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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

HOWARD MILTON LEWIS et al.,

Plaintiffs and Appellants,

v.

DOUBLE ROCK BAPTIST CHURCH
OF COMPTON et al.,

Defendants and Respondents.

B265019

(Los Angeles County
Super. Ct. No. TC026064)

APPEAL from a judgment of the Superior Court of
Los Angeles County. John Shepard Wiley, Jr., Judge. Affirmed.

Law Offices of Barbara Ann Jackson and Barbara A.
Jackson for Plaintiffs and Appellants.

Tredway, Lumsdaine & Doyle, Matthew L. Kinley,
Jennifer A. Lumsdaine, Brandon L. Fieldsted; and Matthew L.
Kinley for Defendants and Respondents.

This case arises out of the allegation by appellant Howard Milton Lewis (Lewis), a parishioner of Double Rock Baptist Church (Double Rock), that Eugene Joshua Sims (Pastor Sims) embezzled money from Double Rock, and that members of the Double Rock Board of Trustees (Board of Trustees) were complicit. The case also arises out of the allegation that Double Rock breached a contract to pay benefits to the late Joseph L. Holmes (Joseph) and his son, appellant Michael Holmes (Michael). The trial court granted summary judgment in favor of the respondents (Double Rock Parties)¹ on the fraud and related tort claims of Lewis, and on the contract claims by Michael. Lewis and Michael now appeal. We find no error and affirm.

FACTS

Lewis sued the Double Rock Parties on December 23, 2011 (Lewis Action). The parents of Michael, Joseph and Cynthia Holmes (Cynthia), sued the Double Rock Parties on the same date (Holmes Action). At some point, Joseph died and Michael was added to his parents' litigation as a necessary party.² On

¹ The Double Rock Parties are Double Rock, Pastor Sims, Curtis Burries (Burries), Virginia Reed (Reed), Harold Tyler (Tyler), Isaac Sutts (Sutts), Tara Phillips-Worthy (Phillips-Worthy), Diedra Burr-Williams (Burr-Williams), Antoinette Emory (Emory), Eddie Mae Sims, Saundra K. Dendy (Dendy), Norma Matthews (Matthews) and Renewed Life Community Church of Corona (RLCC). Burries, Reed, Tyler, Sutts, Phillips-Worthy, Burr-Williams, Emory, Eddie Mae Sims, Dendy and Matthews were sued, inter alia, as members of the Board of Trustees. We refer to members collectively as the Trustees.

² The parties have not provided an order joining Michael as a necessary party. But in the opposition to the Double Rock Parties' motion for summary judgment, there is a judicial

February 27, 2012, the two actions were deemed related. Then, on October 25, 2013, the actions were deemed related to 63 other actions, which were then consolidated for all purposes.³

The Lewis Action (L.A. Super. Ct. Case No. TC026064)

According to the complaint filed by Lewis (Lewis Complaint): Pastor Sims is the pastor acting as chief executive officer of Double Rock. RLCC, Pastor Sims, Lois Wilkey (Wilkey),⁴ Burries, Reed, Tyler, Sutts, Eddie Mae Sims and Matthews converted \$55,000 from Double Rock and gave the funds to Pastor Sims. In addition, Pastor Sims, Wilkey, Burries, Reed, Tyler, Sutts, and Matthews approved salary and housing allowances for Pastor Sims without following the requirements of Double Rock's Constitution and bylaws. The Board of Trustees' lack of supervision and control eventually made it possible for

admission. Michael stated, "As a beneficiary, Plaintiff Michael Holmes joins in all arguments set forth in this opposition [by Cynthia]. The [trial court] previously ordered Plaintiffs[] to amend in order to included Plaintiff Michael Holmes, a beneficiary of the contract action, as a party to the litigation." The trial court granted summary judgment against Michael on the grounds that he was not a primary beneficiary of the contract at issue.

³ Because they are not included in the appellate record, and because they are germane to the issues raised in Michael's appeal, we take judicial notice of the trial court's minute orders dated February 27, 2012, and October 25, 2013. (Evid. Code, § 452, subds. (c), (d) & (h).)

⁴ Wilkey was allegedly the financial secretary of Double Rock, and the secretary to the Board of Trustees.

Pastor Sims to embezzle \$1.6 million from 2000 to 2009 for his personal use.

The Double Rock Parties used Double Rock's credit cards for their personal use. They were paid in excess of the value of the jobs they performed for various maintenance, secretarial and odd jobs. Pastor Sims converted funds to purchase a home, furnishings, landscaping, cars, clothes, a swimming pool, a Jacuzzi and other items. The Double Rock Parties used Double Rock's credit cards for shopping, vacations and an anniversary party.

In case No. TA107904, Pastor Sims pleaded no contest to embezzling \$874,000 from Double Rock,⁵ and was ordered to pay restitution.⁶ As part of the embezzlement scheme, the Double Rock Parties represented to Lewis that Pastor Sims "was a trustworthy, honorable [p]astor in good standing." Moreover, they failed to disclose to Lewis that they were stealing or allowing Pastor Sims to steal \$874,000. The Double Rock Parties continue to support Pastor Sims working for Double Rock even though the conditions of his probation require that he have no contact with Double Rock. The Double Rock Parties filed a motion with the criminal court to waive restitution. The motion was denied.

Due to the actions of the Double Rock Parties, Lewis was induced to donate, tithe and fundraise. The Double Rock Parties' actions included "written and oral communications which

⁵ Papers filed by Lewis as well as Joseph and Cynthia Holmes stated that Pastor Sims entered his plea on February 2, 2010.

⁶ The restitution order was issued on December 15, 2010.

included untrue statements of material facts and omissions of . . . material facts[] in . . . circumstances . . . which [made the statements] mislead[ing][.]” The Double Rock Parties made statements in a “Business Presentation” to the congregation, and Lewis believed those statements. The Double Rock Parties knew that their representations were false, and intended to deceive Lewis. In addition, the Double Rock Parties failed to disclose that the Trustees were serving as officers of RLCC. Beyond that, the Double Rock Parties “took affirmative steps to conceal the true facts from” Lewis.

At the time the Double Rock Parties made the representations, Lewis was unaware that they were false. Had Lewis “known the actual facts, [he] would not have invested [t]ithes, [o]fferings, and [d]onation[s] in [Double Rock], knowing the monies were not being used for charitable purposes[.]”

On behalf of himself and other members of Double Rock, Lewis alleged causes of action for: (1) injunctive relief, (2) breach of fiduciary duty, (3) conversion, (4) imposition of constructive trust, (5) fraud, (6) violation of Business and Professions Code, section 17200 et seq., (7) accounting, (8) negligence, (9) misrepresentation, (10) misappropriation and self-dealing, (11) unjust enrichment, (12) removal of Pastor Sims and the Trustees from their positions at Double Rock, and (13) intentional infliction of emotional distress.

The trial court denied class certification. It sustained a demurrer without leave to amend as to the causes of action for unjust enrichment and intentional infliction of emotional distress.

The Double Rock Parties moved for summary judgment or, in the alternative, summary adjudication. They argued that a

claim for preliminary and permanent injunction does not exist, and neither does a claim for imposition of constructive trust; the breach of fiduciary duty and negligence claims are barred by the free exercise clauses in the state and federal Constitutions, and because the Double Rock Parties did not wrongfully manage and distribute Double Rock's funds; the conversion and misappropriation claims fail because Lewis cannot establish ownership or right of possession of the money that he gave to Double Rock, nor can he establish lack of consent and wrongful use of a specific, identifiable sum; the fraud and misrepresentation claims fail because Lewis cannot establish justifiable reliance or causation, and because they are barred by the three-year statute of limitations; and Lewis lacks standing to sue for self-dealing and removal.

In the opposition separate statement, it was undisputed by Lewis that he had given money to Double Rock from 2003 to 2012.

The trial court granted summary judgment for the reasons stated in the minute order dated February 6, 2015.⁷

⁷ The parties did not include the February 6, 2015, minute order in the appellate record, and there is no reporter's transcript for the summary judgment hearing. We take judicial notice of that minute order (Evid. Code, § 452, subds. (c), (d) & (h)) because we need to know the grounds for the trial court's decision to grant summary judgment. Whether an appellate court affirms on the trial court's grounds or new grounds will impact appellate procedure, as established by Code of Civil Procedure section 437c, subdivision (m)(2), which provides: "Before a reviewing court affirms an order granting summary judgment or summary adjudication on a ground not relied upon by the trial court, the reviewing court shall afford the parties an opportunity to present their views on the issue by submitting supplemental briefs." Just

Lewis appeals.

The Holmes Action (L.A. Super. Ct. Case No. TC026065)

The Holmes first amended complaint (FAC) filed by Joseph and Cynthia alleged that Joseph was the founding pastor of Double Rock, and served as its pastor from 1960 to 1997. Joseph entered into a retirement contract with Double Rock on April 21, 1996, and signed a settlement agreement with Double Rock on February 15, 2006. Both Cynthia and Michael were listed as third party beneficiaries of the retirement contract. According to the retirement contract, Cynthia and/or Michael were entitled to a cash payment of \$500,000 in the event Joseph died. In November 2009, the Double Rock Parties breached the retirement contract by ceasing to pay retirement benefits to Joseph. On November 23, 2012, Joseph died. Nonetheless, Double Rock failed to make the \$500,000 payment.

The Holmes FAC alleged causes of action for (1) breach of contract, (2) common counts, (3) fraud, (4) intentional interference with prospective economic advantage, (5) negligent interference with business relationship, and (6) negligence. Moreover, it alleged that after Joseph died, Cynthia was appointed Special Administrator of the Estate of Joseph L. Holmes.

The Double Rock Parties demurred, inter alia, to the first and second causes of action due to the failure to add Michael as a necessary party given that he was named in the Holmes FAC as a

as important, we need to determine whether the trial court complied with its responsibility to specify the reasons for its ruling. (Code Civ. Proc., § 437c, subd. (g).)

For efficient discussion of the issues, we set forth the trial court's rulings in connection with our discussion of the causes of action at issue herein.

third party beneficiary of the retirement contract between Double Rock and Joseph.

The trial court ordered Michael added as a plaintiff.

The Double Rock Parties moved for summary judgment against Michael on the grounds that he was not a real party in interest. The trial court granted summary judgment, reasoning, “[The Double Rock Parties] are entitled to summary judgment against Michael Holmes, who has admitted in Separate Statement Fact 101 that [Cynthia] is the primary beneficiary of Joseph Holmes, and that Michael Holmes is not a primary beneficiary.”

Michael filed an appeal from the judgment on June 18, 2015. He filed a second appeal on June 22, 2015. On September 4, 2015, Michael filed an “Abandonment of Appeal” form regarding the appeal of June 22, 2015. Remittitur for the June 22, 2015, appeal was issued on October 19, 2015.

DISCUSSION

I. Standard of Review.

When reviewing an order granting summary judgment, we assess the issues independently, i.e., with no deference to the trial court. (*Moreno v. Quemuel* (2013) 219 Cal.App.4th 914, 917–918.) “First, we identify the issues framed by the pleadings. Next, we determine whether the moving party has established facts justifying judgment in its favor. Finally, if the moving party has carried its initial burden, we decide whether the opposing party has demonstrated the existence of a triable, material fact issue. [Citation.]’ [Citation.]” (*Supervalu, Inc. v. Wexford Underwriting Managers, Inc.* (2009) 175 Cal.App.4th 64, 71.)

II. Lewis.

Lewis argues that the motion for summary judgment should have been denied because none of his claims are barred by the applicable statute of limitations, and there are triable issues as to conversion, fraud, misrepresentation, misappropriation, and self-dealing. In his reply brief, Lewis argues for the first time that there is a triable issue as to breach of fiduciary duty.

We turn to these issues below.

A. Conversion.

The trial court ruled: “Lewis’s [third] cause of action for conversion is based on his claim that ‘Defendants [w]rongfully converted monies that parishioners gave by tithes, offerings, fundraising and donations of over one million dollars[.]’

. . . Lewis admits he turned over funds to Double Rock.

. . . Lewis’s claim for conversion thus fails as a matter of law.”

According to Lewis, the trial court erred because the evidence showed he was misled into turning over funds to Double Rock, allowing the funds to be stolen by Pastor Sims after they were funneled through RLCC. In addition, Lewis argues: “Without [Double Rock] accepting the funds under the agreement to carry out the intended use[,] [Lewis] was not freely giving up his ownership rights to the funds[,] and [Double Rock] wrongfully converted the funds to an unauthorized use.” Both arguments boil down to the assertion that Double Rock misled Lewis into giving the funds, and therefore title never transferred to Double Rock.

The elements of conversion are: the plaintiff owns or has a right to possession of personal property; defendant disposed of the personal property in a manner that is inconsistent with the plaintiff’s rights; and damages. (*Fremont Indemnity Co. v.*

Fremont General Corp. (2007) 148 Cal.App.4th 97, 119.) “Money may be the subject of conversion if the claim involves a specific, identifiable sum; it is not necessary that each coin or bill be earmarked. [Citation.]” (*Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 209.)

“Where plaintiff neither has title to the property alleged to have been converted, nor possession thereof, he cannot maintain an action for conversion.” (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 136.)

The question is whether Lewis had title to or possession of the money, or whether he relinquished both title and possession by making valid gifts. If he made valid gifts, then the trial court did not commit error because Lewis could not establish the requisite title to or possession of the money. If he did not make valid gifts, then the trial court’s ruling is not supported by its logic.

“A gift is a transfer of personal property, made voluntarily, and without consideration.” (Civ. Code, § 1146.) Witkin explains that three things are necessary for a valid gift: there must be an intent on the part of the donor to make an unconditional gift; there must be an actual or symbolical delivery that relinquishes all control; and the donee must signify acceptance. (13 Witkin, Summary of Cal. Law (10th ed. 2005) Personal Property, § 124, p. 140.) A gift is conditional when the donor intends it to be delivered on a future date. (13 Witkin, *supra*, at §§ 124, p. 140, 126, p. 142.) “If the intention is to make a future transfer, there is no gift. [Citations.]” (13 Witkin, *supra*, at § 126, p. 142; *Beebe v. Coffin* (1908) 153 Cal. 174, 177–178.) A gift vests with the donee when it is no longer subject to the donor’s control. (*Id.* at p. 177.)

Lewis fails to establish that any of the necessary elements of a gift are missing. He suggests he did not intend to make unconditional gifts of money because he was deceived. But he misses the point. Even if he was deceived, he was induced into making unconditional gifts. Lewis indicates in his briefs that he gave the money for “specific non-profit needs within the church,” and his “giving was akin to a conditional gift, with the specific intent that he was not giving up ownership of his monies as if he was tossing those funds in the trash.” Thus, he suggests that the money was converted because it was not used as he intended. Because Lewis does not support this argument with law, we deem it abandoned. (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862 (*Nelson*).)

To dispel Lewis’s notion he has a conversion claim, we highlight that his gifts were unconditional because they were present transfers. He may have wished his money to be used in a specific way, but he relinquished all control. To the degree he communicated his wishes, Double Rock may have had a moral obligation to honor those wishes, but it did not have a legal obligation.

Lewis cannot be heard to complain that he was left with no remedy if he was, in fact, deceived by Double Rock. Witkin explains that even if the Civil Code “does not expressly recognize a right to rescind . . . , the cases apply the general law. Hence, if the donor’s intent is induced by mistake or fraud, the gift may be rescinded or set aside in an action in equity. [Citations.]” (13 Witkin, *supra*, Personal Property, § 151, p. 164.) Consequently, Lewis could have sued to rescind or set aside his gifts. A conversion claim was not a viable substitute.

B. Fraud; Misrepresentation.

Regarding the fifth cause of action for fraud and ninth cause of action for misrepresentation, the trial court summarized the allegations supporting these causes of action thusly: Pastor Sims misrepresented himself to be a trustworthy and honorable pastor in good standing, and these misrepresentations induced Lewis into making tithes, offerings and donations. Moving on to its analysis, the trial court determined the following: “[Pastor] Sims’s representations about being honest and trustworthy did not cause Lewis to donate after September 2008, which was the date on which [the evidence shows] Lewis understood [Pastor] Sims to confess that [Pastor] Sims was dishonest and untrustworthy. Despite [Pastor] Sims’s September 2008 confessions, Lewis waited until December 23, 2011 to file suit, but the three-year statute ran in September 2011, months before Lewis filed suit.”

Lewis contends that the trial court erred.

In general, Lewis’s arguments are strewn throughout his briefs in a manner that makes them difficult to understand, let alone pinpoint. Moreover, he makes many factual assertions without providing record citations. We note that California Rules of Court, rule 8.204(a)(B) and (C) provide that every appellate brief should “[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation to authority; and [¶] . . . [s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.” Given the foregoing, we limit our analysis to arguments roughly identified in the headings or subheadings in Lewis’s briefs, and we only consider factual assertions that are

supported by record citations. We consider waived any argument that is not supported by reasoned argument and authorities. (*Nelson, supra*, 172 Cal.App.4th at p. 862.)

The one caveat to the foregoing is that we issued a letter to the parties that stated: “Pursuant to Code of Civil Procedure section 437c, subdivision (m)(2), the court invites the parties to submit letter briefs discussing whether the fifth cause of action for fraud and the ninth cause of action for misrepresentation are barred by the statute of limitations because Howard Lewis was on inquiry notice of the respondents’ alleged fraud and misrepresentation at some time prior to September 2008.” Both parties submitted letter briefs. Our analysis addresses letter brief arguments on the targeted topic.

1. *Relevant Law.*

a. Fraud.

The elements of a fraud cause of action are (1) a misrepresentation by defendant, (2) his or her knowledge of its falsity, (3) his or her intent to induce another’s reliance, (4) justifiable reliance by plaintiff, and (5) damage. (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1255.) For the second element, the following can act as a substitute: “The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact[.]” (Civ. Code, § 1710, subd. (3).) As a result, in fraud causes of action, nondisclosure or concealment of material facts is actionable when there is (1) a fiduciary relationship between the parties or (2) “some other relationship between the plaintiff and defendant in which a duty to disclose can arise.” (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336–337.)

To establish justifiable reliance, the plaintiff must show that: (1) “the matter was material in the sense that a reasonable person would find it important in determining how he . . . would act” and (2) “it was reasonable for the plaintiff to have relied on the misrepresentation.” (*Hoffman v. 162 North Wolfe LLC* (2014) 228 Cal.App.4th 1178, 1194.) “Although a plaintiff’s negligence in failing to discover the falsity of the statement or the suppressed information is not a defense to fraud [citation], a plaintiff’s particular knowledge and experience should be considered in determining whether the reliance upon the misrepresentation or nondisclosure was justified. [Citation.]” (*Ibid.*) Typically, “the question of whether reliance is justifiable is one of fact. [Citations.]” (*Ibid.*) Nonetheless, a court can decide the issue as a matter of law “‘if reasonable minds can come to only one conclusion based on the facts.’ [Citations.]” (*Ibid.*) In circumstances where the absence of justifiable reliance is one of law, the issue can be decided on summary judgment. (*Id.* at pp. 1194–1195.)

Fraud must be pleaded with specificity. (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 184.) ““Thus “the policy of liberal construction of the pleadings . . . will not ordinarily be invoked to sustain a pleading defective in any material respect.” [Citation.] [¶] This particularity requirement necessitates pleading *facts* which “show how, when, where, to whom, and by what means the representations were tendered.” [Citation.]” A plaintiff’s burden in asserting a fraud claim against a corporate employer is even greater. In such a case, the plaintiff must ‘allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or

written.’ [Citation.]” (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.)

b. Fiduciary and Confidential Relationships
with Respect to Clergy.

“[A] fiduciary relationship is a recognized legal relationship such as guardian and ward, trustee and beneficiary, principal and agent, or attorney and client [citation], whereas a ‘confidential relationship’ may be founded on a moral, social, domestic, or merely personal relationship as well as on a legal relationship. [Citations.]” (*Barbara A. v. John G.* (1983) 145 Cal.App.3d 369, 382–383.) The essence of these relationships is that “the parties do not deal on equal terms, because the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert unique influence over the dependent party.” (*Id.* at p. 383.)

“‘[A] confidential relationship . . . is particularly likely to exist when there is a family relationship or one of friendship.’ [Citations.] . . . It is not necessary ‘that there be an extended period of business or accommodation transactions or dealings between persons in order for a confidential relationship to be established between them.’ [Citation.]” (*Estate of Sanders* (1985) 40 Cal.3d 607, 615.) The essential elements are (1) the vulnerability of one party to the other, (2) the empowerment of the stronger party by the weaker, (3) the empowerment was solicited or accepted by the stronger party, and (4) the empowerment rendered the weaker party effectively unable to protect him or herself. (*Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 272 (*Richelle*).)

In various jurisdictions, a confidential relationship has been recognized between pastors and parishioners when there is

a counseling relationship, or when a pastor uses undue influence over a dying parishioner to obtain a gift of property from the parishioner. (*Richelle, supra*, 106 Cal.App.4th at pp. 275–276; *In re Estate of Miller* (1936) 16 Cal.App.2d 141, 148–154.)

Moreover, “there are circumstances in which tort liability for breach of a fiduciary duty may be imposed on a pastor for injuries resulting from the pastor’s sexual misconduct with a parishioner[.]” (*Richelle, supra*, 106 Cal.App.4th at p. 263.) On the other hand, the law establishes that “malpractice claims that may be made against physicians, psychotherapists, and attorneys cannot be made against members of the clergy. There is no such thing in the law as clerical malpractice.” (*Richelle, supra*, 106 Cal.App.4th at p. 269.)

c. Statute of Limitations.

Code of Civil Procedure section 338, subdivision (d) provides a three-year limitation on an “action for relief on the ground of fraud or mistake,” and further provides that the “cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.” In order to overcome the bar of the limitations period appearing on the face of a complaint, the plaintiff must plead facts showing ““(a) [l]ack of knowledge[;] (b) [l]ack of means of obtaining knowledge (in the exercise of reasonable diligence the facts could not have been discovered at an earlier date)[; and] (c) [h]ow and when [he] did actually discover the fraud or mistake. Under this rule[,] constructive and presumed notice or knowledge are equivalent to knowledge. So, when the plaintiff has notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to [his] investigation (such as public records or

corporation books), the statute commences to run.”” (*Parsons v. Tickner* (1995) 31 Cal.App.4th 1513, 1525.) When a plaintiff seeks to avoid the statute of limitations based on delayed discovery, concealment or equitable tolling, he or she must specifically plead facts that would support the theory. (*Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 641.)

“A defendant’s fraud in concealing a cause of action against him will toll the statute of limitations, and that tolling will last as long as a plaintiff’s reliance on the misrepresentations is reasonable. [Citations.]” (*Grisham v. Philip Morris U.S.A., Inc.* (2007) 40 Cal.4th 623, 637.) “Where mere silence and inaction on the part of the alleged concealor are alone relied upon to establish the fraudulent concealment of the existence of a cause of action, it is almost universally held in all jurisdictions that in the absence of the existence of a confidential relationship between the parties, or unless some specially appearing circumstances are shown which of themselves equitably estop a person from relying on his silence or inaction, and which of themselves are sufficient to create on the part of the nonrevealer a positive duty to speak or act, mere silence or inaction, or both, are by themselves insufficient to establish such a concealment.” (*Scafidi v. Western Loan & Bldg. Co.* (1946) 72 Cal.App.2d 550, 562 (*Scafidi*)). “‘The doctrine of fraudulent concealment [for tolling the statute of limitations] does not come into play, whatever the lengths to which a defendant has gone to conceal the wrongs, if a plaintiff is on notice of a potential claim.’ [Citation.]” (*Rita M. v. Roman Catholic Archbishop* (1986) 187 Cal.App.3d 1453, 1460 (*Rita M.*)).

“‘If the plaintiff and defendant are in a confidential relationship there is no duty of inquiry until the relationship is repudiated. The nature of the relationship is such as to cause the

plaintiff to rely on the fiduciary, and awareness of facts which would ordinarily call for investigation does not excite suspicion under these special circumstances. . . . [¶] . . . [¶] However, once the plaintiff becomes aware of facts which would make a reasonably prudent person suspicious, the duty to investigate arises, and he may then be charged with knowledge of facts that would have been discovered by such an investigation. [Citation.]’ [Citation.]” (*Lee v. Escrow Consultants, Inc.* (1989) 210 Cal.App.3d 915, 921 (*Lee*).)

With respect to fraud, the court in *Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1472 explained that a plaintiff must plead “facts showing that he was not negligent in failing to make the discovery sooner and that he had no actual or presumptive knowledge of facts sufficient to put him on inquiry.’ [Citation.] To that end, a plaintiff must allege facts showing ‘the time and surrounding circumstances of the discovery and what the discovery was.’ [Citation.] . . . The discovery-related facts should be pleaded in detail to allow the court to determine whether the fraud should have been discovered sooner. [Citation.]”

“While resolution of the statute of limitations issue is normally a question of fact, where the uncontradicted facts established through discovery are susceptible of only one legitimate inference, summary judgment is proper.” (*Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 487.)

2. *Relevant Allegations in the Lewis Complaint.*

Lewis alleged that on an unspecified date, the Double Rock Parties represented that Pastor Sims was a trustworthy, honorable pastor in good standing. The Double Rock Parties knew that this representation was false. At the same time, they

failed to disclose that the Double Rock Parties were stealing \$847,000 from Double Rock, or allowing that amount to be stolen. The \$847,000 was stolen sometime during the years 2000-2008. The Double Rock Parties took unspecified affirmative steps to conceal the true facts from Lewis. As a result, Lewis was induced to make tithes, offerings and donations to Double Rock.⁸

3. *Relevant Evidence.*

In his deposition, Lewis stated he has check stubs indicating he wrote checks totaling \$17,000 to Double Rock. When asked if he ever stopped making payments to Double Rock, he stated, “I reduced my payments starting 2008. And then I completely stopped when [Double Rock] closed.” He intended his money to be used for specific projects or areas of Double Rock, but he never asked whether the funds he gave were used as he intended. Pastor Sims assured people that their money was being used for beautification of Double Rock, or for new speakers or a new roof and “stuff of that nature.” It was undisputed by Lewis that he gave money to Double Rock from 2003 to 2012.

⁸ The Lewis Complaint contains vague allegations about written and oral statements that were untrue, but those allegations were insufficient to support the fraud claims, so we consider them superfluous. In the fifth cause of action for fraud, Lewis alleges that he was led to believe that the “representation[s] made by [the Double Rock Parties] that the Business Presentation made by [the Double Rock Parties] and delivered to the congregation [was] true.” Because Lewis did not specify the representations allegedly made in the “Business Presentation,” when they were made, or who made them, the allegation regarding the “Business Presentation” is too conclusory to be relevant to our analysis.

Defense counsel asked Lewis if he had any reason to believe his money was not being used as he intended. Lewis said, "Yes; because we didn't see the beautification of [Double Rock] happening. . . . I didn't see a new roof. They said we had one, but there was no documentation[] or there was no word from the pastor that we [had] a new roof on board, because it was still leaking[.]" All of "this happened between" 2002 and 2004. When defense counsel asked if Lewis became concerned at some point "that maybe the money that you donated for particular purposes wasn't being used for those purposes," he replied, "Well, let's see. I may have had an inkling in the back of my mind." Then defense counsel asked if the inkling became something more. Lewis said, "Well, I didn't want to get on the same page as everybody's thinking, 'Well, he's got a house here, and he's driving up in new cars' and this and that. I didn't want to think that my money was used for that. [¶] But as we went on down through the years, it seems that that's what may have happened." He heard other parishioners raise that concern. Asked when that started, Lewis stated, "Probably around 2003."

Defense counsel tried to clarify by asking if Lewis was concerned as early as 2003 that money being donated to Double Rock was being used for the personal betterment of Pastor Sims. First Lewis said it "may have been a concern," but then, when asked if he "personally heard those concerns," he said, "Yes." He said that choir members raised concerns, and maybe others. Defense counsel asked if Lewis recalled "anybody being particularly strong in their statements." Lewis said, "Well, everyone was pretty adamant about it." In business meetings, there may have been one or two questions about "people's concerns over the use of [Double Rock] funds for Pastor Sims'

personal use[.]” Someone asked why a phone bill was high, and Pastor Sims gave a “ridiculous response.”

Lewis waited until 2008 or 2009 to talk to the Trustees about the concerns that he heard from the parishioners.

Other parishioners told Lewis that at a meeting of church members in September 2008, Pastor Sims announced that he had taken funds inappropriately. Defense counsel asked Lewis, “Is that the first that you heard about that?” Lewis replied, “From him, yes.” He then said, “But from other members—no one really knew exactly. They just speculated.” At that point, Lewis added, “But [Pastor Sims] came out and confirmed it.”⁹

Wilkey created minutes for the September 14, 2008 meeting. Lewis did not see those minutes until the Double Rock Parties produced them for the first time during their depositions.

The minutes from a September 14, 2008, meeting at Double Rock provided the following. “[Pastor Sims] reported to the membership that [Joseph] submitted information to him about [Double Rock’s] finances and asked for his resignation as Pastor. . . . He stated that [Joseph] brought information to the Board last week which [Joseph] contends is evidence of stewardship abuse. . . . [¶] . . . [¶] Pastor Sims stated that the documentation [Joseph] gathered and shared with the Board has been put into the hands of the authorities; that he has spoken with [Joseph], but that they disagree profusely. [¶] He stated that he entertained the idea of starting his own church. He continued that he felt that if he . . . acquiesced[,] he would go to jail, and that he needed to think twice about his decision. [¶] Pastor Sims emphasized that he has not taken anything that was

⁹ There is no evidence regarding when Lewis was told about what Pastor Sims said at the September 14, 2008, meeting.

[not] due him; that he is responsible to God first and the congregation second. [¶] . . . [¶] He stated that the reports distributed at annual business meetings have not reflected an accurate picture of [Double Rock's] finances; that according to [Joseph][,] \$1.9 million is missing. He continued that . . . on many occasions he operated exclusive of the Board; making financial decisions about raises and increases without the Board's approval, and many decisions about his household allowances and wages without the Board's approval." Joseph said he had documents supporting his allegations in the form of financial statements given to the congregation each year at business meetings. Cynthia spoke and said that "if \$20,000 monthly for the pastor's household is okay, why has there been no beautification, no outreach, etc.[?]"

After Pastor Sims pleaded no contest, Lewis continued to give money to Double Rock because he wanted to contribute to its upkeep, and because he had friends who were dependent on a salary from Double Rock.

4. *Analysis.*

We have endeavored to understand Lewis's arguments. Based on a fair reading of his briefs and letter, we glean that he argues the following. First, the statute of limitations was tolled until February 2, 2010, because Pastor Sims concealed his embezzlement and misuse of Double Rock funds. Second, the fraud claims did not accrue until Lewis suffered damage in November 2011. Third, the actions of the Double Rock Parties delayed Lewis's discovery of their fraud. In the alternative, Lewis argues that the matter should be remanded to allow him to

present additional evidence or conduct additional discovery regarding delayed discovery.¹⁰

a. Concealment.

The heading to part II.A. of the discussion in Lewis’s opening brief states, “[Pastor Sims] took actions to prevent [Lewis] from discovering the misappropriation of [Double Rock] funds.” In the ensuing discussion, Lewis does not discuss the delayed discovery rule or equitable tolling, and he does not cite any authority regarding fraud. We are uncertain as to the relevance of this discussion. In our view, the issues are these: When did the Double Rock Parties make the fraudulent representation? When did the fraud causes of action accrue? When did Lewis either discover that Pastor Sims was not a trustworthy, honorable pastor in good standing, or discover facts that put Lewis on inquiry notice? If the Double Rock Parties concealed their fraud, did Lewis’s reliance on the Double Rock Parties’ fraud remain reasonable to a date that fell within the three-year statute of limitations? Because Lewis’s discussion does not purport to answer any of these questions, it is of no consequence.

¹⁰ As previously indicated, Code of Civil Procedure section 437c, subdivision (m)(2) provides for additional briefing if an appellate court is considering affirming summary judgment on a ground not relied upon by the trial court. Also, the statute provides: “The supplemental briefing may include an argument that additional evidence relating to that ground exists, but that the party has not had an adequate opportunity to present the evidence or to conduct discovery on the issue. The court may reverse or remand based upon the supplemental briefing to allow the parties to present additional evidence or to conduct discovery on the issue.” (Code Civ. Proc., § 437c, subd. (m)(2).)

To be complete, we explain why Lewis's discussion is not availing.

The Lewis Complaint does not allege the date that the Double Rock Parties represented that Pastor Sims was a trustworthy, honorable pastor in good standing. Nor does the Lewis Complaint identify the person or persons who made the statements. Thus, the pleading is deficient.

Lewis contends that in September 2008, Pastor Sims denied taking anything that was not due to him, and that Lewis did not discover the falsity of the statement until Pastor Sims pleaded no contest to embezzlement on February 2, 2010, when he confirmed his criminal acts.¹¹ This purported misrepresentation by Pastor Sims was not alleged in the Lewis Complaint, so it is not at issue either as a basis for an allegation of initial fraud or an act of concealment.

Also, as noted by the trial court in its February 6, 2015, minute order, this alleged denial by Pastor Sims appears in the minutes for the September 14, 2008, meeting, and the minutes do "not affect the court's analysis" because Lewis declared that he did not see the minutes until the Double Rock Parties were deposed. Thus, the minutes are "not pertinent to what Lewis knew . . . because Lewis never saw [the minutes] until after the statute had run."

Even if the minutes are considered, they do not alter our analysis. Pastor Sims's purported statement was no more than a

¹¹ The September 14, 2008, meeting minutes establish that Pastor Sims said he did not take anything "due him." We presume the absence of the word "not" is a typographical error, and that the minutes therefore meant to record that Pastor Sims said he did not take anything "not due him."

vague denial of wrongdoing, and that purported statement could not have tolled the statute of limitations because, in light of what Lewis knew and suspected, it was no longer reasonable to rely on the statement that Pastor Sims was a trustworthy, honorable pastor in good standing. At that point, Double Rock parishioners had been speculating about the misuse of Double Rock funds since at least 2003. Also, Lewis personally had concerns that Pastor Sims was using church funds for his own betterment, the roof was leaking even though Double Rock said the roof had been fixed, and Lewis admittedly *waited* until 2008 or 2009 to raise his preexisting concerns with the Trustees. Then, on September 14, 2008, Pastor Sims announced he had taken funds inappropriately. Also on that date, presuming that the minutes accurately recorded what Lewis later learned, Pastor Sims acknowledged that he had been accused by Joseph of stewardship abuse, that Joseph claimed that \$1.9 million was missing, and that the documentation that Joseph had gathered and shared with the Board of Trustees was in the hands of the authorities. Too, Pastor Sims admitted that financial reports distributed at annual business meetings did not reflect an accurate picture of Double Rock. Pastor Sims went so far as to mention the possibility of going to jail. Further, Pastor Sims admitted he had often acted without the Board of Trustees' approval when making decisions about raises and his household allowance. Cynthia indicated that Pastor Sims's household allowance was \$20,000 a month even though Double Rock had not engaged in beautification or outreach.¹²

¹² The trial court expressed views that are consistent with our own. Among other things, the trial court stated, "The minutes report [Pastor] Sims 'stated that the reports distributed at

The uncontradicted facts are susceptible of only one legitimate inference, which is that Lewis knew or should have known in 2003, or at least by August 2008, that the Double Rock Parties had falsely represented that Pastor Sims was a trustworthy, honorable pastor in good standing. This conclusion brooks no debate. Because Lewis was on inquiry notice, and therefore had constructive notice of what Pastor Sims was doing, it is irrelevant that the Double Rock Parties may have tried to conceal their fraud. (*Rita M.*, *supra*, 187 Cal.App.3d at p. 1460.) This is true even if there was a duty to disclose. (*Lee*, *supra*, 210 Cal.App.3d at p. 921.)

Though Lewis seems to suggest there was a duty to disclose based on a fiduciary duty or confidential relationship, he cited no law to show that a pastor owes either a fiduciary duty to, or has a confidential relationship with, a general member of a parish with whom there is no counseling relationship. In any event, this case does not involve allegations or evidence that Lewis was vulnerable to the Double Rock Parties, that Lewis empowered

annual business meetings have not reflected an accurate picture of the church[']s finances; that according to [Joseph][,] \$1.9 million is missing.’ Pastor Sims was confessing the inaccuracy of his past financial reports to the church. That confession would alarm a reasonable listener, as would [Pastor] Sims’s further statement that the amount reported missing was \$1.9 million. That is a large sum for a neighborhood church. The self-justifying statement by [Pastor] Sims that ‘he has not taken anything that was [not] due to him; that he is responsible to God first and the congregation second’ would not negate the impact upon a reasonable observer, for people often make partial, self-serving, and internally inconsistent confessions of wrongdoing. The mixed message does not mute the cause for alarm.”

them, that they accepted this empowerment, and that Lewis was rendered unable to protect himself.

In his briefs, Lewis asserts other false statements, misleading statements and omissions by the Double Rock Parties, all of which allegedly concealed misconduct by the Double Rock Parties. Also, Lewis asserts that the Board of Trustees informed the congregation it would investigate the financial state of Double Rock.¹³ Regardless of whether these assertions are true, none of them were alleged in the Lewis Complaint, so they are not relevant to our discussion. Even if they were relevant, they would not countermand the evidence that Lewis was on inquiry notice. To the extent Lewis relies on the Double Rock Parties'

¹³ Lewis failed to provide a record citation to support this factual assertion. Rather, he cited to a page from the minutes of Double Rock's September 14, 2008, meeting with its membership. That page records a motion to open the meeting, and then a summary of Pastor Sims's statements to the membership. Nowhere on this page is there a statement that by the Trustees promising to investigate Double Rock's finances. We decline to search the rest of the record to find support for Lewis's assertion. (*Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1050 [a reviewing "court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment"].)

In his reply brief, Lewis adverts to additional pages from the minutes of Double Rock's September 14, 2008, meeting with its membership. On one of those pages, it states that "Rev. Harold Tyler commented about the state of the business of [Double Rock] and indicated that the Board is reviewing the information, which has to do with finances." Presumably, this means the Board was reviewing documentation provided by Joseph. This was not a promise by the Board to the membership to conduct an investigation into Double Rock's finances.

nondisclosure of facts to establish concealment, that reliance is misplaced in the absence of evidence that the Double Rock Parties had a duty to disclose those facts. (*Scafidi, supra*, 72 Cal.App.2d at p. 562.) Lewis has made no attempt to show that such a duty existed and was breached. More generally, Lewis provided no legal argument or authority suggesting that the facts known to him did not trigger the three-year clock. “It is not our responsibility to develop an appellant’s argument.” (*Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1206, fn. 11.) Lewis “apparently assum[es] this court will construct a theory supportive of his” appeal, but that “is not our role.” (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) “One cannot simply say the court erred, and leave it up to the appellate court to figure out why. [Citation.]” (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368.)

In part IV.A.1. of the discussion in his opening brief, which is entitled “Fraud by Defendant/Respondent [Pastor Sims],” Lewis echoes his concealment arguments, pointing out that Pastor Sims denied taking any funds that were not due him, and asserting that a Double Rock “Executive Board” (which Lewis does not describe or otherwise identify) promised to investigate Double Rock’s finances. In part IV.A.2. of the discussion, which is entitled “Fraud by Defendant/Respondent [Double Rock] and Respondent [Pastor Sims],” Lewis again repeats a list of false statements, misleading statements and omissions by the Double Rock Parties. Lewis did not provide any record citations, and none of these purported acts are alleged in the Lewis Complaint. Finally, in part IV.D, which is entitled “[Lewis] has Sufficiently Plead[ed] a Cause of Action for Self-Dealing and Misrepresentation,” Lewis reiterates that he discovered his

financial damages when Pastor Sims pleaded no contest on February 2, 2010. All of these arguments/contentions fail because they are unsupported, immaterial and, more importantly, moot given that they could not establish tolling of the statute of limitations because, as a matter of law, they do not countermand the facts putting Lewis on inquiry notice.

In Lewis's reply brief, at part I.A. of the discussion, which is entitled "[The Double Rock Parties] Took Actions to Prevent [Lewis] from Discovering the Misappropriation of [Double Rock] Funds," he argues that the Trustees were negligent because they failed to conduct an investigation or hire an accountant to conduct an audit. Fairness militates against our consideration of arguments that an appellant raised for the first in his reply brief. (*Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 295, fn. 11 (*Varjabedian*.) That bromide aside, we take a moment to suss this out. It would appear—though we cannot be certain—that Lewis is arguing that the Trustees concealed the fraud of the Double Rock Parties by failing to investigate Double Rock's finances. This argument fails because Lewis cited no law establishing a failure to act can result in concealment of a claim. Our independent research has revealed no case law supporting his position.

Lewis submitted a letter brief in which he suggests that the Double Rock Parties concealed their fraud as follows: (1) From 1999 to 2008, Pastor Sims provided a 40-page booklet entitled Double Rock Baptist Church Handbook and Guide (Handbook) that failed to disclose the misappropriation of money; (2) the method of tithing was changed so that each parishioner got blue envelopes for donations and white envelopes for tithing, and the funds collected were placed in a general account instead of

separate accounts; (3) the Double Rock Parties changed the frequency of business meetings; (4) even though the planned repairs to the roof did not happen, other programs at the church flourished; (5) the financial statements for years 1997-2007 stated the income and expenses of the church but did not reflect the fraud and misappropriation of funds that was occurring; (6) the Trustees failed to disclose that they served on the board of trustees of Double Rock and RLCC; (7) RLCC was a secret; (8) RLCC was not listed in the organization structure of Double Rock; and (9) the 2006 Handbook listed 10 ministries, which made it appear as though Double Rock was thriving and serving the community. But even if all the foregoing is true, it does not change the fact that Lewis had sufficient suspicion and therefore cause to investigate the Double Rock Parties for fraud. Also, we perceive no equitable basis for allowing Lewis to either present more evidence or conduct additional discovery. He has not explained why, since the commencement of this action, he has not had an adequate opportunity to present evidence or conduct discovery on an issue critical to viability of his causes of action.

b. Damages.

Lewis cites the undisputed rule that a plaintiff “must suffer actual monetary loss to recover on a fraud claim. [Citations.]” (*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1240.) In part IV.A.1. of the discussion in his opening brief, which is entitled “Fraud by Defendant/Respondent [Pastor Sims],” Lewis states, “In November 2011[,] when [Lewis] learned the [Double Rock Board] was ratifying and approving [Pastor Sims’s] theft . . . , [Double Rock] and other similarly situated church members suffered damages.” This bald statement offers no insight into his position. We glean that it is a mere adjunct of a statement in the

“Procedural Background” section of his opening brief, which is this: “The damages for . . . fraud occurred when [Double Rock] and [the Trustees] decided not to pursue the restitution funds that would have financially restored [Double Rock] following the theft. . . . It was the fiduciary duty of the [Board of Trustees] to pursue and recover the funds on behalf of [Double Rock][,] but instead [Double Rock] published a report stating [it] would not take any further steps to recover the embezzled monies.” Thus, it appears that Lewis believes he remained damage free until Double Rock decided not to pursue restitution against Pastor Sims. This argument is waived because Lewis failed to provide reasoned argument and supporting law. (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 366, fn. 2.)

Lewis’s waiver aside, we easily dismiss his argument. He was damaged the moment he gave money to Double Rock in detrimental reliance on the representation that Pastor Sims was a trustworthy, honorable pastor in good standing. (*Lazar v. Superior Court, supra*, 12 Cal.4th at p. 642.) Lewis claims to have given more than \$17,000. It was undisputed by Lewis that he gave money to Double Rock from 2003 to 2012. At least by August 2008, he was on inquiry notice, and any subsequent monetary gifts did not give rise to actionable fraud. Accordingly, Lewis’s argument regarding the timing of damages does not avoid the time bar.

c. Delayed Discovery.

In Lewis’s reply brief, in part II.A. of the discussion, which is entitled “[Lewis’s] Reply to [the Double Rock Parties’] Assertion that [Lewis] Knew of Wrongdoing,” he avers, “[Lewis] had no actual knowledge that funds were being embezzled by

[Pastor Sims] until his plea of no contest in February 2, 2010. [Pastor Sims] and the [Board of Trustees] continue[d] to provide [Lewis] and members of [Double Rock] with income and expense statements of [Double Rock], which showed no evidence of wrongdoing. . . . These actions delayed the discovery by [Lewis]. . . . In this case[,] [Lewis] was not privy to or provided information that would have brought [Pastor Sims's embezzlement] to light[] until the plea of [no contest][.]"

This argument is unavailing. What matters is when Lewis had constructive knowledge, not when he had actual knowledge. Based on the undisputed facts, he was on constructive notice no later than August 2008.

C. Misappropriation.

Regarding the misappropriation cause of action, the trial court stated, "The elements of a claim for misappropriation under California law consist of the following: (a) the plaintiff invested substantial time, skill or money in developing its property; (b) the defendant appropriated and used the plaintiff's property at little or no cost to the defendant; (c) the defendant's appropriation and use of the plaintiff's property was without the authorization or consent of the plaintiff; and (d) the plaintiff can establish that it has been injured by the defendant's conduct.' (*United States Golf Assn. v. Arroyo Software Corp.* (1999) 69 Cal.App.4th 607, 618.) [¶] The tenth cause of action for misappropriation fails for the same reason the third cause of action for conversion fails. Lewis admits he willingly turned over funds to Double Rock. He therefore cannot demonstrate that the church took his funds without his consent, because Lewis did consent. The motion for summary adjudication is granted as to the tenth cause of action for misappropriation."

Lewis argues that he did not willingly make monetary gifts because they were not used for the use and benefit of Double Rock. This argument fails on multiple fronts. As a temporal matter, the way the funds were used occurred later in time than the giving of those funds, and therefore had no bearing on whether the funds were given voluntarily. In essence, Lewis is arguing that he was induced into giving the funds. But that still amounts to voluntary giving. Furthermore, Lewis cites no evidence that his specific funds were misused.

D. Self-Dealing.

The trial court ruled that Lewis lacked standing to assert the claim for self-dealing, finding that the claim belonged to Double Rock.¹⁴ In his opening brief, Lewis contends that he properly pleaded his claim for self-dealing. But he did not cite any law establishing the elements of the claim, nor did he cite law establishing that he has standing. It is apropos to point out that “[a]lthough our review of a summary judgment is de novo, it is limited to issues which have been adequately raised and supported in [Appellant’s] brief.” (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6 (*Reyes*)). Because Lewis declined to grapple with the standing issue, he has not met his burden to demonstrate trial court error.

¹⁴ Lewis does not describe this claim. Our research indicates that self-dealing is a theory of recovery that is employed as part of a breach of fiduciary duty claim between business partners, or a theory of recovery in a derivative action by shareholders or limited partners against the managers of a business entity. If Lewis is using the term “self-dealing” to mean something else, he has not said. Like the trial court, we fail to perceive how Lewis can assert this claim.

E. Breach of Fiduciary Duty.

The trial court ruled that Lewis's second claim, which was for breach of fiduciary duty, was barred because the United States Constitution prohibits judicial review of matters relating to religious leadership. In his reply brief, Lewis states, "[Lewis] did not argue this cause of action in the [opening brief] because whether or not to keep a religious leader was not the question before the court. The question was whether a California Non Profit corporation could continue to employ the very same employee who embezzled tithes, offerings and donations. . . . The trial court found that it was an ecclesiastical decision that was protected by the Constitution. [Lewis] disagree[s], in that the criminal court proceeded and convicted [Pastor Sims]." This argument is waived because it is asserted for the first time in Lewis's reply brief, making it unfair to the Double Rock Parties for us to consider it, and because it is not supported by reasoned discussion and citation of legal authorities pinned to the constitutional basis for the ruling. (*Varjabedian, supra*, 20 Cal.3d at p. 295, fn. 11; *Reyes, supra*, 65 Cal.App.4th at p. 466, fn. 6.)

III. Michael.

Michael argues that summary judgment should be reversed because the trial court did not comply with Code of Civil Procedure section 437c, subdivision (g) by recording the reasons for its ruling. That statute provides, in part, "Upon the grant of a motion for summary judgment on the ground that there is no triable issue of material fact, the court shall, by written or oral order, specify the reasons for its determination. . . . The court shall record its determination by court reporter or written order." (Code Civ. Proc., § 437c, subd. (g).)

This argument is defeated by the inadequacy of the record. The order in the record states, *inter alia*, “For reasons listed in this order and the . . . Minute Order for the hearing on February 6, 2015, after full consideration of the evidence, and the written and oral submissions by the parties, the [trial court] finds that [the Double Rock Parties] are entitled to summary adjudication as follows: [¶] . . . [¶] [The Double Rock Parties’] Motion for Summary Judgment is granted in its entirety as to all claims asserted by Plaintiff Michael Holmes.” Below, the parties waived a court reporter for the summary judgment hearing. In addition, Michael has not cited to the February 6, 2015, minute order, and it is not listed in the index to the appellate record. As a result, Michael’s argument is waived.

To thoroughly exhaust this topic, we have examined the February 6, 2015, minute order. As to Michael, it provides, “[The Double Rock Parties] are entitled to summary judgment against Michael [], who has admitted in Separate Statement Fact 101 that his mother is the primary beneficiary of [Joseph], and that [Michael] is not a primary beneficiary.” We conclude that this statement satisfied the trial court’s duty to give and record its reasoning.

Next, Michael argues: “It was [the Double Rock Parties] who insisted that [Michael] be brought into the action as a necessary party in the related [Holmes Action][,] Los Angeles Superior Court Case No[.] TC026065. The [Double Rock Parties] claimed that in the absence of Michael Holmes as a party, this would prevent complete relief and expose them to later inconsistent judgments. [Michael] never asserted a claim in this action.” Presumably, Michael is claiming that “this action” is the Lewis Action, summary judgment was entered against him in the

Lewis Action even though he was only a plaintiff in the Holmes Action, and therefore summary judgment against him in the Lewis Action was improper. But the two actions were consolidated. As a result, the summary judgment against him pertains to the causes of action he was asserting as a joined plaintiff in the Holmes Action. Though Michael contends there was a procedural irregularity, we do not perceive one.

Continuing on, Michael argues that the trial court ruled that Michael was not a necessary party “because he did not meet the factors of a necessary party as required by [Code of Civil Procedure section 389],” and therefore the trial court “committed a reversible error in failing to dismiss [Michael] from the action and allowing the [Double Rock Parties] a judgment against [Michael].” The threshold problem is that Michael fails to provide a record citation establishing that the trial court ruled that he was not a necessary party. A follow up problem is that he cites no law establishing that once a party is joined as a plaintiff, that plaintiff must be sua sponte dismissed if the trial court later determines he is not a necessary party. Whatever argument Michael is trying to assert, we cannot understand it, so it is waived.

The foregoing considerations aside, we assume Michael is challenging the ruling that he was a necessary party. But he has made no attempt to explain why that was an improper ruling. With respect to the necessary party issue, we perceive no abuse of discretion on the trial court’s part. (*Dreamweaver Andalusians, LLC v. Prudential Ins. Co. of America* (2015) 234 Cal.App.4th 1168, 1174 [a trial court has discretion to determine whether a party is necessary].)

Code of Civil Procedure section 389, subdivision (a) provides: “A person . . . shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.”

The Holmes Complaint alleged that Michael was a third party beneficiary of Joseph’s retirement contract. Consequently, complete relief could not be accorded among Cynthia and the Double Rock Parties in Michael’s absence. Also, he claimed an interest relating to the subject matter of the action, so his absence could have impaired or impeded his ability to protect that interest, and it could have exposed Double Rock to double, multiple or inconsistent obligations. Thus, the trial court’s decision to order Michael’s joinder is unassailable.

DISPOSITION

The judgment is affirmed.

The Double Rock Parties shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
HOFFSTADT

_____, J.*
GOODMAN

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