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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JOHN KAESMAN,

Plaintiff, Cross-defendant and  
Respondent,

v.

ERIC KAESMAN,

Defendant, Cross-complainant and  
Appellant.

B233511

(Los Angeles County  
Super. Ct. No. NC052384)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Judith Vander Lans, Judge. Affirmed.

Stephen A. Madoni for Defendant, Cross-complainant and Appellant.

Gary Eugene Beeks for Plaintiff, Cross-defendant and Respondent.

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Defendant, cross-complainant and appellant Eric Kaesman (Eric or son) appeals a judgment in favor of his father, plaintiff, cross-defendant and respondent John Kaesman (John or father), following a court trial.<sup>1</sup>

Eric contends the trial court erred in denying his request for statement of decision and he challenges the sufficiency of the evidence to support the judgment.

We conclude the trial court properly denied Eric's untimely request for statement of decision and that substantial evidence supports the judgment. Therefore, the judgment is affirmed.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### *1. Father's complaint.*

On January 16, 2009, father filed suit against Eric alleging causes of action for breach of contract and fraud. The verified complaint sought damages and the establishment of a resulting trust on the subject real property, located on Gundry Avenue in Long Beach. Father pled:

He and Eric orally agreed in 2003 to pool their resources and purchase a home that would satisfy their housing needs. Father agreed to sell his residence at Leisure World and from the proceeds of the sale, he would provide \$50,000 for the down payment. Eric agreed to make the monthly mortgage payments. In return for providing the down payment, father "was to live on the property for the rest of his life without any further financial obligation arising out of ownership of the property." Title to the property was to vest solely in Eric only upon father's death. Because father lacked sufficient income to qualify for a mortgage, he "decided to permit [Eric] to become the owner of record, thereby avoiding any necessity of probate upon his death." Father also increased the down payment to \$75,000 to help Eric qualify for the loan.

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<sup>1</sup> Because the parties share the last name, we refer to them by their first names for purposes of clarity.

Father pled Eric breached the agreement by filing an unlawful detainer action against him in July 2008, in which Eric alleged he was the sole owner of the property and that their relationship was that of landlord and tenant. Father prevailed but incurred \$3,500 in defending against Eric's unjustified unlawful detainer action.

Father alleged Eric further breached their agreement by encumbering the property without father's knowledge or consent; in 2005 Eric obtained a \$100,000 home equity line of credit, which he used for his own benefit.

*2. Eric's cross-complaint.*

Eric filed a cross-complaint against father, setting forth causes of action for ejectment, quiet title, declaratory relief and waste of real property.

Eric pled he purchased the subject real property in October 2003 and that he alone took title to the property. The relationship of the parties was landlord and tenant, and father paid him \$800 per month in rent. In May 2008, he served father with a 60-day notice of termination of tenancy, but father refused to vacate the premises. Thereafter, Eric sought to oust his father in the unlawful detainer action but was unable to do so because father claimed an ownership interest in the form of a life estate in the subject property.

*3. Substitution of plaintiff.*

Father, the plaintiff, died on September 23, 2009, during the pendency of the lawsuit.

Father was succeeded in this litigation by his daughter, Ann Kaesman (Ann), as personal representative of father's estate.

*4. Trial.*

On February 15, 2011, the matter came on for a court trial.

Plaintiff called Eric pursuant to Evidence Code section 776. Eric testified father sold his property at Leisure World prior to moving into the subject real property. Plaintiff introduced as exhibit 1 a four-page typed letter. Eric admitted he had prepared that document sometime between 2005/2006 and father's death.

Paragraph 7 of the letter stated: “*You and I together were able to buy this house.* You agreed to put up \$50,000 down payment.” (Italics added.) Eric explained the word “you” referred to father and the word “I” referred to Eric.

The letter which Eric authored also stated, “You have half this house to live in forever,” “I’ll be there to take care of you when you can’t care for yourself,” and “You will never have to worry about that because that’s the type of son I am.”<sup>2</sup>

Eric testified, however, that said letter he authored was “not an accurate reflection of the original agreement.” According to Eric, their agreement was that “he gave me \$50,000 down. I purchased the house, and he would live in the back for the rest of his life.”

Father occupied the rear unit of the property, which had a separate kitchen and bathroom.

Eric admitted he later sought to evict his father, but stated the eviction was motivated by father’s “erratic behavior.”

Nonetheless, Eric admitted the \$50,000 down payment came from the proceeds of the sale of his father’s property in Leisure World. Eric further admitted he received an additional \$20,000 from his father at the time he purchased the subject real property.

Eric also testified he received some checks from his father in late 2003 and early 2004, not toward paying the mortgage, but only to assist with household items such as “food, gas, spending money.”<sup>3</sup>

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<sup>2</sup> The letter also stated: “The agreement we had was I would be on title because of your credit and tax history. You helped me for the first year with the mortgage payments because of my credit history, and it was the only loan I could get. Sure, we could have waited for a better time, better set of terms, but we would not have this house. There was no discussion about pulling out any equity.”

<sup>3</sup> Eric was employed as an investigator for the Orange County Sheriff’s Department. Father was a licensed California attorney.

Eric also admitted he took out a \$100,000 home equity line against the property and had drawn \$90,000 on the credit line. Of the \$90,000, he gave his father \$7,500 for a vacation, \$6,500 for car repairs, and smaller sums in the \$100 to \$200 range.

Ann testified, *inter alia*, that father had surgery in 2009 and then was transferred to a convalescent home in Lakewood. Once father's Medicare coverage ran out, the convalescent home notified the family that father needed to be discharged. Eric refused to take father back and stated if father were discharged and sent home, he would call 911 and send father back to the hospital. Father then passed away at the convalescent home.

The parties rested on the first day of trial. The trial court then scheduled post-trial briefing, with the "final reply [to] be filed March 11 *at which time the case will be considered submitted.*" (Italics added.)

#### 5. *Post-trial proceedings.*

The parties filed post-trial briefs, with the final brief filed on March 11, 2011, in accordance with the briefing schedule. On March 11, 2011, the matter was submitted.

On March 28, 2011, the trial court entered judgment on the complaint in favor of father (who had been substituted by Ann as personal representative of father's estate), in the amount of \$40,600. The trial court further ruled that Eric "holds a 50% ownership interest in the [subject real property] in trust for the Estate of John Louis Kaesman." The trial court denied Eric any recovery on his cross-complaint.

On April 8, 2011, 11 days after entry of judgment, Eric filed a request for statement of decision.

On April 12, 2011, the trial court denied Eric's request for statement of decision as untimely.

On May 26, 2011, Eric filed notice of appeal from the judgment and from the postjudgment order denying the request for statement of decision.

## CONTENTIONS

Eric contends: the trial court erred in not rendering a statement of decision upon request of his counsel; the trial court erred in ostensibly finding that father was an owner of the subject property; the trial court should have found the statute of frauds supported Eric's arguments at trial; and the trial court was not provided with any evidence to substantiate the amount or valuation of father's purported share of the real property.

## DISCUSSION

1. *Trial court properly denied Eric's belated request for statement of decision.*

Code of Civil Procedure section 632 states in relevant part: "The court 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 appearing at the trial. The request must be made within 10 days after the court announces a tentative decision *unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision.*" (Italics added.)

Trial commenced on February 15, 2011, at 9:30 a.m. The trial was of short duration. The reporter's transcript is only 62 pages.

Upon the completion of the oral testimony on February 15, 2011, the trial court set a briefing schedule for written closing arguments, with the matter to be submitted on March 11, upon the filing of the final reply papers. Plaintiff filed its closing argument on February 25 (5 pages), Eric filed his closing brief on March 4 (8 pages), and plaintiff filed its reply brief on March 11 (3 pages), at which time the matter was submitted.

Due to the presentation of closing arguments in written form, the trial was not concluded in one calendar day. Nonetheless, the trial consumed less than eight hours, and the trial court so found. In ruling on Eric's request for statement of decision, the trial court ruled: "Trial was concluded in 'less than eight hours over more than one day.' "

Accordingly, the request for statement of decision had to "be made prior to the submission of the matter for decision." (Code Civ. Proc., § 632.) Therefore, to be timely, the request for statement of decision had to be made prior to the submission date of March 11, 2011. Eric's request for statement of decision, filed 11 days *after entry of judgment*, was untimely and properly was rejected.

2. *Substantial evidence supports trial court's determination that father was a co-owner of the property.*

Eric contends the trial court erred in ostensibly finding that John was an owner of the subject real property, the trial court disregarded or misapplied the form of title presumption, and the evidence established that at most, John had a *life estate* in the property. The arguments are unavailing.

a. *Exhibit 1 supports trial court's determination that father was a co-owner of the property, notwithstanding the form of title which indicated sole ownership in Eric.*

Under the "form of title" presumption, the description in a deed as to how title is held presumptively reflects the actual ownership status of the property. (*In re Marriage of Fossum* (2011) 192 Cal.App.4th 336, 344). This common law presumption is codified in Evidence Code section 662, which states, "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.*" (Italics added.) The presumption is based upon the promotion of a public policy that favors the stability of titles to property. (*Fossum, supra*, at p. 344.)

We review the trial court’s decision pursuant to the substantial evidence rule. “ ‘The standard of review on appeal remains the same whether the normal “preponderance of the evidence” standard or the higher “clear and convincing evidence” standard applied in the proceedings below.’ ” (*In re Marriage of Ruelas* (2007) 154 Cal.App.4th 339, 345 (*Ruelas*).)

Here, exhibit 1, the four-page letter authored by Eric to his father, stated in relevant part: “*You and I, TOGETHER, were able to buy this house. You agreed to put up the \$50,000 down payment. You also gave me another \$20,000 for purchasing beds (yours and mine) and other items we needed. I purchased those items we both needed. The agreement we had was I would be on title because of your credit and tax history.*” (Italics added.)

Exhibit 1 constitutes substantial evidence to support the trial court’s determination that notwithstanding title to the property having been taken solely in Eric’s name, Eric and father bought the house *together*. Exhibit 1 established that father was omitted from title only due to his adverse credit and tax history, which would have impaired Eric’s ability to qualify for a loan.

b. *Trial court was not compelled to find the existence of a life estate.*

Eric contends the allegations of father’s verified complaint reflect that father had at most an unrecorded life estate in the subject property, with the remainder interest in Eric. Eric cites father’s allegations that after contributing the down payment, father “was to live on the property *for the rest of his life* without any further financial obligation arising out of *ownership* of the property,” and that “[t]itle to the property was to vest solely in the Defendant [Eric] *only at the time of Plaintiff’s death.*” (Italics added.) Eric asserts that given these allegations, plaintiff did not meet its burden of negating the form of title presumption by clear and convincing evidence.

We reject Eric’s argument that only one conclusion can be drawn from the evidence. The inferences to be drawn from the evidence were a matter for the trial court, and our review of the trial court’s determination is deferential. As already



discussed, exhibit 1, the letter authored by Eric, supports the trial court's determination that father was a co-owner of the property.

Further, credibility is the province of the trial court. The evidence in the instant trial included Eric's claim in the 2008 unlawful detainer action that father was merely an ordinary tenant who could be evicted. In the unlawful detainer action, the trial court entered judgment for father, stating "the plaintiff [Eric] did not meet burden of proof to establish landlord-tenant relationship."

Because Eric's claim that father was merely a tenant was found to be not credible, the trial court was entitled to reject Eric's backup argument that father was merely a life tenant, rather than a co-owner.

### 3. *Statute of frauds.*

Eric contends the trial court should have found the statute of frauds supported his arguments at trial. The argument is unavailing because plaintiff established the existence of a resulting trust, which arises by operation of law. An interest in real property which arises by operation of law, such as by way of a resulting trust, is an alternative to a transfer of real property by a written instrument. (Civ. Code, § 1091; Code Civ. Proc., § 1971.)<sup>4</sup>

*"When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made. "The trust that is "presumed to*

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<sup>4</sup> Civil Code section 1091 states: "An estate in real property, other than an estate at will or for a term not exceeding one year, *can be transferred only by operation of law, or by an instrument in writing*, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing." (Italics added.)

Code of Civil Procedure section 1971 states: "No estate or interest in real property, other than for leases for a term not exceeding one year, nor any power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, *otherwise than by operation of law, or a conveyance or other instrument in writing*, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by the party's lawful agent thereunto authorized by writing." (Italics added.)

result” from this situation is termed a “resulting trust”; its purpose is to enforce the intentions of the parties. It is distinguished from a constructive trust, which is typically imposed to rectify fraudulent behavior.’ [Citation.] ‘A resulting trust differs from an express trust chiefly in that (1) *it arises by operation of law*, without an expressed intent, and (2) the resulting trustee ordinarily has no duty other than to transfer the property to the person entitled.’ ” (*Ruelas, supra*, 154 Cal.App.4th at p. 342, italics added.)

Here, the evidence showed father provided the down payment for the property, and that father and Eric purchased the property together, but title was taken solely in Eric’s name due to father’s credit and tax history. Under these circumstances, the trial court properly found the existence of a resulting trust, which arises by operation of law, without the necessity for a written instrument.

*4. Substantial evidence supports trial court’s award of \$40,600 to plaintiff and its decree that Eric holds a 50 percent ownership interest in the property in trust for father’s estate.*

Eric contends the trial court was not provided with any evidence to substantiate the amount or valuation of father’s share of the real property.

This argument lacks merit. The issue at trial was not the current value of the property, but rather, whether father was a co-owner of the property. Based on the evidence adduced at trial, the trial court properly decreed that Eric “holds a 50% ownership interest in the [subject real property] in trust for the Estate of John Louis Kaesman.”

The evidence also supported the trial court’s ruling that Eric pay \$40,600 to plaintiff. As set forth above, Eric withdrew \$90,000 in home equity, of which \$45,000 should have gone to father. Of those loan proceeds, Eric gave father \$7,500 for a vacation, \$6,500 for car repairs, and smaller sums in the \$100 to \$200 range. That left about \$30,000 still owed to father out of the loan proceeds. In addition, father provided \$20,000 to purchase beds and household items for the two of them, entitling father to \$10,000 in reimbursement.

The approximately \$30,000 owed to father out of the loan proceeds, combined with the \$10,000 owed to father for furniture and household items, supports the trial court's award of \$40,600 to plaintiff.

**DISPOSITION**

The judgment is affirmed. Respondent shall recover costs on appeal.

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KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.