

Filed 3/20/18 Mehta v. Activor Corp. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MAHAVIR MEHTA,

Plaintiff and Respondent,

v.

ACTIVOR CORPORATION et
al.,

Defendants and Appellants.

B276151

(Los Angeles County
Super. Ct. No. BC 488531)

APPEAL from a judgment of the Superior Court for the County of Los Angeles, Ernest M. Hiroshige, Judge. Affirmed as modified.

Mainak D'Attaray and Michael T. Stoller for Defendants and Appellants.

California Lawyers Group, Michael S. Brown and Michael E. Reznick, for Plaintiff and Respondent.

INTRODUCTION

The trial court determined by clear and convincing evidence that defendant Activor Corporation fraudulently transferred assets to its principal shareholder, defendants Chanda Zaveri, and two other entities she formed (Actiogen Corporation and Chanda LLC) to avoid paying plaintiff the entire judgment in his favor in the underlying action. Plaintiff was awarded compensatory and punitive damages. We modify the judgment as to Activor alone and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 12, 2007, while employed by Activor Corporation, plaintiff Mahavir Mehta fell 12 feet off a ladder and sustained serious injuries, including one to his left wrist that required surgery. At the time of plaintiff's accident, Activor did not carry workers' compensation insurance and was not permissibly self-insured. Plaintiff initiated workers' compensation proceedings (*Mehta* WCAB)¹ and sued Activor and Zaveri for damages pursuant to Labor Code section 3706 (*Mehta*

¹ When an employer fails to provide workers' compensation insurance, the employee still may proceed before the workers' compensation appeals board and obtain "the award . . . he or she would be entitled to receive if the employer had secured the payment of compensation as required . . ." (Lab. Code, § 3715, subd. (a).) If the employee obtains an award in those proceedings, but the employer fails to pay it, the employee may seek payment from the Uninsured Employers Benefits Trust Fund (UEBTF). (Lab. Code, § 3716.)

v. Zaveri et al., Los Angeles Superior Court Case No. YC057627 (*Mehta I*.)²

Mehta I resulted in a judgment in plaintiff's favor against Activor only in the total sum of \$184,850.22: economic damages of \$40,000, noneconomic damages of \$15,000, and \$129,850.22 in attorney fees. The judgment was in favor of defendant Zaveri, who was awarded \$8,019.07 in costs. Through a writ of execution, plaintiff collected \$55,000 from Activor.³

After entry of the *Mehta I* judgment, Activor began transferring assets and accounts receivable to Zaveri and to Actiogen Corporation and Chanda LLC, two newly formed entities controlled by Zaveri. Activor subsequently initiated a "no asset" bankruptcy proceeding, omitting "more than \$900,000 accounts receivable due and owing to Activor." In order to collect the outstanding portion of the judgment, i.e., the attorney fees award, plaintiff commenced this action (*Mehta II*) for compensatory and punitive damages against Activor, Zaveri,

² A civil judgment pursuant to Labor Code section 3716 will be offset by the compensation actually paid as a result of the workers' compensation proceedings. If the employer pays the workers' compensation award, it is entitled to a credit. If the UEBTF pays the award, it is entitled to a first lien. (Lab. Code, § 3709.)

³ This is the only writ of execution in the record, although plaintiff suggests more than one such writ issued. This writ of execution that resulted in the \$55,000 levy was issued on April 29, 2010, after entry of judgment on April 13, 2010. The judgment was amended May 20, 2010, to add attorney fees.

Actiogen, and Chanda based on common law and statutory fraudulent transfer theories.⁴

A bench trial was held January 20, 2016. The trial court found defendants voluntarily absented themselves, but permitted defense counsel to participate. There was no court reporter or live witness testimony. Instead, counsel stipulated the evidence would consist of deposition testimony and documents.⁵ After the evidentiary portion of the trial, the parties filed briefs and returned on February 19, 2016, for closing arguments.

Court minutes for February 19, 2016, indicate the trial judge announced his decision from the bench, finding in favor of plaintiff against all defendants, jointly and severally. The trial court awarded plaintiff compensatory damages of \$207,760.35 and punitive damages of \$621,781.05, for a total judgment of

⁴ After judgment was entered in this case, *Mehta II*, the Legislature revised the Uniform Fraudulent Transfer Act (UFTA) (Civ. Code, § 3439 et seq.) and renamed it the Uniform Voidable Transactions Act. (Stats. 2015, ch. 44, §§ 2–3, eff. Jan. 1, 2016; *Nautilus, Inc. v. Yang* (2017) 11 Cal.App.5th 33, 36, fn. 2.) The substantive provisions of the former UFTA applicable to this case were not altered. (See Civ. Code, § 3439.14, subd. (d).) We will cite to those provisions as they appear in the current act, but to avoid confusion with references in the record, we will continue to use UFTA in this opinion.

⁵ The statement of decision listed the evidence as follows: “The Court received documentary evidence from the parties, including Plaintiff’s ‘Appendix of Exhibits . . .’, the July 29, 2014 Deposition of Third Party Witness Jose Reyes, . . . and ‘Defendants’ Evidentiary Objections to Plaintiff’s Evidence in Support of Opposition to Plaintiff’s Opening Brief,’ which were overruled by the Court in their entirety”

\$829,041.40, plus interest, attorney fees and costs. Plaintiff's counsel was ordered to prepare a proposed statement of decision and judgment.

The proposed statement of decision was received by the court on March 24, 2016. The court signed it and entered judgment on May 12, 2016. Court minutes for that date note defendants did not file any opposition or objections to either document.

Defendants timely appealed.

DISCUSSION

I. Record on Appeal

Although the trial was unreported, defendants did not provide a settled statement or other suitable substitute. The clerk's transcript was incomplete. It included defendants' opposition to two motions in limine filed by plaintiff, but not the motions themselves or the court's rulings; defendants' exhibits (an assortment of documents from *Mehta I*, including the complaint, minute order announcing the decision, the judgment, and a writ of execution); defendants' request for judicial notice of the documents included in the exhibits; defendants' opposition to plaintiff's opening trial brief, but not plaintiff's brief itself; and the trial court's ruling, statement of decision, and amended judgment. The record did not include the complaint, answer, or any other pertinent pleading.

On January 20, 2017, before any appellate briefs were filed, this court issued a briefing order, directing the parties to include in their briefs a discussion of "the effect of defendants' failure to provide most of the relevant papers as part of the record in an appendix In addition, the parties are to brief the issue of

whether defendants' failure to provide a reporter's transcript or a suitable substitute of the relevant hearings warrants affirmance based on the inadequacy of the record." Defendants responded by filing a motion to augment the record on appeal to include the following documents from *Mehta II*: the complaint; defendants' answer; plaintiff's motion in limine no. 4, and plaintiff's opening and reply trial briefs.

Otherwise, defendants failed to heed our January 20, 2017 briefing order. Their opening brief—filed in June 2017, after current appellate counsel substituted into the case—is silent on the issues we ordered addressed. Defendants did not file a reply brief. Defendants thereafter requested judicial notice of the March 19, 2015 "Findings of Fact and Award" in *Mehta WCAB*.⁶ On December 4, 2017, we granted defendants' second motion to augment the record with some, but not all, of the trial evidence (a deposition transcript and other documents), including exhibits that duplicated those contained in respondent's appendix.

Where the appellate record is inadequate to permit us to assess whether the trial court has erred or the judgment is not supported by substantial evidence, we must affirm. (*Southern California Gas Co. v. Flannery* (2016) 5 Cal.App.5th 476, 483; see also *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79

⁶ We deny defendant's request for judicial notice. The *Mehta WCAB* "Findings of Fact and Award" was issued 10 months before the trial in this case. No evidence in the record suggests this document was ever presented to the trial court. Nor has defendant explained the relevance of this WCAB decision, which determined plaintiff's temporary and total disability ratings. The award itself is not relevant as there is no evidence that Activor (as opposed to the Uninsured Employers Benefit Trust Fund) paid it. (See fns. 1 and 2, *ante*.)

Cal.App.4th 440, 447-448.) Additionally, “A party on appeal has the duty to support the arguments in the briefs by appropriate reference to the record, which includes providing exact page citations. We have no duty to search the record for evidence and may disregard any factual contention not supported by proper citations to the record.” (*Air Couriers Internat. v. Employment Development Dept.* (2007) 150 Cal.App.4th 923, 928; Cal. Rules of Court, rule 8.204(a)(1)(C); *Sharabianlou v. Karp* (2010) 181 Cal.App.4th 1133, 1149 [“we will not scour the record on our own in search of supporting evidence”].)

Inadequacies in the record may be inconsequential where pure questions of law are presented. That is not the case, however, where defendants have challenged the sufficiency of the evidence to support the trial court’s finding that they acted with the requisite malice and fraud when they transferred assets to avoid the *Mehta I* judgment and the award of punitive damages.

II. Statement of Decision

Further, defendants failed to challenge the proposed statement of decision in the trial court. Accordingly, the doctrine of implied findings applies, and we “presume[] 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.” (*Nellie Gale Ranch Owners Assn. v. McMullin* (2016) 4 Cal.App.5th 982, 996, internal quotation marks omitted.) When an appellant fails to “bring ambiguities and omissions in the

factual findings of the statement of decision to the trial court's attention . . . the reviewing court will infer the trial court made every implied factual finding necessary to uphold its decision, even on issues not addressed in the statement of decision. The question then becomes whether substantial evidence supports the implied factual findings." (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 48.) Under the substantial evidence standard of review, defendants have the burden demonstrate "there is no substantial evidence whatsoever to support the findings." (*Young v. City of Coronado* (2017) 10 Cal.App.5th 408, 419.)

III. Plaintiff has Standing to Sue

Defendants' threshold argument is that plaintiff lacked standing to pursue this action. This presents an issue of law (*Jasmine Networks, Inc. v. Superior Court* (2009) 180 Cal.App.4th 980, 989), and the record is adequate for us to resolve it on the merits. As a matter of law, however, defendants' argument fails.

Defendants, leaving a substantial portion of the *Mehta I* judgment unsatisfied, now contend the right to sue for the unpaid attorney fees portion is vested in plaintiff's law firm, not plaintiff himself. Stated another way, defendants insist plaintiff is no longer a judgment creditor entitled to sue defendants for fraudulent transfers. They cite *Flannery v. Prentice* (2001) 26 Cal.4th 572 (*Flannery*) for this proposition; their reliance on that decision is misplaced.

The question presented in *Flannery* was "to whom, as between attorney and client," does an award of attorney fees belong? (*Flannery, supra*, 26 Cal.4th at p. 575.) *Flannery* and its progeny have no application in a situation like this one, where

there is no dispute between plaintiff and his attorneys. As our Supreme Court acknowledged more than 80 years ago, a judgment for attorney fees belongs “to the party to the action for fees paid or incurred by him, and not directly to the attorney, who is not a party to the action.” (*Los Angeles v. Knapp* (1936) 7 Cal.2d 168, 173.) This holding endures today. In this action, where the issue is whether the judgment debtor became involved in a scheme to divest itself of assets in order to thwart the judgment creditor’s ability to collect, plaintiff remains the real party in interest with standing to sue.⁷

IV. Sufficiency of the Evidence to Support Fraudulent Transfers

Defendants next argue that “even if Mehta was a creditor and Activor was a debtor . . . there was no evidence presented at trial that Activor transferred assets to the other [defendants].” Defendants complain the admitted exhibits in support of the fraudulent transfer findings “were not authenticated” and were, therefore, “incompetent and insufficient.” Defendants’ opening brief does not identify the documents by trial exhibit number or by citation to pages in the record where they may be found.

⁷ Defendants’ related arguments, (1) that plaintiff cannot prove causation or damages because he has already received everything to which he was entitled under the *Mehta I* judgment, i.e., the \$55,000 in economic and noneconomic damages and (2) there could not have been any fraudulent transfers because the judgment was satisfied when plaintiff received \$55,000, similarly fail. The *Mehta I* judgment was in the amount of \$184,850.22 (arguably with an \$8,019.07 setoff for Zaveri’s costs), not \$55,000. Mehta remains the judgment creditor and Activor the judgment debtor for any unpaid balance.

Although the clerk's transcript does include defense written objections to certain "plaintiff's exhibits," nothing in the record confirms the numbers on the exhibits correspond to the actual trial exhibit numbers.

"A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Additionally, "it is counsel's duty to point out portions of the record that support the position taken on appeal. The appellate court is not required to search the record on its own seeking error. Again, any point raised that lacks citation may, in this court's discretion, be deemed waived." (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) The record is inadequate to demonstrate error. We deem the sufficiency of the evidence argument forfeited.

In any event, respondent's appendix includes a number of trial exhibits admitted without a defense objection. Exhibit 24 is one such exhibit. It is a letter from defendants' trial counsel to plaintiff's counsel describing 25 categories of defense documents produced in response to a trial court discovery order. These documents include bank and financial statements and tax returns for the entity defendants, and counsel cautions they "are sensitive, confidential and proprietary." Under these circumstances, the letter itself constitutes sufficient evidence to authenticate the documents it describes: "Although writings must be authenticated before they are received into evidence or before secondary evidence of their contents may be received ([Evid. Code,] § 1401), a document is authenticated when sufficient evidence has been produced to sustain a finding that the document is what it purports to be ([Evid. Code,] § 1400). As

long as the evidence would support a finding of authenticity, the writing is admissible.” (*Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 321.)

V. Money Judgment as Remedy for Fraudulent Transfers

The *Mehta I* judgment against Activor included Mehta’s attorney fees for successfully prosecuting that action. The *Mehta II* judgment awards the same amount plus punitive damages, jointly and severally, against all defendants, including Activor. The judgment for compensatory damages is appropriate as to all defendants except Activor.

Civil Code section 3439.08, subdivision (b)(1) provides a judgment creditor may recover a judgment in “the amount necessary to satisfy the creditor’s claim” against the first and all subsequent transferees other than good faith transferees. There is no authority for the damages award in *Mehta II* against Activor, however, because those damages were already awarded to plaintiff in *Mehta I*. In this regard, we agree with the analysis in *Renda v. Nevarez* (2014) 223 Cal.App.4th 1231 (*Renda*). *Renda* explained that permitting the judgment creditor to obtain a second judgment for the unpaid balance of the underlying judgment against the judgment debtor would violate “the principle against double recovery for the same harm.” (*Id.* at p. 1238.) The prohibition against a redundant judgment applies whether we view the *Mehta II* judgment as one rendered under UFTA or common law.

Plaintiff’s reliance on *Jhaveri v. Teitelbaum* (2009) 176 Cal.App.4th 740 is unavailing. That decision involved the allocation of postjudgment settlement sums, not a redundant

judgment. Accordingly, the *Mehta II* judgment must be modified to strike Activor as a judgment debtor.

VI. Punitive Damages

The trial court found by clear and convincing evidence that all defendants “entered into a fraudulent scheme orchestrated by Zaveri to transfer all of Activor’s assets to [d]efendants Actiogen, Zaveri and Chanda to hinder, delay and defraud creditors and in particular, to avoid paying [p]laintiff’s Judgment.” The trial court assessed punitive damages at three times the amount of compensatory damages. It specifically found plaintiff “submitted sufficient evidence of [d]efendants’ net worth.” Alternatively, the trial court relied on *Mike Davidov Co. v. Issod* (2000) 78 Cal.App.4th 597 (*Davidov*) and concluded punitive damages were warranted based on each defendant’s failure to comply with discovery orders for the production of their financial information.⁸

Defendants challenge the punitive damages award on various fronts.⁹

⁸ The statement of decision provided, “Even if [p]laintiff’s evidence of ‘net worth’ was insufficient, however, it is solely the result of [d]efendants’ deliberate refusal to produce any financial information concerning [d]efendants’ net worth despite a Court order dated August 14, 2014 that such financial information be produced Defendants also ignored [p]laintiff’s duly served ‘Notice to Appear’ and requests for production of financial information pertaining to net worth pursuant to Code of Civil Procedure [section] 1987[, subdivision] (c). Under such circumstances, [d]efendants are estopped from complaining about insufficient evidence of ‘net worth.’”

⁹ Defendants forfeited several additional issues by failing to provide legal authority to support the contentions. They fault the

A. *Punitive Damages May Be Awarded in Fraudulent Transfer Actions*

Defendants first argue punitive damages are not recoverable in a UFTA action as a matter of law. They cite no authority for this contention, other than the absence of any language in UFTA that expressly provides for punitive damages. UFTA, however, authorizes “[a]ny other relief the circumstances may require.” (Civ. Code, § 3439.07, subd. (a)(3)(C).)

Moreover, UFTA does not provide the exclusive remedy for fraudulent conveyances. (*Macedo v. Bosio* (2001) 86 Cal.App.4th 1044, 1051.) UFTA remedies “are cumulative to the remedies applicable to fraudulent conveyances that existed before the uniform laws went into effect.” (*Wisden v. Superior Court* (2004) 124 Cal.App.4th 750, 758.) As a matter of law, punitive damages

trial court for not reducing the compensatory damages, and consequently the punitive damages, by the \$8,019.07 in costs awarded to Zaveri in *Mehta I*. However, the record is devoid of evidence that plaintiff failed to pay those costs.

The compensatory damages award in this action included the unpaid attorney fees component of damages in *Mehta I*, plus interest on that sum. Defendants conclude the trial court erred in this regard, but failed to support the conclusion with any legal discussion or authority. The issue is waived. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956, internal quotation marks omitted [“Appellate briefs must provide argument and legal authority for the positions taken. 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. [Citation.] We are not bound to develop appellants’ argument for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived”].)

may be awarded in fraudulent transfer actions, whether under UFTA or common law.

B. Sufficiency of the Evidence to Support Punitive Damages

Next, defendants challenge the sufficiency of the evidence to support the \$621,781.05 punitive damages award against defendants. The record is inadequate for review of this issue, however, requiring us to affirm. (*Southern California Gas Co. v. Flannery, supra*, 5 Cal.App.5th at p. 483.)

The statement of decision concluded plaintiff presented sufficient evidence of defendants' net worth to support the joint and several award of punitive damages. As previously noted, defendants did not question or challenge the trial court's findings in this regard, triggering the doctrine of implied findings. (*Fladeboe v. American Isuzu Motors Inc., supra*, 150 Cal.App.4th at p. 48.) Defendants forfeited the complaint that the statement of decision omitted findings as to their financial liabilities by failing to bring the omission to the trial judge's attention.

Additionally, defendants failed to include in the record before this court a reporter's transcript or suitable substitute for oral proceedings in the trial court, the entire pleadings file, or all the trial evidence. Defendants did not meet their burden to demonstrate "there is no substantial evidence whatsoever to support the findings." (*Young v. City of Coronado, supra*, 10 Cal.App.5th at p. 419.)

Defendants' alternative argument based on *Davidov, supra*, 78 Cal.App.4th 597 also fails. The trial court's August 14, 2014 pretrial discovery order to compel the disclosure of each defendant's financial condition is part of the record. The record

does not include any objections to the order. Defendants did not produce financial documents either before or during trial to rebut the financial evidence introduced by plaintiff. Nor did defendants request a trial continuance to permit them to produce additional evidence relevant to an award of punitive damages. The award of punitive damages against defendants Zaveri, Actiogen Corporation, and Chanda LLC, jointly and severally, is affirmed.

DISPOSITION

The judgment is modified to strike defendant Activor only as a judgment debtor in this action. In all other respects, the judgment is affirmed. In the interest of justice, Activor is to bear its own costs on appeal. Plaintiff is awarded costs on appeal, jointly and severally, against Zaveri, Actiogen Corporation, and Chanda LLC.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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