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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

KURT SILBER et al., Plaintiffs and Respondents, v. IAN SILBER et al., Defendants and Appellants.	B267051 (Los Angeles County Super. Ct. No. LC099686)

APPEAL from a judgment of the Superior Court of Los Angeles County, Russell S. Kussman, Judge. Affirmed.

Blut Law Group, Elliot S. Blut and Sara V. Katz for Defendants and Appellants.

Lang, Hanigan & Carvalho and Timothy R. Hanigan for Plaintiffs and Respondents.

Plaintiffs and respondents Kurt and Irene Silber[1] sued their son Ian and his wife Jane Silber, defendants and appellants, based on a claim the parties entered into a joint property venture. After a court trial, the court found in plaintiffs' favor. On appeal, defendants contest the sufficiency of the evidence to support the judgment, based on what they believe was the erroneous admission of documents. We find that the evidence was properly admitted and that sufficient evidence supports the judgment. We therefore affirm the judgment.

BACKGROUND

I. Factual background

Kurt and Irene entered into joint real estate ventures with their son, Ian, under which they split, 50-50, interest in residential real estate in Woodland Hills (the Oso property) and in New York (the West Islet property). A dispute arose between the parties whether they had a similar agreement regarding residential property at 22014 Galvez Street, Woodland Hills, California 91364 (the Galvez property or Galvez). Kurt and Irene claimed they had a 50 percent interest in Galvez; Jane and Ian claimed they solely owned Galvez. Kurt and Irene thus sued Ian and Jane in February 2013 for constructive fraud, breach of oral agreement, financial elder abuse, quiet title, declaratory relief, and partition of real property. The matter proceeded to a bench trial in 2015.[2]

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[1] We refer to the parties by their first names to avoid confusion.

[2] At the time of trial, Kurt was 88 and Irene was 85.

At trial,[3] the evidence showed that the Galvez property was purchased in approximately December 1996. According to Kurt, the parties had the same 50-50 arrangement regarding the Galvez property as they had with the Oso and West Islet properties. That is, Kurt and Irene would contribute one-half of the down payment and to repairs, and Ian would manage the property.

Kurt sent checks to Ian for Kurt's one-half share of the approximate $40,000 down payment and, thereafter, for repairs to the property. Kurt did not have the cancelled checks or bank statements, but he produced a check register (plaintiffs' exhibits 1 and 2). According to the register, Kurt wrote, for example, the following checks, totaling $20,000, to Ian: check no. 647, dated November 4, 1996, for $5,000 to "buy house in Gal"; check no. 648, dated November 4, 1996, for $5,000 "for house 22014 Galvez St Woodland Hills Calif"; check no. 662, dated December 1, 1996, for $1,000 "to buy Galvez St. house"; and check no. 663 dated November 30, 1996 for $9,000 "to buy Galvez St. house."

Ian also wrote checks to Kurt, representing, according to Kurt, his and Irene's share of rent or profits. Ian and Jane denied that these payments had anything to do with Galvez: rather, each year they gave Kurt 12 blank checks and Kurt wrote in an amount he needed. These were either loans or support to help their parents.

Although Kurt and Irene were not on the Galvez property's grant deed, they produced a "declaration letter," dated

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[3] We recite the facts established by the record in the light most favorable to the judgment, in accordance with the substantial evidence standard of review. (*612 South LLC v. Laconic Limited Partnership* (2010) 184 Cal.App.4th 1270, 1276.)

November 30, 1996.[4] It stated: "This is a declaration letter to state that Kurt Silber/Irene Silber are one half owners of the property located at 22014 Galvez St. Woodland Hills CA 91367." Ian and Jane signed the letter and, next to their signatures, wrote the date, January 17, 1997. Although how this letter came to be was ambiguous, it was undisputed that, on January 17, 1997, the Silbers (including Kurt, Irene, Ian and Jane) were in New York for a family bar mitzvah.

In March 2007, Ian and Jane, without Kurt's and Irene's knowledge or consent, took out a $380,000 loan, secured by the Galvez property. Kurt and Irene received no proceeds from that loan.

II. Procedural background

The matter was tried in two phases: liability and damages. At the liability phase in January 2015, the trial court found for Kurt and Irene.[5] Although the court noted several times that documentation was "lacking on both sides," the court found persuasive Kurt's check register. But what "tilt[ed] the balance in plaintiffs' favor" was the declaration letter, which the court reviewed in detail. While acknowledging the ambiguities surrounding the letter, the court nonetheless found it supported plaintiffs' case and undermined the credibility of defendants,

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[4] The trial court overruled defendants' objection on the ground of authentication, and said there is a "difference between authenticating a document and finding it to be authentic," the latter of which defendants could still try and establish.

[5] The court found for plaintiffs on all causes of action except the one for elder abuse, because there was no evidence plaintiffs resided in California, as required by Welfare and Institutions Code section 15610.27.

whose "testimony about it was so vehement and so critical—in the sense of 'protesting too much'—that they gave substantial credibility to its contents while undermining their own." The court thus held that plaintiffs presented substantial evidence they entered into a joint venture with defendants to buy Galvez and that the parties co-owned it.

The matter proceeded to the damages phase in June 2015. The trial court awarded plaintiffs $103,591.38 in compensatory damages plus prejudgment interest and ordered the Galvez property to be partitioned and sold. The trial court also awarded $90,000 in punitive damages to Kurt and Irene.

CONTENTIONS

Ian and Jane contend **I.** they were the statutorily presumed owners of Galvez, and Kurt and Irene had to prove by clear and convincing evidence to the contrary, under Evidence Code section 662, **II.** the trial court abused its discretion by admitting the declaration letter and check registers, and therefore there is insufficient evidence to support the judgment; and **III.** the court abused its discretion by excluding evidence of expenses Ian and Jane incurred to repair Galvez.

DISCUSSION

I. The burden of proof and Evidence Code section 662

Citing Evidence Code section 662, defendants assert they were the presumed owners of the Galvez property, and Kurt and Irene had to rebut that presumption by clear and convincing evidence. The statute provides: "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof." The section, however, does not apply "when title itself is challenged as not genuine." (*People v. Semaan* (2007) 42 Cal.4th

79, 88; see also *Murray v. Murray* (1994) 26 Cal.App.4th 1062, 1068 ["We are unaware, however, of a single reported case in which Evidence Code section 662's presumption and burden were applied when the legal title itself was in dispute."].) The basis of Kurt's and Irene's lawsuit was a challenge to Ian's and Jane's claim of sole title to Galvez. Evidence Code section 662 therefore did not apply.

II. Sufficiency of the evidence to support the judgment

The essence of defendants' argument is the trial court erroneously admitted the check registers (exhibits 1 and 2) and the declaration letter (exhibit 9); but for the erroneous admission of those documents, there was insufficient evidence to support the judgment. The argument is meritless.

When an appellate court reviews a statement of decision issued after a bench trial, the trial court's findings of fact are reviewed under the substantial evidence standard, while the trial court's resolution of a question of law is subject to independent review. (*Brewer v. Murphy* (2008) 161 Cal.App.4th 928, 935-936; *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 364.) We uphold the trial court's findings of fact if there is substantial evidence to support them, even if other evidence would support a contrary finding. (*Brewer*, at p. 935; *Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1658.) A single witness's testimony may constitute substantial evidence to support a finding. (*Citizens Business Bank v. Gevorgian* (2013) 218 Cal.App.4th 602, 613.) We may not reweigh the evidence and are bound by the trial court's credibility determinations. (*Axis Surplus Ins. Co. v. Reinoso* (2012) 208 Cal.App.4th 181, 189; see also *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133 ["A judgment or order of a lower court is presumed to be correct on appeal, and all

intendments and presumptions are indulged in favor of its correctness."].)

Here, defendants contend the evidence is insufficient to support the judgment because the judgment rests on the allegedly improperly admitted declaration letter and check registers. Defendants contend these documents were not properly authenticated and/or were hearsay. Applying an abuse of discretion standard to a trial court's evidentiary rulings (*Osborne v. Todd Farm Service* (2016) 247 Cal.App.4th 43, 50-51), we discern no abuse.

"Authentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law." (Evid. Code, § 1400; see generally *Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 321 ["As long as the evidence would support a finding of authenticity, the writing is admissible. The fact conflicting inferences can be drawn regarding authenticity goes to the document's weight as evidence, not its admissibility."]; *People v. Dawkins* (2014) 230 Cal.App.4th 991, 1002.)

As to the declaration letter, there certainly was a dispute as to its authenticity. Kurt and Irene recognized Ian's and Jane's signatures on the letter. But Ian and Jane denied signing it and suggested someone photocopied or affixed their signatures to the document. Notwithstanding Ian's and Jane's denials, Kurt's and Irene's testimony that they recognized Ian's and Jane's signatures was sufficient to authenticate the letter. (See, e.g., *Thorstrom v. Thorstrom* (2011) 196 Cal.App.4th 1406, 1419 [proper authentication existed where "witnesses testified that the script and signature on the [document] appeared to be in [the

alleged signor]'s handwriting"].)[6] Other evidence also authenticated the letter. According to Irene, her daughter Lydia sent the declaration letter with photos from the bar mitzvah to Irene in 1997, sometime after the party, and Irene kept it in a filing cabinet. Melissa Amar, Kurt's and Irene's other daughter, testified that Irene gave her the declaration letter and other papers about 10 years ago for safekeeping.

More to the point, the trial court disbelieved Jane's and Ian's protestations about the declaration letter. In its decision, the court painstakingly detailed why: Ian's testimony about his signature was "inconsistent[ ] and evasive[ ]," because he said it "looks like" "my handwriting" but also, "no this is not my handwriting"; the way the date (1-17-97) was written next to Ian's name was consistent with how Ian customarily wrote his "7s," i.e., with a cross or bar through them; the letter's date, November 30, 1996, was "fully consistent with the timeline set forth by the plaintiffs and reflected in their check register, showing that they sent portions of the down payment to Ian and Jane in November and early December, solidifying the purchase which took place around that time"; the date the letter was signed (January 17, 1997) corresponds to a trip to New York the family took and at which Jane and Ian were present; and the handwritten portions of the letter bore similarities to Jane's

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[6] The letter was also signed by attorney George Cotz, who was married to plaintiffs' daughter, Lydia. Cotz did not testify at trial, but he had submitted a declaration in connection with defendants' motion for summary judgment in which he apparently said it was his signature on the document but couldn't remember signing or seeing the document.

handwriting on other documents. The record more than supports these findings.

Defendants also objected to the declaration letter as hearsay. (Evid. Code, § 1200.) But it was a party admission. (Evid. Code, § 1220.)

As to the check registers, Kurt authenticated them.[7] He testified the registers were primarily in his writing. It was his practice to make an entry into the check register around the time he wrote the check. The trial court thus found, "This document appears to have been written by Kurt Silber as well as others, and includes memo lines purporting to show that money was contributed to the Galvez property – both for the down payment and as intermittent payments for repairs." The court also impliedly found that the check registers were authentic because there were four entries dated from November 4, 1996 to December 1, 1996 totaling $20,000, and those dates corresponded "to the period of time during which the Galvez property was being purchased." Based on this evidence, the court did not abuse its discretion by admitting the check registers. Thus, to the extent defendants' sufficiency of the evidence argument depends on the supposed inadmissibility of the declaration letter and check register, we reject the argument.

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[7] Defendants objected to exhibit 1: "I think it is not the best secondary evidence, and also I don't believe it's established – or, well, I don't believe it's the same handwriting in each and every entry. He certainly didn't ask him if he personally wrote each every entry, and there looks to be three different handwritings in there. It is being purported he's making every single entry." They objected to exhibit 2 on the same ground: "not the best secondary evidence." The court overruled the objections.

Nor do we find persuasive defendant's other arguments about the sufficiency of the evidence. Defendants, for example, first point out that plaintiffs were not on escrow or other documents regarding Galvez. But they ignore that Ian named Kurt as an insured on property insurance documents. Second, Ian and Jane testified that the money they gave to Kurt was a loan for his and Irene's support. But Kurt testified he did not borrow money from Ian, and Kurt conscientiously crossed out any references to a "loan" on checks made out by Ian. The court specifically found it odd that defendants would "give out 12 checks *en masse* to cover a year's worth of payments unless one expected them to be made monthly – like, for example, rent or profits. The fact that Jane began putting 'loan' in the memo line is not determinative. As noted, Kurt took strong issue with her doing so, and often crossed it out, writing Galvez instead." Finally, Ian argued that the amounts Kurt claimed were his share of rent/profits didn't correspond to or exceeded profits Galvez generated. Defendants, however, failed to produce Galvez's lease agreements, and therefore evidence of the profits Galvez generated came solely from Ian, who the trial court found not credible. Defendants' argument thus amounts to nothing more than a request we reweigh the evidence and reevaluate credibility of the witnesses, which we may not do. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 766 [our role is limited to determining whether the evidence before the trier of fact supports its findings].)

III. The exclusion of evidence

At the damages phase of trial, the trial court excluded evidence defendants sought to introduce about what they spent repairing Galvez. As we explain, the court was well within its

discretion to exclude those documents. (See generally *Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns* (1992) 7 Cal.App.4th 27, 35; Code Civ. Proc., § 2023.030.)

First, the exhibits were not produced in a timely fashion. The first phase of trial occurred in January 2015 and the second in June. The documents, reflecting approximately $271,065 in repairs, were not produced until sometime after January 2015. Defense counsel explained that some documents couldn't have been produced due to his client's medical issue, and the documents were in storage. The court acted within its discretion to find this was not a reasonable explanation for the late production.

Second, the trial court rejected defense counsel's alternative explanation for the late production. It was counsel's understanding that discovery was reopened during the gap between the first and second phases of trial per a discussion at an off-the-record status conference. The court, however, could not recall such a discussion. This also was not what plaintiffs' counsel understood. According to him, the discussion pertained only to documents created *after* the liability phase of trial and in connection with a current remodel to Galvez. The court found that there had not been a wholesale reopening of discovery and that evidence in existence before the first phase of trial should have been produced absent a showing it wasn't reasonably obtainable. The only additional admissible evidence was that generated after the liability phase ended.

Finally, it is not reasonably probable that even had the trial court considered the excluded documents it would have resulted in a more favorable outcome. In its decision, the court noted that defendants "submitted new documents purporting to

show they paid expenses far in excess of those presented at the original trial." Whereas at the liability phase of trial they claimed an $80,000 set-off for repairs, "this amount suddenly ballooned to nearly $350,000" at the damages phase. "No reasonable explanation was offered regarding why these claims had not been made or documented earlier. Moreover, the amounts now claimed by defendants far exceed any reasonable amount to invest in repairs to the Galvez property, given the purported range of its market value. The notion that defendants had spent over $350,000 in repairs on this property, came to trial with documentation of around $80,000, then found additional documentation quadrupling that amount after the tentative decision was announced, further undermines [defendants'] credibility." The court then noted that two invoices in exhibit 106 had been altered to inflate the amount defendants claimed to have spent on repairs: "Those two documents (offered by defendants at trial as evidence of what they paid in repairs) remove any doubt regarding defendants' veracity."

Given these findings by the trial court and defendants' falsification of evidence, it is not reasonably probable the excluded exhibits would have altered the outcome.

DISPOSITION

The judgment is affirmed. Plaintiffs and respondents may recover their costs on appeal. Plaintiffs' and respondents' motion for sanctions is denied. This opinion shall become final immediately upon filing.

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ALDRICH, J.

We concur:

EDMON, P. J.

GOSWAMI, J.*

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