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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ROBERT YATES,

Plaintiff, Cross-Defendant
and Appellant,

v.

AGAR, INC.,

Defendant, Cross-
Complainant and Respondent.

B266991

(Los Angeles County
Super. Ct. No. YC062025)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Ramona G. See, Judge. Affirmed.

Robert E. Yates, in pro. per., for Plaintiff, Cross-Defendant
and Appellant.

Law Offices of Philip A. Iadevaia and Philip A. Iadevaia for
Defendant, Cross-Complainant and Respondent.

Robert Yates appeals from a \$1 judgment entered against him and in favor of respondent Agar, Inc. after a jury trial. He raises numerous contentions on appeal about why that judgment should be reversed, but he has failed to provide an adequate record for us to engage in a meaningful review of them. We therefore affirm the judgment.

BACKGROUND

Yates and Agar had a dispute regarding the supply and installation of cabinets. In 2010, Yates sued Agar for, among other things, breach of contract and for fraud, and Agar responded in kind by filing a cross-complaint. Five years after Yates filed his complaint, a jury trial began on March 17, 2015. Almost two weeks later, on April 1, 2015, the jury found against Yates on his complaint but awarded Agar \$1 on its intentional misrepresentation cause of action in its cross-complaint. After the trial court denied Yates's motion for judgment notwithstanding the verdict, Yates brought this appeal.

DISCUSSION

From what we can discern of Yates's confusing appellate briefs, he means to make four contentions on appeal. First, the \$1 damages award for intentional misrepresentation cannot "stand in the absence of proof of actual damage." Second, there were no conflicts in the evidence regarding damages. Third, the trial court should have referred Agar's trial counsel, Philip Iadevaia, to the state bar because counsel misrepresented the law and what were Agar's damages. Fourth, Iadavaia should not be

rewarded with attorney fees because he committed fraud on the court.¹

Assuming that these issues are properly before us, we cannot evaluate them based on the record Yates provided. Although judgment was entered after what Agar asserts was an 11-day jury trial, Yates has provided only select portions of trial testimony from five days of trial and a limited clerk's transcript.² A judgment is "presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Yates, the appellant, bears the burden of affirmatively showing prejudicial error, and, to satisfy this burden, he had to provide an adequate record to assess error. (*Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324.) "Where no reporter's transcript [or settled statement] 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

¹ Given that the trial court did not award costs and attorney fees, Yates's argument is all the more confusing.

² Yates also submitted an appellant's appendix and "evidence transcript." However, we grant Agar's motion to strike the appendix and the evidence transcript, and we strike both in their entirety. Both contain matters not before the trial court, and the appendix contains original handwritten notes. The appendix therefore does not comply with this court's May 10, 2017 order. Also, because the record on appeal is otherwise inadequate, the appellant's appendix and evidence transcript are irrelevant.

judgment but supplies no reporter's transcript will be precluded from raising an argument as to the sufficiency of the evidence.” (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992; see also *Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1658; Cal. Rules of Court, rules 8.130, 8.134, 8.137.)

Although the absence of cogent argument in Yates's briefs also allows us to treat the majority of his contentions as waived (see, e.g., *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830; *Orange County Water Dist. v. Sabic Innovative Plastics US, LLC* (2017) 14 Cal.App.5th 343, 383; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785), he does appear to raise one argument that we can address on this limited record—that nominal damages may not be awarded for fraud. Nominal damages are a few cents or a dollar and can be awarded where a plaintiff has proven that actual damage occurred but cannot prove the amount of actual damage. (*Avina v. Spurlock* (1972) 28 Cal.App.3d 1086, 1088-1089; *Hynix Semiconductor Inc. v. Rambus, Inc.* (2007) 527 F.Supp.2d 1084, 1100; see *Kurini v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 866; *Sterling Drug v. Benatar* (1950) 99 Cal.App.2d 393, 400.) Thus, nominal damages are not per se improper for fraud, as Yates seems to suggest.

DISPOSITION

Agar's motion to strike appellant's appendix and evidence transcript is granted. The judgment is affirmed. Agar shall recover its costs on appeal.

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DHANIDINA, J.*

We concur:

EDMON, P. J.

EGERTON, J.

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