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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

BRIAN SHIN, Plaintiff, Cross-defendant and Respondent, v. MAGGIE WU et al., Defendants, Cross-complainants and Appellants; BENNY LIN, Defendant and Appellant.	B268776 (Los Angeles County Super. Ct. No. BC520298)

APPEAL from a judgment of the Superior Court of Los Angeles County. Elizabeth R. Feffer, Judge. Affirmed.

Douglas A. Frymer for Appellants.

Law Offices of James B. Kropff, James B. Kropff; The JK Law Firm and Jean Kwon for Respondent.

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INTRODUCTION

After a two-day court trial, which included testimony from four witnesses and 20 documentary exhibits,[1] the trial court entered judgment against defendants, cross-complainants and appellants Maggie Wu (Wu), Pro-A Motors, Inc. (Pro-A), and defendant and appellant Benny Lin (Lin), and in favor of plaintiff, cross-defendant and respondent Brian Shin (Shin), in the amount of $144,981.65, plus interest in the amount $29,829.72. On appeal, appellants challenge the judgment against them based upon (1) insufficiency of the evidence, (2) the trial court's failure to provide a written statement of decision, and (3) the trial court's execution and filing of the proposed written judgment lodged by Shin before the time period for objections to the lodged written judgment had passed.

As we demonstrate below, each of appellants' claims is without merit: (1) appellants cannot challenge the sufficiency of the evidence since both sides elected to proceed without a reporter and there is no record of any kind of the witnesses' testimony, (2) the record below does not establish that either side requested a statement of decision from the trial court, and (3) appellants fail to establish that any prejudice resulted from the alleged premature signing and filing of the judgment in this case.

We therefore affirm.

BACKGROUND

The first amended complaint alleges four causes of action against Wu, and three causes of action against Lin, Pro-A, and a

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[1] The trial court's minute order states that exhibits 1 through 21, "described in the Joint Exhibit list filed on May 26, 2015," are admitted. The joint exhibit list however, describes only 20 exhibits.

fourth defendant, In.Pro. Car Wear, Inc. (In.Pro.):[2] (1) breach of contract (against Wu only), (2) breach of covenant of good faith and fair dealing (against all defendants), (3) accounting (against all defendants), and (4) unfair competition (against all defendants). The causes of action are based on a joint venture agreement executed by Shin and Wu, wherein both agreed to develop, manufacture, and sell a replacement product, designed by Shin, for defective consoles installed on 1999 through 2006 Chevrolet and GMC pickup trucks. The first amended complaint further alleges that Wu and Lin are husband and wife, that both are the owners of Pro-A and In.Pro., and that at all relevant times all defendants were acting as the agents of the others. The complaint also alleges that Wu and Lin, at all relevant times, were alter egos of the corporate defendants.

Wu and Pro-A filed a cross-complaint against Shin for (1) rescission and restitution, (2) breach of contract, (3) money had and received, (4) misappropriation, (5) accounting, (6) fraud and deceit, and (7) declaratory relief.

At the two-day court trial, Wu, Shin, Lin, and a woman named Lilian Wang testified. The court admitted 20 documentary exhibits, totalling 274 pages that consist of the joint venture agreement, balance statements and sales summaries, various checks drawn on an account belonging to Pro-A and made out to Shin, various IRS tax forms for Pro-A, a tooling agreement, product drawings, import documents, supplier invoices, and various other documents allegedly related to expenses incurred for labor and staff salaries, warehousing, airfare and lodging, shipping, marketing and advertising, telephone use, and product returns. At the close of the evidence on October 1, 2015, and after hearing argument from both

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[2] In.Pro. is not a party to this appeal.

sides, the trial court issued an oral ruling, documented in the minutes:

"The court notes that the joint venture agreement was drafted by defendant Benny Lin. The evidence shows that there was a market for the product; 15,000 units were sold in a 30-month period.

"The court finds defendants' testimony to be not credible in several areas and that their evidence is inadequate and not trustworthy. Evidence Code Sections 412 and 413 permit the court to distrust weaker evidence when it is within a party's ability to provide stronger evidence. No true accounting was provided by defendants, and the duty and tariff documents were inconsistent with oral testimony by defendants.

"The court finds that plaintiff has met his burden to show that there was a profit generated by the console product and that costs of labor and EBay expenses were not a part of the joint venture agreement. Plaintiff Brian Shin shall recover from defendants Maggie Wu, Benny Lin, and Pro-A Motors, Inc., only[,] $144,981.65 together with prejudgment interest at the legal rate from September 5, 2013 through October 1, 2015.

"The court finds cross-complainants did not meet their burden to show fraud. Cross-complainants Maggie Wu and Pro-A Motors, Inc. shall take nothing on the cross-complaint.

"Plaintiff shall prepare and submit to Department 39 a proposed judgment by October 15, 2015. All exhibits are returned to counsel for plaintiff, who shall keep them in a safe and secure condition until the time for appeal has passed."

Although appellants did not designate it as part of the clerk's transcript on appeal, Shin apparently lodged an original proposed judgment on or before October 15, 2015, to which appellants filed objections. Appellants objected to the original proposed judgment

because it (1) did not specify the basis upon which the judgment was made; (2) did not "break down what the amount awarded consists of, and allocation of profits and costs, although the [trial] [c]ourt specifically announced this for inclusion in the [j]udgment"; (3) stated an actual amount of interest, without explanation for the calculation, rather than simply "interest at the legal rate"; and (4) included blank lines for additional orders, if necessary, from the trial court, which made it "ambiguous and void."

On October 19, 2015, Shin submitted an amended proposed judgment, which the trial court signed and filed the same day. In relevant part, the amended judgment awarded a total of $174,811.37 (damages in the amount of $144,981.65, plus prejudgment interest from September 5, 2013, in the amount of $29,829.72) to Shin "for the sale of 15,000 units sold [*sic*] between January 1, 2012 and July 31, 2014 only." A number of blank lines after the printed language, "it is further ordered," were lined out, apparently by the trial court.

This appeal followed.

DISCUSSION

Appellants raise three issues: (1) there is insufficient evidence to support the judgment, (2) the judgment is void because the trial court did not provide a statement of decision though requested to do so by both sides, and (3) the trial court signed the proposed amended judgment the same day it was lodged, before the time for objections had run.

We address each of these contentions in turn. None are meritorious.

1. Sufficiency of the Evidence

It is a cardinal rule of appellate review that a judgment of the trial court is presumed correct and prejudicial error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d

557, 564.) In the absence of a showing to the contrary in the record, all presumptions in favor of the judgment below will be made by the appellate court. (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187.) If the record is insufficient for meaningful review, the appellant defaults and the judgment below should be affirmed. (*Ibid.*; see also *Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) In other words, the burden of providing an adequate record falls on appellant, and failure to do so requires that any issue be resolved against appellant. (*Foust,* at p. 187; *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.)

As mentioned earlier, both sides, including all appellants, elected to proceed in this case without a court reporter. There is, therefore, no record of any kind that establishes to what matters the witnesses in this case testified. Moreover, although appellants designated that all trial exhibits be part of the clerk's transcript on appeal, the clerk's transcript, as designated, is still partial. For example, most of the events appellants claim occurred during the procedural history of this case are not supported by any reference to the clerk's transcript. This is because the clerk's transcript does not include any minute orders or other documents that establish whether any of those events ever occurred. Assertion of facts without citation to the record is a violation of court rules. (Cal. Rules of Court, rule 8.204(a)(1)(C).) These assertions are therefore stricken and disregarded. (*Liberty National Enterprises, L.P. v. Chicago Title Ins. Co.* (2011) 194 Cal.App.4th 839, 846 (*Liberty National*).)

Appellants' sufficiency argument is in five parts: (1) there is insufficient evidence to support a finding of liability as to Lin, since he is not a signatory to the joint venture agreement; (2) there is insufficient evidence to support a finding of liability as to Pro-A,

since it, likewise, is not a signatory to the agreement; (3) Shin's exhibits are insufficient to establish his case, and this is demonstrated by the trial court's characterization of the exhibits as a "mess" and its further mischaracterization of them as, in fact, appellants' exhibits; (4) the trial court disregarded evidence of appellants' expenses; and (5) the trial court "assumed" evidence to make up for Shin's lack of evidence in support of his case. Essentially, as to each, appellants argue that the exhibits contained in the clerk's transcript are self-explanatory, and there is no need to review witness testimony either to explain those documents or to see clearly that their insufficiency contentions are correct.

Appellants' argument borders on frivolous. First, the 274 pages of documentary exhibits are anything but self-explanatory. More importantly, even if they were, they are only a part of the evidence the trial court considered in reaching its decision. Shin did not elect to mark his exhibits and rest his case; he chose to testify himself, and also call both individual defendants to testify, as part of his case-in-chief. A total of four persons testified in this case over a two-day period. The trial court made specific findings as to the credibility, or lack thereof, of appellants Wu and Lin. There is simply no way that the exhibits alone, to the extent their relevance can even be deciphered, overcome the presumption of correctness that attaches to the trial court's judgment, where appellants elected to proceed without a complete record in the form of a reporter's transcript of the witness testimony. The record is simply, and clearly, inadequate to support the insufficiency arguments raised by appellants.

2. Failure to Prepare a Statement of Decision

Upon a court trial, "written findings of fact and conclusions of law" are not required. (Code Civ. Proc., § 632.) The trial court, however, "shall issue a statement of decision explaining the factual

and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party[.]" (*Ibid.*) Any such request must be made within 10 days after the court announces a tentative decision or, if the trial concludes within one calendar day or in less than eight hours over more than one day, prior to submission of the matter for decision. (*Ibid.*)

In the "Procedural History" part of their opening brief, appellants contend both parties requested a statement of decision at the May 26, 2015 final status conference, and that the court ordered proposed statements electronically filed prior to trial with hard copies to be submitted on the first day of trial. This assertion of fact, like nearly all of appellants' "Procedural History," and much of the rest of the factual assertions in both the opening and reply briefs, is not supported by a citation to the record. Insofar as we can determine, there is no portion of the record that establishes this fact. Appellants' unsupported assertion is therefore disregarded. (*Liberty National, supra,* 194 Cal.App.4th at p. 846; Cal. Rules of Court, rule 8.204(a)(1)(C).)

Appellants attempt to create a record where none exists by attaching, as exhibits to their opening brief, two emails, one by each trial counsel, that purport to be each side's submission of a proposed statement of decision. Appellants also attach a third exhibit: an unsigned, non-conformed, document that purports to be appellants' proposed statement of decision. Appellants contend that this corroborates their purported request for a statement of decision.

By separate motion filed in this court, and again in his brief, Shin asks us to strike the exhibits as a violation of court rules. The purported exhibits are a violation; we agree that they should be stricken and thus disregarded. Rule 8.204(d) of the California Rules of Court permits a party filing an appellate brief to attach "copies of exhibits *or other materials in the appellate record* or

copies of relevant local, state, or federal regulations or rules, out-of-state statutes, or other similar citable materials that are not readily accessible." (Italics added.) Appellants' exhibits are not included within the categories of documents described in the rule, which clearly pertain only to matters that are already part of the appellate record or which the court can judicially notice or otherwise properly cite even though not in the record. Appellants cannot use a rule that allows documents otherwise part of the record or otherwise citable to be attached directly to an appellate brief for convenience sake to create a record that does not exist. The exhibits to appellants' opening brief are therefore stricken and will not be considered.

There is, therefore, simply no part of the record properly before us that supports appellants' assertion that they made a timely request for a statement of decision.

3. Execution and Filing of the Amended Judgment

Finally, appellants contend the proposed amended judgment submitted by respondent and ultimately signed and filed by the trial court is "void" because (1) appellants' objections to the original proposed judgment had not yet been ruled on by the trial court, (2) it was not properly served, and (3) it was signed and filed by the trial court before the 10-day period for objections had run. (Cal. Rules of Court, rule 3.1590(j).)

Appellants cite no authority for their contention that the pendency of objections to an original lodged document somehow prevents a party from submitting, for court approval, a second, amended document. If anything, the filing of such an amended judgment, in our opinion, renders the first, as well as any objections to it, moot. In any event, without cited authority for appellants' novel contention, it is not persuasive and we reject it.

Appellants are correct in their second contention: there does not appear to be a proper proof of service in the record for the proposed amended judgment ultimately signed by the trial court. This however, begs the question, as does appellants' third contention regarding the 10-day period for objections: assuming proper service and a full opportunity to object to the judgment, it is not clear what appellants contend is improper about the judgment ultimately signed and filed by the trial court or how they were prejudiced. Appellants never attempted to set aside the amended judgment on this or any other ground. In their reply brief, appellants contend only that they would have made the same objections they made to the original proposed judgment.

Appellants' objections to the original proposed judgment, mentioned *ante*, at pages 4 and 5, if considered against the amended proposed judgment, are completely without merit. First, a valid judgment for money damages need not state the legal basis upon which it is made; it need only state which side is to recover from which and the amount of damages with specificity. (See 7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 30, p. 570.) Second, appellants' contention the trial court specifically ordered that the judgment break down the total damage amount into its constituent components, including an allocation of costs and profits, is not supported by the record. Third, appellants have not established that the specific interest amount contained in the written judgment is anything but prejudgment interest at the legal rate, as ordered by the court in its oral ruling. Finally, the blank lines at the end of the written judgment, provided for the benefit of the trial court if additional orders were needed, were not used but instead apparently excised by the trial court. Appellants, therefore, have not demonstrated that failure to allow objections to the proposed amended judgment, prior to it being signed and filed by

the trial court, caused them any prejudice. (*Estate of Cooper* (1970) 11 Cal.App.3d 1114, 1121-1122.)

DISPOSITION

The judgment below is affirmed. Respondent is awarded costs on appeal.

SORTINO, J. *

WE CONCUR:

RUBIN, Acting P. J.

FLIER, 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.