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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

STEPHEN C. SAYRE,

Plaintiff and Appellant,

v.

CLEAR CHANNEL OUTDOOR, INC.,

Defendant and Respondent.

B241601

(Los Angeles County
Super. Ct. No. SC112410)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Richard A. Stone, Judge. Affirmed.

Stephen C. Sayre, in pro. per., for Plaintiff and Appellant.

Poole & Shaffery, David S. Poole and Jaion Chung for Defendant and Respondent.

Stephen Sayre appeals from the judgment in favor of respondent Clear Channel Communication. We affirm, as we explain:

The judgment was entered after respondent's demurrer to appellant's second amended complaint was sustained without leave to amend. In its ruling on the demurrer, the trial court described the complaint: "Plaintiff alleges that he suffered damages due to the defendant's unlawful transfer of plaintiff's contract, defendant's wrongful appropriation of trade secrets and defendant's unethical business practices. The plaintiff is seeking the equivalent of the benefits of performance caused by defendant, compensation for estimated future benefits, and any other other relief the court deems just and proper."

In the ruling, the court also listed the causes of action (violation of the Uniform Trade Secrets Act, breach of contract, and violation of Business and Professions Code section 17200), and the grounds for the demurrer, which was that each cause of action was barred by the statute of limitations. The court agreed, finding that all causes of action would be barred by the statute of limitations but for a basis for tolling or extending the time limits, that Judge Connor, the judge who had heard the demurrer to the original complaint, "specifically admonished [appellant] to respond to specific areas of inquiry for the court to acknowledge the possible application of the doctrine of equitable estoppel; and [appellant] has not alleged any facts to support the contention that equitable estoppel could apply to this case, and, based upon the specific requests from Judge Connor, the court finds that there is no reasonable basis to believe that [appellant] can allege such facts."

Appellant contends that the finding is error, and that he pled an equitable estoppel. However, he designated a record which consists of the ruling on the demurrer, the judgment, and notice of entry of judgment, but does not include a reporter's transcript, any of the complaints in this matter, or the demurrer itself.

The notice designating a record on appeal specifically warns litigants electing to proceed without a record of the oral proceedings that "I understand that without a record

of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings."

Further, before appellant filed his opening brief, we ordered the parties to brief "the effect of the plaintiff's failure to provide virtually all of the relevant papers as part of the record in an appendix or to seek augmentation of the record." In his brief, appellant asserts that his citation to the second amended complaint and to the demurrer means that the record is adequate.

It simply is not. A judgment or order is presumed correct, and an appellant has the burden of demonstrating prejudicial error. (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187.) Without the complete record, we cannot evaluate appellant's contentions on appeal, and thus cannot find error. Instead, we look to the record before us, which consists largely of the trial court's description of the complaint, and find no error.

The rule is well established and of the utmost importance: "By failing to provide an adequate record, appellant cannot meet his burden to show error and we must resolve any challenge to the order against him." (*Hotels Nevada v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348.)

Appellant did not seek augmentation of the record, but in his brief and in correspondence with this court, appellant has offered to augment the record with any other documents we deem necessary for our review. Considerations of due process prohibit us from acting on that request. We may not act as counsel or advocate for a party. Nor may we put respondent to the expense of filing a second brief, to respond to a record augmented by the court.

Disposition

The judgment is affirmed.

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ARMSTRONG, J.

I concur:

TURNER, P. J.

MOSK, J., Concurring

When a document is missing from the record, we may obtain the document from the file or request the parties to supply it so that the record can be augmented. We should try, if possible and consistent with the applicable rules, to have the matter heard on the merits. It appears from the documents in the record that plaintiff might have been able to state a cause of action for breach of a promise—the breach having occurred when plaintiff came back to California. But plaintiff did not, as far as I can tell, proceed on that theory.

It is true this court did not specify that the record should at least have the second amended complaint. But the notice about an inadequate record should have induced plaintiff to augment the record with the entirety of the file because it does not appear that the file could be that large or expensive, as this case is based on an order sustaining a demurrer.

Even at oral argument, plaintiff was informed of the necessity of the record containing at least the operative pleading—the second amended complaint, and yet plaintiff did not request the opportunity to augment the file. Rather he just reiterated that he could supply any documents we specified. Perhaps this court should have requested the superior court file and requested a reporter's transcript, if the issue of amending was an issue, but instead, the court chose to alert plaintiff repeatedly to supply an adequate record. He did not do so.

Because of the costs of litigation, there are more parties representing themselves. We may have to adapt to this reality to insure fairness and equal treatment. Although I might have handled this matter differently, based on what has occurred, I reluctantly concur.

MOSK, J.