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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

SANG W. LEE et al.,

Plaintiffs and Appellants,

v.

HOWARD PARK et al.,

Defendants and Respondents.

B282857

(Los Angeles County
Super. Ct. No. NC059536)

APPEAL from a judgment of the Superior Court of the
County of Los Angeles, Ross Klein, Judge. Affirmed.

Law Offices of Albert Chang, and Albert Chang, for
Plaintiffs and Appellants.

Law Office of David L. Bell, and David L. Bell, for
Defendants and Respondents.

I. INTRODUCTION

Plaintiffs Sang Lee and Christopher Ko¹ sued defendants Howard and Chong Hoon Park² for the alleged breach of a settlement of disputes arising from a laundromat joint venture and related claims. Following a bench trial, the court issued a statement of decision including detailed factual findings and concluding plaintiffs did not meet their burden of proof on their various causes of action.

On appeal, plaintiffs contend that the trial court's factual findings were not supported by substantial evidence and that they produced sufficient evidence to satisfy their burden of proof on their causes of action. We hold plaintiffs have not demonstrated a lack of substantial evidence for the challenged factual findings, and that if the trial court did err in making any particular finding, plaintiffs have not shown they were prejudiced. We further hold plaintiffs failed to demonstrate, as to any of their causes of action, that the evidence compels a finding that they were entitled to judgment as a matter of law. We therefore affirm the judgment.

¹ Sang Lee and Christopher Ko will be referred to collectively as plaintiffs and individually by their last names.

² Howard and Chong Hoon Park will be referred to collectively as defendants and individually by their first names.

II. FACTUAL BACKGROUND³

A. *Partnership Formation and Collapse*

In 2007, Jong Park (Jong) formed CGP Development, LLC (CGP) and registered it with the California Secretary of State. On March 27, 2008, plaintiffs and Jong formed a general partnership to buy and develop a laundromat business and property located at 1501-1507 West Willow Street in Long Beach. That same day they signed an operating agreement for CGP. The partnership agreement called for plaintiff Lee to make a capital contribution of \$180,000 for a 33 percent ownership interest in CGP. Plaintiff Ko was to forgive \$120,000 in debt owed by defendant Howard in exchange for a 17 percent ownership interest. Jong was to retain a 50 percent ownership interest in CGP.

The business was purchased on April 8, 2008. Defendant Howard received \$113,000 at the close of escrow and immediately loaned the money back to CGP. On April 18, 2008, plaintiff Ko assumed co-management of the laundromat business along with Jong, who had no prior business experience. Escrow for funding the purchase of the real property closed on October 8, 2008. The seller, defendant Chong, received nothing from the sale.

Pursuant to the partnership agreement, plaintiffs were to manage the business along with Jong. During the first year of

³ Because, as explained below, plaintiffs did not adequately challenge the sufficiency of the evidence in support of the trial court's findings, we state the facts as found by the trial court in its statement of decision.

the partnership, the economy went into a recession and the three partners eventually abandoned the venture.

B. *Financing the Partnership*

1. The Business

The original intent of the partnership was to purchase the business and property for \$1.82 million. Plaintiffs testified that the purchase price for the business was reduced to \$290,000 and was paid with seller financing of \$140,000 and Jong's capital contribution of \$150,000.

2. The Property

The purchase price for the property was \$1.26 million. This amount was financed by a \$948,000 bank loan plus \$152,000 in seller financing and a \$180,000 capital investment by Lee (leaving a \$20,000 surplus for remodeling, improvements, and business expenses). Plaintiffs never actually provided any consideration to become partners. Plaintiff Ko never forgave \$120,000 in loans, his capital investment for the partnership. He never became a partner to the partnership. Plaintiff Lee paid \$180,000, but received \$203,176 back when the escrow closed. He initially testified that he did not know anything about the money being held for him in escrow and never received it. He was then shown a demand letter signed by him, which stated that the escrow company was holding \$203,176 in his account. He confirmed his signature on the document. He testified that he

received \$30,000 from the account, did not know anything about the remaining \$173,907.22, and never inquired about it.

C. *Abandonment of the Partnership in 2009*

Plaintiff Ko acknowledged that the economy was in dire straits in 2008. The partners nevertheless anticipated a quick turnaround of the property and a profit of nearly \$800,000. But no such profit was ever realized. All three partners walked away from the partnership in 2009. Plaintiffs testified that within eight to nine months after starting the partnership, they gave up participatory management in the business and returned the business keys, books, records, and checkbook. They further testified that they gave up because: 1) the economy was bad; 2) they were not interested in running a laundromat; and 3) they wanted to return to their own business affairs. Jong abandoned the partnership in 2009 and returned to Korea.

After the abandonment, plaintiffs never inquired further about the partnership, never followed the procedures established in the operating agreement, never checked on the partnership assets or liabilities or asked for an annual or special meeting, never asked for tax information necessary for their tax return or for any profit/loss statements, and never inquired about the status of the partnership. Plaintiffs both told defendant Howard that they were giving up on the project.

D. *The Settlement Agreement*

In August 2011, two years after they abandoned the partnership, plaintiffs sued defendants and Jong asking for

dissolution of the partnership. The parties settled the suit on August 3, 2011⁴ and executed a formal written settlement agreement on September 14, 2011. Plaintiffs' primary concern in the settlement (and during trial of this matter) was the return of their investment. Defendant Howard agreed to pay plaintiff Lee \$185,000 within three years of the settlement and to pay plaintiff Ko \$45,000 within 12 months after plaintiff Lee was paid. Defendants would also remove any encumbrances on CGP that would expose plaintiffs to further liability. Under this provision, defendant Howard would buy out plaintiffs' partnership interest and remove them from any liability for the venture.

Before this lawsuit was filed, defendant Howard had paid plaintiff Lee \$20,631 and owed a balance of \$157,400, and defendant Chong had rescinded the \$152,000 note. Plaintiffs filed this action in June 2014, before the expiration of the three-year-period for defendant Howard to pay the full amount owed to plaintiff Lee under the settlement agreement. Plaintiffs made further performance impossible until the rights of the parties were determined in this lawsuit.

III. PROCEDURAL BACKGROUND

On June 2, 2014, plaintiffs sued defendants and others alleging 18 causes of action for, inter alia, breach of the settlement agreement, fraudulent inducement, rescission,

⁴ There were two lawsuits pending between the parties before the settlement: *Chong Hoon Park v. CGP Development, LLC* (case No. NC054627) and *Sang W. Lee et al. v. Howard Park et al.* (case No. NC055944). Both cases were dismissed as part of the settlement.

cancellation of deeds of trust, concealment, conspiracy, an accounting, and an injunction.⁵ Defendants filed a cross-complaint, and the matter proceeded to a bench trial on November 14, 15, and 16, 2016. Plaintiffs and defendants testified,⁶ and plaintiffs submitted 36 documentary exhibits while defendants submitted two.

Following trial, the parties filed closing briefs, and the trial court then issued a minute order attaching and incorporating a statement of decision. The statement of decision contained detailed factual findings and the trial court's reasons for its rulings. On plaintiffs' breach of contract claims, the trial court ruled that "[p]laintiffs filed suit on June 2, 2014, which was before either of the final payment obligations were due. [Defendant] Howard had not, at the time of the complaint, breached this obligation. The evidence show[ed] that [defendant] Howard made periodic payments and that the progress payments were accepted before the [plaintiffs] filed suit. [¶] Defendants persuasively argue that the totality of the evidence shows that the partnership all but failed in 2009, that the [p]laintiffs (both in 2011 and currently) simply wanted a refund of their investment, and that the [s]ettlement [a]greement was intended to supersede the [p]artnership [a]greement. [Defendant] Howard agreed to return the [p]laintiffs' capital investments and remove any

⁵ Plaintiffs filed an amended complaint asserting 16 causes of action on July 27, 2015.

⁶ Plaintiffs also called Young Lim who testified briefly about a deed of trust naming her as beneficiary and purportedly securing a \$450,000 loan from her to CGP. Lim testified she never loaned CGP \$450,000.

encumbrances against the [p]laintiffs. Per testimony, [defendant] Chong rescinded the \$152,000 note within 10 days of the settlement. [Defendant] Howard was to pay [plaintiff] Lee within three years. Had full payment been allowed, these actions would have repaid the investors, removed any encumbrances on the [p]laintiffs, and rendered all remaining grievances moot.”

On plaintiffs’ rescission claim, the trial court ruled that “[t]he uncontradicted evidence before the [c]ourt is that the [d]eed and [n]ote in question were rescinded pursuant to the [s]ettlement [a]greement and that this issue was therefore rendered moot.”

On plaintiffs’ misrepresentation, concealment, and conspiracy claims, the trial court ruled that plaintiffs had failed to satisfy their burden of proof. The trial court also ruled that plaintiffs had failed to meet their burden of proof on any remaining causes of action.

The trial court concluded its decision: “As to the complaint, judgment is entered for the [d]efendants; [p]laintiffs shall take nothing. [¶] As to the cross-complaint, judgment is entered for the [c]ross-[d]efendants; the [c]ross-[c]omplainants shall take nothing. [¶] The [c]ourt finds there is no prevailing party. Each side is to bear its own costs.”⁷

Plaintiffs filed objections to the statement of decision, asserting that 19 factual findings were “not based on oral testimonies and/or documentary evidence” Defendants filed a response, and the trial court issued a minute order directing

⁷ The trial court also noted that under the parties’ settlement agreement, the trial court retained jurisdiction to enforce the settlement pursuant to Code of Civil Procedure section 664.6 and invited any party to the agreement to bring such a motion.

defendants to prepare a proposed statement of facts and plaintiffs to file a response. Defendants submitted a proposed statement of decision that essentially mirrored the trial court's statement and included certain cross-references to the trial transcripts. Plaintiffs' response included objections to 30 factual findings in defendants' proposed statement.

On February 21, 2017, the trial court issued a minute order overruling plaintiffs' objections to the trial court's statement of decision and defendants' proposed statement of decision. The minute order reiterated the trial court's original ruling and statement of decision granting judgment in favor of defendants on the complaint and in favor of plaintiffs on the cross-complaint. The minute order also stated that "[i]f any party to the [s]ettlement [a]greement wishes, he (or it) may file a Declaration and Motion to Enforce the [t]erms of the [s]ettlement [pursuant to Code of Civil Procedure section 664.6]."

On March 20, 2017, the trial court entered judgment in favor of defendants on the first amended complaint and in favor of plaintiffs on the cross-complaint. On May 17, 2017, plaintiffs filed a notice of appeal.

IV. DISCUSSION

A. *Contentions on Appeal*

Plaintiffs assert two general categories of challenges to the statement of decision. The first category, which plaintiffs attempt to characterize as evidentiary errors subject to an abuse

of discretion standard of review,⁸ is more accurately a challenge to the sufficiency of the evidence in support of 23 of the factual findings. Plaintiffs' second category is based on the trial court's conclusions that plaintiffs failed to meet their burden of proof on one or more of the elements of the majority of their causes of action.

B. *Standards of Review and Principles of Appellate Practice*

1. Sufficiency of Evidence

Contrary to plaintiffs' assertion, their challenges to the sufficiency of the evidence in support of the factual findings are not reviewed for abuse of discretion, but for substantial evidence. "When a finding of fact is attacked on the ground that there is not any substantial evidence to sustain it, the power of an appellate court *begins and ends* with the determination as to whether there is any substantial evidence contradicted or uncontradicted which will support the finding of fact.' [Citations.] [¶] 'It is well established that a reviewing court starts with the presumption that the record contains evidence to sustain every finding of fact.' [Citations.] [Appellants are therefore required] ' . . . to demonstrate that there is *no*

⁸ Plaintiffs claim that the trial court abused its discretion when it overruled their "evidentiary" objections to the trial court's statement of decision. Those objections, however, were not directed to evidence admitted during trial, but rather to the trial court's *posttrial factual findings* on the grounds that those findings were not supported by the trial evidence.

substantial evidence to support the challenged findings.’ (Italics added.) [Citations.] A recitation of only [appellants’] evidence is not the ‘demonstration’ contemplated under the above rule. [Citation.] Accordingly, if . . . ‘some particular issue of fact is not sustained, [appellants] are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed to be waived.’ [Citations.]” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881, italics added.)

When, as here, an appellant challenges the sufficiency of the evidence to support the factual findings, the opening brief must include a fair and complete statement of all facts supporting the judgment or order on appeal. (See Cal. Rules of Court, rule 8.204(a)(2)(C).) “A party who challenges the sufficiency of the evidence to support a finding must set forth, discuss, and analyze all the evidence on that point, both favorable and unfavorable.” (*Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218.) An appellant cannot simply provide a selective statement of facts in its opening brief. “Such briefing is manifestly deficient.” (*In re Marriage of Fink* (1979) 25 Cal.3d 877, 887.) ““A claim of insufficiency of the evidence . . . consisting of mere assertion without a fair statement of the evidence, is entitled to no consideration when it is apparent . . . that a substantial amount of evidence was received on behalf of the respondents.”” (*Schellinger Brothers v. Cotter* (2016) 2 Cal.App.5th 984, 998; *Kanner v. Globe Bottling Co.* (1969) 273 Cal.App.2d 559, 564.)

Moreover “[i]t is not the province of a reviewing court to search the record in order to ascertain whether it contains evidence that will sustain a contention made by either party to

the appeal. . . . Without any assistance from [an] appellant in setting forth the material evidence on [a challenged fact finding, a reviewing court is not required to] exhume it from the reporter's transcript of a . . . trial." (*Schultz v. Steinberg* (1960) 182 Cal.App.2d 134, 137.)

2. Failure of Proof at Trial

When a party challenges a trial court's conclusion that a plaintiff failed to meet its burden of proof, reviewing courts have developed an analytical approach that focuses on whether the evidence compels a finding in favor of the plaintiff. (*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 465-466 (*Sonic*).)

C. Analysis

1. Substantial Evidence

Plaintiffs first assert that 23 specific factual findings are not supported by the evidence. Plaintiffs have the affirmative burden of demonstrating a lack of evidence with a full and fair statement of the facts, favorable and unfavorable, relating to those findings. (Cal. Rules of Court, rule 8.204(a)(2)(C); *Doe v. Roman Catholic Archbishop of Cashel & Emly, supra*, 177 Cal.App.4th at p. 218.) Plaintiffs do not satisfy this basic requirement. Instead, at best, plaintiffs make blanket assertions concerning the insufficiency of the evidence in support of a given finding and cite selectively to their own evidence and exhibits without making any effort to set forth, discuss, and analyze all of

the facts and reasonable inferences that may be drawn from those facts. Their briefing is therefore “manifestly deficient” (*In re Marriage of Fink, supra*, 25 Cal.3d at p. 887) and fails at the outset to affirmatively demonstrate error.

In effect, plaintiffs shift to defendants and this court the burden to sift through the record for evidence supporting the findings. For example, plaintiffs contend that there was no “admitted” testimony to support the trial court’s conclusion that the partners abandoned the venture. This bald assertion ignores the testimony of both plaintiffs admitting that they voluntarily ceased active management of the business eight or nine months after it was purchased—returning keys, books, records, and the checkbook—because the economy was bad and they wanted to tend to their own business affairs, as well as plaintiff Ko’s admission that Jong returned to Korea in 2009 and never returned. That testimony supported a reasonable inference that the three partners abandoned the partnership within a year of its formation. Similarly, plaintiffs contend no evidence supports the finding that “Chong . . . had rescinded the \$152,000 note.” But, defendant Howard testified that he and his son defendant Chong had rescinded that note. Plaintiffs also assert that no evidence supports the finding of a lack of damages. However, plaintiff Lee testified that apart from the \$185,000, which defendant Howard still had months to pay when the suit was filed, his only loss was his inability to acquire two other properties due to bad credit caused by delinquencies unrelated to the partnership.

Plaintiffs, not this court, had the burden of showing a failure of substantial evidence. They did not satisfy that burden. To the contrary, the record reveals that the trial court received a substantial amount of evidence, including the testimony of

defendant Howard and the testimony of plaintiffs on both direct *and cross-examination*. The trial court made credibility determinations concerning, inter alia, the abandonment of the partnership and the settlement of disputes arising from it. The trial court also considered extensive documentary evidence and drew reasonable inferences from those documents. Based on evidence in the record, the trial court concluded that plaintiffs voluntarily abandoned the partnership within a year of its formation and settled their disputes with defendants by agreeing to accept the return of their original investments and the extinguishment of any and all partnership obligations and liabilities. The trial court further found that plaintiffs' premature lawsuit prevented defendants from fully performing under the settlement and that, but for the lawsuit, defendants were ready and able to fully perform their obligations. Plaintiffs' inadequate briefing falls far short of establishing an insufficiency of the evidence to support the trial court's findings.

2. Prejudice

In addition, plaintiffs' appeal suffers from a separate failure to meet their affirmative burden on appeal. Although plaintiffs assert that the alleged errors were prejudicial, they do not affirmatively demonstrate how any given claim of error was prejudicial to them.

Before an appellate court can reverse a trial court ruling, the appellant must demonstrate that the error upon which he or she relies was prejudicial. "Our state Constitution provides that '[n]o judgment shall be set aside, or new trial granted, in any cause, . . . for any error as to any matter of procedure, unless,

after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.’ (Cal. Const., art. VI, § 13.) ‘The effect of this provision is to eliminate any presumption of injury from error, and to require that the appellate court examine the evidence to determine whether the error did in fact prejudice the defendant. Thus, reversible error is a relative concept, and whether a slight or gross error is ground for reversal depends on the circumstances in each case.’ (6 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Reversible Error, § 1, p. 443.) [¶] The phrase ‘miscarriage of justice’ has a settled meaning in our law, having been explained in the seminal case of *People v. Watson* (1956) 46 Cal.2d 818 [299 P.2d 243] (*Watson*). Thus, ‘a “miscarriage of justice” should be declared only when the court, “after an examination of the entire cause, including the evidence,” is of the “opinion” that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.’ (*Id.* at p. 836.) ‘We have made clear that a “probability” in this context does not mean more likely than not, but merely a *reasonable chance*, more than an *abstract possibility*.’ (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 715 [34 Cal.Rptr.2d 898, 882 P.2d 894].)” (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800.)

Ordinarily, the appellant has the burden of affirmatively demonstrating prejudicial error. (*Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069.) Plaintiffs make no attempt to show that any of the claimed errors by the trial court in its factual findings was prejudicial, *i.e.*, that if the trial court had not made a particular allegedly incorrect factual finding, it was reasonably probable that plaintiffs would have obtained a more favorable

result. Plaintiffs cannot make this showing for the many factual findings concerning events before the 2011 settlement, which resolved the parties' then pending disputes. These findings about amounts that parties contributed to the business or received from the formation of the business in 2008 have slight bearing on plaintiffs' claims in the 2016 trial that defendants breached the 2011 settlement agreement by not making payments owed after 2011 and mismanaging the business after 2011.

In short, absent a showing of prejudice, plaintiffs cannot demonstrate that they are entitled to a reversal of the judgment.

3. Failures of Proof

The trial court also concluded that plaintiffs failed to satisfy their burden of proof on the majority of their causes of action. On appeal, plaintiffs again fall short of making the required showing to challenge this conclusion. Plaintiffs needed to show that the trial evidence compelled a finding in their favor on each cause of action. (*Sonic, supra*, 196 Cal.App.4th at pp. 465-466.)

Plaintiffs fail at the outset to acknowledge their significant burden on such challenges. (See *Sebago, Inc. v. City of Alameda* (1989) 211 Cal.App.3d 1372, 1388 ["Arguments should be tailored according to the applicable standard of appellate review"]; *James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021 [Failure to acknowledge the proper scope of review is a concession of a lack of merit].) They also fail to make any attempt to show that their evidence in support of a given cause of action compelled a finding in their favor.

Instead of tailoring their arguments to the appropriate standard of review, plaintiffs refer to the substantial evidence standard and merely reargue their interpretation of the evidence, without acknowledging that much of their evidence was contradicted or impeached. For example, plaintiffs argue that they proved defendants breached the settlement agreement because defendant Chong was obligated to rescind the \$152,000 note within 10 days of the execution of the settlement agreement and defendant Howard admitted that he still had possession of the original note. Howard's testimony on that issue was not so definite. Initially he said he gave plaintiffs the original note, but he then said he gave them a copy. He ultimately testified that he was unsure whether he gave plaintiffs a copy or the original. Thus, plaintiffs' evidence on this issue was not compelling and left room for a determination that the note had been rescinded. Moreover, plaintiffs argue that the trial court erred by not cancelling the note, but there is nothing in the record to show that plaintiffs ever requested at trial an order for delivery and cancellation of the original note.

Given the insufficiency of plaintiffs' showing, we conclude that they did not demonstrate error in the trial court's conclusion that plaintiffs failed to satisfy their burden of proof.

DISPOSITION

The judgment is affirmed. Defendants are awarded costs on appeal.

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SEIGLE, J.*

We concur:

BAKER, Acting P. J.

MOOR, J.

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