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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

SF PROPERTIES, LLC,

Plaintiff and Appellant,

v.

DOVE STREET CAPITAL LENDERS,
LLC,

Defendant and Respondent.

B233994

(Los Angeles County
Super. Ct. No. EC051716)

APPEAL from the judgment of the Superior Court of Los Angeles County.

David S. Milton, Judge. Affirmed.

Schock & Schock and John P. Schock for Plaintiff and Appellant.

Attlesey | Storm and Suzanne S. Storm for Defendant and Respondent.

* * * * *

On March 3, 2005, plaintiff SF Properties, LLC, borrowed \$3,640,000 from defendant Dove Street Capital Lenders, LLC, secured by a deed of trust on plaintiff's Glendale property. The maturity date of the loan was March 31, 2006, but the parties entered into a number of modifications extending the maturity date after plaintiff's default. On October 27, 2009, defendant foreclosed on the property and purchased it for \$7,986,255.56. Plaintiff sued defendant, claiming entitlement to surplus proceeds from the foreclosure sale. In its statement of decision, the trial court concluded that plaintiff had not met its burden of proof that it was "entitled to surplus proceeds from the sale of the property," and judgment was entered for defendant. On appeal, plaintiff contends that insufficient evidence supports the trial court's judgment, reasoning the evidence established that the principal due on the loan was \$4,627,955, creating a surplus of over \$3 million. Because plaintiff has provided an incomplete record on appeal, the presumption of correctness requires affirmance of the judgment.

DISCUSSION

A judgment is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown" by the appellant. (*Ibid.*) This standard also applies to statements of decision. "[W]hen the court's statement of decision is ambiguous or omits material factual findings, a reviewing court is required to infer any factual findings necessary to support the judgment. [Citations.] This rule '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.' [Citation.]" (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 494.) Appellate review for sufficiency of the evidence extends to the entire record, and is not limited to facts mentioned in a trial court's statement of decision. (See *In re Marriage of Schmir* (2005) 134 Cal.App.4th 43, 49-50.)

The trial court's statement of decision reflects that Keith Smith, a representative of defendant, testified that the total amount due on the loan was \$7.5 million, but because

plaintiff disagreed with this balance, the parties eventually compromised to an outstanding balance of \$6.5 million in December 2008. Cherie Maples, the foreclosure supervisor for Assured Lender Services, testified that she prepared the notice of default for the foreclosure, and received the balance due from Smith. Lawrence Goelman, defendant's managing member, testified that the parties negotiated and agreed that the outstanding loan balance was \$6.5 million. Greg Galletly, managing member of Insatiable Assets, which managed plaintiff, testified that after the loan went into default, the parties agreed to an outstanding balance of \$6.567 million, but that settlement negotiations ultimately fell apart. John Morrow, who worked for plaintiff's affiliate, testified that Galletly negotiated and approved all loans from defendant. After summarizing this evidence, the trial court concluded that "[plaintiff] failed its burden to prove by a preponderance of the evidence that the [p]laintiff was entitled to surplus proceeds from the sale of the property."¹

The appellate record provided by plaintiff contains the direct and cross-examination of Maples, the recross-examination and redirect examination of Smith, and the direct and cross-examination of Goelman. Plaintiff's appendix contains: the complaint; the trial court's statement of decision; a March 3, 2005 promissory note and deed of trust for \$3,640,000, with an interest rate of 12 percent, a default rate of 25 percent, and other provisions for late fees and fees associated with default; an April 25, 2006 loan modification, additional advance, and extension agreement executed by Galletly on behalf of plaintiff, creating a new balance of \$4,279,200; a November 13, 2006 loan modification, additional advance, and extension agreement creating a new balance of \$4,407,576, also executed by Galletly; and a June 6, 2007 loan modification, additional advance, and extension agreement creating a new balance of \$4,627,955,

¹ The statement of decision provides that "[d]efendant failed its burden of prove by a preponderance of the evidence that the [p]laintiff was entitled to surplus proceeds from the sale of the property." It is clear, as plaintiff acknowledges in its reply brief, that the trial court intended to find that *plaintiff* did not satisfy its burden, as plaintiff was the party seeking surplus proceeds.

executed by Galletly. The appendix also included email correspondence between plaintiff's and defendant's representatives, discussing settlement of the outstanding loan balance, unexecuted settlement agreements seeking to cure plaintiff's default on the loan, and an unexecuted December 19, 2008 purchase agreement, seeking to settle the outstanding loan (represented to total \$6,567,000) by selling the Glendale property to defendant. The record also includes bid instructions for the foreclosure sale, reflecting an outstanding principal balance of \$5,336,549.50, accrued late charges of \$2,627,078.10 (as of October 23, 2009), per diem charges of \$5,225.48, as well as trustee fees of \$22,627.96. The trustee's deed upon sale reflects that defendant purchased the Glendale property at foreclosure on October 27, 2009, for \$7,986,255.56.

Notably missing from the record is the testimony of Galletly and Morrow, as well as portions of Smith's testimony. We cannot find any evidence concerning the status of other possible lien holders for the property (defendant's appendix includes a title report, showing liens which may have priority over any hypothetical surplus). (*Caito v. United California Bank* (1978) 20 Cal.3d 694, 701 ["Following a foreclosure sale and satisfaction of the obligation of the creditor who forecloses, subordinate liens against the foreclosed property attach to the surplus proceeds in order of their priority"].) We can only guess at what else plaintiff omitted from the appellate record. It is not enough for plaintiff to argue there was insufficient evidence without providing all relevant transcripts and evidence. Without a complete reporter's transcript or appendix, we cannot determine what evidence was presented concerning the outstanding balance on the loan, any additional fees which may have been assessed under the promissory note, or whether there is other relevant evidence supporting the judgment. As a consequence, we cannot consider plaintiff's challenge to the sufficiency of the evidence. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132 [if the appellant fails to supply the court with the necessary transcripts or exhibits to resolve the insufficient evidence argument on appeal, the issue may be deemed waived].)

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs on appeal.

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GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.