

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 THREE

LAMTC LENDER, LLC,

Plaintiff and Appellant,

v.

PATRICIA A. SHENKER,

Defendant and Respondent.

B270722

(Los Angeles County
Super. Ct. No. BC500903)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Elizabeth R. Feffer, Judge. Affirmed.

Law Offices of Thomas E. Elenbaas and Thomas E.
Elenbaas; Webster Book and Steven T. Webster, for Plaintiff and
Appellant.

Richard P. Towne for Defendant and Respondent.

Plaintiff and appellant LAMTC Lender, LLC sued defendant and respondent Patricia A. Shenker for breach of a guaranty. After a bench trial, the trial court found in Shenker's favor, concluding that LAMTC had failed to show standing to sue on the guaranty and that even if LAMTC had standing to sue LAMTC had failed to show the guaranty was breached. We hold that substantial evidence supports the judgment, and we affirm.

BACKGROUND

In December 2006, UCV Media Tech Center, LLC (UCV) executed a \$25 million fixed-rate note in favor of JP Morgan Chase Bank, lender. UCV's president, Shenker, signed the note, which was secured by real property (commercial buildings). She also executed a personal guaranty under which she agreed to "be liable for, and [to] indemnify, defend and hold Lender harmless from and against, any and all Losses to the extent of such Losses . . . incurred or suffered by Lender and arising out of or in connection with the . . . [¶] . . . misapplication or misappropriation of Rents[.]" A deed of trust and security agreement and an assignment of rents were also executed. UCV defaulted on the note in 2011.

In 2013, LAMTC sued Shenker for breach of the guaranty. LAMTC's complaint alleged that three allonges¹ evidenced assignments of the loan documents (note, deed of trust and security agreement, assignment of rents, and guaranty) to LAMTC. LAMTC therefore alleged it was the lawful holder of

¹ An allonge is an endorsement of a negotiable instrument contained on a separate piece of paper rather than the back of the instrument. (See *Pribus v. Bush* (1981) 118 Cal.App.3d 1003, 1007-1011.)

the loan documents. The complaint further alleged that UCV held security deposits from tenants of the commercial property (which secured the note) in an amount not less than \$181,305.63, that pursuant to the November 2011 “master rent roll” tenants owed the borrower not less than \$261,896.04 per month in net rent, and that from September 1, 2011 through January 20, 2012, UCV collected not less than \$1,309,480.20 in rent from tenants. UCV, however, failed to hold the rents and security deposits in trust for LAMTC as required under the loan documents. Thus, Shenker, as guarantor, breached the guaranty by failing “to pay the amount of the misappropriated and/or misapplied rents and Tenant security deposits” to LAMTC.

Shenker answered the complaint, asserting a general denial and affirmative defenses.

The matter proceeded to a bench trial at which Shenker was the sole witness.² Shenker testified she solely owned UCV and was its president and managing member. She did not dispute that UCV defaulted on the note in 2011, that the property securing the note was foreclosed on, nor signing the guaranty. After UCV defaulted on the note and during the time that UCV was supposed to be holding rents and security deposits in trust for the lender, UCV wrote checks totaling \$249,110.04 to Shenker which were deposited into a bank account. Shenker,

² Because LAMTC failed to comply with its pretrial obligations, the trial court limited LAMTC to introducing the exhibits attached to the complaint and to calling only the parties as witnesses. LAMTC was thus precluded from calling, for example, UCV’s accountant and from introducing UCV’s general ledger. LAMTC did not call its representative to testify. LAMTC does not challenge that order on appeal.

however, did not know the checks were going into her account. Shenker first testified on direct examination that those monies should have been held in trust for the lender. She then equivocated, stating, for example, “I don’t know,” “I guess so,” and “I think so.” In the defense case, Shenker explicitly denied authorizing the issuance of those checks. To her knowledge, she did not receive any of the funds.

In December 2015, the trial court issued a statement of decision. The court found that LAMTC failed to offer admissible evidence of chain of title of the loan documents from the original lender (JP Morgan) to LAMTC. To evidence that chain of title, LAMTC had tried to introduce the three allonges, but the court excluded them because no witness authenticated or laid a foundation for them. The court rejected LAMTC’s argument that the allonges were self-authenticating under Commercial Code section 3308. Even if the section applied, it did not relieve LAMTC of its burden of establishing “foundational authority of those signing the allonges to bind the entities they purport to bind” or that they “actually assigned the Guaranty.” LAMTC thus failed to establish that the guaranty had been assigned to it. The court also found that LAMTC failed to produce evidence the guaranty had been breached: LAMTC “provided no evidence of any such missed payments [as alleged in the complaint], let alone that rents or security deposits were ‘misappropriated and/or misapplied.’” LAMTC also “presented no evidence that the persons who issued the subject checks did or did not have the authority to do so, and that issuance of the checks was contrary to the Guaranty.”

LAMTC appeals, contending that it did have standing and that there was sufficient evidence the guaranty was breached.

DISCUSSION

The trial court's judgment in favor of Shenker was based on two primary grounds: (1) LAMTC's failure to produce admissible evidence the guaranty had been assigned to it, and (2) LAMTC's failure to produce evidence the guaranty was breached. We focus here on the second ground and conclude that substantial evidence supports the court's findings.

When an appellate court reviews a statement of decision issued after a bench trial, the trial court's findings of fact are reviewed under the substantial evidence standard, while the trial court's resolution of a question of law is subject to independent review. (*Brewer v. Murphy* (2008) 161 Cal.App.4th 928, 935-936.) We uphold the court's findings of fact if there is substantial evidence to support them, even if other evidence would support a contrary finding. (*Id.* at p. 935; *Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1658; *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 364.) A single witness's testimony may constitute substantial evidence to support a finding. (*Citizens Business Bank v. Gevorgian* (2013) 218 Cal.App.4th 602, 613.) Under "the doctrine of implied findings, the reviewing court must infer . . . that the trial court impliedly made every factual finding necessary to support its decision." (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 48.) " " "We may not reweigh the evidence and are bound by the trial court's credibility determinations." ' ' ' (*Axis Surplus Ins. Co. v. Reinoso* (2012) 208 Cal.App.4th 181, 189.) "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." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) We affirm a judgment if correct on any ground.

A lender is entitled to judgment on a breach of guaranty claim based upon evidence that (1) there is a valid guaranty, (2) the borrower has defaulted, and (3) the guarantor failed to perform under the guaranty. (*Gray1 CPB, LLC v. Kolokotronis* (2011) 202 Cal.App.4th 480, 486.) Here, LAMTC alleged that Shenker breached the guaranty by failing “to pay the amount of the misappropriated and/or misapplied rents and Tenant security deposits” to LAMTC. The trial court, however, found that LAMTC provided “no evidence of any such missed payments, let alone that rents or security deposits were ‘misappropriated and/or misapplied.’” Substantial evidence supported that finding. Although the unverified complaint (which was generally denied) alleged that the property’s tenants had paid \$261,896.04 in rent and \$181,305.63 in security deposits to UCV that should have been held in trust for LAMTC, that complaint did not constitute evidence at trial of the truth of the allegations made therein. (See generally *Cassady v. Morgan, Lewis & Bockius LLP* (2006) 145 Cal.App.4th 220, 241.) LAMTC produced no evidence to establish the amounts of rent and security deposits allegedly withheld from LAMTC. Rather, all that LAMTC established was that checks were written from a UCV account to Shenker after the note was in default.

There was no direct evidence, however, that the money was from tenants.³ At best, a weak inference as to that issue might have arisen from Shenker’s equivocal testimony about whether the money should have been held in trust for the lender. But she unambiguously testified that she did not receive any of those funds. The trial court, by referring to that specific testimony,

³ The checks were not admitted.

impliedly found Shenker credible on that issue. In any event, Shenker's vague statements about whether certain monies should have been held in trust for LAMTC notwithstanding, she was not UCV's accountant, who did not testify, and no evidence was admitted to show that those checks were misappropriated rents and security deposits. Indeed, there was no evidence that UCV's sole asset was the property securing the note; that is, if UCV owned other income-producing assets unrelated to this transaction, then nothing in this record shows why UCV was prevented from paying monies to Shenker. In short, LAMTC failed to connect the dots: there was no connection between the checks written to Shenker and the rents and security deposits subject to any obligation under the guaranty. Thus, the record supports the trial court's finding that there was no evidence that "issuance of the checks was contrary to the Guaranty."

Having failed to prove that the guaranty was breached, LAMTC could not establish its right to an accounting as a remedy. There is no remedy where there is no breach.

In any event, this is not a case in which the nature of the parties' agreement (a guaranty) or their relationship (lender and guarantor) gives rise to a right to an accounting or to a shifting of the burden of proof. (Cf. *McClain v. Octagon Plaza, LLC* (2008) 159 Cal.App.4th 784 [where commercial lease obligated tenant and landlord to share common expenses, tenant entitled to disclosure of documents to verify expenses]; *Wolf v. Superior Court* (2003) 107 Cal.App.4th 25, 35 ["in contingent compensation and other profit-sharing cases where essential financial records are in the exclusive control of the defendant who would benefit from any incompleteness, public policy is best served by shifting the burden of proof to the defendant"].)

DISPOSITION

The judgment is affirmed. Defendant and respondent shall recover her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BACHNER, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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