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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

NOVIAN & NOVIAN, LLP, Plaintiff and Respondent, v. CHINGEZ TARAR, Defendant and Appellant.	B271905 Los Angeles County Super. Ct. No. SC122436

APPEAL from a judgment of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge. Affirmed.

Chingez Tarar, in pro. per., for Defendant and Appellant.

Novian & Novian and Aaron J. Weissman for Plaintiff and Respondent.

INTRODUCTION

This is an appeal from a judgment rendered after a bench trial. Defendant and appellant Chingez Tarar contends the proceedings below were riddled with procedural errors and the judgment in favor of plaintiff and respondent Novian & Novian, LLP is not supported by substantial evidence. Due to the numerous deficiencies in Tarar's arguments on appeal, and his failure to provide us with a transcript of the trial or an appropriate substitute, we affirm the judgment.[1]

FACTS AND PROCEDURAL BACKGROUND

According to the operative pleading,[2] the law firm of Novian & Novian, LLP (Novian & Novian or law firm) entered into a retainer agreement with Venn Polymers, Inc. (Venn) to represent Venn, Primo Corporation (Primo), Jim Farooquee (Farooquee), and Chingez Tarar (Tarar) (collectively, defendants) in a series of business matters and litigation. All of the law firm's work was performed at defendants' direction and only after they "expressed assurances of payment." After defendants failed to pay Novian & Novian, the law firm sued defendants to recover its unpaid fees and expenses. Novian & Novian also alleged that Tarar was Venn's alter ego.

After a bench trial, the court awarded Novian & Novian damages of $42,315.24 and prejudgment interest in the amount

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[1] Tarar's motions for sanctions and for judicial notice, filed on September 21, 2017, are denied.

[2] The complaint sets forth claims for breach of written contract, common count, account stated, quantum meruit, and unjust enrichment.

of $9,007.93. Judgment against Tarar was entered by the court on March 2, 2016 and Tarar timely appeals.[3]

CONTENTIONS

Tarar contends the trial court committed the following errors: it failed to deem the matter a complex case; it awarded more than $25,000 in damages; it conducted the trial at the Santa Monica courthouse instead of at the Stanley Mosk courthouse; it conducted a bench trial instead of a jury trial; it failed to make a phonographic record of the trial; it failed to render a statement of decision; it failed to continue the trial; it was biased against Tarar; it found Tarar liable under an alter ego theory even though no evidence was presented at trial to support this theory; and it violated the bankruptcy court's automatic stay.

DISCUSSION

1. An appellant must affirmatively demonstrate both error and prejudice.

There are fundamental rules and principles of appellate practice which govern the types of issues and arguments that may be raised on appeal, the form in which such arguments should be made, and the manner in which the facts should be stated. As will become evident, the presentation of this case on appeal is inadequate in a number of ways. Therefore, we will set forth some of the fundamental principles that guide our consideration of the issues.

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[3] Judgment was also entered against Venn and Farooquee. Primo was dismissed from the lawsuit before judgment was entered by the court. Venn and Farooquee are not parties to this appeal.

The most fundamental rule of appellate review is that the judgment or order challenged on appeal is presumed to be correct, and "it is the appellant's burden to affirmatively demonstrate error." (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) "All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Failure to provide an adequate record requires that the issue be resolved against the appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; *see Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.)

Both parties must also provide citations to the appellate record directing the court to the supporting evidence for each factual assertion contained in that party's briefs. When an opening brief fails to make appropriate references to the record in connection with points urged on appeal, the appellate court may treat those points as waived or forfeited. (See, e.g., *Lonely Maiden Productions, LLC v. GoldenTree Asset Management, LP* (2011) 201 Cal.App.4th 368, 384; *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 779–801 [several contentions on appeal "forfeited" because appellant failed to provide a single record citation demonstrating it raised those contentions at trial].)

Further, a party who contends that a particular finding is not supported by substantial evidence is obligated to set forth in his or her brief *all* the material evidence on the point, not merely the party's own evidence. (*Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1657–1659.) Facts must be presented in the light most favorable to the judgment (*id.* at pp. 1657–1658), and the burden on appellant to provide a fair summary of the

evidence " ' "grows with the complexity of the record. [Citation.]" ' " (*Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 739 (*Myers*); see Cal. Rules of Court, rule 8.204(a)(1)(C)[4] [briefs must support any reference to a matter in the record with a citation to the record]; rule 8.204(a)(2)(C) [appellant's opening brief must "[p]rovide a summary of the significant facts limited to matters in the record"].) The appellant waives a claim of lack of substantial evidence to support a finding by failing to set forth, discuss and analyze all the evidence on that point. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881 [error is deemed to be waived]; *Myers, supra*, 178 Cal.App.4th at p. 749.)

Finally, an appellant has the burden not only to show error but prejudice from that error. (Cal. Const., art. VI, § 13.) If an appellant fails to satisfy that burden, his argument will be rejected on appeal. (*Century Surety Co. v. Polisso* (2006) 139 Cal.App.4th 922, 963.) "[W]e cannot presume prejudice and will not reverse the judgment in the absence of an affirmative showing there was a miscarriage of justice. [Citations.] Nor will this court act as counsel for appellant by furnishing a legal argument as to how the trial court's ruling was prejudicial. [Citations.]" (*Ibid.*)

2. Tarar's opening brief is seriously deficient.

We first address the opening brief submitted by Tarar in this appeal. His brief makes numerous references to facts but often fails to cite to the record, or provides record citations that do not support the facts in the brief. (See rule 8.204(a)(1)(C).)

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[4] All further rule citations are to the California Rules of Court.

For instance, although Tarar's brief contains five pages of purported facts he only provides two citations to the record. And in one of those citations Tarar relies on his general denial to the complaint as support for his contention that "[t]he $10,000 Farhad [Novian] demanded and received was paid to Farhad outside the courthouse in Norwalk as full and final payment."

In addition, many of Tarar's arguments omit any meaningful legal analysis or misrepresent the record. As one example, while Tarar argues that venue in Santa Monica was improper he omits a critical fact: Tarar agreed to take his motion for change of venue off calendar. As another example, Tarar contends the judgment must be vacated and set aside because he never waived his right to a "phonographic report of the trial transcribed by a stenographic reporter" under rule 914. There is no such rule, however. To the extent Tarar intended to cite to Code of Civil Procedure section 914, that statute applies only when the right to a phonographic report has not been waived *and* when it was impossible to have a phonographic report of the trial transcribed because of the death or disability of the court reporter. Here, the record does not show it was impossible to have a report of the trial transcribed because of the death or disability of the court reporter. In fact, the record shows that a court reporter was not present during the trial.

We recognize that Tarar is representing himself on appeal. His status as a party appearing in propria persona does not, however, provide a basis for preferential consideration. A self-represented party is to be treated like any other party and is entitled to the same but no greater consideration than other litigants and attorneys. (See *Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125.) Based on the state of

his opening brief and his failure to comply with established appellate principles, Tarar has failed to demonstrate error.

3. Tarar's arguments are not supported by the limited record and he failed to provide an adequate appellate record.

We also note that Tarar advances arguments that are not supported by the limited record before us and, in any event, we cannot evaluate his other arguments because he has not provided us with an adequate record.

At the outset, Tarar argues the judgment must be reversed because there is no evidence in the record that a trial was actually held in February 2016, and there is no evidence of who testified or what exhibits were admitted into evidence. This contention is false. In his appendix, Tarar included a copy of the court's minute order from the February 16, 2016 trial. That minute order states that the matter was called for trial on February 16, 2016 and that two witnesses, Farhad Novian and Tarar, testified. That minute order also states that exhibits 1, 2, 12, 13, 14, and 16 were admitted into evidence.

Similarly, although Tarar believes the case should have been deemed complex under rule 3.400, there is no indication in the record that he challenged the law firm's designation of the case, or that he asked the court to designate the matter as complex. (See rule 3.402(b) [a defendant may file a complex counterdesignation].) Tarar also does not show that he was prejudiced by the court's failure to deem the matter complex. As for Tarar's contention that the case should have been tried to a jury, there is no indication in the record that Tarar ever sought a jury trial, and the judgment expressly states that "[t]he jury was waived."

Tarar's additional contention that the court failed to make material findings is without merit. When, as here, the trial court conducts a bench trial on a question of fact, the court must prepare a statement of decision upon a party's timely request. (Code Civ. Proc., § 632; *Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 970 (*Acquire II*).) But no statement of decision is required if the parties fail to timely and properly request one. (*Ibid.*) In this case, Tarar has not pointed us to any request for a statement of decision in the record. A party's failure to request a statement of decision when one is available has two consequences: "First, the party waives any objection to the trial court's failure to make all findings necessary to support its decision. Second, the appellate court applies the doctrine of implied findings and presumes the trial court made all necessary findings supported by substantial evidence. [Citations.] This doctrine 'is a natural and logical corollary to three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error.' " (*Ibid.*)

Tarar's argument that the court lacked jurisdiction due to a bankruptcy filing fares no better. To be sure, under the Bankruptcy Code, when a debtor files his petition for bankruptcy, he receives the benefit of an automatic stay that is imposed on his creditors, preventing them from proceeding to collect on their claims. (*Gottlieb v. Kest* (2006) 141 Cal.App.4th 110, 143.) Here, however, there is no evidence in the record that Tarar filed a bankruptcy petition. While there is a notice of stay in the record,

that stay related to a bankruptcy proceeding by a *different* defendant, Primo.

Finally, Tarar argues that the court expressed bias during the trial, abused its discretion in not continuing the trial on the trial date, and erred by making certain findings. We are unable to evaluate these arguments without a record or a summary of the evidence presented to the trial court. (Rules 8.130 [reporter's transcript], 8.134 [agreed statement], 8.137 [settled statement].) Without a reporter's transcript, "it is presumed that the unreported trial testimony would demonstrate the absence of error." (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992.)

DISPOSITION

The judgment is affirmed. Novian & Novian shall recover its costs on appeal.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

CURREY, 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.