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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JOE LEWIS,

Plaintiff and Respondent,

v.

GORDON CLARK et al.,

Defendant and Appellant.

B279047

(Los Angeles County
Super. Ct. No. BC468085)

APPEAL from a judgment of the Superior Court of Los Angeles County. Stephanie M. Bowick, Judge. Affirmed.

No appearance for Plaintiff and Respondent.

Law Offices of Charles Fonarow and Charles Fonarow for
Defendant and Appellant.

Defendant and appellant Gordon Clark appeals from a summary judgment entered in favor of plaintiff and respondent Joe Lewis, and from the trial court's order denying Clark's motion for relief under Code of Civil Procedure section 473.¹ In August of 2011, Lewis filed suit against Clark alleging he fraudulently induced him to invest approximately \$500,000 in a movie finance company that turned out be an investment scam. Clark contends the trial court improperly based its rulings on inadvertent statements he made in open court admitting to personal liability for the debt owed to Lewis. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The complaint alleged that in March 2008, Lewis invested approximately \$500,000 in Clark's movie finance company, The Movie Portfolio Fund Limited (the Fund), based in part on Clark's representation that the investment would be readily redeemable. In May 2009, Lewis submitted a request for the redemption of all of his shares in the Fund. Clark and others failed to return any of his money.

Lewis filed suit against Clark, the Fund and others alleging the following causes of action, listed respectively: fraud, negligent misrepresentation, breach of contract, conversion, unjust enrichment, and money had and received.

Thereafter, Lewis filed a motion for summary judgment. The trial court's tentative ruling was to deny the motion as to Clark, individually. However, at the hearing on the summary judgment motion, Clark (who was a self represented litigant), admitted in open court to personal liability for the debt owed to

¹ All further statutory references are to the Code of Civil Procedure unless otherwise stated.

Lewis. As a result, the trial court granted Lewis's motion for summary judgment as to his breach of contract, conversion, unjust enrichment, and money had and received causes of action against Clark.²

Following the summary judgment hearing, Clark filed objections to the entry of judgment against him, arguing any admission he made to the court was a "result of a moment of confusion and misunderstanding in oral argument." The court rejected Clark's contentions, finding his objections lacked merit. The trial court entered judgment in favor of Lewis and against Clark.

Shortly thereafter, Clark filed a motion for a new trial, contending he discovered new evidence that Lewis, over a period of many years, had misappropriated over \$200 million of his clients' money in a Ponzi scheme. Clark argued had he known about this information, he would have invoked the unclean hands doctrine at the summary judgment hearing. The trial court granted the motion, finding there was a likelihood the new evidence would have produced a different result at the summary judgment hearing.

Prior to trial, Lewis filed a second motion for summary judgment, reiterating the fact that Clark already admitted that he is personally liable for the amount sought. The trial court granted Lewis's motion, and judgment was entered in favor of Lewis and against Clark.

² Because the Fund was not represented by counsel, and Clark, a non-attorney, could not appear on behalf of the Fund, the trial court struck the Fund's answer and entered default against the Fund as to all of Lewis's claims. The Fund is not a party to this appeal.

Thereafter, Clark filed a motion to vacate the judgment pursuant to Code of Civil Procedure section 473, arguing he never intended to admit to personal liability, and there was a complete absence of evidence indicating he is personally liable. It appears the trial court denied Clark's motion; however, a copy of trial court's order has not been included in the record on appeal.

Clark filed a timely appeal. He elected to proceed on appeal without a reporter's transcript.

DISCUSSION³

Clark Failed to Provide an Adequate Record Demonstrating Any Error by the Trial Court

Clark contends the trial court erred in denying his motion for relief under section 473, and in failing to vacate the judgment entered against him because "he never intentionally admitted to personal liability" for the debt owed to Lewis. We reject Clark's assertion because he failed to provide a record on appeal sufficient for us to perform our appellate function.

"[I]t is settled that: 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' [Citations.]" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is the appellant's burden on appeal to produce a record " 'which overcomes the presumption of validity favoring [the] judgment.' " (*Webman v. Little Co. of Mary Hospital* (1995) 39 Cal.App.4th 592, 595.) When a party has elected to proceed with the appeal solely on a

³ No opposition has been filed.

clerk's transcript, we treat it as an appeal on the "judgment roll." (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082.) For an appeal on the judgment roll, we conclusively presume sufficient evidence was presented to support the trial court's findings. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) Our review is limited to determining whether any error "appears on the face of the record." (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521; Cal. Rules of Court, rule 8.163.)

The fundamental flaw with Clark's appeal is that he is unable to overcome the presumption that the trial court acted properly in interpreting the statements he made at the summary judgment hearing. First of all, Clark has not included in his record on appeal all of Lewis's moving papers in support of the second motion for summary judgment. Specifically, the separate statement, the Declaration of David Harris and the compendium of documentary evidence are missing. Thus, we do not know what evidence the trial court had before it when ruling on the motion. Secondly, a copy of the reporter's transcript from the first summary judgment hearing has not been designated as part of the record on appeal. There is also no adequate substitute for a reporter's transcript such as a settled or agreed upon statement of the hearing. (Cal. Rules of Court, rules 8.134, 8.137.) Without a reporter's transcript, we do not know what statements were made at the hearing. "Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant]." (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187.) We also do not know whether or in what manner the trial court ruled on the challenged motions. (*Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259 ["The absence of a record concerning what actually occurred at the hearing precludes a

determination that the court abused its discretion.”].) Given the sparse record, we presume the trial court’s rulings were correct and affirm them.

DISPOSITION

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

BIGELOW, P.J.

We Concur:

RUBIN, J.

ROGAN, J. *

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