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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ALEX RASKIN,

Plaintiff, Cross-defendant and
Respondent,

v.

ARMEN PETROYSYAN,

Defendant, Cross-complainant
and Appellant.

B267798

(Los Angeles County
Super. Ct. No. BC447668)

APPEAL from a judgment of the Superior Court of Los Angeles County, Victor E. Chavez, Judge. Affirmed.

Law Offices of Leslie S. McAfee and Leslie S. McAfee for Plaintiff, Cross-defendant and Respondent.

Baker, Keener & Nahra and Phillip A. Baker for Defendant, Cross-complainant and Appellant.

BACKGROUND

Alex Raskin (plaintiff) filed the present action against Armen Petrosyan (aka Armin Roberts) (defendant) and others on October 20, 2010, and filed the operative sixth amended complaint on May 30, 2014. The operative complaint alleged that defendant held himself out as an experienced art broker/dealer and persuaded plaintiff to purchase works of art for 10 to 20 times their actual value. The complaint asserted causes of action for intentional and negligent misrepresentation, intentional and negligent concealment, conversion, and rescission.

Defendant filed a cross-complaint against Raskin for breach of written contract and reasonable value of goods delivered. The cross-complaint asserted that plaintiff purchased approximately 108 paintings from defendant at a combined cost of over \$6,000,000. After a series of disputes arose between plaintiff and defendant, the parties entered a “Mutual General Release” (general release) that purported to release each party from existing claims. Defendant asserted that the general release resolved plaintiff’s claims against him; in the alternative, defendant claimed damages for unpaid debts.

The matter was tried to a jury. On May 14, 2015, the jury returned a special verdict finding the general release invalid, awarding plaintiff \$5,648,000 for intentional and negligent misrepresentation and intentional concealment, and awarding defendant \$825,000 for breach of contract. Subsequently, the jury awarded plaintiff punitive damages of \$5,648,000 against defendant. Judgment was entered on July 21, 2015, and notice of entry of judgment was served the same day.

Defendant filed motions for judgment notwithstanding the verdict and for a new trial, which apparently were denied by operation of law. Defendant timely appealed.

DISCUSSION

Defendant makes two claims on appeal. First, he asserts the judgment should be set aside because the fully integrated general release should have barred the action, and substantial evidence did not support the jury's finding that the general release was invalid. Second, defendant asserts the punitive damages award must be reversed because plaintiff failed to offer sufficient evidence of defendant's financial condition.

Both of defendant's appellate claims suffer from the same defect—namely, that defendant has not provided us with an adequate appellate record to allow us to assess his claims of error. “It is fundamental that an order is presumed correct, and the burden of affirmatively demonstrating error is on the appellant. (*Fundamental Investment etc. Realty Fund v. Gradow* (1994) 28 Cal.App.4th 966, 971.) This places on appellant the burden to provide an adequate record on appeal to allow the reviewing court to assess the purported error (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416), and if the record on appeal does not contain all of the documents or other evidence considered by the trial court, a reviewing court will ‘decline to find error on a silent record, and thus infer that substantial evidence’ supports the trial court's findings. (*Haywood v. Superior Court* (2000) 77 Cal.App.4th 949, 955.)” (*569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 434, fn. 9.)

In the present case, defendant has not provided us with the reporter's transcript of the jury trial.¹ "Where no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct as to all evidentiary matters*. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 153-154.) The effect of this rule is that an appellant who attacks a judgment but supplies no reporter's transcript will be precluded from raising an argument as to the sufficiency of the evidence. (*Sui v. Landi* (1985) 163 Cal.App.3d 383, 385-386; *National Secretarial Service, Inc. v. Froehlick* (1989) 210 Cal.App.3d 510, 521-522.)" (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992.)

Both of defendant's appellate contentions concern the sufficiency of the evidence to support the jury verdict. With regard to the first claim, defendant urges that to set aside the release agreement, plaintiff was required to present evidence of fraudulent inducement, but "presented no evidence at trial, either through his testimony or otherwise, that [defendant] misrepresented the nature or contents of the Release Agreement . . . [n]or did [plaintiff] present evidence sufficient to otherwise sustain a finding of fraud." With regard to the second claim,

¹ The sole reporter's transcript defendant designated is of the September 9, 2011 hearing on defendants' motion for summary judgment, the August 2, 2012, hearing on a motion to compel production of documents and to disqualify plaintiff's expert witness, a September 19, 2013 hearing on defendant's demurrer to the fifth amended complaint, and a September 18, 2015 hearing on defendant's motion for new trial.

defendant suggests that plaintiff “offered *insufficient evidence* of [defendants’] financial condition.” Both of these claims require us to review the trial testimony—which, in the absence of a reporter’s transcript, we are wholly unable to do.

Under these circumstances, we conclude that defendant has failed to provide an adequate record to assess the claimed errors, and therefore we affirm on that basis.

DISPOSITION

The judgment is affirmed. Respondent is awarded his appellate costs.

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EDMON, P. J.

We concur:

ALDRICH, J.

GOSWAMI, J.*

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