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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

GLOBAL CONNECTOR RESEARCH
GROUP, INC.,

Plaintiff and Respondent,

v.

FRANK FISCHER,

Defendant and Appellant.

G046844

(Super. Ct. No. 06CC08868)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Gregory Munoz, Judge. Affirmed. Request for judicial notice. Denied.

Frank Fischer, in pro. per., for Defendant and Appellant.

Kull + Hall, Robert F. Kull and Kevin P. Hall for Plaintiff and Respondent.

* * *

INTRODUCTION

In *Global Connector Research Group, Inc. v. Fischer* (June 27, 2011, G042673) (nonpub. opn.), we affirmed in part and reversed in part a judgment in favor of Global Connector Research Group, Inc. (Global) and against Apex Equity Partners, Inc. (Apex), Belgravia Capital Corporation (Belgravia), and Frank Fischer. We refer to our prior unpublished opinion as *Global Connector I*. The disposition in *Global Connector I* was set forth in detail. After remand, the trial court carried out that disposition in a second amended judgment.

In this matter, Fischer alone appeals from the second amended judgment. While he argues at length that the second amended judgment is contrary to the jury verdict, he is really challenging *Global Connector I*, which long ago became final. Fischer's appeal borders on the frivolous. We affirm.

SUMMARY OF OUR PRIOR OPINION

The facts are set forth in *Global Connector I*. The following is a summary of our discussion of the issues in that opinion.

1. *Contract-based Causes of Action*. The jury awarded Global \$430,350 for breach of written contract. The jury found Apex liable for breach of oral contract, breach of third party beneficiary contract, and quantum meruit, but found zero damages on those causes of action. Although we concluded Global could not recover for breach of written contract, we upheld the breach of contract damages under the quantum meruit cause of action. We concluded the jury verdicts were ambiguous, Apex and Fischer failed to object to the verdicts, and the trial court correctly interpreted the verdict by concluding the jury intended to award the same damages on all of the contract-based causes of action. We reversed the award of contract-based attorney fees in Global's favor

because Global did not recover for breach of contract. (*Global Connector I, supra*, G042673.)

2. *Fraud/Concealment Cause of Action.* In the verdicts, the jury found Apex and Fischer liable for both intentional misrepresentation and fraudulent concealment. The jury returned a verdict awarding \$150,000 in damages for intentional misrepresentation and another verdict awarding zero damages for fraudulent concealment. We concluded substantial evidence supported the damages for fraud based on fraudulent concealment. The trial court had found the jury verdicts were ambiguous as to whether intentional misrepresentation or fraudulent concealment formed the basis for the award of damages. Neither Apex nor Fischer asked for the jury to be polled or objected to the verdicts. We concluded: “In approving the judgment, the trial court reasonably concluded the verdict forms reflected the jury’s intent to award the same damages for both intentional misrepresentation and concealment. It was reasonable to conclude the jury intended Global to recover \$150,000 on the fraud cause of action, and found zero damages for concealment only because it had already awarded Global those damages for intentional misrepresentation.” (*Global Connector I, supra*, G042673.)

3. *Interference with Prospective Economic Advantage.* The jury awarded Global \$50,000 in damages on its cause of action against Fischer for interference with prospective economic advantage. We concluded Global could not recover under that cause of action and reversed. (*Global Connector I, supra*, G042673.)

4. *Injunction Under Business and Professions Code Section 17200.* The trial court issued a permanent injunction against Apex and Fischer under Global’s cause of action for unfair competition in violation of Business and Professions Code section 17200. We concluded Apex and Fischer engaged in unlawful acts or practices by committing fraudulent concealment, and those unlawful acts or practices were sufficient to serve as the basis for an injunction under section 17200. (*Global Connector I, supra*, G042673.)

5. *Punitive Damages.* We concluded substantial evidence supported the jury’s award of \$125,000 in punitive damages against Apex and Fischer based on fraudulent concealment. (*Global Connector I, supra*, G042673.)

6. *Apex’s Cross-complaint.* We affirmed the trial court’s order granting Global’s motion for nonsuit on Apex’s cross-complaint for interference with prospective economic advantage, intentional misrepresentation, and negligent misrepresentation. (*Global Connector I, supra*, G042673.)

7. *Addition of Belgravia and Fischer as Judgment Debtors.* After entry of judgment, the trial court granted Global’s motion to add Belgravia and Fischer as judgment debtors pursuant to Code of Civil Procedure section 187. The trial court found that Fischer and Belgravia were the alter egos of Apex. We reversed. As a consequence, Fischer is not a judgment debtor on those parts of the judgment against Apex alone. (*Global Connector I, supra*, G042673.)

8. *The Disposition.* The disposition states, in relevant part: “We reverse the following: [¶] 1. . . . [T]hose portions of the Amended Judgment awarding Global attorney fees (Amended Judgment, paragraph (8), page 4, lines 7-9); [¶] 2. The portions of the Amended Judgment awarding Global damages for interference with prospective economic advantage (Amended Judgment, paragraph (4), page 3, lines 19-22); and [¶] 3. The order granting the motion to add Belgravia and Fischer as additional judgment debtors and those portions of the Amended Judgment awarding judgment against Belgravia and against Fischer as judgment debtors to Apex [¶] In all other respects, and except as expressly provided, the judgment is affirmed. . . .” (*Global Connector I, supra*, G042673.)

In response to petitions for rehearing, we modified paragraph 1 of the disposition in a manner that is not relevant to this appeal.

Fischer filed a petition for review of our opinion. The California Supreme Court denied the petition for review. We issued the remittitur on October 11, 2011. Later, the United States Supreme Court denied Fischer's petition for a writ of certiorari and Fischer's petition for rehearing of denial of certiorari.

PROCEEDINGS FOLLOWING REMAND

Following remand to the trial court, Global submitted a proposed amended judgment, paragraph (3) of which stated: "That Judgment, per the verdicts of the jury, is awarded in favor of Fleck^[1] and against Apex on the sixth cause of action (intentional misrepresentation and concealment) of the Complaint jointly and severally against Apex and Fischer for the sum of \$150,000.00."

Fischer filed objections to the proposed amended judgment. He asserted the words "intentional misrepresentation" in the proposed amended judgment should be deleted because "the Court of Appeal Opinion did not affirm on the basis of misrepresentation but rather only on the basis of concealment."

The trial court modified the proposed amended judgment by striking the words "intentional misrepresentation and" and inserting the word "fraudulent" before the word "concealment." The court made a few more changes, none relevant here, and, on the caption page, struck "[PROPOSED]" before the words "AMENDED JUDGMENT AFTER APPEAL" and inserted the word "Second," thereby creating the second amended judgment. On March 16, 2012, the trial court signed the second amended judgment and it was entered on the same day.

Still unsatisfied, Fischer moved to amend or modify the second amended judgment by striking the word "fraudulent" that the court had inserted before the word "concealment." He then asserted no damages should be awarded for concealment

¹ Global did business under the name Fleck Research. Many documents in the record use the name Fleck Research instead of Global. (*Global Connector I, supra*, G042673.)

because the jury found zero damages on that claim. He also sought to have the permanent injunction deleted from the second amended judgment. Fischer filed a notice of appeal from the second amended judgment before the trial court ruled on his motion. No ruling on Fischer's motion to amend or modify the second amended judgment appears in the record.²

DISCUSSION

The gist of Fischer's argument is this: The second amended judgment awards \$150,000 in damages for fraudulent concealment. The jury awarded zero damages on the verdict for concealment. The jury awarded \$150,000 in damages on the verdict for intentional misrepresentation, but, Fischer claims, that cause of action has been "entirely removed and expunged" from the judgment. He argues the judgment against him for concealment must be reversed for a host of statutory, constitutional, and jurisprudential reasons. He argues that if the judgment for concealment is reversed, then the judgment for punitive damages and the permanent injunction under Business and Professions Code section 17200 must also be reversed.

The sixth cause of action for fraud was based on claims of both intentional misrepresentation and concealment. The jury was asked to render separate verdicts on the two claims. The jury returned verdicts finding liability for both intentional misrepresentation and concealment. The jury awarded Global \$150,000 for intentional

² In the respondent's brief, Global requests that we take judicial notice of a minute order, filed August 23, 2012, in *Global Connector Research Group Inc. v. Apex Equity Partners, Inc.* (Super. Ct. Orange County, No. 06CC08868), a copy of which is attached to the respondent's brief as exhibit A. (Evid. Code, §§ 452, 459, subd. (a).) Alternatively, Global moves to augment the record with this document. We deny Global's request for judicial notice or motion to augment the record because Global did not file an application or motion in compliance with California Rules of Court, rules 8.50 and 8.54(a).

misrepresentation, but awarded zero damages for concealment. (*Global Connector I, supra*, G042673.)

In *Global Connector I*, we stated: “Apex and Fischer argue the judgment against them for damages based on fraudulent concealment must be reversed because the jury found zero damages for that claim. The trial court treated the fraud/concealment cause of action in a similar fashion as the contract-based causes of action and quantum meruit cause of action: The court awarded judgment ‘in favor of [Global] and against Apex on the sixth cause of action (intentional misrepresentation and concealment) of the Complaint jointly and severally against Apex and Fischer for the sum of \$150,000.00.’ [¶] As with the contract-based causes of action, the trial court found the jury verdicts were ‘somewhat ambiguous’ as to which causes of action formed the basis for the award of damages. Since neither Apex nor Fischer asked the jury to be polled or objected to the verdicts before the jury was discharged, the trial court was called upon to interpret the verdicts for intentional misrepresentation and concealment (*Woodcock v. Fontana Scaffolding & Equip. Co.* [(1968)] 69 Cal.2d [452,] 456), and did so correctly. In approving the judgment, the trial court reasonably concluded the verdict forms reflected the jury’s intent to award *the same damages for both intentional misrepresentation and concealment*. It was reasonable to conclude the jury intended Global to recover \$150,000 on the fraud cause of action, and found zero damages for concealment only because it had already awarded Global those damages for intentional misrepresentation.” (*Global Connector I, supra*, G042673, italics added.)

Thus, in *Global Connector I*, we rejected the argument the verdict’s award of \$150,000 in damages was only for intentional misrepresentation. We concluded that the trial court correctly interpreted the jury verdict as awarding \$150,000 in damages on both the intentional misrepresentation claim and on the concealment claim and that the jury intended Global to recover that amount on the fraud cause of action. Following remand, the trial court has jurisdiction only to act in accordance with the directions of the

reviewing court. (*Ayyad v. Sprint Spectrum, L.P.* (2012) 210 Cal.App.4th 851, 859-860.) Since we affirmed the judgment on the sixth cause of action based on fraudulent concealment, the trial court carried out our directions by signing the second amended judgment awarding \$150,000 on the sixth cause of action.

Fischer's appeal is a backhanded way of challenging *Global Connector I*. Fischer spends literally dozens of pages in his opening and reply briefs repeating and dwelling on arguments we rejected in that opinion. Despite denial of both his petition for review and petition for a writ of certiorari, he continues to argue the trial court violated his constitutional rights, engaged in "judicial activism," and erred by "disregarding an unambiguous special jury verdict of zero damages" and awarding damages for fraudulent concealment. These arguments were not convincing when made in the prior appeal, we rejected them in *Global Connector I*, and, at this stage, they are close to being frivolous.

Fischer challenges the permanent injunction under Business and Professions Code section 17200 on the additional ground he submitted a declaration to the trial court that showed the injunction is no longer warranted. Fischer's declaration was submitted with the motion to amend or modify the second amended judgment, which was made after that judgment was entered. No ruling on the motion appears in the record. The second amended judgment as entered correctly includes the permanent injunction.

Finally, we categorically reject Fischer's argument that the trial court did not follow the directions of our prior opinion. The amendments and modification requested by Fischer, which would have left Global with no recovery on the sixth cause of action, were contrary to our directions in *Global Connector I* and, if made, would have been outside the scope of the trial court's jurisdiction on remand.

DISPOSITION

The judgment is affirmed. Respondent to recover costs incurred on appeal.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.