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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

HAOXIAO LIU, Plaintiff and Appellant, v. GOLDENGATE BUS INC., et al., Defendants and Respondents.	B320846 (Los Angeles County Super. Ct. No. 21STCV26298)

APPEAL from a judgment of the Superior Court of Santa Cruz County. Colin P. Leis, Judge. Affirmed.

Haoxiao Liu, in pro. per., for Plaintiff and Appellant.

Murchison & Cumming and Gina E. Och for Defendants and Respondents.

Plaintiff and appellant Haoxiao Liu appeals from a judgment of dismissal entered against him and in favor of defendants and respondents Goldengate Bus Inc. (Goldengate), and Gang Guo (Guo) following defendants' successful demurrer.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Factual background

From what we can glean from the parties' briefs and the appellate record, on July 22, 2019, plaintiff, a Goldengate bus driver trainee, was on a multi-hour bus trip with a Goldengate driving trainer. He sustained a host of injuries on this bus trip, prompting him to take legal action.

Plaintiff's small claims court action

On December 26, 2019, plaintiff filed an action against Goldengate in small claims court, seeking compensation for injuries sustained on July 22, 2019. Following trial, plaintiff obtained a judgment against Goldengate in the amount of $615.

The instant lawsuit

On July 19, 2021, plaintiff filed the instant lawsuit against defendants,[1] alleging claims for negligence and intentional tort arising out of the injuries sustained on July 22, 2019. In his negligence cause of action, plaintiff alleges, inter alia, that defendants "failed to provide [him with] the necessary work environment," "failed to protect [their] employee," "failed to do anything to care and protect [their] new employee," "failed to pay wage that [they] promised to pay," and "failed to report the injury

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[1] On July 16, 2021, plaintiff apparently also filed another action against defendants (*Liu v. Goldengate Bus, Inc.* (Super. Ct. L.A. County, 2021, No. 21GDCV00936), which has been deemed related to the instant action.

of the plaintiff to its insurance company." In his intentional tort claim, plaintiff similarly alleges that "[a]s a direct result of defendants' [negligence], abuse of power, [and] hostile work environment," he suffered injuries.

Defendants' demurrer

In response, defendants demurred, arguing, inter alia, that plaintiff's claims were barred by the exclusive remedy rule and the doctrines of res judicata and/or collateral estoppel.

Plaintiff filed a written opposition.

Trial court order

The trial court sustained defendants' demurrer without leave to amend. It found that defendants "established that the workers' compensation exclusivity rule bars Plaintiff's claims" and that plaintiff's claims against Goldengate were barred by the doctrine of res judicata.

There is no reporter's transcript of this hearing.

Judgment and appeal

Judgment of dismissal was entered, and plaintiff timely filed a notice of appeal.

DISCUSSION

It is well-established that a trial court judgment 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.' [Citations.]" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

Plaintiff has not overcome this burden. Issues are raised that are not thoroughly fleshed out or supported by record citations and/or legal authority. (*Benach v. County of Los Angeles*

(2007) 149 Cal.App.4th 836, 852 [appellant bears the burden of supporting a point with reasoned argument]; *County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591 [appellant must present argument on each point made]; *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115 [appellate court is not required to make an independent, unassisted search of the appellate record].) We decline to consider the issues raised in plaintiff's opening brief that are not properly presented or sufficiently developed to be cognizable, and we treat them as waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *In re David L.* (1991) 234 Cal.App.3d 1655, 1661; *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545–546.) Plaintiff's election to act as his own attorney on appeal does not entitle him to any leniency as to the rules of practice and procedure. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985; *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247.)

With these principles in mind, we have attempted to address the merits of the issues raised by plaintiff.

I. *Standard of review*

"Our Supreme Court has set forth the standard of review for ruling on a demurrer dismissal as follows: 'On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed "if any one of the several grounds of demurrer is well taken. [Citations.]"

[Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. [Citation.]' [Citations.]" (*Payne v. National Collection Systems, Inc.* (2001) 91 Cal.App.4th 1037, 1043–1044.)

II. *The trial court properly sustained defendants' demurrer*

A. Exclusivity of the Workers' Compensation Act

1. *Relevant law*

"Under California's Workers' Compensation Act (Lab. Code, § 3200 et seq.), workers' compensation is the exclusive remedy ('in lieu of any other liability whatsoever') 'for any [employee] injury . . . arising out of and in the course of employment' where enumerated 'conditions of compensation' are satisfied. [Citations.]" (*Reynaud v. Technicolor Creative Services USA, Inc.* (2020) 46 Cal.App.5th 1007, 1020, fn. omitted (*Reynaud*).) "'"[A]rising out of" and "in the course of" are two separate requirements. [Citations.] '[F]or an injury to "arise out of the employment" it must "occur by reason of a condition or incident of [the] employment . . . ." [Citation.] That is, the employment and the injury must be linked in some casual fashion. [Citation.]' [Citation.] '"[I]n the course of employment" . . . "ordinarily refers to the time, place, and circumstances under which the injury occurs." [Citation.]' [Citation.] These two requirements are 'often so intertwined that no valid line of demarcation can be drawn.' [Citation.]" (*Reynaud*, *supra*, at p. 1020.)

"The Workers' Compensation Act is to be liberally construed in favor of awarding workers' compensation benefits.

[Citations.] 'The rule is not altered because a plaintiff believes that he can establish negligence on the part of his employer and brings a civil suit for damages.' [Citation.]" (*Reynaud*, *supra*, 46 Cal.App.5th at p. 1020.)

The Workers' Compensation Act provides the exclusive remedy for both negligence and some intentional torts. (Lab. Code, § 3600, subd. (a); *Gunnell v. Metrocolor Laboratories, Inc.* (2001) 92 Cal.App.4th 710, 723; *Livitsanos v. Superior Court* (1992) 2 Cal.4th 744, 747.)

2. *Analysis*

As set forth above, plaintiff alleges that he was injured on the job and that he sustained his injuries while employed by defendants. Even on appeal, plaintiff concedes that he sustained his injuries at work. It follows that plaintiffs' claims in this action are barred by the exclusivity of the Workers' Compensation Act.

3. *Plaintiffs' alleged exceptions to the exclusivity rule*

Urging us to conclude otherwise, plaintiff argues that his claims fall within the scope of certain exceptions to the exclusive remedy rule.[2] (Lab. Code, § 3602, subd. (a); *Foster v. Xerox Corp.* (1985) 40 Cal.3d 306, 308.) Specifically, he points us to (1) the dual capacity doctrine, (2) injuries aggravated by the employer's fraudulent concealment of the existence of the injury, and (3) the failure to secure payment of workers' compensation through insurance or otherwise.

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[2] Because plaintiff did not raise this argument below, we could deem it forfeited on appeal. (*Wittenberg v. Bornstein* (2020) 51 Cal.App.5th 556, 565–567.)

a. Dual capacity doctrine

The dual capacity doctrine "'posits that an employer may have or assume a relationship with an employee other than that of employer-employee, and that when an employee seeks damages for injuries arising out of the secondary relationship the employee's claim is not subject to the exclusive remedy provisions of the Workers' Compensation Act' [citation]." (*King v. CompPartners, Inc.* (2018) 5 Cal.5th 1039, 1054.)

That doctrine is inapplicable here. The complaint does not allege that defendants were acting as his so-called "transporter[s]" as plaintiff now seems to argue. The fact that Goldengate is a motor carrier for paying passengers does not mean that plaintiff was one such passenger. (*Jimenez v. Mrs. Gooch's Natural Food Markets, Inc.* (2023) 95 Cal.App.5th 645, 657 (*Jimenez*).)

b. Fraudulent concealment

"The fraudulent concealment exception is found in [Labor Code] section 3602, subdivision (b)(2). To withstand a demurrer, an employee must 'in general terms' plead facts that if found true by the trier of fact, establish the existence of three essential elements: (1) the employer knew that the plaintiff had suffered a work-related injury; (2) the employer concealed that knowledge from the plaintiff; and (3) the injury was aggravated as a result of such concealment. [Citations.] 'If any one of these conditions is lacking, the exception does not apply and the employer is entitled to judgment in its favor. [Citation.]' [Citation.]" (*Jimenez*, *supra*, 95 Cal.App.5th at p. 658, fn. omitted.)

"Critically for our purposes, '[t]he exception does not apply where the employee was aware of the injury at all times. [Citation.] [Citation.] This point is fatal to [plaintiff's] argument.

The complaint does not allege that [plaintiff] was unaware of his injury. Nor could it reasonably do so—the nature of the accident must have apprised [plaintiff] that he was injured." (*Jimenez*, *supra*, 95 Cal.App.5th at p. 658.) "Thus, the allegations of the operative complaint establish that the fraudulent concealment exception to the workers' compensation exclusivity rule does not apply as a matter of law." (*Ibid*.)

Plaintiff's arguments based upon the small claims court proceedings do not support his contention that the fraudulent concealment exception to the workers' compensation exclusivity rule applies. Whatever occurred during that trial is irrelevant vis-à-vis this exception to the exclusivity rule.

c. Failure to secure payment of workers' compensation

Labor Code section 3706 provides, in relevant part, that "[i]f an employer fails to secure the payment of compensation, any injured employee . . . may bring an action at law against such employer for damages." (Lab. Code, § 3706.) "In a statutory action under [Labor Code] section 3706, it is the "*plaintiff's* obligation to plead and prove violation of [Labor Code] section 3700 by his [defendant employer's] failure to carry workers' compensation insurance.'" (*Campos Food Fair v. Superior Court* (1987) 193 Cal.App.3d 965, 968.) Thus, "[a] defendant need not plead and prove that it has purchased workers' compensation insurance where the plaintiff alleges facts that otherwise bring the case within the exclusive province of workers' compensation law, and no facts presented in the pleadings or at trial negate the workers' compensation law's application or the employer's insurance coverage.'" (*Gibbs v. American Airlines, Inc.* (1999) 74 Cal.App.4th 1, 14.)

Plaintiff does not allege anywhere in his complaint that Goldengate failed to carry workers' compensation insurance on July 22, 2019. The fact that plaintiff alleges that Goldengate failed to report the injury to its insurance company does not mean that Goldengate was uninsured. Rather, the opposite is true—plaintiff concedes that Goldengate did have insurance; Goldengate's alleged blunder was in failing to report plaintiff's claim to the insurance company. But that misstep does not bring plaintiff's claims within the scope of this exception to the exclusivity rule.

B. Res judicata

1. *Relevant law*

"'"Res judicata" describes the preclusive effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. . . . [Citation.] Under the doctrine of res judicata, . . . a judgment for the defendant serves as a bar to further litigation of the same cause of action.' [Citation.]" (*Hi-Desert Medical Center v. Douglas* (2015) 239 Cal.App.4th 717, 731.)

Claim preclusion "applies when (1) the claim raised in the prior adjudication is identical to the claim presented in the later action; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior adjudication. [Citation.]" (*In re Anthony H.* (2005) 129 Cal.App.4th 495, 503.)

"[I]t is well-settled that the claim preclusion aspect of the doctrine of res judicata applies to small claims judgments. [Citation.]" (*Bailey v. Brewer* (2011) 197 Cal.App.4th 781, 791.)

"To determine whether two proceedings involve identical causes of action for purposes of claim preclusion, California courts have 'consistently applied the "primary rights" theory.' [Citation.]" (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797.) Under this theory, "'a "cause of action" is comprised of a "primary right" of the plaintiff, a corresponding "primary duty" of the defendant, and a wrongful act by the defendant constituting a breach of that duty. [Citation.]" (*Hayes v. County of San Diego* (2013) 57 Cal.4th 622, 630–631.) "The cause of action is the right to obtain redress for a harm suffered, regardless of the specific remedy sought or the legal theory (common law or statutory) advanced. [Citation.]" (*Boeken*, *supra*, at p. 798.)

"As applied to questions of preclusion, privity requires the sharing of 'an identity or community of interest,' with 'adequate representation' of that interest in the first suit, and circumstances such that the nonparty 'should reasonably have expected to be bound' by the first suit. [Citation.] A nonparty alleged to be in privity must have an interest so similar to the party's interest that the party acted as the nonparty's ""virtual representative"" in the first action. [Citation.]" (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 826.) Thus, "[w]hen a defendant's liability is entirely derived from that of a party in an earlier action, claim preclusion bars the second action because the second defendant stands in privity with the earlier one. [Citations.] The nature of derivative liability so closely aligns the separate defendants' interests that they are treated as identical parties. [Citation.] Derivative liability supporting preclusion has been found between a corporation and its employees." (*DKN Holdings*, *supra*, at pp. 827–828.)

2. *Analysis*

Here, all elements of res judicata are met. There is a final judgment in favor of plaintiff and against Goldengate arising out of the small claims court action. The claims raised therein are the same as those alleged in this action and involve the same parties. And, there was an adjudication on the merits, namely a trial.

Even though Guo was not a party to the small claims court action, the doctrine of res judicata bars plaintiff's claims against him. As alleged in the complaint, his liability, if any, is entirely derived from Goldengate's liability.

Finally, plaintiff offers no legal authority to support his contention that errors in the small claims court proceedings (i.e., defendants' witnesses allegedly lied under oath) vitiate the application of claim preclusion.

C. Plaintiff's contention that he was prevented from presenting oral argument

Plaintiff argues that the trial court's judgment must be reversed because he "was prevented from even speaking let [alone] adequately arguing and defending his lawsuit against defendants." But there is no reporter's transcript to support plaintiff's contention. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295 [an appellant has the burden of "provid[ing] an adequate record to assess error" and the failure to do so will result in the issue being resolved against the appellant].) And plaintiff offers no legal authority that absent a reporter's transcript, he "can rely on [the alleged] error" to support his request that we reverse the judgment.

Setting that aside, there is no general due process right to be heard at oral argument on every motion in the trial court.

"California courts have concluded that use of the terms 'heard' or 'hearing' does not require an opportunity for an oral presentation, unless the context or other language indicates a contrary intent." (*Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1247; see also *id.* at pp. 1244–1245.) Plaintiff received an opportunity to be heard through his opposition papers. And, he has not explained how an oral presentation would have added to the arguments set forth therein or how the trial court's ruling would have changed. (*TJX Companies, Inc. v. Superior Court* (2001) 87 Cal.App.4th 747, 751 [oral argument not required if it would amount to an empty gesture].)

D. Defendants' remaining arguments

Defendants' remaining arguments, including whether plaintiff alleged sufficient facts to state a cause of action, are moot.

III. *Leave to amend*

Finally, plaintiff argues that the trial court erred in denying him leave to amend. But where, as here, "an appellant does not indicate, either in the trial court or in [the appellate] court, the manner in which the complaint is proposed to be amended, an abuse of discretion is not shown." (*Bailey v. Safeway, Inc.* (2011) 199 Cal.App.4th 206, 217.)

DISPOSITION

The judgment is affirmed. Defendants are entitled to costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ