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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

NOUR EDDINE ELASALI, Plaintiff and Appellant, v. SURERIDE CHARTER, INC., et al., Defendants and Respondents.	D060630 (Super. Ct. No. 37-2009-00084032-CU-CR-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Joan M. Lewis, Judge. Affirmed.

I.

INTRODUCTION

Nour Eddine Elasali filed this action against respondents Sureride Charter, Inc. (Sureride), Rich Illes, Lorenzo Ortiz, Robert Vint, and Lorraine Tokarz. Respondents filed a motion for judgment on the pleadings. We are unable to discern the precise nature of the claims asserted in the complaint or the grounds that respondents raised in their

motion for judgment on the pleadings, because neither the complaint nor the motion for judgment on the pleadings is contained in the record on appeal.[1]

Respondents' request for judicial notice in support of their motion for judgment on the pleadings is in the record on appeal. Respondents contended that the documents to be judicially noticed demonstrate that the issues in the present case were adjudicated in a prior action, and that the claims in this case are barred by the statute of limitations. The trial court granted respondents' request for judicial notice and granted respondents' motion for judgment on the pleadings, without leave to amend. In its order, the court stated that the judicially noticed documents demonstrated that Elasali's causes of action are all time barred.

On appeal, Elasali contends that the trial court erred in granting the motion for judgment on the pleadings, in denying a motion to disqualify the trial judge, and in denying a motion for change of venue. We affirm.

II.

FACTUAL AND PROCEDURAL BACKGROUND

At some point prior to January, 7, 2010, Elasali filed a complaint against respondents.[2] The action apparently arose from Elasali's prior employment with Sureride.

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1 It appears that Elasali filed a first amended complaint at some point in the trial court proceedings. However, that pleading is not contained in the record on appeal.

2 Elasali states in his brief, "Defendants were served with the complaint and the summons on Dec. 23rd, 2009." Respondents state that Elasali filed the "initial action" in

On January 7, 2010, respondents filed an answer. In their answer, respondents alleged as an affirmative defense that Elasali's claims were barred by the statute of limitations. Respondents stated, "Elasali left employment with Sureride Charter Inc. on 2/23/2005. The statute of limitations for this type of action is 2 years. This allegation took place almost 5 years ago." Respondents also stated, "This is the third time the exact same complaint has been filed by Mr. Elasali."

In March 2011, Elasali filed a motion for change of venue and a separate motion to disqualify the trial judge. On April 19, 2011, the trial judge struck the motion to disqualify on the grounds that it was untimely, it had not been properly served, and it stated no basis for disqualification. On April 22, 2011, the trial court denied the motion for change of venue. The court ruled that Elasali had not demonstrated any reason to believe that he could not obtain a fair trial in San Diego County.[3]

On or about July 11, 2011, respondents filed a motion for judgment on the pleadings. Respondents requested that the trial court take judicial notice of several pleadings from other actions involving the parties, including a 2007 complaint filed in the San Diego Superior Court by Elasali against several of the respondents; a June 16, 2006 document from the Department of Fair Employment & Housing entitled Notice of Case

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this matter on February 24, 2009, and that Elasali filed an amended complaint on December 10, 2009. None of these statements is supported by citation to the record or by any document in the record.

[3] Respondents contend in their brief that in May 2011, this court denied Elasali's writ petitions seeking review of these two orders. However, no documents evidencing such writ proceedings are contained in the record on appeal in this case.

Closure; a 2007 complaint filed in federal court by Elasali against several of the respondents; various pleadings from the federal case; and an August 28, 2007 letter from the United States Equal Opportunity Commission to Elasali. Respondents claimed that the documents demonstrated that Elasali's claims in this case are time barred.

On August 5, 2011, the trial court granted respondents' request for judicial notice and also granted respondents' motion for judgment on the pleadings without leave to amend. In its order, the court stated that the judicially noticed documents demonstrate that Elasali's causes of action are all barred by the applicable statutes of limitations.

Elasali timely appealed from the trial court's August 5 ruling.[4]

III.

DISCUSSION

Elasali has not demonstrated that the trial court committed any reversible error

Elasali contends that the trial court erred in granting respondents' motion for judgment on the pleadings, in denying his motion to disqualify the trial judge, and in denying his motion for change of venue.

Certain fundamental rules govern this court's consideration of Elasali's claims. "As with any civil appeal, we must presume the judgment is correct, [and] indulge every intendment and presumption in favor of its correctness . . . . [Citations.]" (*Steele v. Youthful Offender Parole Bd.* (2008) 162 Cal.App.4th 1241, 1251.) It is the burden of the

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4 The trial court's August 5 ruling also states, "The court finds judgment on the Amended Complaint (First) for Sureride Charter, Inc., DBA Sun Diego Charter Co, Robert Vint, Lorraine Tokarz,, Rich Illes, Lorenzo Ortiz, and against Noureddine [*sic*] Elasali . . . ." Thus, we construe the August 5 ruling as a final appealable judgment.

party challenging a judgment to provide an adequate record to assess claims of error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) Included within this burden is the obligation to support factual arguments with a citation to evidence in the appellate record. (*People v. Milosavljevic* (2010) 183 Cal.App.4th 640, 654 (*Milosavljevic*).) An appellant is also required to support any legal argument with legal authority or analysis. (See *People ex rel. Reisig v. Acuna* (2010) 182 Cal.App.4th 866, 879 [" 'An appellate 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 [forfeited], and pass it without consideration." [Citation.]' [Citation.]"].) "Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, [they are] . . . waived. [Citations.]" (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 (*Jones*).)

Elasali contends that the trial court erred in granting respondents' motion for judgment on the pleadings because respondents' answer was not timely filed and should have been stricken. Elasali contends that respondents "relied on a falsified and rolled back court stamp" in filing their answer. This argument fails because there is no evidence in the record demonstrating that respondents obtained a false file stamp in filing their answer. (*Milosavljevic, supra*, 183 Cal.App.4th at p. 654 [appellant must support factual arguments with citation to evidence in the record].) This argument also fails because we are unable to determine the timeliness of respondents' answer. Elasali has failed to include his complaint in the record, and there is thus nothing in the record that indicates the date on which he filed his complaint or effected service of process. Without

knowing when the complaint was filed, we have no way of determining whether the answer was or was not timely filed. (*Ketchum v. Moses, supra*, 24 Cal.4th at pp. 1140-1141 [appellant must provide adequate record to review claims].)

Elasali also contends that the trial court erred in granting the motion for judgment on the pleadings on the ground that his complaint is barred by the statute of limitations. We reject this argument because Elasali has provided neither an intelligible legal argument in support of this contention (*Jones, supra*, 26 Cal.App.4th at p. 99 [claims must be supported with reasoned legal argument]), nor has he included respondents' motion for judgment on the pleadings in the record. (*Ketchum v. Moses, supra*, 24 Cal.4th at pp. 1140-1141.)

In addition, Elasali contends that the trial court erred in denying his motion to disqualify the trial judge. The law is well established that the denial of a motion to disqualify a trial judge is not cognizable on appeal, and may be addressed only through writ proceedings. (See, e.g., *People v. Brown* (1993) 6 Cal.4th 322, 333.) Finally, Elasali contends that the trial court erred in denying his motion for change of venue. We reject this argument because Elasali has failed to offer any legal argument that would support this contention.[5] (*Jones, supra*, 26 Cal.App.4th at p. 99.)

Accordingly, we conclude that Elasali has not demonstrated that the trial court committed any reversible error.

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[5] The only argument that Elasali offers in his brief in support of this argument is his contention that "plaintiff gave a few reasons among other things that are sufficient to establish that it would be extremely doubtful that an impartial trial could be had [in San Diego] . . . ."

IV.

DISPOSITION

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

AARON, J.

WE CONCUR:

McCONNELL, P. J.

McDONALD, J.