will address appellants' general contention, "we do not consider all of the loose and disparate arguments that are not clearly set out in a heading and supported by reasoned legal argument. [Citation.]" (*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1294.)

"Specific performance of a contract may be decreed whenever: (1) its terms are sufficiently definite; (2) consideration is adequate; (3) there is substantial similarity of the requested performance to the contractual terms; (4) there is mutuality of remedies; and (5) plaintiff's legal remedy is inadequate. [Citations.]" (*Blackburn v. Charnley* (2004) 117 Cal.App.4th 758, 766.) Specific performance can be enforced against a party only if it is "just and reasonable." (Civ. Code, § 3391, subd. (2).) A grant of specific performance is reviewed under the abuse of discretion standard. (*Petersen v. Hartell* (1985) 40 Cal.3d 102, 110.)

As we have discussed, the trial court had the power to order CKEC to convey the extent of the property within its power, and to craft an appropriate remedy for the defect in title to lot 44. (Rest., Contracts, § 365, subd. (c), p. 660; see *D-K Investment Corp. v. Sutter*, *supra*, 19 Cal.App.3d at p. 547.)

Specific performance was just and reasonable under the circumstances because it executed the parties' intent in so far as

the sale of CKEC's ownership interests in the church property. (Civ. Code, § 3391, subd. (2).) Although the sale did not include lot 44, the trial court acted within its discretion by offsetting the purchase price with the value of the lot. (See *D-K Investment Corp. v. Sutter*, *supra*, 19 Cal.App.3d at p. 547, 548 [determination to abate purchase price is well within trial court's equitable powers].)

A buyer may compel specific performance where a seller either has equitable title to property or some interest in the property. (See *Milkes v. Smith* (1949) 91 Cal.App.2d 79, 81–82.) Thus, it was NLOC's option whether to enforce the option agreement notwithstanding CKEC's inability to fully perform its obligations regarding the sale of lot 44.

Turning to mutuality of remedy, appellants assert specific performance was barred because the lease option did not include mutual obligations to specifically perform. "Mutuality of remedy is no longer strictly required under California law. If otherwise equitable, specific performance may be refused only if there is not sufficient assurance that the defendant will receive the performance promised to her." (*Converse v. Fong* (1984) 159 Cal.App.3d 86, 92, citing Civ. Code, § 3386.) Appellants are incorrect that a mutuality of remedy was required.

V

Appellants contend the trial court erroneously accepted the expert testimony of an appraiser regarding the value of lot 44, for two reasons. First, "[t]he complaint determines the scope of a lawsuit, and NLOC's causes of action for breach of contract and fraud did NOT require expert's testimony." Second, the expert's testimony was "seriously flawed."

Appellants were required to make a timely and specific objection to the admissibility of the expert testimony. (Evid. Code, § 353, subd. (a).) "A timely objection allows the trial court to exercise its sound discretion with respect to admissibility of expert testimony. [Citation.]" (*Heiner v. Kmart Corp*. (2000) 84 Cal.App.4th 335, 346.) Appellants do not point to any objection to the expert's testimony. It is appellants' burden to support their argument with citations to relevant portions of the record. (*Yield Dynamics, Inc. v. TEA Systems Corp*., *supra*, 154 Cal.App.4th at p. 557.) In any event, our review of the record reflects no such objection. Thus, this claim of error is forfeited. (See *ibid*.)

DISPOSITION

The judgment is affirmed. Respondent is entitled to costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.