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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

JAMES M. TACHERRA,
Plaintiff and Respondent,
v.
ERNEST J. TACHERRA,
Defendant and Appellant.

A133677
(Marin County Super. Ct.
No. CIV 061492)

Defendant Ernest J. Tacherra appeals from the trial court's statement of decision and interlocutory judgment (judgment) after a bench trial regarding the causes of action brought against him by his brother, plaintiff James M. Tacherra, in an action for partition and other causes of action related to their partnership. The trial court found that defendant violated his partnership responsibilities in various ways and exercised its equitable powers to partition partnership real properties via sale, establish the partnership assets due to each partner, and issued related orders and relief. Defendant argues the trial court made various errors of law in doing so. Plaintiff opposes defendant's arguments for the most part, agreeing only that the trial court made a mathematical error of \$5,060 dollars that should be corrected. We agree with plaintiff.

BACKGROUND

We note at the onset that defendant's appendix and briefing are lacking. According to plaintiff, there was no court reporter present during the first two days of trial, when plaintiff and the court-appointed receiver testified. Their testimony is not in

the record before us. Appellant's appendix also does not contain the testimony of Meg Gould and defendant, nor any of the exhibits submitted by the parties at trial, and in particular does not include the receiver's reports to the court, which are plainly relevant to this appeal; plaintiff has provided some exhibits and documents in respondent's appendix. Also, defendant's appellate briefing repeatedly does not provide sufficient citations to relevant law and the record.

As we shall discuss, defendant does not help his cause by these omissions. We may disregard arguments not supported by citations to law or the record. (*People v. Stanley* (1995) 10 Cal.4th 764, 793 (*Stanley*); *Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1379 (*Grant-Burton*); *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) Also, appellant has the burden to affirmatively establish error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*)). The most fundamental principle of appellate review is that “ ‘[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.’ ” (*Ibid.*)

The following background facts are taken from the trial court's statement of decision and reports by the court-appointed receiver. Plaintiff and defendant were two of four siblings who were heirs in essentially equal parts to their father's estate, which included significant real property holdings, when he passed away in 1998. The heirs agreed that that plaintiff and defendant would purchase all of the rights, title, and interest of their other two siblings to the estate. To do so, plaintiff and defendant borrowed substantial sums; one sibling was paid in full and the other was given a down payment and a promissory note that required monthly payments.

Plaintiff and defendant, in addition to the estate properties they acquired from their siblings, also jointly acquired other properties. Their purchases were subject to mortgages on various properties, and they also incurred loan obligations to pay their siblings, with various properties serving as security for these loans. Among their holdings was a sizeable ranch in Bolinas, California, known as the “Home Ranch.” The

receiver, who was legal counsel to both plaintiff and defendant before his appointment, reported to the court about subsequent events:

“Thereafter, the two brothers commenced to co-own the various properties and manage their affairs, including trying to make payments on the accumulated debt. The brothers had an informal division of responsibility for the management of their properties and the ranch operation. Although not based on clearly drawn lines, it appeared that as a general proposition, [plaintiff] took responsibility for the ranch operations including maintaining a small herd of cattle along with hogs, goats, chickens, and geese; which he maintained, fed and sold products therefrom to local restaurants and markets. [Defendant], on the other hand, managed the real estate holdings by renting homes and units, collecting rents on properties, make mortgage payments, and periodically refinancing properties and utilizing the funds as he saw fit.

“Over time, defendant, in his management of the properties, succeeded in having most of the non-ranch properties held in his name alone, without plaintiff being on title. In addition, some of the ranch properties were also held solely in the name of defendant, without the benefit of plaintiff being on title. . . .

“It appeared to have been generally understood and agreed to by the two brothers that all of the properties . . . , regardless of the record title owner, were jointly owned properties and that each brother owned an undivided one half interest in the various properties. Indeed, title to the Home Ranch rests solely in the names of plaintiff and Susan Tacherra to facilitate their attaining the \$1 million loan on the property in order to raise the money that was necessary to be paid to [the siblings] for their interest in the estate property.”

According to the receiver, plaintiff and defendant tried to negotiate, but could not agree on the terms of a written co-ownership agreement. From early 2000 to early 2006, they attempted to cooperatively own and manage properties in which they both had an interest, but were not successful. The receiver reported:

“Most of the rental properties were operated on a negative cash flow basis. As a result, the properties went in and out of foreclosure proceedings necessitating refinancing

efforts, sometimes at high and above market rates because of the poor credit of defendant who was the record owner of most of the properties, and further because the properties did not have positive cash flows and could not support the financing that was being obtained. . . . [N]umerous refinances of the various properties occurred, all performed by defendant, according to plaintiff, with little or no knowledge or input from him. Over that period of time, the economic stresses of the situation contributed to numerous arguments and disagreements between the brothers and suspicions and issues of distrust developed between them. Arguments occurred and questions were raised about how monies were being handled and failures on the part of one or the other brothers to account to the other for their handling of monies produced from the properties, including but not limited to, the numerous refinances there were undertaken by defendant.”

In 2006, plaintiff filed his action for partition, accounting, appointment of a receiver, quiet title, declaratory relief, and damages for conversion; the receiver was appointed by the court soon thereafter and served in that capacity throughout the action. After a three-day bench trial, the trial court issued a statement of decision. It found that plaintiff’s credibility was “very high” and that defendant’s credibility was “challenged”; that defendant did not inform plaintiff or seek his consent regarding some of defendant’s activities in managing the partnership assets and debts, refused to provide accounting, did not follow orders of the receiver, did not stop using partnership assets for his personal use, among other breaches of duty, and negligently or improperly used specific assets from the partnership properties. Based on its findings, the court ruled that defendant was to pay the partnership account various sums of money totaling approximately \$415,000.

The trial court granted partition via sale of the properties, quieted title, judicially determined the parties’ rights and obligations, awarded 65 percent of the equity of the Home Ranch to plaintiff’s share of partnership assets and 35 percent to defendant based on defendant’s conversion, ordered the winding up and dissolution of the partnership, and appointed the receiver as referee for the winding up. The court issued an interlocutory judgment consistent with its statement of decision.

Defendant filed a timely notice of appeal, appealing from the judgment and an interlocutory order denying defendant's request for \$28,760 in attorney fees.

During the pendency of this appeal, plaintiff filed a motion to augment the record with a July 6, 2012 order following hearing, which relates to the "Franklin Judgment" issue discussed further herein pursuant to California Rules of Court, rule 8.155(a)(1). The rule provides in relevant part that we may order the record to be augmented with any document filed in the case in the superior court. (Cal. Rules of Court, rule 8.155(a)(1)(A).) Defendant opposes the motion because the order relates to arguments by Franklin that were not before the trial court at the time of trial and the augmentation does not add anything useful. We hereby grant the motion.

DISCUSSION

I. The Court's Rulings Regarding the Home Ranch

Defendant argues that the trial court erred when, as relief for defendant's conversion of partnership assets, it awarded 65 percent, rather than 50 percent, of the equity of the Home Ranch to plaintiff's share of partnership assets and 35 percent, rather than 50 percent, to defendant. Defendant also argues that the trial court erred by giving plaintiff the option to purchase the Home Ranch at its appraised market value.

A. The Proceedings Below

The trial court made several findings regarding defendant's conversion. First, defendant did not keep plaintiff informed of his activities, comingled his and partnership property, failed to file partnership tax returns, and used partnership rents and loan proceeds for his personal use. He unreasonably did not keep an accounting, provide information, or comply with the receiver's orders, and breached his duty not to take advantage for himself at the expense of the partnership.

Second, plaintiff had partnership income that was used by defendant, and also by the receiver, to pay the mortgage and property taxes for the Home Ranch.

Third, plaintiff physically worked "24/7" on the ranch property.

Fourth, defendant's conduct increased the costs of the receivership and caused greater detriment to the partnership.

Fifth, defendant had converted partnership funds to his own use and benefit. The court stated, “Where the amount converted was able to be computed to a sum certain, the court has ruled that those sums were to be repaid by defendant to the partnership account. However, in other instances, defendant’s lack of an accounting has resulted in the court being unable to determine the actual amount of damages for conversion. Accordingly, based on equitable and fair relief, the court orders that sixty-five percent (65%) of the equity in the Home Ranch be awarded to plaintiff’s share of the partnership assets and thirty-five percent (35%) of said equity be awarded to defendant’s share of the partnership assets.”

The trial court ordered that plaintiff was to continue to reside at the Home Ranch until it was sold, unless circumstances required the referee to do otherwise. Upon the completion of certain events and transactions, the referee was to have the Home Ranch appraised at its fair market value and offer the property for sale, “with plaintiff having the option to purchase it at that value.”

B. Defendant’s Appellate Arguments

1. The Allocation of Equity in the Home Ranch

Defendant makes several arguments in support of his claim that the court should not have allocated the equity 65/35 percent in plaintiff’s favor, rather than 50-50, in the Home Ranch. His arguments are made in shotgun fashion with conclusory references, if any, to legal authority, and are unpersuasive.

First, defendant argues that the trial court had an adequate legal remedy in money damages and, therefore, should not have ordered an equitable remedy, based on “the oft-stated rule that an adequate legal remedy precludes equitable relief is one of the most firmly established principles in equitable jurisprudence.” (*Wilkison v. Wiederkehr* (2002) 101 Cal.App.4th 822, 835.) He argues, without further citation to legal authority, that to the extent that the court considered it difficult to ascertain exact damages, “judges simply do the best they can and specify a particular amount.” By not doing so, he contends, the trial court erred, and also wrongly changed his oral agreement with plaintiff that they were 50-50 partners in the Home Ranch.

Defendant also argues that the trial court, by not explaining how it arrived at its determination that plaintiff was entitled to 65 percent of the Home Ranch equity, chose an arbitrary figure and committed a possible miscarriage of justice because plaintiff potentially gained a windfall based on the possible future appreciation of the property. Defendant contends, without citation to legal authority, that “[i]n order to avoid such a miscarriage of justice, the judge would have to form an opinion of the value of defendant’s interest and the sum total of the hard-to-calculate amounts converted. The judge would then have to ascertain what portion of defendant’s interest corresponded to that number.”

Defendant further argues, without citation to legal authority, that the court’s ruling was “fundamentally unfair” because it deprives him of the benefit of any increase in the property’s value in the future, which, he baldly contends, “bears no relationship whatsoever to the amounts converted.” He claims the order is a penalty more than an order of restitution, and is contrary to public policy.

Defendant also argues the court’s order violated Corporations Code section 16504, which governs the remedies available to a judgment creditor of a partner, without explaining the statute’s application to the present circumstances.

Defendant further contends, again without evidentiary or legal support, that the history of his participation on the farm, his age and family obligations, and the fact that he put all of his inheritance in the farm make the court’s order a “miscarriage of justice.” He states, “The brothers began on an equal footing, and all considerations of fairness, compassion, and equity require that they end the same way.”

2. Plaintiff’s Option to Purchase the Home Ranch

Defendant argues that the trial court’s order that the referee give plaintiff the option to purchase the Home Ranch is unfair and inequitable because it discriminates against him, should he be willing to also buy the property at the appraised market value, and deprives the partnership of extra funds should defendant be willing to purchase the ranch at a price above market value.

Defendant also argues that the court's 65/35 percent allocation of the Home Ranch equity allows plaintiff to submit what in effect is a "credit bid" for 65 percent of the ranch, rather than 50 percent, reducing his cash payment to well below that required of defendant. Defendant appears to argue that this violates California law regarding credit bids because the two partners must be put on equal footing, quoting a long passage from *Owen v. Cohen* (1941) 19 Cal.2d 147, 153-155 without explaining its relevance to the present circumstances.

Defendant concedes that Code of Civil Procedure section 872.140 provided the trial court with the authority " 'to order allowance, accounting, contribution, or other compensatory adjustment among the parties according to the principles of equity.' " He nonetheless asserts that the trial court "did not have the power to *change* those shares [in the Home Ranch equity] from the 50-50 basis [plaintiff and defendant] had agreed to," which were limited by contract.

C. Analysis

" '[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.' " (*Stanley, supra*, 10 Cal.4th at p. 793.) Accordingly, we disregard defendant's arguments that we have identified as not supported by citations to legal authority, or as relying on authority without an explanation of its application to the present circumstances.

As for the remainder of defendant's arguments, he has not met his burden to affirmatively establish error. (*Denham, supra*, 2 Cal.3d at p. 564.) As plaintiff points out, his complaint is primarily a suit for partition of the assets of their partnership. "Real and personal property may be partitioned in one action." (Code Civ. Proc., § 872.240.) Furthermore, "[t]he interests of the parties . . . may be put in issue, tried, and determined in the action." (Code Civ. Proc., § 872.610.) "The court may, in all cases, order . . . compensatory adjustment among the parties according to the principles of equity." (Code Civ. Proc., § 872.140.) Furthermore, "[w]here division cannot be made equally among the parties according to their interests without prejudice to the rights of some,

compensation may be required to be made by one party to another to correct the inequality.” (Code Civ. Proc., § 873.250, subd. (a).) In a partition suit, the court has broad equitable powers and comparatively unlimited discretion to do equity without being bound by any strict rules of procedure. (*Richmond v. Dofflemyer* (1980) 105 Cal.App.3d 745, 766.)

Thus, in *Cosler v. Norwood* (1950) 97 Cal.App.2d 665, a partition action, the appellate court upheld the trial court’s finding that two persons who owned a property as joint tenants nonetheless held 25 percent and 75 percent interests in the property. The appellate court, after noting that the parties had paid for the property in these percentages, concluded there was “no merit in plaintiff’s contention that since the title to the real property was taken in the names of the parties as joint tenants defendant is estopped to claim that she has more than one-half interest in the property. Plaintiff by seeking a partition and an accounting put in issue the interest of each of the parties to the real property in question. Therefore the deed of joint tenancy was only one item of evidence to be considered by the court in connection with other probative facts produced by plaintiff and defendant.” (*Id.* at p. 666.)

Pursuant to this statutory and case authority, plaintiff argues the court could order a compensatory adjustment between him and defendant regarding the equity in the Home Ranch, as well as that he have the option to purchase the Home Ranch at its appraised market value; and defendant provides us with no reason to disagree. Indeed, defendant does not respond to this argument, providing no explanation why the court ruling in a partition action cannot not award damages for conversion by adjusting the parties’ shares of partnership assets, such as by adjusting the allocation of equity in the Home Ranch regardless of their partnership agreement, or order that plaintiff have the option to purchase the Home Ranch at the appraised market value upon its sale.

Instead, defendant argues the court’s order somehow changed the parties’ contractual agreement regarding the Home Ranch. We disagree with this characterization of the court’s order. The court’s ruling makes no mention of the parties’ agreement to co-own the Home Ranch. Instead, the court states what equity each of the parties were

entitled to receive regarding the Home Ranch in the division of their partnership assets. Again, defendant provides no persuasive explanation as to why the court was not entitled to do so pursuant to its broad equitable powers in partition actions.

Defendant argues that *Cosler* does not apply because it did not involve “the creation of any options to buy or other discriminatory treatment in favor of one partner and against the other “simply involved the interpretation of an oral partnership agreement, with no attempt made to rewrite it or favor one party over another.” These arguments are unpersuasive because they ignore the *Cosler* court’s equitable adjustment of the interests of the parties to the partition action notwithstanding their joint tenancy agreement, which is directly analogous to the present circumstances.

We also reject defendant’s argument that the trial court was required to come up with a more complete explanation of its calculation of the damages caused to plaintiff by defendant’s conversion. The court’s calculation was obvious—it determined that the damages were equivalent to approximately 15 percent of the total equity value of the Home Ranch. Defendant does not establish that the court’s calculation was improper, provided any actual or potential windfall to plaintiff, amounted to a penalty, or was a miscarriage of justice.

As for defendant’s argument that the court’s order violated Corporations Code section 16504, which governs the remedies available to a judgment creditor of a partner, defendant does not establish that this provision applies to an order regarding the allocation of partnership assets between partners in a partition action, or trumps the court’s equitable powers in a partition action.

Accordingly, we affirm the trial court’s 65/35 percent allocation of the Home Ranch equity to the parties’ respective shares of partnership assets and its order that plaintiff be given the option to purchase the Home Ranch at the appraised market value.

II. Defendant’s Contribution to the Mortgage of 24 Wharf Road

A. The Proceedings Below

In its statement of decision, the court stated about the partnership’s 24 Wharf Road property that defendant, while paying the mortgage in full and collecting the rent income,

did not pay the property tax nor inform plaintiff of this, causing the receiver to pay the tax of \$23,618.68. The court found that defendant “did not account for the amount he collected in rents from this property nor did he account for his use of the partnership rental income,” and concluded that defendant owed the partnership \$23, 618,68 “due to his failure to use rent he collected to pay the property tax.”

The court also made findings regarding a \$700,000 loan obtained by defendant, which was secured by four properties, including three partnership properties. The court, after noting that plaintiff provided unrefuted testimony that he was not informed of, nor did he consent to, defendant’s action, also found that defendant did not provide testimony that the transaction benefitted the partnership properties, provide any accounting, or any testimony or documents regarding the allocation of this loan to partnership properties. Furthermore, the court noted, around the time of the loan, the partnership properties were in distress and defendant and his wife purchased a \$1.4 million property, paying a \$504,593.18 down payment for 1,800 acres that generated rental income, and which was later foreclosed.

The trial court found that the loan transaction was a breach of defendant’s duties to the partnership, and an unwarranted comingling of partnership assets and obligations with defendant’s separate property. The court then stated that, while defendant used \$140,000 of his separate property to pay the mortgage of the 24 Wharf Road property and testified that over a period of some 14 months, he paid one-half of the amount, \$70,000, back to himself, “the partnership does not owe defendant any money arising from these transactions.”

B. Analysis

Defendant argues the trial court “inexplicably” ruled that the partnership did not owe him \$70,000 of the \$140,000 he paid on the mortgage of the 24 Wharf Road property, and that the court made a “mathematical error.” Defendant contends that, given that he is to compensate the partnership for the property tax paid on the property, which he does not contest, he is entitled to a net credit of \$46,381.32.

The court's findings indicate that it concluded defendant, as a result of his improper obtaining of a \$700,000 loan with the use of partnership properties, breached his partnership duties and improperly comingled partnership assets and obligations with his separate property and, therefore, was not owed any further repayment of the \$140,000 he used to pay the mortgage on the 24 Wharf Road property. Defendant does not contest the court's ruling, choosing instead to ignore it in his argument of "mathematical error." Accordingly, he has not met his burden of affirmatively showing error. (*Denham, supra*, 2 Cal.3d at p. 564.) Therefore, we affirm the court's ruling.

III. Defendant's Payment for Discovery Sanctions

A. The Proceedings Below

In the course of the action, defendant was held in contempt of a court order that he provide an accounting and was ordered to pay plaintiff fees in the amount of \$2,540. Subsequently, the court granted plaintiff's motion for an order compelling defendant's attendance at deposition and to produce documents, and sanctioned defendant again, ordering him to pay plaintiff reasonable expenses and attorney fees in the amount of \$2,540 within 10 days.

The court later ruled on a petition for instructions by the receiver. This included its order that the receiver distribute \$2,540 to plaintiff's attorney as a monetary sanction imposed against defendant from defendant's share of partnership assets.

Subsequently, the receiver filed an accounting of funds with the court, including a statement of profit and loss by class for the period from June 21, 2008, through June 30, 2010. This statement, contained in respondent's appendix, lists sanctions as an expense under professional fees in the amount of \$5,080. The trial court, by order on August 11, 2010, approved and accepted this statement and approved and ratified all actions taken by the receiver since the last interim report.

In its statement of decision, the court stated, "The \$5,080 in court ordered sanctions to be paid by defendant were paid by the partnership. Defendant owes the partnership a total of \$5,080, as reimbursement[.]"

B. Defendant's Appellate Arguments

Defendant contends that plaintiff “had” the receiver pay him the \$5,080 from partnership funds, although it was not a partnership obligation. Thus, he argues, plaintiff improperly diverted partnership funds in violation of Corporations Code sections 16501 and 16502 and he should reimburse the partnership, not defendant. He also argues that the trial court erred in ruling that he should reimburse the partnership.

Defendant fails to cite any evidentiary support for his assertion that plaintiff somehow engaged in improper actions regarding partnership funds as a result of the court’s sanction orders. “ ‘ “It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations.” ’ ” [Citation.] Because ‘[t]here is no duty on this court to search the record for evidence’ [citation], an appellate court *may* disregard any factual contention not supported by a proper citation to the record [citation].” (*Grant-Burton, supra*, 99 Cal.App.4th at p. 1379; see also *Nwosu v. Uba, supra*, 122 Cal.App.4th at p. 1246 [noting that the Cal. Rules of Court require factual assertions to be supported by citations to the record].) His claim fails for this reason alone.

Defendant also does not explain why the court’s orders involved an error of law, particularly in light of its broad equitable powers in partition actions, which we have discussed. In other words, he does not affirmatively establish error. (*Denham, supra*, 2 Cal.3d at p. 564.) His appellate claim fails for this reason as well.

IV. The Grade Loan

A. The Proceedings Below

In its statement of decision, the trial court found: “It is undisputed that plaintiff and defendant borrowed \$100,000 from J. Sobel, and that Margaret Grade guaranteed that loan. When the loan to Sobel was not paid when due, Grade paid it and the parties became indebted to her in that amount. [¶] Thereafter, the partnership paid Grade \$40,000, leaving a balance due of \$60,000. Plaintiff has assumed the loan and has been paying it off monthly. The court orders that plaintiff satisfy this obligation on behalf of

the partnership, and finds that defendant owes the partnership account \$30,000 as his share of this obligation.”

B. Analysis

Defendant argues the trial court erred in ordering him to pay \$30,000 to the partnership for his share of the Grade loan because plaintiff “has been paying down the \$60,000 balance with fire wood, eggs, and other products of the partnership, which Grade sells in her country store.” Thus, defendant contends, plaintiff is acting on behalf of the partnership to pay off a partnership debt with partnership assets. Therefore, the court’s ruling is erroneous as a matter of law.

Defendant’s argument reargues the evidence, regardless of his claim of legal error. In doing so, he makes evidentiary contentions without citation to supporting evidence in the record, rendering his argument unpersuasive. He contends plaintiff is paying down the Grade loan with “fire wood, eggs, and other products of the partnership.” However, he does not provide evidentiary support for his assertion that these are partnership products. Plaintiff, while he acknowledges that he “has supplied [Grade] with meat, eggs and firewood for years,” contends that his payments to Grade are being paid by him from his own assets and labor. He cites to his 2007 filing of a statement of profit or loss from farming with his tax returns, which indicates that he incurred various farm expenses, including \$20,685 for feed.

The court’s order specifically found that “plaintiff has assumed the loan and has been paying it off monthly.” From this, it can be reasonably inferred that the court found plaintiff is paying the Grade loan with his separate assets, rather than with partnership products. Also, we must indulge all intendments and presumptions to support the court’s judgment on matters as to which the record is silent. (*Denham, supra*, 2 Cal.3d at p. 564.) Defendant, by not citing any evidence to the contrary, has not met his burden to affirmatively establish error. (*Id.* at p. 564.) Therefore, we reject his appellate claim.

V. The Franklin Judgment

Defendant acknowledges that he borrowed \$20,000 from a third party, Susan Franklin, and failed to repay the loan. He does not contest that Franklin subsequently

recorded a judgment against him as a lien against partnership properties. However, he argues that the trial court erred in ruling that, “as this is defendant’s separate obligation, at such time as the lien is satisfied, all amounts paid by the partnership shall be credited towards plaintiff’s equalization of the partnership assets.”

Plaintiff, in his motion to augment the record, contends that the court’s denial in its July 6, 2012 order of Franklin’s alternative application for an order enforcing her judgment lien against partnership assets renders this appellate claim moot. We disagree. The court’s tentative ruling, attached to, and incorporated into, the order, indicates the trial court determined that Franklin cannot assert her judgment against partnership assets. However, plaintiff does not establish that this ruling is final and not subject to further challenge or appeal by Franklin and defendant has not withdrawn the claim. Therefore, we proceed to the merits of the issue.

According to defendant, the court’s ruling was a declaratory judgment that “was erroneous due to lack of a justiciable controversy.” Essentially, he argues that the properties involved, even if they were “nominally” in defendant’s name, were equitably owned by the partnership. Therefore, he argues, Franklin cannot levy on the properties because, he argues, citing various Corporations Code provisions, a partner is not a co-owner of partnership property, which is owned by the partnership, not by partners individually. (See Corp. Code, §§ 16501, 16203.)

Furthermore, defendant contends, “[t]he parties agree that Franklin has never attempted to levy on partnership assets and that plaintiff has never attempted to join her as a party to the instant action. Under such circumstances, declaratory relief is inappropriate, because there is no bona fide dispute as to whether the ownership of the property or Franklin’s rights as a judgment creditor. The partnership is not liable on the judgment, and there is no evidence in the record suggesting that Franklin will attempt to collect her judgment from anyone other than the judgment debtor. Plaintiff had the burden of proof on this issue, and since he failed to meet it, he is not entitled to declaratory relief.”

However, plaintiff does not agree that Franklin never attempted to levy on partnership assets, and states that “the [r]eceiver had to pay Franklin \$1,000 towards that lien before she would release the lien on a lot he was selling.” He cites a receiver report in July 2010 so indicating. Defendant responds that this \$1,000 payment was for a “nonexistent lien” and that a lien is not a levy.

Defendant does not cite any law or facts in support of his declaratory relief claim, which is neither undisputed as to the facts nor apparent as to the law in light of the undisputed existence of the judgment lien asserted by Franklin on partnership properties and the receiver’s payment. Therefore, we disregard his arguments. (*Stanley, supra*, 10 Cal.4th at p. 793; *Grant-Burton, supra*, 99 Cal.App.4th at p. 1379.) Furthermore, were we to consider their merits, defendant fails to affirmatively establish error. (*Denham, supra*, 2 Cal.3d at p. 564). Therefore, we reject his appellate claim.

VI. *The \$144,000 Tax Lien*

A. *The Proceedings Below*

In its statement of decision, the trial court found that defendant did not file partnership tax returns, notwithstanding evidence that the receiver and counsel made efforts for him to do so, and that plaintiff “must have been aware” of defendant’s failure to file tax returns since 2000.

The court further found that, because no tax returns had been filed by the partnership, income was imputed to the partnership by the Franchise Tax Board (FTB), taxes assessed thereon, and monies from escrow on two properties that were sold and separate tax liens were collected by the FTB totaling approximately \$78,500. The FTB asserted a lien against plaintiff individually for \$144,000 in unpaid taxes, which the receiver paid from partnership funds.

The trial court “urged” defendant to prepare and file tax returns for the subject years because, the court stated, the actual amount due would appear to be fairly modest given the partnership income and expenses. The court ordered the referee to monitor these matters until they were resolved and that whatever amounts were ultimately

retained by the taxing entities would be charged against defendant's interest in the partnership assets.

B. Defendant's Argument

Defendant argues, without citation to facts or law, that the receiver acted as plaintiff's "agent" in paying the \$144,000 tax lien from partnership funds, a diversion that the trial court should have seen as a conversion. He further argues that, since the court ruled that plaintiff "must have been aware" of defendant's failure to file partnership tax returns since 2000, which was reasonable since plaintiff would need a copy of the partnership tax returns to prepare his own, and given that partners, not partnerships, pay tax, plaintiff and defendant were "*in pari delicto* when it comes to the failure to file tax returns."¹ Accordingly, the court should have left the parties where it found them, citing without further explanation *Bank of Orland v. Harlan* (1922) 188 Cal. 413, 421 and *Bacciocco v. Transamerica Corp.* (1934) 2 Cal.App.2d 595, 597. Therefore, "[i]t was wrong for the trial judge to charge 100% of the taxes to defendant's share of the partnership assets upon dissolution. Both men were equally foolish, and the trial judge should have left them where she found them, sharing their partnership losses equally and bearing their individual losses separately."

C. Analysis

Defendant again attempts to relitigate the facts rather than argue legal error. He also bases his argument on contentions that he does not establish, that being that the receiver acted as plaintiff's agent and that plaintiff and defendant were equally at fault regarding the failure to file partnership tax returns and the subsequent actions by the FTB. That the receiver paid the taxes does not establish agency, and that plaintiff knew that defendant did not file tax returns does not establish equal culpability. Indeed, the court's finding that *defendant* did not file the returns indicates it considered them his responsibility, a finding defendant does not directly challenge.

¹ The term "*in pari delicto*" means in equal fault. (*CrossTalk Productions, Inc. v. Jacobson* (1998) 65 Cal.App.4th 631, 647.)

We again are presented with an argument so sparsely supported by citations to facts or relevant law that we may disregard it. (*Stanley, supra*, 10 Cal.4th at p. 793; *Grant-Burton, supra*, 99 Cal.App.4th at p. 1379.) We do so. Furthermore, even if we were to consider its merits, defendant does not affirmatively establish error. (*Denham, supra*, 2 Cal.3d at p. 564). Therefore, we reject his appellate claim.

VII. *The 174 Elm Road Property*

In its statement of decision, the trial court found that the 174 Elm Road property was rented for \$925 per month, which was more than its monthly mortgage payment, and that defendant collected \$5,500 in rent that he converted for his own benefit. Also, in April 2008, the receiver paid \$6,430.08 to the lender to prevent foreclosure and reinstate the loan on the property. The court found that defendant owed a total of \$11,930.08 to the partnership account.

Defendant argues the trial court's order that he pay \$11,930.08 was a mathematical error, since if defendant had paid the partnership the \$5,500 he converted, that money would have been applied to the mortgage payments, leaving the receiver with only an additional \$930.08 to cure the loan default. Therefore, the court should have ordered him to pay \$6,430.08, and he asks this court to modify the judgment accordingly. Plaintiff agrees, as do we.

"It is well settled that clerical errors in a judgment, where they are shown by the record, may be corrected at any time. [Citation.] . . . [A]n appellate court may correct a judgment containing an obvious clerical error or other defect resulting from inadvertence by modifying the judgment." (*Hennefer v. Butcher* (1986) 182 Cal.App.3d 492, 506-507.) Pursuant to our authority, we modify the judgment to show that defendant owes \$6,430.08 to the partnership account, rather than \$11,903.08 ordered by the court, regarding the 174 Elm Road property.

VIII. Order Denying Defendant's Attorney Fees of \$28,760.50

A. The Proceedings Below

The record before us on the issue is incomplete, but it appears that defendant filed a motion before trial in late 2009 or early 2010, for an order directing the receiver to pay \$28,760.50 to his attorney for fees.

As part of his opposition to this motion, plaintiff filed a declaration from the receiver. The receiver declared that he had previously distributed \$50,000 to plaintiff's attorney and \$32,500 to two of defendant's attorneys. The receiver further stated that he disbursed \$15,000 to one of defendant's attorneys, Robert Sprague, based on the attorney's representation that he was representing defendant with regard to the merits and substance of the action, and would be actively involved in settlement or trial. In September 2009, the receiver was informed by Sprague that the \$15,000 was for the limited purpose of obtaining a continuance of the trial, filing a motion to dismiss causes of action in the complaint for delay in prosecution, and seeking to remove plaintiff's attorney of record. The receiver stated that if he had known this, he would have required the consent of plaintiff or an order of the court before making the \$15,000 disbursement.

Thereafter, the receiver stated, when Sprague requested an additional \$30,000 in fees, with a comparable amount to plaintiff's counsel, the receiver declined the request because he did not believe the partnership could afford such distribution and still be able to carry out the steps needed to effectuate a settlement or judgment of partition. The receiver also stated that defendant may have exhausted his interest in the partnership funds based on his failure to account for partnership funds presumably received and in his possession as well as prior distributions on his behalf, and that plaintiff refused to consent to such distribution.

In March 2010, the court denied without prejudice defendant's motion for an order directing the receiver to pay \$28,760.50 for defendant's attorney's fees.

B. Analysis

Defendant argues that the trial court erred in denying his motion for pretrial attorney fees of \$28,760.50 because of the disparity in payments by the receiver of the

parties' attorney's fees. Defendant claims without citation to the record that this disparity resulted in plaintiff having the same attorney for six years, while defendant was unable to keep any attorney for very long due to nonpayment and had an attorney substituted into the case on the first day of trial. He also contends, based on the court's denial of his motion without prejudice, that the court did not object to the nature or amount of the fees, but simply did not want them paid in the midst of settlement negotiations, and that the court had no way of knowing that the settlement would fall apart after the retirement of the judge presiding.

Essentially, defendant argues that the trial court's denial was unfair and disadvantageous to him without citing any legal authority, and based on unsubstantiated facts, such as that he was unable to keep an attorney for any length of time due to nonpayment or that the court's denial of his motion without prejudice indicated the court did not object to his request for fees.

We reject defendant's claim on three grounds. First, we are again presented with an argument insufficiently supported by citations to facts or relevant law that we are entitled to disregard. (*Stanley, supra*, 10 Cal.4th at p. 793; *Grant-Burton, supra*, 99 Cal.App.4th at p. 1379.) We do so. Also, although plaintiff provided his opposition of defendant's motion for \$28,760.50 in attorney's fees, defendant has not included his motion or the record of the parties' arguments at hearing. We cannot meaningfully review his appellate claim without considering the full record regarding the motion. "[I]f the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed." (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051, fn. 9.) Finally, even if we were to consider the merits of defendant's claim, he fails to affirmatively establish error. (*Denham, supra*, 2 Cal.3d at p. 564.)

DISPOSITION

We affirm the judgment, with the modification that defendant owes the amount of \$6,430.08, rather than the \$11,930.08 calculated by the trial court, to the partnership account regarding the 174 Elm Road property.

Lambden, J.

We concur:

Haerle, Acting P.J.

Richman, J.