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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JUSTINIANO JAOJOCO et al.,

Plaintiffs and Appellants,

v.

RONALD CRUZ et al.,

Defendants and Respondents.

B264060

(Los Angeles County
Super. Ct. No. BC523523)

APPEAL from a judgment of the Superior Court of Los Angeles County, Malcolm Mackey, Judge. Affirmed.

Marapao Law Offices, Reginald V. Itchon and Abe A. D. Marapao for Plaintiffs and Appellants.

Rallo Law Firm, Thomas C. Rallo, Arthur J. Travieso and Tin Kim Westen for Defendants and Respondents.

INTRODUCTION

Plaintiffs Justiniano Jaojoco and Justin Chipeco appeal from a judgment entered in favor Defendants Ronald Cruz, Arlene Jaojoco, Good Samaritan Hospice, Inc. and United Home Health Care, LLC following a bench trial.¹ Plaintiffs' claims arise from a purported oral contract by which Plaintiffs and Cruz allegedly agreed to jointly purchase a home health care business, UHHC, and divide the equity and operating profits equally, one-third each. In rendering judgment in favor of Defendants on Chipeco's claims, the trial court found Chipeco failed to establish he had purchased an ownership interest in UHHC. With respect to Justiniano, the court determined, among other things, that Justiniano was judicially estopped from pursuing his claims because he had taken an inconsistent position concerning his alleged ownership interest in a prior bankruptcy proceeding. We conclude the court's findings were supported by the evidence. We affirm.

FACTS AND PROCEDURAL BACKGROUND

1. *The Complaint's Allegations*

Plaintiffs filed this action on October 4, 2013. According to the complaint, Justiniano and Cruz are co-workers at the Los Angeles County Department of Mental Health. Justiniano is a registered nurse; Cruz is an information technology specialist. Apart from his work for the County, Justiniano has also owned

¹ For clarity, we refer to Plaintiff Justiniano Jaojoco and Defendant Arlene Jaojoco, a formerly married couple, by their respective first names. We refer to Plaintiff Justin Chipeco and Defendant Ronald Cruz by their respective last names, and we refer to Defendant United Home Health Care by the acronym, UHHC.

and operated three home health agencies in the past. Beginning in 2007, Cruz repeatedly expressed a desire to partner with Justiniano in a home healthcare business.

In May 2009, Justiniano entered negotiations to purchase UHHC, a limited liability company organized and located in Las Vegas, Nevada. The owners agreed to sell the company to Justiniano for \$360,000, of which \$60,000 was to be paid upon execution of the purchase agreement with the remaining balance to be paid in \$50,000 monthly increments over the next six months.

After settling on the terms, Justiniano contacted Chipeco about the potential UHHC purchase. Chipeco is a friend of Justiniano's and a businessman from the Philippines, who also expressed an interest in partnering with Justiniano to own a home healthcare business. Chipeco allegedly agreed to purchase one-third of UHHC's shares. According to the complaint, Chipeco did not want to be named as a buyer and instead requested that Justiniano manage his ownership interest.

Following his discussion with Chipeco, Justiniano met with Cruz. The complaint alleges Justiniano and Cruz entered into an oral agreement at that meeting, pursuant to which Justiniano, Chipeco and Cruz would jointly purchase UHHC. According to the terms of the alleged agreement, each party agreed to supply \$20,000 towards the \$60,000 down payment, and each was to acquire a one-third ownership interest in UHHC. The parties also agreed that Cruz alone would execute the purchase agreement as the "purchaser on record," while Justiniano and Chipeco would hold their interests as non-record "beneficial owners." According to the complaint, the parties agreed upon this arrangement because "[Justiniano] had some unresolved

issues with Medicare regarding his old home health business while Chipeco did not want to deal with the licensing of the business due to his other business commitments in the Philippines.”

On May 23, 2009, Cruz executed the written purchase agreement for UHHC. He is the only named purchaser on the document. The complaint alleges Justiniano and Chipeco furnished the entire \$60,000 down payment, as Cruz failed to provide his \$20,000 share on the sale date. Arlene, Justiniano’s wife, allegedly delivered the down payment to the sellers in Justiniano’s presence. Justiniano also remitted to the sellers his shares of stock in Calene Corporation, as security for the balance of the purchase price.²

The complaint alleges UHHC has operated profitably since receiving its Medicare provider number in 2009. UHHC’s filings with the Nevada Secretary of State list Arlene as the company’s registered agent and Cruz as the sole managing member. Arlene also allegedly serves as UHHC’s assistant administrator, manager, biller and a signatory to the company’s financial and business transactions.

In 2011, Arlene filed for divorce from Justiniano. In August 2012, they separated. The complaint alleges Arlene and Cruz are presently romantically involved and living together in Nevada.

After allegedly paying Justiniano a \$21,000 profit distribution in 2010, UHHC made no further payments to

² Justiniano owned Calene with his sister. At the time, the company operated a handful of Church’s Chicken franchises.

Plaintiffs.³ In February 2013, after consulting with Chipeco, Justiniano requested an accounting of UHHC's business transactions. On April 17, 2013, after receiving no response from Defendants, Justiniano retained legal counsel and sent a letter to Cruz and UHHC to "ask formally for an accounting."⁴

On April 22, 2013, UHHC responded to the request for an accounting. In a letter from its legal counsel, UHHC asserted Justiniano was "not a member of UHHC" and, hence, was "not entitled to any of UHHC's financial or tax information." The letter denied the existence of an oral agreement between Justiniano and Cruz. Further, while allowing for the possibility that Chipeco might have supplied funds for the down payment to purchase UHHC, the letter unequivocally stated that Justiniano was "clearly not a legal or equitable owner of UHHC."

³ Contrary to the complaint's allegation, Justiniano testified at trial that he did not actually receive this payment. He also admitted at trial that he reported the purported income on his taxes in connection with \$68,430 in offsetting expenses incurred by Arlene's medical billing business. Arlene testified that the 1099 reflected payments to her medical billing company for services rendered to UHHC, but Justiniano had requested that UHHC issue the 1099 to him in order to "wash off his income so that he won't pay taxes."

⁴ Justiniano testified at trial that as early as 2010 he had requested documents and share certificates from UHHC confirming his ownership interest in the company. Though Justiniano admitted at trial that UHHC refused to provide the requested documentation, the complaint alleges he took no formal action to investigate his claims until April 2013.

Following receipt of UHHC's response, Plaintiffs filed the instant action. The complaint asserts causes of action for open book accounting, conversion, fraud and constructive trust.

2. *The Bench Trial and Statement of Decision*

On December 22, 2014, the court commenced a four-day bench trial on Plaintiffs' claims. Justiniano offered testimony and evidence largely consistent with the complaint's allegations. Though he had been served with a notice to attend trial, Chipeco failed to appear.

Defendants disputed the complaint's allegations and offered contrary evidence concerning the existence of the alleged oral agreement and the source of the funds that Cruz used to purchase UHHC. Cruz testified that he first spoke to Arlene in April 2009 about his desire to purchase a home healthcare business. Arlene contacted a friend who knew the owners of UHHC and learned they were considering selling the business. Arlene agreed to broker the deal. According to Cruz, Justiniano was not a party to these discussions.

On May 23, 2009, Cruz executed an agreement with UHHC's owners to purchase the business. Per the agreement's terms, Cruz purchased UHHC for a total price of \$270,000, consisting of a \$25,000 deposit, a subsequent \$35,000 payment upon execution of the agreement, four monthly payments of \$50,000 commencing on June 30, 2009, and a final \$10,000 payment on October 30, 2009. Cruz is the only named purchaser in the agreement.

Cruz testified that he never formed an agreement with Plaintiffs to be part owners in UHHC. He denied Plaintiffs' claims that they held an ownership interest in the company, denied they had ever been issued company stock, and denied they had ever received profit distributions from UHHC.

Arlene similarly testified that she spoke with Cruz in April 2009 about his desire to purchase a home healthcare company. After contacting a friend, who informed her UHHC's owners would sell the company, Arlene assisted Cruz with the negotiations. She was present for the closing, but did not witness Cruz execute the purchase agreement. In June 2009, after completing the UHHC purchase, Cruz hired Arlene as a community liaison, medical biller and designee assistant administrator for the company. Arlene confirmed Justiniano was not a party to the purchase transaction and was not a UHHC shareholder.

With respect to Chipeco, Arlene testified that he wire transferred her money on three separate occasions in 2009, but none of those funds were intended or used to purchase an equity interest in UHHC. In February 2009, Chipeco wired Arlene \$50,000 for the purchase of a different home healthcare company, Ameriprime. Arlene assisted Chipeco with the Ameriprime purchase, which closed in March 2009. In May 2009, Arlene requested a personal loan from Chipeco to assist her with debts carried by Justiniano's company, Calene, which operated a handful of Church's Chicken franchises. Chipeco wired Arlene \$60,000 as a personal loan to assist with Calene's operating liabilities. During her testimony, Arlene authenticated several checks drawn on her personal account to pay Calene's rent and other expenses from the funds Chipeco lent her in May 2009.

Lastly, in November 2009, Arlene negotiated with Chipeco to secure a \$50,000 loan for UHHC. UHHC eventually paid the loan back to Chipeco, with interest. Arlene confirmed that Chipeco neither purchased nor ever received an ownership interest in UHHC.

At the close of Plaintiffs' case, which included the foregoing testimony by Cruz and Arlene, Defendants moved for judgment on Chipeco's claims pursuant to Code of Civil Procedure section 631.8. Defendants argued Chipeco should be barred from pursuing the claims because he had failed to appear at trial despite having been served with a notice to attend pursuant to Code of Civil Procedure section 1987. Additionally, Defendants argued Chipeco failed to present sufficient evidence to support his claims. The trial court granted the motion and dismissed Chipeco from the case.

In addition to the testimony offered during Plaintiffs' case, Defendants presented evidence concerning a Chapter 7 bankruptcy petition that Justiniano filed in June 2010. The petition listed several categories of assets in Justiniano's possession, including a 50 percent ownership interest in Calene. However, Justiniano did not list his purported interest in UHHC, nor did he disclose his claimed UHHC interest anywhere in the petition. Justiniano confirmed in his trial testimony that he believed he owned an interest in UHHC at the time he filed for bankruptcy, but concluded he could not list the interest because he did not have paperwork from the company confirming his ownership. Justiniano admitted the bankruptcy court discharged over \$1 million in debts as a result of his petition.

After taking the matter under submission, the trial court issued a written statement of decision in favor of Defendants on all claims. As a legal matter, the court concluded the alleged oral agreement could not serve as a basis for Justiniano's claims because the contract's purpose—to conceal Justiniano's ownership interest due to a dispute with Medicare—was illegal. The court also found the claims were time barred under the applicable statute of limitations because Justiniano knew or should have known Defendants disputed his ownership interest by January 1, 2011—more than two years before he filed suit based on the alleged oral contract. Alternatively, the court concluded Justiniano was judicially estopped from claiming an ownership interest in UHHC because he had omitted the alleged interest from his 2010 bankruptcy petition. Lastly, the court concluded each of Justiniano's claims failed on their individual merits based on the evidence adduced at trial.

DISCUSSION

1. The Trial Court Properly Granted Defendants' Motion for Judgment as to Chipeco's Claims

We begin with Plaintiff Chipeco's contention that the trial court erred in rendering judgment in favor of Defendants pursuant to Code of Civil Procedure section 631.8. The statute provides in relevant part: "After a party has completed his presentation of evidence in a trial by the court, the other party, without waiving his right to offer evidence in support of his defense or in rebuttal in the event the motion is not granted, may move for a judgment. The court as trier of the facts shall weigh the evidence and may render a judgment in favor of the moving party, in which case the court shall make a statement of decision

as provided in Sections 632 and 634.” (Code Civ. Proc., § 631.8, subd. (a).)⁵

⁵ Code of Civil Procedure section 632 provides, upon the trial of a question of fact by the superior court, “[t]he court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial.” For appeal purposes, the statement of decision provides a record of the trial court’s reasoning on particular disputed issues, which the appellate court reviews in determining whether the trial court’s decision is supported by the law and evidence. (See *In re Marriage of Fong* (2011) 193 Cal.App.4th 278, 293.)

“When a statement of decision does not resolve a controverted issue, or if the statement is ambiguous and the record shows that 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.” (Code Civ. Proc., § 634.) However, appellate courts will invoke the doctrine of “implied findings” where the non-prevailing party fails to timely bring alleged deficiencies in a requested statement of decision to the trial court’s attention. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1134.) In other words, unless the non-prevailing party requested clarification in the trial court, that party waives the right to claim on appeal that a statement of decision is deficient, and hence the appellate court will imply findings to support the judgment. (*Ibid.*; Code Civ. Proc., § 634.) Because Plaintiff Chipeco did not raise any purported deficiencies in the statement of decision with the trial court, we must presume the trial court’s judgment is correct, and indulge all reasonable intendments and presumptions in favor of its correctness. (*In re Marriage of Arceneaux*, at p. 1133.)

“The findings of a trial court made after granting a motion for judgment pursuant to Code of Civil Procedure, section 631.8 are entitled to the same respect on appeal as are any other findings of a trial court, and are not erroneous if supported by substantial evidence. [Citations.] Where two or more inferences reasonably can be drawn from the facts, an appellate court is without power to substitute its deductions for those of the trial court. . . . We treat the court’s findings made pursuant to granting a motion under Code of Civil Procedure, section 631.8 as though made after a trial in which evidence was produced by both sides; thus the evidence is viewed in the light most favorable to respondents.” (*Charles C. Chapman Building Co. v. California Mart* (1969) 2 Cal.App.3d 846, 853.)

The trial court’s statement of decision identified two grounds for rendering judgment in favor of Defendants on Chipeco’s claims: (1) Chipeco failed to appear at trial despite having been served with a notice to attend as a party to the litigation (Code Civ. Proc., § 1987, subd. (b)); and (2) Chipeco failed to present sufficient evidence to establish the claims asserted in the complaint. On appeal, Chipeco focuses exclusively on the first ground, arguing his appearance was not required because he was represented by Justiniano pursuant to a power of attorney. While we find the proposition dubious, we need not decide whether a power of attorney relieves a plaintiff of his duty to attend trial when served with a proper notice in lieu of subpoena. Regardless of that contention’s merit, we conclude the trial court’s alternative ground—Chipeco’s failure to satisfy his evidentiary burden—was correct and sufficient to affirm the judgment.

At trial, Justiniano testified that, in May 2009, Chipeco wire transferred \$20,000 to Arlene for his one-third portion of the \$60,000 down payment to purchase UHHC. According to Plaintiffs' complaint, that alleged payment secured Chipeco a one-third equity interest in the company, pursuant to an oral agreement between Justiniano, Chipeco and Cruz. Defendants disputed this claim and offered contrary evidence at trial concerning the purpose for Chipeco's wire transfer. In that regard, Arlene testified that Chipeco made the May 2009 wire transfer as a personal loan to assist Justiniano's business, Calene, which had accumulated significant operating liabilities at the time. Defendants corroborated Arlene's testimony with bank records showing Arlene used the money she received from Chipeco to pay rent, tax liabilities, and other debts owed by Calene in May 2009. Arlene also testified that the loan was repaid to Chipeco, with interest. Further, both Arlene and Cruz testified that Chipeco had never supplied any funds to purchase an interest in UHHC.

In ruling on Defendants' motion for judgment, the trial court acknowledged the evidence was "conflicting" with respect to Chipeco's alleged ownership interest. Nevertheless, in rendering judgment in Defendants' favor, the court implicitly found Defendants' evidence to be more credible, specifically citing Arlene's testimony characterizing Chipeco's wire transfer as a personal loan that had been repaid. Code of Civil Procedure section 631.8 requires the trial court to "weigh the evidence" in determining whether to render judgment in favor of the moving party. The court did just that in crediting Defendants' evidence regarding Chipeco's wire transfer while rejecting the conflicting evidence offered by Justiniano. Because the judgment is

supported by substantial evidence, we must affirm. (See *Roth v. Parker* (1997) 57 Cal.App.4th 542, 549.)

2. *The Trial Court's Judicial Estoppel Findings Are Supported by the Evidence*

The trial court identified four grounds in its statement of decision for rendering judgment in Defendants' favor on Justiniano's claims: (1) the claims were barred because the alleged underlying oral contract had an illegal purpose; (2) the claims were time barred under the applicable statute of limitations; (3) the claims were barred by the doctrine of judicial estoppel; and (4) the claims failed on their individual merits according to the evidence presented at trial. We conclude the court's judicial estoppel findings are supported by the evidence, and this ruling alone is sufficient to affirm the judgment as to all Justiniano's claims.

“ ‘ “The doctrine of judicial estoppel, sometimes referred to as the doctrine of preclusion of inconsistent positions, is invoked to prevent a party from changing its position over the course of judicial proceedings when such positional changes have an adverse impact on the judicial process. . . . ‘The policies underlying preclusion of inconsistent positions are “general consideration[s] of the orderly administration of justice and regard for the dignity of judicial proceedings.” ’ . . . Judicial estoppel is ‘intended to protect against a litigant playing “fast and loose with the courts.” ’ ’ ’ ” (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181.)

Consistent with these policies, courts invoke the judicial estoppel doctrine to preclude a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position. “ ‘ “The doctrine's dual goals are

to maintain the integrity of the judicial system and to protect parties from opponents' unfair strategies. . . ." [Citation.] The doctrine applies when '(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.' " (*Aguilar v. Lerner* (2004) 32 Cal.4th 974, 986-987 (*Aguilar*).)

Application of the judicial estoppel doctrine is discretionary. (*Aguilar, supra*, 32 Cal.4th at p. 986.) "[B]ecause judicial estoppel is an equitable doctrine [citations], whether it should be applied is a matter within the discretion of the trial court. [Citations.] The exercise of discretion for an equitable determination is reviewed under an abuse of discretion standard." (*Blix Street Records, Inc. v. Cassidy* (2010) 191 Cal.App.4th 39, 46-47.) " 'In deciding whether the trial court abused its discretion, "[w]e are . . . bound . . . by the substantial evidence rule. [Citations.] . . . The judgment of the trial court is presumed correct; all intendments and presumptions are indulged to support the judgment; conflicts in the declarations must be resolved in favor of the prevailing party, and the trial court's resolution of any factual disputes arising from the evidence is conclusive. [Citations.]" [Citation.]" (*Koo v. Rubio's Restaurants, Inc.* (2003) 109 Cal.App.4th 719, 728.)

In its statement of decision, the trial court made findings on each element necessary to invoke the judicial estoppel doctrine. The court found: “1) that Plaintiff [Justiniano] Jaojoco did not assert an ownership interest in UHHC in his June 2010 bankruptcy proceedings, but now alleges a [one-third] ownership interest in UHHC; 2) both Plaintiff Jaojoco’s bankruptcy proceedings and this immediate action are judicial proceedings; 3) Plaintiff Jaojoco’s debts were discharged in his bankruptcy proceedings; 4) Plaintiff Jaojoco’s two positions were diametrically opposed to each other; and 5) Plaintiff Jaojoco knowingly and intentionally failed to disclose his alleged ownership interest in UHHC.” (Footnote omitted.)⁶ Each of these findings was supported by substantial evidence, including, among other things, Justiniano’s bankruptcy petition in which he omitted his alleged ownership interest in UHHC. Additionally, Justiniano’s trial testimony confirmed that the bankruptcy court discharged his debts, totaling over \$1,000,000, without providing compensation to creditors from the equity in UHHC that Justiniano now claims in the instant action. That is, Justiniano’s trial testimony suggests he knowingly derived an appreciable benefit from the nondisclosure in the bankruptcy proceeding. (Cf. *Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th

⁶ The trial court also correctly observed in its statement of decision that a discharge of debt is a successful assertion of a position for purposes of invoking the judicial estoppel doctrine. (See, e.g., *Hamilton v. State Farm Fire & Cas. Co.* (9th Cir. 2001) 270 F.3d 778, 784 [“a discharge of debt by a bankruptcy court, under these circumstances, is sufficient acceptance to provide a basis for judicial estoppel”].)

995, 1017, 1019 [nondisclosure unaccompanied by bad faith is insufficient to justify the application of judicial estoppel].)

On appeal, Justiniano argues his position in the bankruptcy proceeding was not inconsistent with the claims he asserts in this action. Citing his own testimony, Justiniano maintains he was “forced not to take any position[] with respect to [UHHC] during the bankruptcy proceeding, because, at that time, [Arlene] refused to provide him with the required documents needed to prove he was a part owner of the company.” In other words, Justiniano insists he had no obligation to disclose his alleged ownership interest in UHHC because he could not obtain paperwork from the company. We are not persuaded. The bankruptcy law is clear, insofar as Justiniano believed he maintained an ownership interest in UHHC, he was required to list it in his petition pursuant to the mandate that a debtor disclose “all legal or equitable interests of the debtor in property as of the commencement of [a bankruptcy] case” wherever located and by whomever held. (11 U.S.C., §§ 541(a)(1), 521(a)(1); *Ajaka v. BrooksAmerica Mortg. Corp.* (11th Cir. 2006) 453 F.3d 1339, 1344 [“A debtor seeking shelter under the bankruptcy laws must disclose all assets, or potential assets, to the bankruptcy court.”].) Justiniano fails to support his argument with legal authority articulating an applicable exception to the bankruptcy law’s disclosure rules.

Justiniano alleged in his complaint and testified at trial that, in May 2009, he paid money and entered into an agreement with Cruz to obtain a one-third equity interest in UHHC. He admitted again at trial that, as of June 2010 when he filed his bankruptcy petition, he believed he was an owner of the company. Notwithstanding these allegations and admissions, Justiniano's bankruptcy petition shows he failed to disclose his purported ownership interest to the bankruptcy court. In view of this evidence, the trial court reasonably concluded that Justiniano took inconsistent positions with respect to the core factual contention underpinning each of the claims asserted in his complaint, and implicitly found those inconsistent positions were asserted on purpose to benefit Justiniano. The trial court did not err in ruling Justiniano's claims were barred by the judicial estoppel doctrine.⁷

⁷ Because the judicial estoppel ruling is alone sufficient to affirm the judgment, we need not address whether the court erred with respect to the other grounds articulated in its statement of decision.

DISPOSITION

The judgment is affirmed. Defendants are entitled to their costs.

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GOSWAMI, J.*

We concur:

ALDRICH, Acting 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.