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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

JOCELINDA INVESTMENTS,
LLC et al.,

Plaintiffs and Respondents,

v.

MICHAEL MABUGAT,

Defendant and Appellant.

B259502

(Los Angeles County
Super. Ct. No. LC086160)

APPEAL from a judgment of the Superior Court of Los Angeles County, Frank J. Johnson, Judge. Affirmed.

MC Attorney Group and Michelle A. Mabugat for Defendant and Appellant.

Law Offices of Joel P. Schiff and Joel P. Schiff for Plaintiffs and Respondents.

INTRODUCTION

This case arose out of two failed real estate development projects, one in Gulf Shores, Alabama, and the other in Palm Desert, California. Plaintiffs are three entities that invested in the projects: Jocelinda Investments, LLC (Jocelinda), La Bella Investments, LLC (La Bella), and Comercio, LLC (Comercio). Dr. John Chaves, a dentist, was the manager of all three companies and owned at least 50 percent of each of them.

Defendants are Michael Mabugat, the developer; three entities of which he was manager and controlling member (Westlake Development of Alabama, LLC (Westlake), Jurassic Ventures, LLC (Jurassic), and Praetorian Development and Acquisitions, LLC (Praetorian)); and Mabugat's former wife, Maria Theresa Estandarte, who was Praetorian's bookkeeper.

Following a bench trial, the court entered judgment in favor of plaintiffs and against defendants for breach of contract, breach of fiduciary duty, fraud, and various common counts, and the court found that the entity defendants were Mabugat's alter egos. The judgment awards plaintiffs both compensatory and punitive damages and attorney fees, plus interest.

Only Mabugat appeals. He argues that the fiduciary duty and fraud claims were based on improper expert testimony and that the fiduciary duty claim and one of the fraud theories were not supported by substantial evidence. We conclude that (1) the argument concerning the expert testimony lacks merit and (2) even if the substantial evidence arguments were meritorious, the deficiencies would not be prejudicial. We therefore affirm.

FACTUAL BACKGROUND

Mabugat and Chaves met in 1999, when Mabugat became a patient of Chaves's. Over the years, they became close friends, sharing common interests. Mabugat and Estandarte were part of the wedding party when Chaves got married.

The plaintiff and defendant entities, acting through Mabugat and Chaves, entered into three contracts in 2006. First, Westlake and Jocelinda entered into a written agreement concerning the development of property Westlake owned in Gulf Shores, Alabama. Under the contract, Jocelinda would participate in the development of the property by investing up to \$2 million in the project.

Second, Jurassic and La Bella entered into a written agreement concerning the development of property in Palm Desert. Jurassic held the majority interest in Desert Gold Ventures, which was acquiring the Palm Desert property for development. Under the contract, La Bella would participate in the development of the property by investing up to \$600,000 in the project.

Third, Mabugat and Chaves orally agreed that Comercio would invest an additional \$150,000 in the Palm Desert project under the same terms as those in the written agreement between Jurassic and La Bella.

At Mabugat's suggestion, Jocelinda transferred its \$2 million investment in the Gulf Shores project into Praetorian's bank account, rather than paying Westlake directly. Mabugat told Chaves that Praetorian "owns everything. It'll be useful for me if you at this point sent the money to Praetorian, which I own, it's my company. And then I will disburse it immediately to

Westlake. It's easier for me." La Bella transferred \$600,000 and Comercio transferred \$150,000 into Praetorian's bank account on the same basis.

In discussions leading up to the first agreement, Mabugat falsely represented to Chaves that Mabugat and Estandarte had a family trust worth over \$80 million. Mabugat told Chaves, "[S]88 million in our trust. And, John, I'm going to stand behind it. I will give you a personal guarantee. Just know your two million is nothing. If anything happens, you know, I'm going to take care of you Don't worry about it. You're like family to me. You're my brother." Mabugat said he would personally guarantee the investments with the family trust and would put it in writing, but he never gave Chaves such a written guarantee.

Mabugat also failed to disclose to Chaves that another investor ("Northstar") was contractually entitled to both a \$25 million payment on the Palm Desert project and a 10-acre parcel of the property itself. Chaves testified that he would have wanted to know that information before investing in the project, but he indicated that he probably would have invested even if he had known: "But I got to tell you, the project was huge. The project ultimately was going to be many millions of dollars. So I didn't know about these details. He didn't share any of these. I think it would have diluted our position. But at the same time it was a big project. So there was, supposedly, a lot of fat to go round."

In February 2008, Mabugat informed Chaves that the Gulf Shores project was not going to be built. Chaves asked for his money back. Mabugat said he would return the money, but throughout the rest of 2008 he kept giving Chaves various reasons why he could not do so. The major lenders for the Palm

Desert project then backed out of that project at the last minute, and the project died.

According to plaintiffs' financial expert, William Buckley, the money transferred into Praetorian's bank account was commingled with Mabugat's personal funds and used to pay his personal expenses, including dental work performed by Chaves. By September 2006, all of plaintiffs' funds had been disbursed.

PROCEDURAL BACKGROUND

Plaintiffs' operative first amended complaint alleged 14 causes of action: (1) breach of fiduciary duty (against Mabugat, Praetorian, and Westlake), (2) breach of contract (against Westlake), (3) breach of contract (against Jurassic), (4) fraud by concealment (against Mabugat and Jurassic), (5) fraud (against Mabugat and Estandarte), (6) rescission (against Westlake), (7) rescission (against Jurassic), (8) money had and received (against Mabugat, Estandarte, Praetorian, and Westlake), (9) money had and received (against Mabugat, Estandarte, Praetorian, and Jurassic), (10) money lent (against Mabugat, Praetorian, and Westlake), (11) money lent (against Mabugat, Praetorian, and Jurassic), (12) money lent (against Mabugat, Praetorian, and Jurassic), (13) constructive trust (against Mabugat and Estandarte), and (14) unjust enrichment (against Mabugat and Estandarte). The judgment omits the constructive trust claim and refers to the unjust enrichment claim as the thirteenth cause of action.

The court found against Mabugat on all nine causes of action against him: breach of fiduciary duty, fraud by concealment, fraud, five common counts, and unjust enrichment.

The court also found against Estandarte on the unjust enrichment claim but found in her favor on the fraud claim. (It did not address the other claims against her.) The entity defendants stipulated to entry of judgment against them on all causes of action to which they were parties (the first through fourth and sixth through twelfth causes of action). No party requested a written statement of decision, and the court did not issue one.

The court awarded Jocelinda compensatory damages of \$2 million, plus prejudgment interest, against Mabugat, Westlake, and Praetorian jointly and severally, for a total of \$3,673,987.25. It also awarded Jocelinda \$439,147 in attorney fees against Westlake, increasing the total judgment in favor of Jocelinda and against Westlake to \$4,113,134.75.

The court awarded La Bella compensatory damages of \$600,000, plus prejudgment interest, against Mabugat, Jurassic, and Praetorian jointly and severally, for a total of \$1,087,715.46. Comercio was awarded compensatory damages of \$150,000, plus prejudgment interest, against Mabugat, Jurassic, and Praetorian jointly and severally, for a total of \$269,148.90. In addition, the court awarded Jocelinda, La Bella, and Comercio punitive damages of \$1.5 million against Mabugat only.

The court also entered judgment in favor of Jocelinda, La Bella, and Comercio against Estandarte in the amount of \$482,460.

DISCUSSION

A. *Expert Testimony*

Mabugat argues that the judgment must be reversed as to the breach of fiduciary duty and fraud causes of action “because it was premised upon unsound expert testimony.” He asserts that “Buckley conceded that he did not include in his analysis the over \$10 million that Mabugat deposited into the [Praetorian] account from the period after September 2006 through 2008, thus intentionally ignoring the fact that Mabugat *more than* replenished the money that was used for his personal expenses from March to September 2006.” Mabugat argues that Buckley’s analysis was therefore “flawed in that it ignores the simple truth that ‘[m]oney is fungible,’ [citations] therefore tracing cannot be meaningfully made in this case.”

Mabugat cites no evidence that supports his factual assertion that he deposited more than \$10 million into the Praetorian accounts after September 2006. Rather, he cites portions of his cross-examination of Buckley in which (1) Buckley was asked why he limited his analysis to March 2006 through September 2006 (answer: because plaintiffs’ first transfer of funds to Praetorian was in March 2006, and all of plaintiffs’ invested funds had been diverted by September 2006), and (2) Buckley was asked a hypothetical question based on the assumptions that \$10 million was deposited into the Praetorian accounts in October 2006 and those funds were thereafter spent on the real estate projects (the court sustained an objection to the question, which consequently was not answered).

“[A]ny reference to a matter in the record” must be supported by a proper citation to the record (Cal. Rules of Court,

rule 8.204(a)(1)(C)), and we “need not consider” such matters in the absence of an appropriate citation (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239 & fn. 16). Because Mabugat has not cited any evidence supporting his assertion that he deposited more than \$10 million into the Praetorian accounts after September 2006, we decline to consider his argument based on that assertion.

B. Sufficiency of the Evidence

Mabugat argues that the evidence is insufficient to support plaintiffs’ claims for breach of fiduciary duty and fraud by concealment. In particular, he argues that there is insufficient evidence of (1) a fiduciary relationship between Mabugat and Chaves, and (2) actual reliance by Chaves on Mabugat’s nondisclosure of Northstar’s entitlement to payment of \$25 million on the Palm Desert project. We conclude that any such deficiency was harmless.

The first amended complaint alleged fraud based on two theories: concealment of the Northstar agreement and false representations concerning Mabugat’s alleged \$80 million family trust. In its oral ruling, the trial court found in favor of plaintiffs and against Mabugat on both theories. Moreover, in the absence of a written statement of decision, “[t]he doctrine of implied findings requires the appellate court to infer the trial court made all factual findings necessary to support the judgment.” (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58.) Thus, even without the trial court’s oral ruling, we would have to infer that the court resolved the fraud claim concerning the family trust against Mabugat.

On appeal, Mabugat presents no arguments concerning the fraud claim concerning the family trust, so we must affirm the finding against him on that claim. He also does not argue that plaintiffs recovered more on the fiduciary duty and fraud by concealment claims than they were entitled to recover on the fraud claim concerning the family trust alone, and we are not aware of any potential basis for such an argument. Thus, even if we agreed that the fiduciary duty and fraud by concealment claims were not supported by substantial evidence, we would have to affirm the judgment on the basis of the fraud claim concerning the family trust. (Cf. *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 427 [when ““several counts or issues are tried,”” a general verdict must be affirmed as long as at least one count ““is supported by substantial evidence and is unaffected by error””].)

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs of appeal.

MENETREZ, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

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