

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

YAKOV KLISHTEIN,

Plaintiff and Respondent,

v.

BOBBY BEHZADI,

Defendant and Appellant.

B256267

(Los Angeles County
Super. Ct. No. BC488204)

APPEAL from a judgment of the Superior Court of Los Angeles County,
H. Chester Horn, Jr., Judge. Affirmed.

Law Office of Gary Kurtz and Gary Kurtz for Defendant and Appellant.

Herzlich & Blum and Allan Herzlich for Plaintiff and Respondent.

Bobby Behzadi appeals a judgment after a nonjury trial awarding Yakov Klishtein \$75,000 in damages for fraud. He contends the trial court made a factual finding that requires a judgment in his favor based on the doctrine of unclean hands. We conclude that Behzadi has shown no error and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Klishtein sued Behzadi and Final Solution, Inc. (Final Solution) in July 2012. He alleged that Final Solution agreed to procure a medical marijuana dispensary license for him in exchange for payment of \$75,000. He alleged that Final Solution breached the written agreement by failing to procure a license.¹ Klishtein also alleged that both defendants falsely represented they could procure a license at a time when the City of Los Angeles was no longer issuing such licenses. He alleged counts for breach of contract against Final Solution and fraud against both defendants.

Final Solution demurred to the complaint, arguing that the sale of marijuana violated federal law and that the doctrine of unclean hands precluded any relief on the complaint. The trial court overruled the demurrer, stating, “the court finds that the agreement does not mention the sale of marijuana. Rather, as pled, the consideration was assistance in obtaining a valid license to operate a marijuana dispensary—presumably, a legal purpose under California law. Further, even assuming that the consideration was unlawful, the court finds that from the allegations, there are still grounds to enforce the agreement to avoid unjust enrichment to FSI [Final Solution].” Both defendants answered the complaint and alleged unclean hands as an affirmative defense.

The first phase of a nonjury trial took place on December 9, 2013. The appellate record includes no reporter’s transcript of the trial proceedings. The trial court filed a minute order on December 11, 2013, stating that it had taken the matter under submission. The minute order stated, “THE COURT MAKES THE FOLLOWING

¹ The contract provided the \$75,000 would be “fully refundable if Final Solution [was] unable to deliver” the license, but Final Solution and Behzadi apparently kept the money.

RULING:” followed by the subheading “Decision.” It stated that the court found that the defendants were liable for fraud in the amount of \$75,000 plus punitive damages to be determined in the second phase of trial. It also stated under the subheading “The Facts” that Klishtein operated a medical marijuana dispensary in 2009, but the City of Los Angeles ordered him to cease operations in 2009. It stated that Klishtein “wanted to open a new dispensary that complied with all applicable laws.” It stated that Behzadi, acting on behalf of Final Solution, falsely represented that he could secure a valid medical marijuana dispensary license at a time when he knew that the City of Los Angeles had imposed a moratorium on new licenses, and Klishtein reasonably relied on those false representations and suffered \$75,000 in resulting damages.

The minute order instructed counsel to appear on December 18, 2013, to discuss scheduling of the punitive damages phase of trial. It stated, “However, the Court advises the parties that, given the unusual nature of this case, the Court is unlikely to order punitive damages other than a nominal amount. The reason[] for the Court’s inclination is that it is clear to the Court that the plaintiff intended to operate his proposed medical marijuana dispensary for profit. Indeed, plaintiff and one of his investors testified to the proposed operation as a business enterprise in which they would be partners, hence the reason for such a substantial investment. The only entities that the Compassionate Use Act and the Medical Marijuana Program Act authorized to operate medical marijuana dispensaries were mutual benefit collectives, however organized, that did not engage in the distribution of marijuana for profit. [Citation.] Thus, it seems clear from the evidence adduced at trial, that both Klishtein, Final Solution, Inc., and Behzadi all knew that the purpose of the dispensary they contracted to get a license for was intended to operate in violation of the MMPA. Under such circumstances, the Court cannot conceive of the circumstance that would justify the award of punitive damages for participating in such a scheme.”

The defendants filed a document entitled Defendants’ Objection to Statement of Decision and Request for Further Clarification on December 18, 2013, in which they characterized the trial court’s December 11, 2013, ruling as a statement of decision.

The defendants asserted that the ruling failed to address the defense of unclean hands and that the court should modify its ruling. They argued that the court's finding that Klishtein intended to violate the law compelled the conclusion that he had unclean hands and established a complete defense to his complaint. There is no indication in the appellate record whether the court addressed the objection.

The trial court filed a judgment on March 6, 2014. The judgment stated that Behzadi falsely represented he could secure a valid license allowing Klishtein to operate a medical marijuana dispensary in the City of Los Angeles, despite knowing that the city had imposed a moratorium on such licenses. It stated that Klishtein reasonably relied on those false representations. It awarded him \$75,000 in damages against Behzadi and Final Solution, jointly and severally.

Behzadi timely appealed the judgment. He designated documents to include in the clerk's transcript, but he did not designate a reporter's transcript or provide an agreed or settled statement (Cal. Rules of Court, rules 8.134, 8.137).

CONTENTION

Behzadi contends Klishtein is guilty of unclean hands as a matter of law, and therefore is entitled to no relief, based on the trial court's finding that Klishtein intended to violate California law by operating a medical marijuana dispensary for profit.

DISCUSSION

The equitable doctrine of unclean hands provides that a trial court may deny recovery to a plaintiff whose bad faith or other misconduct in connection with the matter in controversy was so substantial that it would be inequitable to grant the plaintiff any relief. (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 56; *Dickson, Carlson & Campillo v. Pole* (2000) 83 Cal.App.4th 436, 446-447.) The doctrine may apply in both equitable and legal actions. (*Fladeboe, supra*, at p. 56.) Whether to apply the doctrine is a matter within the trial court's discretion. (*Farahani v. San Diego Community College Dist.* (2009) 175 Cal.App.4th 1486, 1495; *Dickson, supra*, at p. 447.) Accordingly, we review the ruling for abuse of discretion. (*Aguayo v. Amaro* (2013) 213 Cal.App.4th 1102, 1109; *Farahani, supra*, at p. 1496.) We review

any factual findings made in connection with the ruling under the substantial evidence standard. (*Aguayo, supra*, at p. 1109.)

“An abuse of discretion occurs if, in light of the applicable law and considering all of the relevant circumstances, the court’s decision exceeds the bounds of reason and results in a miscarriage of justice. [Citations.] This standard of review affords considerable deference to the trial court provided that the court acted in accordance with the governing rules of law. We presume that the court properly applied the law and acted within its discretion unless the appellant affirmatively shows otherwise. [Citations.]” (*Mejia v. City of Los Angeles* (2007) 156 Cal.App.4th 151, 158.)

An appealed judgment is presumed correct; a reviewing court must indulge all intendments and presumptions in favor of the judgment on matters on which the record is silent, and the appellant must affirmatively demonstrate error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Accordingly, we must presume that the evidence supports the judgment unless the appellant affirmatively demonstrates to the contrary. (*Ibid.*)

The trial court’s written ruling of December 11, 2013, was not labeled a statement of decision, and the appellate record does not indicate whether any party requested a statement of decision.² Even if we assume that the ruling was a statement of decision and that the trial court found that Klishtein intended to violate California law by operating a medical marijuana dispensary for profit, such a finding does not necessarily compel the conclusion that it would be inequitable to grant Klishtein any relief. Behzadi has not shown that the equities in this case are so strong that the failure to deny relief based on unclean hands was beyond the bounds of reason and therefore an

² A court that tries a question of fact must issue a statement of decision explaining the factual and legal basis for its decision as to the principal controverted issues at trial, if timely requested by a party appearing at trial. (Code Civ. Proc., § 632.) A statement of decision facilitates appellate review by disclosing the basis for the trial court’s decision. A tentative decision, in contrast, is not binding and cannot be used to impeach the judgment. (Cal. Rules of Court, rule 3.1590(b); *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 268-269.)

abuse of discretion. The trial court could have reasonably concluded that Behzadi's intentional fraud justified an award of damages despite Klishtein's purported illegal purpose and that it would be inequitable to excuse Behzadi and allow him to keep the money Klishtein paid him in these circumstances. Moreover, absent a complete record of the testimony and other evidence presented at trial, we must presume the evidence supports the trial court's ruling. We conclude that Behzadi has shown no error.

DISPOSITION

The judgment is affirmed. Klishtein is entitled to recover his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.*

WE CONCUR:

EDMON, P. J.

KITCHING, J.

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