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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

PEDRO NEGRETE GALVEZ et
al.,

Plaintiffs and
Respondents,

v.

JOSE BARRAGAN
GALLEGOS et al.,

Defendants and
Appellants.

B272398

(Los Angeles County
Super. Ct. No. BC552319)

APPEAL from a judgment of the Superior Court of Los Angeles County, William F. Fahey, Judge. Affirmed.

Law Offices of Bryan Castorina and Bryan Castorina for Defendants and Appellants.

Garrett & Tully, Zi C. Lin, Maia Mdinaradze; Law Offices of Karen A. Davis and Karen A. Davis for Plaintiffs and Respondents.

Defendants Jose Barragan Gallegos (also known as Jose Barragan), Ana Bertha Gallegos (also known as Bertha Barragan), Jose Alfredo Barragan, and Jose Barragan Construction appeal from a judgment in favor of plaintiffs Pedro Negrete Galvez and Rosa Maria Galvez in an action for breach of contract, quiet title, partition, and various other claims.¹ The trial court entered default judgment after striking defendants' answer and conducting a prove-up hearing. Defendants claim the court erred by not granting leave to amend the answer. Because the record on appeal is inadequate to assess defendants' challenge, we presume the judgment is correct and affirm.

BACKGROUND

Plaintiffs filed the operative complaint in this action, the second amended verified complaint, in July 2015. The complaint asserted claims for breach of contract, specific performance, quiet title, slander of title, fraudulent transfer, fraud, negligent representation, reformation of deed of trust, partition, injunction, and declaratory relief. The claims arose from a dispute regarding property in South El Monte co-owned by plaintiffs and defendants.

Defendants filed an answer to the complaint in September 2015. The complaint contained a "General Denial" stating, "Pursuant to California Code of Civil Procedure § 431.30, defendants generally deny each and every allegation contained in the Complaint. Defendants further deny that plaintiffs sustained any injury, damage or loss by reason of any act or omission by defendants. In addition, defendants deny that plaintiffs are

¹ A number of other defendants were named in the complaint below. None are party to this appeal.

entitled to any legal or equitable relief from defendants.” The answer was not verified.

Plaintiffs moved to strike the answer on the basis that it was neither verified nor did it specifically admit or deny the individual allegations in the complaint. Plaintiffs requested that the court enter default judgment against defendants.

Defendants opposed the motion to strike on the basis that it was untimely. In the alternative, defendants argued that “the Court must grant leave to amend because the defect is correctable. Failure to grant leave to amend where the defect is correctable is reversible error.”

Following a hearing, the court granted plaintiffs’ motion, struck the answer, and ruled that the defendants were in default. After holding a prove-up hearing, at which defendants and their counsel did not appear, the court entered an interlocutory judgment of partition in favor of plaintiffs. The court also ruled in favor of plaintiffs on their claims for breach of contract, specific performance, quiet title, fraudulent transfer, reformation of deed of trust, and injunction.

Defendants timely appealed.²

DISCUSSION

Defendants assert that the trial court abused its discretion by striking the answer without granting leave to amend.³ We are unable to evaluate this challenge because defendants have not

² Interlocutory judgments directing partition are appealable. (Code Civ. Proc., § 904.1, subd. (a)(9).) All further unspecified statutory references are to the Code of Civil Procedure.

³ In their opening brief, defendants also claimed the motion to strike was untimely. Defendants withdrew this challenge in their reply brief.

provided an adequate record for us to determine the court's reasoning. (*Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259 (*Wagner*) [appellant has affirmative obligation to provide adequate record to assess claim of abuse of discretion].) Defendants elected to proceed on appeal without a record of the oral proceedings in the trial court. The minute order granting the motion to strike does not contain the court's reasoning, nor does any other part of the record provided to us. "The absence of a record concerning what actually occurred at the hearing precludes a determination that the court abused its discretion." (*Ibid.*) This necessarily follows from the principle of appellate review that "[a] judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.'" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564, italics omitted.)

Defendants argue a reporter's transcript is only necessary when an appeal challenges the sufficiency of evidence or raises other evidentiary issues. This is incorrect; as *Wagner* demonstrates, lack of a reporter's transcript or other record of a proceeding forecloses a claim of abuse of discretion if the court's reasoning cannot otherwise be determined. (*Wagner, supra*, 162 Cal.App.4th at p. 259.)

We also reject defendants' assertion that any error in their answer "could have reasonably and easily been cured" had they been granted leave to amend. Defendants suggest that the only defect in their answer—and thus the only basis for the court's decision to strike the answer—was the lack of verification, that is, the lack of a signed affidavit from a defendant stating that the answer "is true of his [or her] own knowledge, except as to the

matters which are therein stated on his or her information or belief, and as to those matters that he or she believes it to be true.” (§ 446, subd. (a).) But there are other possible reasons the court could have properly struck the answer without leave to amend. In addition to lacking verification, the answer was deficient in that it contained only a general denial, when it was required to deny the allegations in the complaint “positively or according to the information and belief of the defendant.” (§ 431.30, subd. (d); see *City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal.App.4th 455, 476, fn. 19 [“A general denial is not appropriate in a verified answer.”].) The record does not reflect that defendants ever explained to the court what they would do to correct this or any other defects (nor do they on appeal); their opposition to the motion to strike merely stated “the defect is correctable” without elaboration. It is also possible defendants made representations at the hearing that led the court to conclude that a sufficiently amended answer was not forthcoming. Thus, even if we accept that the lack of verification could have been easily cured, we cannot determine on this record that this was the trial court’s sole concern, nor that it was evident to the court that defendants could or would address whatever concerns it had.

Defendants argue that a trial court is “required to grant leave to amend . . . if the defect is correctable irrespective of whether the party will or does avail itself of that opportunity.” Again, because we cannot determine on this record what particular errors the trial court found dispositive, and whether the court abused its discretion in concluding those errors were not correctable, this argument fails.

DISPOSITION

The judgment is affirmed. Plaintiffs are entitled to costs on appeal.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.