

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ARASH KALANTARI,

Plaintiff and Appellant,

v.

CARLOS NIETO,

Defendant and Respondent.

B270054

(Los Angeles County  
Super. Ct. No. LC102847)

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

Arash Kalantari, in pro. per., for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

---

## **INTRODUCTION**

Arash Kalantari brought this action against Carlos Nieto alleging Nieto performed work on Kalantari's house without a contractor's license, damaged Kalantari's property, and converted his tools. After a court trial that was not transcribed by a court reporter, the trial court ruled for Nieto. Kalantari appeals, arguing the trial court should have ruled in his favor. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Kalantari sued Nieto for breach of oral contract, fraud, conversion, and unfair competition under Business and Professions Code section 17200. Kalantari alleged he and Nieto entered into an oral agreement for Nieto "to perform framing, replacing windows, plumbing, electrical, flooring, air-conditioning and tiling on [Kalantari's] house." Kalantari alleged he gave Nieto a \$1,000 cash advance and subsequently paid him \$2,500, and Nieto "started performing the framing job and replacement of the windows . . . ." According to the allegations in Kalantari's complaint, Nieto "breached the contract and stopped work without completion of the Framing and Windows, and caused damages to the property in excess of \$8000 and also took and converted [Kalantari's] tools and material from [his] property. [Kalantari] learned that [Nieto] did not carry a valid California Contractor's license to perform the work in the contract and that [Nieto] had no legal right to perform any work under the oral contract." Kalantari sought \$35,000 in compensatory damages, plus punitive damages.

The case proceeded to a court trial at which each party represented himself. In his trial brief, Kalantari asserted, “The operative facts in this Complaint basically [are] that [Nieto] breached [his] duties and acted wilfully, maliciously and [with] disregard to [Kalantari’s] rights and caused irreparable damage to [Kalantari] by his failure to disclose that [he] did not have a license.” Kalantari asked for disgorgement of the money he had paid Nieto in connection with the project, the value of the tools Nieto had allegedly converted, and punitive damages. Kalantari also filed a motion in limine to exclude witnesses, documents, and evidence not produced during discovery.

At trial, Kalantari and Nieto each testified and made closing arguments. Nieto also presented a narrative, which an interpreter read to the court. Kalantari introduced seven exhibits, including photographs, copies of checks and receipts, and two Home Depot account statements.

The trial court ruled against Kalantari. The court found initially “that there is no way to determine from the [Home Depot] account statements . . . what materials purchased were used, wasted, absconded, or by whom.” The court ruled: “The Court finds that the plaintiff has not met the burden of proof. Plaintiff is advised that as the plaintiff he has the burden of proof to present evidence to support his allegations. Despite what may or may not be true, no evidence has been presented by either side. It is not clear to the Court why plaintiff would pay cash without getting a receipt in some cases while he allegedly did so in others. The Home Depot account statements are merely lists of purchases with no way to determine what was used by who[m] or for what purposes. [¶] As plaintiff has not met [his] burden of proof, the Court finds judgment in favor of the defendant and

against the plaintiff. Plaintiff is to take nothing on the complaint.”

The trial court entered judgment in favor of Nieto. Kalantari timely appealed.

## **DISCUSSION**

Kalantari argues he was entitled to recover the money he paid to Nieto under Business and Professions Code section 7031, subdivision (b), which provides that “a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract.” Kalantari contends he “testified and proved to the court that [Nieto] had no contractor’s license and that [Kalantari] sustained damages in an amount that was presented to the court with evidence and documentary support. However the court abused its discretion in considering the fact and the evidence that [Nieto] was not a duly licensed contractor at the time or during the time [Nieto] performed construction work for [Kalantari].” Kalantari asserts that at trial he “proved and introduced ample evidence that [Nieto] was an unlicensed contractor[ ] and that [Kalantari] was entitled to recover all compensation” that he paid to Nieto.

There is no record of the trial proceedings, whether in the form of a reporter’s transcript or a settled statement. Unfortunately, this is becoming a more common occurrence, in light of the determination to discontinue providing court reporters in many civil proceedings. The impact, particularly for self-represented litigants, is consequential. For this appeal, it

means there is no record of Kalantari's testimony, the evidence and documentary support he provided at trial, or whether and how much he was damaged by anything Nieto did or failed to do. The state of the record, and in particular the absence of a reporter's transcript or settled statement, places a significant obstacle to Kalantari's success on appeal. (See *Elena S. v. Kroutik* (2016) 247 Cal.App.4th 570, 576 ["by knowingly forgoing the preparation of a reporter's transcript or a settled statement, [appellant] made success on appeal unattainable"].)

"Appealed judgments and orders are presumed correct, and error must be affirmatively shown. [Citation.] Consequently, appellant has the burden of providing an adequate record. [Citations.] Failure to provide an adequate record on an issue requires that the issue be resolved against appellant. [Citation.] Without a record, either by transcript or settled statement, a reviewing court must make all presumptions in favor of the validity of the judgment[, . . . and] appellant is effectively deprived of the right to appeal." (*Randall v. Mousseau* (2016) 2 Cal.App.5th 929, 935; see *Elena S.*, *supra*, 247 Cal.App.4th at p. 574 ["[a] proper record includes a reporter's transcript or a settled statement of any hearing leading to the order being challenged on appeal"].) In particular, "[w]here 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.” (*In re Estate of Fain* (1999) 75 Cal.App.4th 973, 992.)

Kalantari argues the trial court abused its discretion in ruling in favor of Nieto. That is not the applicable standard of review. “[W]hen a defendant contends that the plaintiff succeeded at trial in spite of insufficient evidence,” we review the trial court’s factual findings after a court trial for substantial evidence. (*Sonic Mfg. Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 465; see *Orange County Water District v. Sabic Innovative Plastics US, LLC* (2017) 14 Cal.App.5th 343, 369; *M & F Fishing, Inc. v. Sea-Pac Ins. Managers, Inc.* (2012) 202 Cal.App.4th 1509, 1519; *Mission West Properties, L.P. v. Republic Properties Corp.* (2011) 197 Cal.App.4th 707, 712.) We view all factual matters most favorably to the prevailing party and in support of the judgment, and ordinarily look only at the evidence supporting the successful party, disregarding the contrary showing, thus resolving all conflicts in favor of that party. (*Campbell v. Southern Pacific Co.* (1978) 22 Cal.3d 51, 60; accord, *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571.)

Where, however, as here, “the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. . . . [¶] Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) “uncontradicted and unimpeached” and (2) “of

such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.”” (Dreyer’s *Grand Ice Cream, Inc. v. County of Kern* (2013) 218 Cal.App.4th 828, 838; accord, *Petitpas v. Ford Motor Company* (2017) 13 Cal.App.5th 261, 302; *Navigators Specialty Insurance Company v. Moorefield Construction, Inc.* (2016) 6 Cal.App.5th 1258, 1288, fn. 4; *Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 769; see *In re R.V.* (2015) 61 Cal.4th 181, 201 [where party fails to meet its burden on an issue in the trial court, “the inquiry on appeal is whether the weight and character of the evidence . . . was such that the [trial] court could not reasonably reject it”].)

“In fact, ‘[w]here, as here, the judgment is against the party who has the burden of proof, it is almost impossible for him to prevail on appeal by arguing the evidence compels a judgment in his favor.’” (*Atkins v. City of Los Angeles* (2017) 8 Cal.App.5th 696, 734.) “That is because unless the trial court makes specific findings of fact in favor of the losing plaintiff, we presume the trial court found the plaintiff’s evidence lacks sufficient weight and credibility to carry the burden of proof. [Citations.] We have no power on appeal to judge the credibility of witnesses or to reweigh the evidence.” (*Bookout v. State of California ex rel. Dept. of Transportation* (2010) 186 Cal.App.4th 1478, 1486.)

The trial court found Kalantari had not met his burden of proof on all of his causes of action. (Indeed, the court stated neither side had presented any evidence.) Kalantari does not (and, without a reporter’s transcript, cannot) point to “uncontradicted and unimpeached” evidence that compels a contrary finding. Moreover, we must presume the unreported trial testimony, rather than saying what Kalantari claims in his

brief it says, instead supports the trial court’s findings. (*Randall v. Mousseau*, *supra*, 2 Cal.App.5th at p. 935; *In re Estate of Fain*, *supra*, 75 Cal.App.4th at p. 992; see *Hotels Nevada v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348 “[b]y failing to provide an adequate record, appellant cannot meet his burden to show error and we must resolve any challenge to the order against him”]; *Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003 [appellant forfeited any challenge to trial court’s evidentiary and other rulings by failing to submit a reporter’s transcript showing the errors]; see also *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295 [failure to “augment[ ] the record with a settled statement of the proceeding” required the reviewing court to resolve the issue on appeal against the appellants]; *Taylor v. Nu Digital Marketing, Inc.* (2016) 245 Cal.App.4th 283, 291 “[w]ithout a record of the trial testimony, we must conclusively presume it would also support the trial court’s conclusion”).) Therefore, we have no basis or ability to reverse the trial court’s judgment.

## DISPOSITION

The judgment is affirmed. Kalantari is to bear his costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J.

BENSINGER, J.\*

---

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