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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

NELSON LEUNG et al.,

Plaintiffs, Cross-defendant
and Respondents,

v.

LUCIA KAI LEUNG et al.,

Defendants, Cross-
complainants and Appellants.

B290946

Los Angeles County
Super. Ct. No. BC609180

APPEAL from a judgment of the Superior Court of Los Angeles County, Gregory Keosian, Judge. Affirmed.

Lucia Kai Leung, in pro. per., for Defendant, Cross-complainant and Appellant Lucia Kai Leung.

Jeremy I. Lessem and Daniel S. Rubin for Plaintiffs, Cross-defendant and Respondents Nelson Leung and Academicise International Preschool & Kindergarten, Inc.

INTRODUCTION

Lucia Kai Leung appeals from a judgment entered in favor of Nelson Leung¹ and Academicise International Preschool & Kindergarten, Inc. (Academicise). Lucia raises several challenges to the sufficiency of the jury's findings. Lucia has not, however, provided us with transcripts, or a suitable substitute, from any of the underlying proceedings, including the multi-day jury trial. Because Lucia's claims on appeal require us to evaluate the evidence and arguments presented below, we affirm the judgment.

BACKGROUND

Without an oral record of the underlying proceedings, we glean the following facts and procedural history from the documents included in the clerk's transcript on appeal.²

In 1987, Nelson, Lucia, and their sister formed Love & Care Pre-School Corporation (Love & Care), "a child education center for pre-school age children." From the mid-1990s through the mid-2000s, Lucia was primarily responsible for operating

¹ Because they share the same last name, we refer to Lucia and Nelson by their first names.

² We deny Lucia's request for judicial notice of: (1) a 2017 administrative decision involving Nelson, Academicise, and the California Department of Social Services; and (2) the Department of Social Service's Manual of Policies and Procedures for the Community Care Licensing Division. First, the request is untimely. Second, as Lucia concedes in her request, none of the documents were presented to the trial court.

Love & Care while Nelson tended to other family business matters in Asia.

Around July 2005, Lucia asked Nelson to return to California “to take over the ownership, management and control of the pre-school” because Lucia wanted to retire. Nelson and Lucia later entered an oral agreement for the sale of Love & Care. Nelson agreed to pay \$990,000 for the school through monthly installment payments over a 10-year period, between January 2006 and December 2015 (purchase agreement). Nelson also agreed to pay Lucia nearly \$7,000 a month to lease the school’s property, which she owned. Lucia agreed to pay property taxes and any expenses necessary to maintain the school’s property until January 1, 2016, when she was supposed to transfer ownership of the school to Nelson.

Between early 2006 and late 2015, Nelson exercised “exclusive management and control of Love & Care,” and he made regular monthly payments under the purchase agreement. During that period, Lucia failed to pay property taxes for the school’s property, requiring Nelson to make the tax payments himself.

Around August 2015, Lucia and Joy Allado “told parents of children attending the school that Nelson would be leaving the school[,] cast[ing] doubt on the school’s future viability.”³ At least 25 parents withdrew their children from Love & Care as a result of Lucia’s and Allado’s statements.

In September 2015, Nelson applied “to transfer Love & Care’s child care license to a new facility in Arcadia.” According

³ The nature of Allado’s relationship to Lucia, Nelson, and Love & Care is unclear.

to Nelson, Lucia “claimed to the State of California that Nelson had no interest in Love & Care and had no authority to transfer its license to another facility”

In October 2015, Nelson decided to open a new pre-school, Academicise, after “it became obvious that Lucia would not transfer ownership of Love & Care” to him. After Nelson established Academicise, Lucia and Allado made “false statements about Nelson and Academicise having ‘stolen’ sleeping cots, curricula and files that Nelson had previously purchased from Lucia and Love & Care[] to start Academicise.” According to Nelson, “parents did not enroll their children in Academicise[] when they were otherwise willing to do so” because of Lucia’s and Allado’s statements.

In January 2016, Lucia claimed to be the sole owner of Love & Care. She refused to transfer her ownership interest in the school to Nelson.

In February 2016, Nelson and Academicise sued Lucia, Love & Care, and Allado.⁴ The operative first amended complaint asserted three causes of action: (1) breach of oral contract against Lucia; (2) tortious interference with prospective economic advantage against Lucia and Allado; and (3) declaratory relief against Lucia and Love & Care.

In June 2016, Lucia and Love & Care filed an unverified cross-complaint against Nelson and Mil Wong, Nelson’s wife.⁵ The cross-complaint alleged Lucia and Nelson entered an

⁴ Love & Care and Allado are not parties to this appeal.

⁵ The cross-complaint asserted causes of action for breach of contract against Nelson, intentional interference with contractual relations against Nelson and Wong, and conversion against Nelson.

agreement through which Nelson would lease Love & Care for 10 years, but that Lucia never agreed to sell the school to Nelson. Nelson breached the agreement by, among other things, attempting to convert Love & Care into Academicise and by failing to pay Love & Care's property and payroll taxes. The cross-complaint further alleged Nelson stole property from Love & Care, including a computer, a television, numerous sleeping cots, and teaching materials, and that Nelson and Wong intentionally interfered with Lucia's and Love & Care's contractual relations by convincing the parents of children enrolled at Love & Care to enroll their children at Academicise.

The parties' claims were tried before a jury between late February and early March 2018. After Nelson and Love & Care rested, the court dismissed Nelson's and Academicise's claims against Allado. The jury found Lucia and Nelson entered an agreement for Nelson to purchase Love & Care. The jury also found Lucia intentionally interfered with Nelson's and Academicise's prospective economic relations and awarded Nelson and Academicise more than \$1.5 million in damages. The jury found Lucia and Love & Care were not liable for breach of oral contract, and it found Nelson and Wong were not liable for any of the claims asserted in the cross-complaint.

On April 2, 2018, the court entered judgment for Nelson and Academicise and against Lucia and Love & Care for \$1,681,189. On May 22, 2018, the court entered an amended judgment against Lucia only for the same amount of damages awarded in the April 2, 2018 judgment. On May 24, 2018, the court denied Lucia's new trial motion. This appeal follows.

DISCUSSION

Lucia raises four arguments on appeal: (1) Nelson was equitably estopped from claiming he and Lucia entered into an oral contract for the sale of Love & Care; (2) Nelson breached his duty of loyalty to Lucia and Love & Care by convincing parents of students enrolled at Love & Care to enroll their children at Academicise; (3) insufficient evidence supports the jury's finding that Lucia committed a wrongful act for purposes of Nelson's and Academicise's intentional interference with prospective economic advantage cause of action; and (4) insufficient evidence supports the finding that Nelson and Lucia entered into a valid oral contract for the sale of Love & Care.

As we noted above, Lucia has not provided any transcript, or a suitable substitute, of the lower court proceedings, including the jury trial. (See Cal. Rules of Court, rules 8.130 [reporter's transcript], 8.134 [agreed statement], 8.137 [settled statement].) Lucia insists we can reach the merits of her arguments despite her failure to supply a record of the trial because the reporter's transcript is "immaterial" to the issues she raises on appeal and, in any event, there is some documentary evidence in the clerk's transcript that conflicts with the jury's findings. As we will explain, Lucia's record omissions are fatal to her entire appeal.

It is a fundamental rule of appellate review that the judgment or order challenged on appeal is presumed correct, and it is the appellant's burden to affirmatively demonstrate error. (*Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 799.) " " " " "All intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown." " [Citation.] " " " (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228,

1250.) An appellant’s failure to provide an adequate record requires the reviewing court to resolve any issues that rely on the missing record to be resolved against the appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296 (*Maria P.*); see *Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.)

Appellate courts have repeatedly refused “to reach the merits of an appellant’s claims because no reporter’s transcript of a pertinent proceeding or a suitable substitute was provided. (*Maria P.* [, *supra*,] 43 Cal.3d [at pp.] 1295–1296 [attorney fee motion hearing]; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574–575 (lead opn. of Grodin, J.) [new trial motion hearing]; *In re Kathy P.* (1979) 25 Cal.3d 91, 102 [hearing to determine whether counsel was waived and the minor consented to informal adjudication]; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447 [trial transcript when attorney fees sought]; *Estate of Fain* (1999) 75 Cal.App.4th 973, 992 [surcharge hearing]; *Hodges v. Mark* (1996) 49 Cal.App.4th 651, 657 [nonsuit motion where trial transcript not provided]; *Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1532 [reporter’s transcript fails to reflect content of special instructions]; *Buckhart v. San Francisco Residential Rent etc., Bd.* (1988) 197 Cal.App.3d 1032, 1036 [hearing on Code Civ. Proc., § 1094.5 petition]; *Sui v. Landi* (1985) 163 Cal.App.3d 383, 385–386 [motion to dissolve preliminary injunction hearing]; *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 713–714 [demurrer hearing]; *Calhoun v. Hildebrandt* (1964) 230 Cal.App.2d 70, 71–73 [transcript of argument to the jury]; *Ehman v. Moore* (1963) 221 Cal.App.2d 460, 462 [failure to secure reporter’s transcript [or] settled statement].)” (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186–187.)

These rules apply whether a party is represented by counsel or appearing without counsel. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985.) A party appearing without counsel “‘is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.’” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247 [pro. per. litigants must follow the correct rules of procedure].)

Lucia first contends Nelson was equitably estopped from claiming she agreed to sell him Love & Care. According to Lucia, she only intended to lease the school to Nelson in July 2005, when they entered the purchase agreement. Lucia claims Nelson kept his intention to obtain ownership of the school secret until he “attempt[ed] to transfer the preschool license, claim complete ownership and enroll the students into his new preschool.”

To establish equitable estoppel, Lucia was required to prove: “ ‘ ‘ ‘ ‘(1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had the right to believe that it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; and, (4) he must rely upon the conduct to his injury.’ ” [Citation.]’ [Citation.]” (*Hopkins v. Kedzierski* (2014) 225 Cal.App.4th 736, 756.) Whether a party should be equitably estopped “ ‘is a factual question entrusted to the trial court’s discretion. [Citation.]’ ” (*Ibid.*)

Without a record of the evidence presented at trial, we cannot determine (1) whether Lucia raised the issue of equitable estoppel in the trial court (see *In re Aaron B.* (1996) 46 Cal.App.4th 843, 846 [“ ‘[a] party is precluded from urging on appeal any point not raised in the trial court’ ”]); and (2) whether

any of the elements of equitable estoppel were satisfied in this case. While Lucia points to allegations in her unverified cross-complaint as evidence that Nelson should have been estopped from asserting the existence of the purchase agreement, that pleading is not evidence and cannot by itself establish the elements of equitable estoppel. (*Thomson v. Anderson* (2003) 113 Cal.App.4th 258, 271 [an unverified complaint has no evidentiary value].) As for the various exhibits Lucia claims were admitted at trial, including copies of a stock certificate and a stock transfer ledger purporting to show Lucia owned 100 shares of Love & Care's stock as of 1987, we are unable to confirm whether any of those documents were admitted at trial without a record of the court's evidentiary rulings. Because we have no record of what evidence was presented at trial, we cannot conclude the court erred by failing to find Nelson was equitably estopped from claiming Lucia agreed to sell him Love & Care. (See *Maria P.*, *supra*, 43 Cal.3d at pp. 1295–1296.)

The rest of Lucia's arguments fail for the same reason. Whether the parties entered an oral contract to sell Love & Care, whether Nelson breached any duty of loyalty owed to Lucia and Love & Care, or whether Lucia committed an independently wrongful act to support Nelson's and Academicise's intentional interference with prospective economic advantage claim are factual questions that require us to evaluate the evidence the parties presented at trial. (See *Duran v. Duran* (1983) 150 Cal.App.3d 176, 181 [whether the parties intended to enter a binding oral contract is a factual issue for the jury to decide]; see also *Treadwell v. Nickel* (1924) 194 Cal. 243, 261–262 “[w]hen the contract relied on is oral, its interpretation in the first instance is a question of fact to be determined by the jury”];

Monreal v. Tobin (1998) 61 Cal.App.4th 1337, 1350 [whether a party breached a duty or whether her wrongful conduct caused the plaintiff's injuries are factual questions for the trier of fact].) Without a record of what evidence was presented at trial, Lucia has failed to show any of the jury's findings were erroneous.

DISPOSITION

The judgment is affirmed. Respondents Nelson Leung and Academicise International Preschool & Kindergarten, Inc. shall recover their costs on appeal.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.