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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ISAAC LARIAN, Plaintiff and Appellant, v. ABRAHAM TALASSAZAN et al., Defendants and Respondents.	B242508 (Los Angeles County Super. Ct. No. SC110882)

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

Karen-Denise Lee, Eliza Karapetyan; Russ, August & Kabat, Larry C. Russ, Matthew A. Rips, Nathan D. Meyer; Dapeer Rosenblit Litvak and William Litvak for Plaintiff and Appellant.

Vivoli Saccuzzo, Michael W. Vivoli and Jason P. Saccuzzo for Defendants and Respondents.

Plaintiff and appellant Isaac Larian (Larian) appeals a judgment following a grant of summary judgment in favor of defendants and respondents Abraham Talassazan (Abraham), Ehteram Talassazan (Ehteram), Yahya Talassazan (Yahya) and Hersel Talassazan (Hersel) (collectively, the Family Defendants).[1]

Larian contends he lent $2 million to defendant Albert Talassazan (Albert) (not a party to this appeal), and the Family Defendants are liable to him because they conspired with Albert to obtain the money from Larian and to divert and use the funds for their own benefit.[2]

We conclude the undisputed evidence showed Larian lacks evidence to support his claims against the Family Defendants and affirm the grant of summary judgment in their favor.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Pleadings.*

Larian's operative first amended complaint alleged that in May 2005, Larian and Albert entered into a written agreement pursuant to which Larian loaned Albert and his wife Mojgan Talassazan (Mojgan) (Larian's sister) (not a party to this litigation) the sum of $2 million to enable them to purchase a home on Linden Drive in Beverly Hills (Linden). Larian pled that in order to induce him to make the loan, Albert promised: the funds would be used solely to purchase Linden; Larian would receive a security interest in Linden; and no further encumbrances would be placed on Linden that would diminish Larian's security interest.

The agreement provided the loan was based on Albert's representation that "he will execute all such paperwork as may be required and requested by Larian prior to and

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[1] We refer to the various members of the Talassazan family by their first names for the sake of clarity. No disrespect is intended. (*Scalzo v. Baker* (2010) 185 Cal.App.4th 91, 94, fn. 1.)

[2] Albert's codefendants Abraham and Hersel are Albert's brothers, and Yahya and Ehteram are Albert's parents.

in conjunction with the closing of the purchase of the Linden Drive Property, including a Deed of Trust and Promissory Note in the amount of the loan plus interest at the rate of two percent (2%) per year." Albert was to repay the loan in full by the earliest of five years from May 17, 2005, or upon the sale or transfer of Linder, or upon Larian's demand for payment.

In accordance with the agreement, Larian transferred $2 million to the escrow for Albert's benefit. Albert used part of the money to purchase Linden, but contrary to the agreement, Albert failed to execute a deed of trust in Larian's favor, and also took out additional loans on Linden. In doing so, Albert conspired with the Family Defendants and used the borrowed funds for other ventures including the purchase of other real estate. Larian pled on information and belief the Family Defendants were "aware" of Albert's agreement with Larian, yet they conspired and cooperated with Albert "to obtain such loans and funds for their own benefit."

Larian further pled that more than five years had elapsed since the date he made the loan, that he had demanded payment of the loan amount, that Albert and the other defendants had failed to make such payments, and on August 4, 2010, Albert caused Linden to be transferred by trustee's sale.

Leaving aside Larian's claims against Albert, the first amended complaint asserted causes of action against the Family Defendants for: fraud and conspiracy to commit fraud (2nd cause of action); conversion and conspiracy to commit conversion (5th cause of action); unjust enrichment (6th cause of action); constructive trust (7th cause of action); fraudulent transfer (8th cause of action); and declaratory relief (9th cause of action).

2. *Family Defendants' motion for summary judgment.*

On August 19, 2011, the Family Defendants filed a motion for summary judgment, contending that irrespective of whether Albert breached his obligation to Larian, Larian had no basis for his claims against the Family Defendants because the undisputed evidence showed they did nothing wrong and played no part in defrauding or otherwise injuring Larian. The Family Defendants asserted they did not conspire with

Albert and did nothing to diminish the equity in Linden, either directly or indirectly. Yahya and Ehteram received no funds from Albert since the close of escrow; as for Abraham and Hersel, the only money they received from Albert was in repayment of loans owed to them and those loans were not repaid with equity from Linden or from Larian's money.

The moving papers acknowledged Abraham had recommended Albert invest in Essr Chai, LLC, a limited liability company(hereafter, the LLC) that owned real property at 180 Madison Avenue in New York City. However, Albert purchased his membership interest directly from David Asherian, one of the members of the LLC.

The moving papers relied on Larian's discovery responses to establish his inability to prove his claims against the Family Defendants. Specifically:

Larian was asked to admit that none of the Family Defendants ever received any of the $2 million Larian allegedly lent to Albert and Mojgan. In response, Larian admitted he never lent money to the Family Defendants, and that despite a reasonable inquiry, he was unable to admit or deny whether any of the Family Defendants received any portion of said loan proceeds.

Larian also was asked to admit none of the Family Defendants diverted equity or proceeds from Linden. In response, Larian stated he was unable to admit or deny whether any of the Family Defendants ever diverted equity or proceeds from Linden.

Larian also was asked to admit that none of the Family Defendants ever cooperated with, encouraged, ratified or adopted any of the acts set forth in Larian's complaint. In response, Larian stated he was unable to admit or deny the requests because the facts and circumstances were within defendants' knowledge and control and prior to discovery, Larian lacked such knowledge.

Larian also was asked to admit the Family Defendants never used for investments or expenditures any portion of the $2 million he lent to Albert in 2005. Again, Larian responded he was unable to admit or deny the request.

3. *Larian's opposition.*

In opposition, Larian contended the Family Defendants had failed to meet their initial burden in moving for summary judgment, and in any event, triable issues existed which precluded summary judgment or summary adjudication. In the alternative, Larian requested a continuance to conduct additional discovery.

4. *Trial court's ruling.*

After taking the matter under submission, the trial court granted the Family Defendants' motion for summary judgment. It ruled, inter alia:

The record established the moving parties, i.e., the Family Defendants, did not conspire with Albert and none of them had received any money from Albert which came directly or indirectly from the equity in Linden. Albert did not deliver any of the funds allegedly lent by Larian for the purchase of Linden to the Family Defendants. None of the Family Defendants accepted any of the funds lent by Larian to Albert.

Abraham recommended to Albert that he invest in the LLC and Albert did so. None of the funds for the investment went to Abraham. Rather, Albert purchased his interest in the LLC from David Asherian, a member of the LLC, and the investment was profitable.

Further, in Larian's response to requests for admission, Larian admitted he did not lend money to the Family Defendants and that he was unable to admit or deny whether they received any portion of the funds he lent to Albert. Larian also was unable to admit or deny whether the Family Defendants diverted equity or proceeds from Linden. Likewise, Larian was unable to admit or deny whether the Family Defendants ever cooperated with, encouraged, ratified, or adopted any of the acts set forth in his complaint. In addition, Larian was unable to admit or deny whether the Family Defendants used for investments or expenditures any portion of the $2 million he lent to Albert.

The trial court found the movants had met their burden so as to shift the burden to Larian to raise a triable issue of material fact. To wit:

As to the second cause of action for fraud and conspiracy to commit fraud, there was no admissible evidence to show the Family Defendants defrauded Larian out of $2 million or any portion thereof. As to the fifth cause of action for conversion and conspiracy to commit conversion, there was no admissible evidence the Family Defendants exercised dominion and control over the loan proceeds. As to the sixth cause of action for unjust enrichment, this claim was part of the seventh cause of action for constructive trust where property is wrongfully acquired or detained; here, there was no admissible evidence the Family Defendants obtained any of the loan proceeds from Larian. As to the eighth cause of action for fraudulent transfer, there was no admissible evidence of a fraudulent transfer; the only reference to an investment made by Albert was in the LLC and the investment was profitable. As to the ninth cause of action for declaratory relief, it was part of a claim for a lien on the assets of the Family Defendants that were obtained from the Linden proceeds; this claim failed in light of the resolution of the other claims.

With respect to the chronology of the case, the trial court noted this action was commenced on December 29, 2010 and the summary judgment motion had been pending from August 19, 2011, until the hearing date on April 24, 2012. The delay was occasioned by two continuances, one of which was pursuant to Code of Civil Procedure Section 437c, subdivision (h). "Plaintiff had a sufficient amount of time to do discovery."

Larian filed a timely notice of appeal from the judgment.

CONTENTIONS

Larian contends the trial court erred in granting summary judgment because triable issues of material fact exist with respect to his causes of action for (1) conspiracy, (2) conversion, (3) unjust enrichment and constructive trust, and (4) fraudulent transfer; and the trial court abused its discretion in refusing to grant a continuance of the summary judgment hearing to enable him to complete discovery.

DISCUSSION

1. *Standard of appellate review*.

"We independently review an order granting summary judgment. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860.) We determine whether the court's ruling was correct, not its reasons or rationale. (*Salazar v. Southern Cal. Gas Co.* (1997) 54 Cal.App.4th 1370, 1376.) 'In practical effect, we assume the role of a trial court and apply the same rules and standards which govern a trial court's determination of a motion for summary judgment.' (*Zavala v. Arce* (1997) 58 Cal.App.4th 915, 925.)" (*Shugart v. Regents of University of California* (2011) 199 Cal.App.4th 499, 504-505.) In performing our de novo review, we view the evidence in the light most favorable to Larian, as the party opposing summary judgment. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.)

2. *Trial court properly granted summary judgment in favor of Family Defendants because they established Larian lacked evidence to support his claims against them*.

A defendant "can satisfy its initial burden to show an absence of evidence through 'admissions by the plaintiff following extensive discovery to the effect that he has discovered nothing' [citation], or through discovery responses that are factually devoid. [Citations.]" (*Chavez v. Glock, Inc*. (2012) 207 Cal.App.4th 1283, 1302.)

The parties' respective separate statements established Larian lacked evidence to support his claims that: (1) the Family Defendants received any portion of the $2 million that Larian allegedly lent Albert (Undisputed Material Fact (UMF) 23); (2) the Family Defendants "diverted equity or proceeds" from Linden (UMF 25); (3) the Family Defendants " 'cooperated with, encouraged, ratified, or adopted any of the acts set forth' in Plaintiff's complaint" (UMF 28); and (4) the Family Defendants " 'used for investments or expenditures any portion of the Two Million Dollars" that Larian lent Albert (UMF 31). Notwithstanding the voluminous record on appeal, these undisputed facts are essentially the beginning and end of this case, with respect to Larian's claims against the Family Defendants. We agree with the trial court, which specifically cited these undisputed facts in granting summary judgment.

In an attempt to create a triable issue, Larian's appellate briefs cite to various portions of the appellant's appendix, including deposition transcripts and financial schedules, to argue those items would support an inference the Family Defendants are somehow liable to him. However, Larian's opening and reply briefs are devoid of citations to the lengthy separate statement which Larian filed below in opposition to the motion for summary judgment. (Appellant's Appendix, pp. 1566-1693.) The reason Larian's briefs fails to address to the responsive separate statement is self-evident – Larian's responsive separate statement failed to specify a triable issue of material fact with respect to his claims against the Family Defendants.[3]

Although a grant of summary judgment is subject to de novo review (*Noel v. River Hills Wilsons, Inc*. (2003) 113 Cal.App.4th 1363, 1368), Larian bears the burden, as the appellant, to show error on the record presented, even though he did not bear the initial burden below. (*Bains v. Moore* (2009) 172 Cal.App.4th 445, 455.) Like the trial court, we "identify which, if any, material facts are truly undisputed *by comparing the separate statements of facts* and supporting evidence[.]" (*ITT Telecom Products Corp. v. Dooley* (1989) 214 Cal.App.3d 307, 311, italics added.) However, the separate statements, which are the crux of a summary judgment appeal, play no part in Larian's appellate analysis.

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[3] At oral argument on appeal, in response to repeated questioning by the panel, the sole fact cited by appellant's counsel was UMF 8, which stated that none of the Family Defendants "conspired with Albert to diminish the equity of the Linden Drive Property." Larian's responsive separate statement addressed UMF 8 as follows: "Disputed. [¶] See Declaration of Craig Holden, filed herewith, at [paragraphs] 10 and 11, authenticating relevant portions of the deposition transcripts of [Abraham and Albert]; Declaration of Isaac Larian, filed herewith at [¶] 11; [¶] See also, additional material facts, *infra*, at 33-45." Said response was not in proper form, as it merely stated "disputed" without specifying the nature of the factual dispute. (Cal. Rules of Court, rule 3.1350, subds. (f) & (h); see generally, Weil & Brown, California Practice Guide: Civil Procedure Before Trial (Rutter Group 2013) § 10:196c.) Further, the response's citation to unspecified "relevant" portions of deposition transcripts was insufficient to satisfy the statutory mandate, which requires a "reference to the supporting evidence." (Code Civ. Proc., § 437c, subd. (b)(3).)

United Community Church v. Garcin (1991) 231 Cal.App.3d 327, 335 (*Garcin*) held the statutory requirements concerning the presentation of facts and citation of evidence in separate statements are enforced to afford due process to opposing parties and to facilitate the trial court's review of complex motions for summary judgment. *Garcin* embraced the so-called " 'Golden Rule,' " that is, " 'if it is not set forth in the separate statement, it does not exist.' " (*Id*. at p. 337, italics omitted.)

Subsequently, *North Coast Business Park v. Nielsen Construction Co*. (1993) 17 Cal.App.4th 22, 30-32, reasoned the Golden Rule extends to deficiencies in an opposing party's separate statement, and concluded that a party opposing summary judgment must identify pertinent issues and evidence in its separate statement of facts. *North Coast* stated: " '[I]t is no answer to say the facts set out in the supporting evidence or memoranda of points and authorities are sufficient. "Such an argument does not aid the trial court at all since it then has to cull through often discursive argument to determine what is admitted, what is contested, and where the evidence on each side of the issue is located." ' [Citations.]" (*Id*. at p. 30, quoting *Garcin*, *supra*, 231 Cal.App.3d at p. 335; accord *San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 316 ["where evidence is not referenced, is hidden in voluminous papers, and is not called to the attention of the court at all, a summary judgment should not be reversed on grounds the court should have considered such evidence"].)

Here, the Family Defendants' moving papers below met their initial burden, by making an evidentiary showing and pointing to Larian's lack of evidence to support his claims against them. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849, 854-855.) The burden then shifted to Larian to pinpoint material facts which would raise a triable issue as to his claims against the Family Defendants. (*Id*. at p. 849.) Larian did not meet his burden. Because Larian's responsive separate statement failed to establish evidentiary support for his claims against the Family Defendants, the trial court properly granted summary judgment in their favor.

3. *Trial court acted within its discretion in denying a further continuance of the summary judgment hearing*.

Larian contends the trial court abused its discretion in denying a continuance of the summary judgment hearing. In support, he cites a November 10, 2011 declaration by his attorney, Craig Holden, who asserted further evidence may exist which would be relevant to Larian's opposition to the motion.

We note the summary judgment hearing was held more than six months later, on April 24, 2012. After taking the matter under submission, the trial court ruled as follows, with respect to the denial of a further continuance:

"The History of the Motion for Summary Judgment.

"The Defendants' Motion for Summary Judgment was filed on August 19, 2011. [¶] On October 17, 2011, the Court made orders concerning the depositions of Defendants Yahya Talassazan, Ehteram Talassazan and Abraham Talassazan. [¶] On October 28, 2011, pursuant to Plaintiff's request for a continuance of the hearing on Defendants' Motion for Summary Judgment under Code of Civil Procedure Section 437c(h), the hearing was continued from November 9, 2011 to November 22, 2011. [¶] On November 7, 2011, the Court again made orders concerning the taking of the depositions of Defendants Yahya Talassazan and Ehteram Talassazan.

"Due to the transfer of Judge John Segal, this matter was transferred to Judge H. Chester Horn. Thereafter, as a result of a challenge made pursuant to Code of Civil Procedure Section 170.6, the case was transferred to Judge Gerald Rosenberg.

"On December 29, 2011, in an effort to-discuss discovery issues and to review the pending claims, the Court held an informal discovery hearing. As part of the hearing, Plaintiff's counsel expressed his intention to subpoena the bank records of the Defendant Family Members. Opposition to this request was made by said Defendants. Counsel for Plaintiff indicated that his theory was that money from the Wells Fargo Bank Line of Credit was paid over to the Defendant Family Members. [¶] At the conclusion of the hearing and with the consent of counsel for Defendant Albert Talassazan, the court issued the following orders: [¶] 1. On or before January 20, 2012, attorney Behrouz Shafie will

provide all counsel with copies of all checks written on the line of credit by Albert Talassazan and Mojgan Talassazan during the time they resided at the Linden Drive property. [¶] 2. With the exception of the production of the copies of the checks, all discovery is cut-off in this matter. However, after reviewing the copies of the checks, if good cause exists, counsel may bring a properly noticed motion. [¶] 3. The hearing on the Motion for Summary Judgment was continued to April 24, 2012.

"On March 9, 2012, Plaintiff filed an Ex Parte Request to Re-Open Discovery and the hearing on said Motion was set for May 8, 2012. [¶] Plaintiff initially argued to this Court that monies from the Credit Line were diverted to the Defendant Family Member(s). Now, Plaintiff argues that he does not know what happened to the $2,000,000.00 allegedly loaned to Defendant Albert Talassazan and he believes it went to the Defendant Family Member(s).

"This case was filed on December 29, 2010 *and the Motion for Summary Judgment has been pending from August 19, 2011 until the hearing date on April 24, 2012*. The delay was caused by 2 continuances. One of which was made pursuant to Code of Civil Procedure Section 437c(h).

"As a result of the Court's December 29, 2011 Order, copies of checks from the Wells Fargo Bank Line of Credit were provided to Plaintiff's counsel at or about January 20, 2012. Yet counsel waited until March 9, 2012 to request further discovery.

"*Plaintiff had a sufficient amount of time to do discovery. When discovery issues did arise, the Minute Orders clearly show judicial intervention*. [¶] The Defendants' Motion for Summary Judgment is granted." (Italics added.)

On this record, given the eight months the motion for summary judgment already had been pending, we perceive no abuse of discretion in the trial court's denial of a further continuance.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.