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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

PERSONAL COURT REPORTERS, INC., Plaintiff and Respondent, v. SUZANNE E. RAND-LEWIS, Defendant and Appellant.	B269507 (Los Angeles County Super. Ct. No. LC089469)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Huey P. Cotton, Judge. Affirmed.

Timothy D. Rand-Lewis for Defendant and Appellant.

The Law Center of Michael D. Sudman, Michael D. Sudman; Benedon & Serlin, Gerald M. Serlin and Melinda W. Ebelhar, for Plaintiff and Respondent.

Defendant Suzanne E. Rand-Lewis appeals from a judgment in favor of plaintiff and respondent Personal Court Reporters, Inc. (PCR). Rand-Lewis contends the judgment is not supported by the evidence, and the contract on which the judgment was based violated the statute of frauds. The record on appeal is insufficient to review these claims, and there is no error apparent on its face. Rand-Lewis also challenges two pretrial orders—one denying a motion for judgment on the pleadings and another vacating a previous judgment. She concedes the latter order is not properly before us, and we find no reversible error in the former. The judgment is affirmed.

FACTUAL AND PROCEDURAL SUMMARY

In 2010, PCR "filed a complaint for breach of contract and common counts against defendants 'Gary Rand DBA Rand & Rand-Lewis and Suzanne Rand-Lewis DBA Rand & Rand-Lewis.' The complaint alleged that pursuant to the parties' agreement, plaintiff had provided court reporting services for which defendants owed a balance of $32,323.45 plus interest." (*Personal Court Reporters, Inc. v. Rand* (2012) 205 Cal.App.4th 182, 186 (*Rand*).) The record indicates Rand and Rand-Lewis are attorneys, and each has practiced law through a professional law corporation named after him- or herself since 1997.[1]

[1] In a previous appeal, we affirmed the denial of defendants' anti-SLAPP motion, finding the causes of action were "based essentially on nonprotected activity—the nonpayment of overdue invoices" for court reporting services. (*Rand*, *supra*, 205 Cal.App.4th at pp. 187–188, 190, citing Code Civ. Proc. § 425.16(b)(1).) Defendants were sanctioned for filing a frivolous appeal. (*Id.* at p. 193.)

In April 2013, the trial court denied defendants' motion for judgment on the pleadings. In February 2014, judgment was entered in defendants' favor after PCR failed to appear and present evidence at trial. In July 2014, the court granted PCR's motion to vacate that judgment under Code of Civil Procedure, section 473, subdivision (b). There was no court reporter at the bench trial that took place in September 2015. The court received live testimony from Rand-Lewis and PCR's witness Lisa Carrier, and admitted the parties' exhibits into evidence.

PCR submitted past due invoices dated April 2, 2010, with original dates ranging between January 2009 and February 2010. All past due invoices were addressed to Rand-Lewis at "Rand & Rand." A summary of charges was addressed to "Patty" at "Rand & Rand." Deposition transcripts filed by PCR indicate that Rand-Lewis appeared at the depositions on behalf of either "Rand & Rand" or "Rand & Rand-Lewis."

Rand-Lewis submitted two deposition transcripts indicating she appeared on behalf of "Gary Rand & Suzanne E. Rand-Lewis, PLCS." She also submitted two checks made by defendants' professional corporations under protest after the filing of this lawsuit in 2010, two letters on the professional corporation's letterhead sent to PCR's attorney, and printouts from the California Secretary of State's website regarding the existence of the professional corporations.

The parties submitted written closing arguments. In its closing argument, PCR represented that Carrier testified an account was opened and maintained in the name of Rand-Lewis because Carrier believed PCR was doing business with defendants as individuals. Carrier was not advised that Rand-Lewis was practicing through a professional corporation, or that

she should not be personally invoiced. Carrier also reportedly testified that court reporters obtain the attorney identification information from the attorney who appears at the deposition, and that defendants' outgoing voice message in 2010 and 2013 said "Law Offices of Rand and Rand-Lewis." According to PCR, Rand-Lewis admitted at trial that she did not notify PCR of her use of a professional corporation.

In their closing argument, defendants disputed that they ever conducted business under a fictitious business name and argued the debt "could only belong to [their] corporate entities," which PCR had refused to name even after having been notified of their existence as early as December 2010. Defendants challenged PCR's transcripts based on lack of authentication and foundation, and claimed PCR failed to prove it provided services by "licensed court reporters." Defendants also argued the claimed contract was barred under the statute of frauds because Carrier failed to memorialize her conversations with Rand-Lewis and Rand. Defendants disputed that the invoices addressed to Rand-Lewis and the summary addressed to "Patty" could constitute an open book account, or that services were rendered that benefitted defendants.

The trial court issued a tentative statement of decision in October 2015, in which it found that Carrier, on behalf of PCR, negotiated with Rand-Lewis for the provision of court reporter services by PCR at Rand-Lewis's request. A written rate sheet establishing the services to be provided and rates to be charged was entered into PCR's computer and was to control billings. Services were provided and paid for under this agreement for seven or eight years. At some point, a dispute arose over added charges that were not part of the original rate sheet. Rand met

with Carrier to resolve past disputed invoices, even though his authority to bind Rand-Lewis was unclear. Thereafter, PCR continued to provide reporter services to Rand-Lewis. The court found a direct correlation between the depositions referenced in PCR's exhibits 46 through 54 and the invoices PCR submitted to Rand-Lewis (exhibits 1 through 30, 32 through 44), even though, at trial, Rand-Lewis stated she did not remember requesting court-reporter services or attending those depositions. Rand-Lewis did not question billings that were consistent with the agreement and did not dispute that Patty worked for her at the time the summary of past due invoices was sent to Patty's attention.

The court specifically found: "There was no credible evidence that clients of [Rand-Lewis] retained PCR. Rather, the evidence indicates that [Rand-Lewis] negotiated an agreement with PCR for professional services. It is true that the best evidence showed that [Rand-Lewis] only conducted legal business at the depositions while acting in and through her professional corporation. But . . . since she disputes that her agreement with PCR to pay for those services was made on behalf of and through her professional corporation, the court is left with but one conclusion[:] she personally agreed to be responsible for the costs. Even if she did not make such an agreement, in equity and based upon CACI 371, she is deemed responsible for the agreed-to costs."[2] The court ruled that PCR was entitled to breach of contract or quantum meruit recovery of outstanding costs to which the parties agreed, at rates to which they agreed, and ordered the invoices reduced accordingly. The court listed the

[2] The court found the evidence insufficient to establish Rand's contract liability.

specific allowed and disallowed costs, and required the rate reduced to that which Rand-Lewis "recalls agreeing to pay."

Defendants objected to the tentative statement of decision. They took issue with the court's findings on the following grounds: no rate sheet had been introduced into evidence; there was no evidence of licensed reporter services and PCR's evidence of its services was not "competent" because the deposition transcripts were not certified; the court misstated the evidence when it concluded that Rand-Lewis disputed whether her agreement with PCR was made on behalf of her professional corporation; there was no evidence of alter ego; the court ignored "the best evidence presented"; and it made no finding on the total amount of damages in allowing PCR to prepare a spreadsheet of recoverable costs.

In November 2015, PCR submitted revised invoices and a spreadsheet showing $28,909.85 in recoverable damages. On December 1, 2015, the court overruled defendants' objections, and issued its statement of decision and a judgment for $28,909.85 in favor of PCR. Rand-Lewis's motion for new trial was denied after a reported hearing in February 2016. Meanwhile, in January 2016, Rand-Lewis filed this appeal from the December 1, 2015 judgment.

DISCUSSION

I

Rand-Lewis raises various challenges to the sufficiency of the evidence, but has provided no reporter's transcript or settled statement of trial testimony. "'It is well settled . . . that a party challenging a judgment [or order] has the burden of showing reversible error by an adequate record.' [Citation.] . . . A proper record includes a reporter's transcript or a settled statement of

any hearing leading to the [judgment or] order being challenged on appeal. [Citations.]" (*Elena S. v. Kroutik* (2016) 247 Cal.App.4th 570, 574.)

"Where no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary matters*. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. [Citation.] The effect of this rule is that an appellant who attacks a judgment but supplies no reporter's transcript will be precluded from raising an argument as to the sufficiency of the evidence. [Citations.]" (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992.)

That defendants objected to the statement of decision does not change this rule since a deficient statement of decision rarely, if ever, mandates reversal. While an objection may avoid the effect of the doctrine of implied findings (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133–1134), the omission of a finding on a material issue is harmless error unless the evidence is "sufficient to sustain a finding in the complaining party's favor which would have the effect of countervailing or destroying other findings. [Citation.]" (*Hellman v. La Cumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224, 1230.)

We see no reversible error on the face of the incomplete record in this appeal. Rand-Lewis mainly relies on the trial court's finding that "the best evidence showed that [Rand-Lewis] only conducted legal business at the depositions while acting in and through her professional corporation." Rand-Lewis recharacterizes it as a finding that the best evidence showed there was no contract between PCR and herself as an individual.

But that is not what the court found; rather, the court made the following findings: that Rand-Lewis personally negotiated the contract with PCR, that she disputed doing so on behalf of or through her professional corporation, and that there was no credible evidence PCR was retained by Rand-Lewis's clients in the lawsuits for which she requested court reporter services.

Rand-Lewis assumes the only way she could be found personally liable is if the court improperly pierced the corporate veil to impose alter-ego liability for the debt of her corporation. Yet, nothing in the statement of decision shows imposition of alter-ego liability. Rather, the court specifically found that Rand-Lewis disputed "that her agreement with PCR to pay for those services was made on behalf of and through her professional corporation." Absent an adequate record of trial, we must presume that Rand-Lewis's trial testimony lent itself to such a finding, especially since in its closing argument, PCR claimed Rand-Lewis admitted at trial she did not notify PCR of her use of a professional corporation.

Assuming the trial testimony established Rand-Lewis never notified PCR that she was using a professional corporation, and she actually disputed that the contract was on behalf of her corporation, the court's finding is consistent with the doctrine that the agent of an undisclosed principal is personally liable to a third party on a contract, and may be sued individually as a party to the contract, whether or not the principal also is sued. (See e.g. *G.W. Andersen Construction Co. v. Mars Sales* (1985) 164 Cal.App.3d 326, 331; see generally 3 Witkin, Summary of Cal. Law (10th ed. 2005) Agency and Employment, §§ 158–160, pp. 202–204.)

In supplemental briefing, Rand-Lewis argues we should not

consider this theory since it was not raised in the trial court. But there is no evidence in the record before us that during contract negotiations Rand-Lewis made clear she was acting on behalf of her professional corporation, and without a reporter's transcript or settled statement, we presume the trial testimony supported the theory that she contracted as the agent of an undisclosed principal. Rand-Lewis's representations of trial testimony in her appellate briefs are not a proper substitute for an adequate evidentiary record. That is particularly so in light of PCR's competing representations that Carrier testified she believed Rand-Lewis negotiated the contract for reporting services in her individual capacity, and did not know Rand-Lewis operated through a professional corporation; and that Rand-Lewis admitted she did not tell PCR about her professional corporation. In addition, at the hearing on the motion for new trial, the trial court disagreed with Rand-Lewis's attorney regarding trial testimony. On appeal, we cannot settle the record in the first instance, or resolve evidentiary conflicts in Rand-Lewis's favor. (See *Williamson v. Brooks* (2017) 7 Cal.App.5th 1294, 1299 [on appeal all evidentiary conflicts are resolved in favor of judgment].)

Nor does the documentary evidence submitted by the parties support Rand-Lewis's position that she may not be held personally liable for PCR's unpaid invoices. Although she claims the invoices always were paid by the professional corporation, the only two checks in the record postdate the filing of this lawsuit and do not show how invoices were paid in the seven or eight years during which, according to the trial court, payments were made mostly without objection.

Rand-Lewis represents that PCR's invoices were sent to

"Rand and Rand," a nonexistent entity under which she has never practiced. However, the invoices were addressed to her personally, and PCR's deposition transcripts show her as appearing on behalf of either "Rand and Rand" or "Rand and Rand-Lewis." Neither of these names placed PCR on notice she operated through a separate business entity, which explains why she was sued under a "doing business as" designation. (See *Pinkerton's, Inc. v. Superior Court* (1996) 49 Cal.App.4th 1342, 1349 ["doing business as" designation is descriptive of use of fictitious business name and does not denote separate legal entity].)

While the two deposition transcripts defendants submitted include the correct names of defendants' professional corporations, at most they raise a conflict about the name Rand-Lewis gave out at depositions. Even if the court resolved that conflict in Rand-Lewis's favor, the evidence that in 2009 she took depositions on behalf of the professional corporations does not compel a conclusion that, during the much earlier contract negotiations with Carrier, Rand-Lewis had made clear she negotiated the contract on behalf of her corporation.

Similarly, the fact that PCR may have been notified in 2010 of the correct names of defendants' professional corporations does not establish that previous invoices were not addressed to Rand-Lewis personally. Nor does it prevent PCR from suing Rand-Lewis individually since, even after knowing the name of her professional corporation, PCR may still elect to proceed against her or the corporation until satisfaction of judgment. (See 3 Witkin, Summary of Cal. Law (10th ed. 2016 supp.) Agency and Employment, § 160, p. 59, citing Rest.3d Agency, § 6.09(2) [agent's or principal's liability is discharged only to

extent judgment against other is satisfied].)

Rand-Lewis also contends the court enforced an oral contract subject to the statute of frauds either because, by its terms, it could not be performed within a year or because it included a promise to answer for the debt of another. (Civ. Code, §1624, subd. (a)(1) & (2).) The court referenced a written "rate sheet," which according to Rand-Lewis was "neither marked nor entered into evidence," but the record before us does not make clear why.

Even assuming the agreement was not sufficiently memorialized, the lack of a writing is not dispositive. "'There is sufficient evidence that a contract has been made'" for purposes of the statute of frauds when "'[t]he party against whom enforcement is sought admits in its pleading, *testimony, or otherwise in court that a contract was made*.'" (*Pietrobon v. Libarle* (2006) 137 Cal.App.4th 992, 998, quoting Civ. Code, § 1624, subd. (b)(3)(C).) In its statement of decision, the trial court found that Rand-Lewis did not object to the invoices in their entirety, and at the hearing on the motion for new trial, the court relied on Rand-Lewis's trial testimony regarding "specific line items being either accepted or rejected by Ms. Rand-Lewis based on a shared understanding of what was included in the agreement and what wasn't, and specifically policed by her over the course of these depositions, meticulously." Thus, the court placed emphasis on Rand-Lewis's acceptance at trial of certain items on the invoices, and its statement of decision distinguished those items with which she agreed from the ones with which she disagreed. Thus, we must assume that the court enforced the contract only to the extent Rand-Lewis's trial testimony supported its terms.

The principle of full performance also takes a contract out of the statute of frauds in cases where performance consists of rendering personal services. (*Secrest v. Security National Mortgage Loan Trust 2002-2* (2008) 167 Cal.App.4th 544, 556.) Rand-Lewis's contention that the evidence is insufficient to show PCR performed under the contract is not persuasive. She claims there was no evidence PCR and its court reporters were licensed. But there is no indication that lack of licensing was asserted as an affirmative defense (see, e.g., *K & K Services, Inc. v. City of Irwindale* (1996) 47 Cal.App.4th 818, 822), and none of the authorities cited by Rand-Lewis requires PCR itself to be licensed, or prevents it from recovering in contract. (See, e.g., Bus. & Prof. Code, § 8044 [requiring licensing for directors, shareholders, and officers of shorthand reporting corporation]; § 8045 [prohibiting sharing of income with disqualified shareholder].) Moreover, the deposition transcripts show each court reporter's license number. (See Cal. Code Regs., tit. 16, § 2406 [court reporter "shall list his license number on the cover page and certificate page of each deposition. . . ."].)

Rand-Lewis contends the deposition transcripts lacked foundation and proper authentication, but without a reporter's transcript we have no way of knowing how they were introduced at trial or whether Rand-Lewis timely objected on those grounds. (See *Gonzalez v. Santa Clara County Department of Social Services* (2017) 9 Cal.App.5th 162, 173 [objections based on lack of foundation and lack of authentication forfeited if not made when document admitted into evidence].) Rand-Lewis concedes her challenge goes to the credibility of PCR's evidence, but that is not something we may reconsider on appeal. (See *Williamson v. Brooks*, *supra*, 7 Cal.App.5th at p. 1300 [appellate courts do not

reweigh evidence and redetermine credibility].) The transcripts sufficiently show that a licensed court reporter was present and took down testimony at depositions conducted by Rand-Lewis.

Alternatively, the court concluded PCR could recover in equity under the doctrine of quantum meruit. Rand-Lewis objects that PCR did not perform services that benefitted her personally. However, even "[a]s to quasi-contractual liability, there is authority that an agent cannot escape liability in *quantum meruit* on the grounds that the agent did not receive the benefit of services performed when the agent fails to disclose the existence of the principal who actually received such benefit." (12 Williston on Contracts § 35:43 (4th ed.), citing *Transnational Corp. v. Rodio & Ursillo, Ltd.* (1st Cir. 1990) 920 F.2d 1066, 1070–1072.)

On its face, the incomplete record before us reveals no reversible error in the court's statement of decision after trial.

II

Rand-Lewis challenges two earlier orders of the trial court: one denying a motion for judgment on the pleadings and another granting a motion to vacate a prior judgment. An order granting a motion to vacate under Code of Civil Procedure section 473 is immediately appealable if it vacates an appealable final judgment. (*Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 680.) We have a duty to raise issues concerning our own jurisdiction on our own motion (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126), and decline to consider what appears to be an attempt to belatedly appeal from a prior appealable order. (See *Maughan v. Google Technology, Inc.* (2006) 143 Cal.App.4th 1242, 1247 [prior separately appealable order is not cognizable on appeal from subsequent judgment].) In supplemental briefing, Rand-Lewis

concedes that the order granting PCR's motion to vacate the previous judgment is not cognizable on this appeal.

On the other hand, the correctness of an order denying a motion for judgment on the pleadings may be reviewed on appeal from the subsequent judgment. (*Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 207.) However, to the extent Rand-Lewis challenges the complaint as uncertain or proceeding against her as an individual, any error in ruling on "technical defects in the pleading, such as misjoinder, uncertainty, allegations in the form of conclusions of law or evidentiary matters, etc., is cured by going to trial on the merits. After trial and judgment such matters are not grounds for reversal." (*In re Eugene W.* (1972) 29 Cal.App.3d 623, 631.)

Nor are we convinced the court erred in denying the motion for judgment on the pleadings. Rand-Lewis argues the court was required to take judicial notice of a declaration by PCR's attorney which, in her view, contained a judicial admission of the lack of evidence as to her personal contract liability. But the fact that the declaration was in the court file does not mean its content was subject to judicial notice. The court may take notice of existence of records in its file, but not of the content of affidavits and declarations in the record. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882.)

Rand-Lewis argues the complaint does not allege a valid written contract between PCR and defendants. It is true that a written contract must either be attached to the complaint or its terms sufficiently set out in the body of the complaint. (See *Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 307.) But PCR's complaint does not purport to be based on such a contract. Rather, it alleges an oral contract, whose terms are

stated in an attachment to the complaint. The attachment states that defendants asked PCR "to render . . . court reporting services"; after rendering those services, PCR was to prepare an invoice requesting payment, which defendants were to pay in full. PCR also alleged that it completely performed under the contract and submitted invoices that defendants refused to pay. The fact that the invoices were not attached to the complaint makes no difference because, according to the terms of the alleged contract, defendants had agreed to pay the invoices in full, and their entire amount was listed in the complaint. Whether or not the common count cause of action was demurrable also makes no difference since the complaint sufficiently alleged a breach of contract claim based on the full performance of services.

The earlier court orders do not require reversal of the judgment.

DISPOSITION

The judgment is affirmed. PCR is entitled to its costs on appeal.

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EPSTEIN, P. J.

We concur:

WILLHITE, J. MANELLA, J.