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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

YU CHUNG KOO,

Plaintiff and Respondent,

v.

HUANG CHO HONG et al.,

Defendants and Appellants.

B228431

(Los Angeles County
Super. Ct. No. BC414375)

COURT OF APPEAL - SECOND DIST.

FILED

OCT 11 2011

JOSEPH A. LAINE

Clerk

Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark V. Mooney, Judge. Affirmed.

Law Offices of Dale C. Frailey & Associates, Dale C. Frailey and Lawrence Hoodack, for Defendants and Appellants.

Hong & Mashal, Robin Mashal and Peter Y. Hong for Plaintiff and Respondent.

Defendants and appellants Huang Cho Hong, Siu Ling Li, Xi Fan Hong, and Yan Nan Hong appeal from a judgment following a jury trial, entered against them and in favor of plaintiff and respondent Yu Chung Koo. Because appellants have not satisfied their burden on appeal of providing both an adequate appellate brief and an adequate record from which we can properly review alleged claims of error, we deem all issues purportedly raised in their opening brief waived. Even if we were to reach those issues on the merits, we would conclude that judgment was properly entered.

Accordingly, we affirm.

Appellants' Burden on Appeal

“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.” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Thus, appellants must make a challenge. In so doing, appellants must raise claims of reversible error or other defect, and “present argument and authority on each point made.” (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591.) “[F]ailure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal.” (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119.) In addition, “a party challenging a judgment has the burden of showing reversible error by an adequate record.” (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) “Failure to provide an adequate record on an issue requires that the issue be resolved against [appellants]. [Citation.]” (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.) Appellants have failed to meet their burden on appeal in both regards.

Inadequate Brief and Record

The major problem with appellants' appeal lies in their opening brief. Assertions that "the verdict is against the law" and that there were "irregularities in the proceedings" are made without support or any attempt to argue the applicability of the law to the facts of this case. Although some case citations are provided, the brief does not "support each point by argument and . . . by citation of authority," in violation of California Rules of Court, rule 8.204(a)(1)(B). (See also *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [appellant bears the burden of supporting a point with reasoned argument]). It is not our role to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785.)

The opening brief is not the only failure of appellants, the record also is inadequate. Appellants allege errors related to jury instructions and the trial verdict, but provide no reporter's transcripts from the seven-day trial in this case. Similarly, appellants allege an abuse of discretion by the trial court in denying a motion for continuance, but fail to provide a transcript of the motion hearing. "[I]t is presumed that the unreported trial testimony would demonstrate the absence of error." (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 153–154.) It is the burden of the party challenging a judgment on appeal to provide an adequate record to assess error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140–1141.) Where, as here, appellants fail to furnish an adequate record of the challenged proceedings, their claim on appeal must be resolved against them. (*Rancho Sante Fe Assn. v. Dolan-King* (2004) 115 Cal.App.4th 28, 46.)

Were We to Reach the Issues, We Would Affirm the Judgment

To the extent we can determine what appellants are seeking on appeal, and setting aside the procedural obstacles noted above, appellants are not entitled to the relief

requested. Appellants claim the jury reached a verdict against one of the defendants (Siu Ling Li) that was not supported by the jury instructions given to them.

Although appellants claim in their opening brief that “[p]laintiff/[r]espondent’s counsel prepared jury instructions in this matter which were read and given to the jury,” the record indicates that the parties submitted 56 “Joint [Proposed] Jury Instructions” of which 32 were given to the jury. Some jury instructions referred to “defendants” collectively, while others made specific references to individual defendants by name. Respondent’s counter that the trial court prepared a general verdict form which was reviewed, modified, and agreed to by the parties, is unchallenged by appellants. The record indicates that the jury returned a general verdict in favor of respondent, Yu Chung Koo.

A general verdict implies findings on all issues in one party’s favor. (*City of San Diego v. D.R. Horton San Diego Holding Co., Inc.* (2005) 126 Cal.App.4th 668, 678.) “If the verdict is ambiguous the party adversely affected should request a more formal and certain verdict. Then, if the trial judge has any doubts on the subject, he may send the jury out, under proper instructions, to correct the informal or insufficient verdict.’ [Citations.]” (*Woodcock v. Fontana Scaffolding & Equip. Co.* (1968) 69 Cal.2d 452, 456.) Failure to object to a verdict before the discharge of a jury and to request clarification or further deliberation precludes a party from later questioning the validity of that verdict if the alleged defect was apparent at the time the verdict was rendered and could have been corrected. (*Henriouille v. Marin Ventures, Inc.* (1978) 20 Cal.3d 512, 521.)

The purported defect in the verdict was apparent and could have been brought to the attention of the trial judge, but appellants forfeited their challenge to the verdict by failing to assert it before the jury was discharged. (*Bell v. Bayerische Motoren Werke Aktiengesellschaft* (2010) 181 Cal.App.4th 1108, 1130.)

Appellants also contend the trial court erred in denying their motion to continue the trial and reopen discovery. The record indicates the complaint was filed on May 22, 2009, and trial was set for August 2, 2010. Appellants brought an ex parte motion at the

Final Status Conference on July 23, 2010, to continue the trial, based in part on the fact that they had not concluded the deposition of respondent, Yu Chung Koo.

“[A] reviewing court should not disturb the exercise of a trial court’s discretion unless it appears that there has been a miscarriage of justice. . . . ‘Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered. The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there had been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power.’ [Citations.]” (*Denham v. Superior Court, supra*, 2 Cal.3d at p. 566.)

Again, we have not been provided with a transcript of the hearing on appellants’ ex parte application, or even the notice of ruling. It is appellants’ burden to show that the ruling constituted an abuse of the court’s discretion, and appellant has failed to meet this burden.

DISPOSITION

The judgment is affirmed. Respondent to recover costs on appeal.

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_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ