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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

GREGORY RODRIGUES,

Plaintiff and Appellant,

v.

CVP ACQUISITION CORPORATION et al.,

Defendants and Respondents.

F062081

(Super. Ct. No. CU148156)

OPINION

APPEAL from a judgment of the Superior Court of Merced County. John D. Kiriwara, Judge.

R. Randall Riccardo for Plaintiff and Appellant.

Whelan Law Group, Walter W. Whelan and Brian D. Whelan for Defendants and Respondents.

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This is an appeal from the judgment after a court trial in an action based primarily on allegations of breach of two contracts. Plaintiff contends substantial evidence does not support the trial court's conclusion that a binding contract existed between plaintiff and defendant, Robert Christian, and that plaintiff did not perform in accordance with its

terms and was therefore not entitled to recover from Christian or from a newly formed corporation for his failure to perform. Plaintiff does not challenge the trial court's resolution of the other claims asserted in the complaint. Substantial evidence supports the judgment and we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 1993, defendant Robert Christian and others founded Central Valley Processing (CVP), an almond processing company. In 2002, the company experienced financial difficulties; the Whitney Group¹ invested in the corporation and received stock in exchange. Christian remained as president, and defendant, Kim Sziraki, was vice president. The Whitney Group transferred valuable assets out of the corporation, including two buildings in which the corporation carried on its almond processing, the Grogan Avenue facility and the Childs Avenue facility. The Whitney Group refused to make a promised monetary investment in the corporation and, in January 2003, Christian asked for and obtained permission to try to find a buyer for the company. The Rodrigues Group, represented by plaintiff, was among the potential buyers. No agreement was reached with any buyer, and, in February 2003, CVP filed for bankruptcy.

Christian and Sziraki continued to work for the corporation in the same capacities while it was in bankruptcy. In March 2003, plaintiff approached Christian about buying the company out of bankruptcy. According to Christian, plaintiff and Christian reached an oral agreement that, if plaintiff raised at least \$2 million, and they were successful in buying the company out of bankruptcy, plaintiff would receive a 15 percent interest in the company and Christian would receive a controlling interest. Plaintiff brought in Strategic Capital Solutions, a group from New York; on May 13, 2003, it made a presentation to the growers' committee, a committee set up through the bankruptcy proceeding to

¹ This group is referred to in the record sometimes as the Whitney Group and sometimes as the Casselman Group.

represent the grower-creditors. The growers' committee rejected the proposal, which required the growers to accept 50 cents on the dollar.

On June 18, 2003, there was a meeting with a larger group of growers at which plaintiff made a presentation. Part of that presentation proposed that the growers exchange the debts owed to them by CVP for preferred stock in a new corporation that would purchase the assets of CVP. The growers did not agree.

In June 2003, the bankruptcy judge and Hilton Ryder, the attorney for CVP in the bankruptcy proceeding, suggested creating a new entity to purchase the assets of CVP free and clear of liens in a section 363(f) sale. (11 U.S.C. § 363, subd. (f).) Christian, Sziraki, plaintiff, and Mayo Ryan, an accountant brought in by plaintiff, decided to pursue the section 363(f) purchase. They were to be the management team of the new corporation, for which they adopted the name Central Valley Processing Acquisition Corporation (CVPAC). Ryder prepared the motion seeking court approval of the purchase. The assets included the business name, equipment, good will, and two vehicles. The purchase price was \$1.25 million, made up of \$750,000 cash and a \$500,000 loan from American AgCredit. The purchase was conditioned on obtaining a lease of the Childs Avenue property with an option to purchase it on favorable terms. On July 29, 2003, the bankruptcy court approved the purchase of assets by CVPAC. Prior to that date, plaintiff had told Christian that he would personally invest the money necessary to complete the purchase. On August 1, however, Sziraki and Ryan had lunch with Kenneth Spagnola, an almond grower who was one of CVP's large customers, and mentioned to him that plaintiff had just told them he would not be putting up the money to complete the asset purchase. They reported that plaintiff wanted to wait to purchase the equipment on the courthouse steps, when it would cost less, then attempt to restart the business the next year. It was nearing harvest time, and if the growers went elsewhere to have their almonds processed, they would be unlikely to bring their business to CVPAC the next year. Spagnola stated that, if he could arrange things with his bank, he would

put up the money necessary to complete the asset purchase if plaintiff did not. The parties understood the court order gave them until August 14 to finalize the purchase.

On August 11, 2003, Christian, Spagnola and plaintiff had a conversation in Christian's office at CVP; Sziraki and Ryan were in the next room and overheard the conversation. After Spagnola confirmed that he had offered to fund the asset purchase, plaintiff advised that his arrangement with Christian entitled him to 15 percent of the new company. Spagnola told plaintiff he was not worth 15 percent and if plaintiff put up the money, he could make whatever arrangement he wanted with Christian. Spagnola said he might consider giving plaintiff 10 percent to compensate him for the work he had done, but plaintiff was not going to be CEO or a director of the corporation. Plaintiff became angry, stated he did not want anything to do with the company, and walked out. Plaintiff subsequently notified others involved in the bankruptcy proceedings that he would no longer be CEO or a director of CVPAC. On August 14, Christian, Sziraki, and Ryan met as directors of CVPAC; they passed a resolution making Spagnola a director in place of plaintiff, who had been named as a director in the Articles of Incorporation. The purchase of the assets of CVP was completed, funded by Spagnola. Spagnola became the sole owner of CVPAC.

Plaintiff sued CVPAC, Spagnola, Christian, and Sziraki,² alleging causes of action for breach of contract, quantum meruit, fraud, and negligent misrepresentation.³ After a court trial, the court issued a ruling finding that plaintiff had a binding oral agreement with Christian, but breached that agreement by failing to provide funds to finance the

² The complaint names only CVPAC and Spagnola as defendants. Although the record contains no Doe amendment or other amendment of the complaint naming the others as defendants, we assume they were so named because subsequent documents filed by defendants' attorneys reflect that they represented Christian and Sziraki as well.

³ The complaint also contained a claim for specific performance, but that claim was withdrawn prior to the trial court's decision.

asset purchase; the court found plaintiff had no binding contract with CVPAC, Sziraki, or Spagnola. The trial court also found in favor of defendants on the quantum meruit, fraud, and negligent misrepresentation causes of action. Plaintiff appeals, challenging only the sufficiency of the evidence to support the findings that plaintiff breached the contract with Christian and that plaintiff had no binding contract with CVPAC.

DISCUSSION

I. Substantial Evidence Standard of Review

“In every appeal, ‘the appellant has the duty to fairly summarize all of the facts *in the light most favorable to the judgment.*’ [Citation.]” (*Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 739, italics added.) “‘A party who challenges the sufficiency of the evidence to support a particular finding must *summarize the evidence* on that point, *favorable and unfavorable*, and show *how and why it is insufficient.* [Citation.]’ [Citation.]” (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409.) In violation of this duty, plaintiff’s statement of facts largely ignores the evidence supporting the judgment. Instead it focuses on the evidence favorable to plaintiff’s theories, citing primarily to plaintiff’s trial testimony.

We may not reweigh the evidence, however. “[I]t is the general rule that on appeal an appellate court (1) will view the evidence in the light most favorable to the respondent; (2) will not weigh the evidence; (3) will indulge all intendments and reasonable inferences which favor sustaining the finding of the trier of fact; and (4) will not disturb the finding of the trier of fact if there is substantial evidence in the record in support thereof. [Citations.] It is not the province of the reviewing court to analyze conflicts in the evidence. [Citation.] Rather, when a finding of fact is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence contradicted or uncontradicted, which will uphold the disputed finding. [Citation.]” (*Berniker v. Berniker* (1947) 30 Cal.2d 439,

444.) “‘Findings of fact must be liberally construed to support the judgment.’ [Citation.]” (*Gordon v. City Council of Santa Ana* (1961) 188 Cal.App.2d 680, 686.)

II. Breach of Contract with Christian

Judgment was entered in favor of defendants; the judgment incorporated the trial court’s written ruling. The written ruling addressed each cause of action, discussing the relevant evidentiary facts and applying the appropriate law to them. The trial court then set out its findings of ultimate fact and ordered that judgment be entered in favor of defendants. The findings of fact include: “Plaintiff Rodrigues had a binding oral agreement with defendant Christian” and “the contract was breached when plaintiff failed to provide funds to finance the court approved asset purchase of CVP assets by CVPAC.” Plaintiff challenges the latter finding, asserting there was no evidence his contract with Christian required him to personally provide funds to finance the asset purchase. Therefore, he concludes, he did not breach the contract as the court concluded, and he should be able to recover for its breach by Christian.

The first section of the written ruling regarding breach of contract, makes clear that the trial court did not find plaintiff’s contract with Christian required plaintiff to personally fund the purchase. Its discussion contains the following statements. Christian and plaintiff entered into an oral agreement in March 2003. “Christian agreed that plaintiff would receive a fifteen percent share of CVP if plaintiff were to raise sufficient funds to purchase the company out of bankruptcy.” Plaintiff and Christian worked together to attract investors, but their efforts failed. They pursued the asset purchase. “At the eleventh hour, plaintiff failed to raise the funds, choosing not to invest his own funds and failing to attract other investors to fund the asset purchase.... [P]laintiff failed to perform the crucial action on his part, the timely funding of CVPAC.”

In light of this discussion and our obligation to liberally construe the findings in favor of the judgment, we construe the trial court’s finding that plaintiff “failed to provide funds” to mean that plaintiff failed to either raise the needed funds from investors

or invest his own funds. There was ample evidence plaintiff agreed to locate investors or invest himself. Christian testified his agreement with plaintiff was that, if plaintiff could bring in a \$2 million investment and they were successful in buying the company out of bankruptcy, plaintiff would receive a 15 percent interest in the company. He stated it was plaintiff's obligation under the contract to find an investor, and the primary reason for plaintiff's involvement in the transaction was his claimed ability to bring in capital. Christian testified that, as of July 29, 2003, the date the asset purchase was approved, plaintiff had indicated he would be the investor. Sziraki testified she understood plaintiff was to be the investor or locate an investor. Plaintiff conceded in his testimony that one of his primary roles was to locate investment capital. His interrogatory responses indicated that, prior to July 29, 2003, the only capital or financing resources available and committed for CVPAC were his funds, which were available July 17, 2003. Liberally construing the trial court's findings, we conclude the finding that plaintiff "failed to provide funds to finance the court approved asset purchase" is supported by substantial evidence.

Plaintiff seems to assert that there was no substantial evidence supporting the trial court's finding that plaintiff breached the contract, because he brought in Spagnola as an investor. There was evidence Spagnola was an almond grower and a customer of CVP prior to the bankruptcy. He had a good working relationship with Christian and wanted Christian managing the plant, regardless of who owned it. He visited CVP's offices frequently and attended the bankruptcy hearings because, at the time the bankruptcy proceeding was commenced, CVP had possession of 720,000 pounds of Spagnola's almonds for processing. Spagnola was interested in the continuation of CVP's business because it would cost him money to move his almonds from the CVP facility and have them reprocessed elsewhere. Plaintiff led the other participants and the bankruptcy court to believe he would fund the purchase, either personally or through investors. Spagnola testified he did not want the asset purchase to fail at the last minute because plaintiff did

not invest the necessary funds. He made no commitment to plaintiff to participate as an investor in CVPAC. The evidence supported an inference that Spagnola agreed to provide the funds necessary to complete the asset purchase based on a conversation with Sziraki and Ryan, his past relationship with CVP and Christian, and his own interests, rather than based on plaintiff's efforts to locate an investor. Additionally, Spagnola made it clear he was not willing to invest on the terms of the agreement between Christian and plaintiff. He was not willing to agree to plaintiff holding a 15 percent interest in the new corporation; he contemplated owning 100 percent of the corporation if he put up the money for the asset purchase. The evidence did not compel a finding that plaintiff brought Spagnola in as an investor and therefore performed his obligation under the contract.

Plaintiff also argues that the findings of fact are distinct from the court's opinion and, if there is a conflict between the two, the findings control. He contends the trial court's finding was that plaintiff breached the contract with Christian "when plaintiff failed to provide funds to finance the court approved asset purchase"; plaintiff characterizes as opinion the explanation of the transaction in the earlier section of the court's ruling, which clarified that plaintiff was either to invest or to find an investor. Plaintiff argues that the explanatory "opinion" must be disregarded as being in conflict with the findings.

Under current law, when a question of fact is tried, written findings of fact and conclusions of law are not required; a statement of decision, which explains the factual and legal basis of the court's decision on the principal controverted issues, is required only if a party makes a timely request therefor. (Code Civ. Proc., § 632.)⁴ This contrasts with the law prior to 1969, when findings of fact and conclusions of law were required in

⁴ Further statutory references are to the Code of Civil Procedure unless otherwise indicated.

every case involving trial of a question of fact by the court. (See, 7 Witkin, Cal. Procedure (5th ed. 2010) Trial, § 389; *R. E. Folcka Construction, Inc. v. Medallion Home Loan Co.* (1987) 191 Cal.App.3d 50, 53.) The cases plaintiff cites regarding findings of fact and opinions of the court predated this amendment of section 632.

Plaintiff has cited nothing in the record to indicate any request for a statement of decision was made.

“The general rule is that in the absence of a statement of decision in a court trial, the reviewing court must conclude that the trial court made all findings necessary to support the judgment under any theory which was before the court. [Citations.] However, this rule is merely a corollary of the general rule that a judgment is presumed to be correct and must be upheld in the absence of an affirmative showing of error. This presumption applies only on a silent record. [Citations.] In contrast, ‘When the record clearly demonstrates what the trial court did, we will not presume it did something different.’ [Citation.] Thus, even in the absence of a statement of decision, we are not compelled to resort to a presumption if the record adequately demonstrates the legal theory the court applied.” (*Border Business Park, Inc. v. City of San Diego* (2006) 142 Cal.App.4th 1538, 1550 (*Border Business Park*).

What the trial court did and what legal theory it applied may be determined by the reviewing court from the reporter’s transcript or the judgment itself, if that document sets out the legal basis for the trial court’s decision. (*Border Business Park, supra*, 142 Cal.App.4th at p. 1550.)

No statement of decision was requested. After trial, however, the trial court issued a ruling containing the trial court’s version of the facts proven at trial, the applicable law, and its conclusions as to which party or parties prevailed on each cause of action in light of the facts and law. The trial court did not issue an opinion separate from its ruling; the ruling contained the equivalent of a statement of decision. The opinion and the findings of fact plaintiff refers to are both contained in that same ruling. The trial court incorporated this ruling into its judgment, making it clear that this was not a tentative or

preliminary opinion, to be superseded by a later statement of decision or judgment; rather, it was the trial court's expression of the basis of its final judgment.

Plaintiff cites *De Cou v. Howell* (1923) 190 Cal. 741, 751 (*De Cou*), which states: "The findings of fact and conclusions of law constitute the decision which is the final, deliberate expression of the court. To hold that oral or written opinions or expressions of judges of trial courts may be resorted to to overturn judgments would be to open the door to mischievous and vexatious practices." Although, as *De Cou* indicates, the opinion of the trial court cannot be used to impeach or contradict its findings, it can be used to explain or interpret them. (*Distribu-Dor, Inc. v. Karadanis* (1970) 11 Cal.App.3d 463, 468.) Thus, even if plaintiff were correct that the opinion portion of the trial court's ruling cannot be used to contradict the findings of fact, the opinion portion may be used to aid this court in interpreting what the trial court meant by the phrase "failed to provide funds to finance the court approved asset purchase." In light of the discussion in the first portion of the ruling, it is clear the trial court intended that phrase to mean that plaintiff was to provide the funds, either personally or through investors. As previously stated, that finding is supported by substantial evidence.

"[F]indings must be sustained if they are supported by substantial evidence, even though the evidence could also have justified contrary findings." (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 557.) Because the trial court's findings were supported by substantial evidence, plaintiff's insistence that there was an "abundance of credible evidence" showing that plaintiff contracted with Christian to assist in resurrecting CVP from bankruptcy, rather than to provide the financing to do so, is unavailing. Plaintiff has not demonstrated that the trial court's findings of fact were not supported by substantial evidence.

III. Contract with CVPAC

The trial court found plaintiff had no binding agreement with CVPAC. It explained: "[n]o credible evidence was presented to demonstrate any binding agreement

between plaintiff and CVPAC. The evidence showed one agreement existed, that between plaintiff and Christian.” Plaintiff argues that, when a corporation knowingly accepts the benefits of a contract entered into by its promoters prior to its formal existence, the corporation becomes liable as a party to the contract. (*White v. Kaiser-Frazer Corp.* (1950) 100 Cal.App.2d 754, 760.) Based on this rule, he asserts CVPAC accepted the benefits of plaintiff’s contract with Christian, one of the corporation’s promoters, and therefore CVPAC is liable to plaintiff for breach of the contract with Christian.

Plaintiff’s invocation of this rule gains him nothing. Even if CVPAC were bound by Christian’s contract, plaintiff cannot recover from CVPAC for breach of that contract for the same reasons he cannot recover from Christian. By the terms of the contract, Christian was not required to perform by granting plaintiff a 15 percent interest in CVP or a newly formed corporation unless plaintiff provided the necessary funding to revive CVP or successfully purchase its assets. As discussed previously, plaintiff failed to provide the necessary funding; neither Christian nor CVPAC was ever called upon to perform.

DISPOSITION

The judgment is affirmed. Defendants are entitled to their costs on appeal.

HILL, P. J.

WE CONCUR:

KANE, J.

DETJEN, J.