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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DOUGLAS CONVERSE,

Plaintiff and Appellant,

v.

COZETTE BROCKMEIER,

Defendant and Respondent.

B278685

(Los Angeles County  
Super. Ct. No. SC122391)

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

Douglas Converse, in pro. per., for Plaintiff and Appellant.

Brockmeier Law Group and John A. Brockmeier for  
Defendant and Respondent.

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Following a bench trial, defendant Cozette Brockmeier obtained a judgment in her favor, and an award of costs and attorney fees, against plaintiff Douglas Converse. Plaintiff alleged that defendant hired him for a construction project at her home, but fired him without paying for his services. Plaintiff sued defendant for breach of contract and common counts, and defendant filed a cross-complaint for breach of contract and negligence.

Plaintiff makes a number of claims of error on appeal, including that the court abused its discretion by granting defendant's motion for nonsuit, erred in admitting hearsay statements at trial, and erroneously denied plaintiff's motion for a new trial based on newly discovered evidence, and other grounds. Defendant has moved to dismiss this appeal, or strike plaintiff's opening and reply briefs, arguing that plaintiff has not provided an adequate record on appeal, and that his briefs do not conform with the California Rules of Court. Defendant is correct that the appellate record and plaintiff's briefs are inadequate to facilitate review. We deny defendant's motion and affirm the judgment.

### **BACKGROUND**

It seems from the limited record before us that the essential facts are these: In 2010, plaintiff and defendant contracted for plaintiff and his partner to demolish an old home and build a new one. Defendant alleged that she terminated plaintiff from the project after he engaged in inappropriate hostile behavior, and that he was paid for the work he performed.

On April 14, 2014, plaintiff sued defendant for breach of contract and common counts, and defendant later filed a cross-complaint. The action proceeded to a court trial, which was held

on March 14 and March 15, 2016. The trial court issued a statement of decision on May 26, 2016. On July 7, 2016, plaintiff moved for a new trial, arguing that the evidence did not support the trial court's conclusion that defendant had paid in advance for all the work completed before plaintiff was terminated, and that plaintiff had obtained new evidence following trial substantiating his damages claim. The trial court denied the motion.

Plaintiff appealed the judgment. Plaintiff elected to proceed on appeal without a reporter's transcript, and did not provide a settled or agreed statement. His designation of the record on appeal also did not include many documents, such as the operative complaint, the trial court's statement of decision, plaintiff's declarations in support of his new trial motion, or defendant's opposition to the new trial motion. Plaintiff did file a compendium of exhibits which bear no file stamps, or other indication that they were received into evidence at trial.

Defendant moved to dismiss this appeal, based on numerous deficiencies in plaintiff's briefs and the appellate record, but did not otherwise file a respondent's brief. We treated defendant's motion as a respondent's brief. We granted defendant's motion to strike the exhibits, but denied her motions to file a late respondent's brief, and to strike plaintiff's reply brief.

### **DISCUSSION**

This appeal suffers from a number of deficiencies preventing appellate review. First, the appellate record is inadequate. No transcript of the court trial or settled statement was provided. "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.” (*Denham v. Superior Court of Los Angeles County* (1970) 2 Cal.3d 557, 564.) We cannot possibly review plaintiff’s claim that the trial court erred in granting nonsuit in favor of the defendant, or in denying his motion for a new trial, as these rulings necessarily turn on the sufficiency of the evidence. (See *Oakland Raiders v. National Football League* (2007) 41 Cal.4th 624, 636 [new trial motion]; *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132 [transcript or settled statement required to challenge sufficiency of the evidence]; *Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1580-1581 [nonsuit]; see also Cal. Rules of Court, rules 8.120(b), 8.134, 8.137.) Nor can we decide whether the trial court erred in admitting hearsay evidence, when we have no idea what evidence was proffered, or for what purpose. Moreover, the statement of decision, declarations in support of the new trial motion, opposition to the motion for a new trial, and operative complaint were not included in the record on appeal. (See Cal. Rules of Court, rule 8.124(b)(1)(B).)

It was plaintiff’s duty to “present a complete record for appellate review . . . .” (*Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039; see also *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186-187.) “[I]f the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.” (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051, fn. 9.)

Moreover, plaintiff’s appellate briefs do not make adequate citations to the limited record provided, and do not adequately

discuss the evidence adduced at trial. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 [we may disregard any claims when no appropriate reference to the record is furnished]; see also Cal. Rules of Court, rule 8.204(a)(2)(C) [an appellant must recite in the opening brief all “significant facts”]; *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) Therefore, any claim of error is necessarily waived.

### **DISPOSITION**

The judgment is affirmed. Defendant is awarded her costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

ROGAN, J.\*

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