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

WILLIAM CHENG et al.,

Plaintiffs and Appellants,

v.

DENNIS C. BRENING et al.,

Defendants and Respondents.

H037702

(Santa Clara County

Super. Ct. No. CV149131)

This action concerns a challenge to the nonjudicial foreclosure sale of rental residential property in San Jose which had been owned by William Cheng and Janet Cheng (collectively, appellants). They appeal from a judgment entered against them after a court trial. We will affirm the judgment and the subsequent order granting attorney fees and costs.

PROCEDURAL BACKGROUND

It is apparent that on August 5, 2009, appellants filed a complaint captioned as one for declaratory relief, injunctive relief, cancellation of a notice of default, and slander of title.¹ The named defendants were Dennis C. Brening (Brenning), The Dennis C. Brening Trust (Trust), Verdeo Capital Group (Verdeo), and Placer Foreclosure, Inc. (Placer).

¹ The complaint is not part of the appellate record. Our recital of its filing date and substance is based upon its description by the court and respondents' counsel at the trial.

(Hereafter, the defendants are referred to collectively as respondents.)² At some time not disclosed in the record,³ respondents moved for summary judgment or, in the alternative, for summary adjudication. On October 6, 2011, the court denied the motion for summary judgment but granted summary adjudication as to the third and fourth causes of action of the complaint.

A court trial on the remaining claims took place on October 31, 2011, and November 1, 2011. After the parties submitted the matter, the court entered judgment on November 3, 2011, concluding that appellants should take nothing on their complaint. The court held further that respondents were prevailing parties entitled to statutory costs with respondents “to file [a] timely cost bill and/or motion for attorneys^[s] fees.” Appellants filed a timely appeal of the judgment.

DISCUSSION

I. *Appellants’ Noncompliant Briefs*

Before addressing any substantive issues that may have been raised by appellants, we are compelled to identify the serious procedural deficiencies existing in their filings with this court. The opening brief is not in compliance with the California Rules of Court.⁴ The brief does not include a requisite summary of the relevant procedural history of the case, including a plain statement of “the nature of the action, the relief sought in the trial court, and the judgment or order appealed from,” all as required by rule

² It is apparent that the complaint also named First American Title Company, but First American was never served with the summons and complaint and did not appear in the action.

³ Appellants, who elected under California Rule of Court, rule 8.122 to have a clerk’s transcript prepared, did not identify any of respondents’ summary judgment papers to be included by the clerk as part of the record.

⁴ Further rule references are to the California Rules of Court unless otherwise specified.

8.204(a)(2)(A). Similarly, the brief fails to include a plain statement of appealability, i.e., that “the judgment appealed from is final, . . .” (Rule 8.204(a)(2)(B).)

More significantly, the opening brief contains minimal citation to the record in support of appellants’ assertions of fact and no citation to the record concerning procedural matters allegedly occurring below, in violation of rule 8.204(a)(1)(C). (See *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 800-801 [failure to include citations to appellate record in brief may result in forfeiture of claim].) The very few citations to the record which appear in the opening brief⁵ are noncompliant with the Rules of Court. They consist of block references to a group of pages of the reporter’s transcript, rather than a reference to the specific page or pages upon which appellants claim that the fact stated is found. This is unhelpful to this court and is an unacceptable appellate practice. “Plaintiff’s single citation to a reporter’s transcript with block page references, for example, ‘RT Vol 6, 2480–2501,’ frustrates this court’s ability to evaluate which facts a party believes support his position, particularly when a large portion of that citation referred to points that appeared to be irrelevant.” (*Nazari v. Ayrapetyan* (2009) 171 Cal.App.4th 690, 694, fn. 1; see also *Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205 [“exact page citations” to the appellate record are required].)

Further, appellants have taken the liberty of appending some 10 pages of documents to their opening brief and nine pages to their reply brief, another procedural violation of appellate practice, because it is unclear whether these documents are indeed part of the record below. (Rule 8.204(d); see *Doers v. Golden Gate Bridge etc. Dist.*

⁵ There are a total of six citations to the reporter’s transcript: pages 84-119 (cited twice), pages 127-145 (cited twice), pages 84-91, and pages 84-119. We acknowledge that appellants have attempted to cure this deficiency by offering several pinpoint citations to the record in their reply brief; however, this does not excuse appellants’ noncompliance with the Rules of Court, particularly since any pinpoint citations to the record should have been in the opening brief so that respondents could have had the opportunity to address them in their brief.

(1979) 23 Cal.3d 180, 184, fn. 1 [documents not presented to trial court generally may not be included in record on appeal].) We will disregard any factual assertions made by appellants which are not contained in the record and we will also disregard any attachments to their briefs where we cannot determine that the documents were part of the record below. (See rule 8.204(a)(2)(C); *McOwen v. Grossman* (2007) 153 Cal.App.4th 937, 947; *Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 632.)

The failure to cite to the record connotes another significant problem with the appeal: appellants' failure to procure an adequate appellate record. The court has gleaned that their challenges on appeal relate to (1) the court's granting of summary adjudication in favor of respondents as to two of the claims, (2) the court's later entry of judgment adverse to appellants after a court trial, and (3) the court's postjudgment award of attorney fees. Appellants, however, have not presented the relevant documents from the court below necessary to adequately address this appeal. Part of the appellant's burden in showing error is to provide an adequate record from which the claimed error may be demonstrated; the failure to present such a record requires that the issue be resolved against the appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; see also *Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259 [failure of appellant to include transcript of hearing foreclosed court's review of claim of error].) As we discuss below, appellants' failure to procure an adequate record precludes our review of their challenge to the summary adjudication order.

We acknowledge that appellants are representing themselves in connection with this appeal and therefore have not had formal legal training that would be beneficial to them in advocating their position. However, the rules of civil procedure apply with equal force to self-represented parties as they do to those represented by attorneys. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) Thus, "[w]hen a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other

litigants and attorneys.” (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638; see also *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

Based upon the wholly noncompliant nature of appellants’ briefs, it would be appropriate to entirely disregard their contentions as having been forfeited. (See *State Comp. Ins. Fund v. WallDesign Inc.* (2011) 199 Cal.App.4th 1525, 1528-1529, fn. 1.) We are, however, able to glean the essential claims of error appellants make relative to the judgment. Therefore, in the interests of addressing the merits of the case—and without impliedly minimizing the significance of appellants’ noncompliance with appellate procedures—we will, to the extent possible, address below the contention by appellants that the judgment must be reversed due to insufficiency of the evidence.

II. *Summary Adjudication Order*

Appellants appear to take issue with the court’s order granting summary adjudication. Although the order disposed of the third (injunctive relief) and fourth (slander of title) causes of action, appellants’ sole argument is directed toward the summary adjudication of the fourth cause of action. They have failed, however, to produce an adequate record permitting this court to evaluate that contention. They have failed to include any of the papers (either moving or reply) filed by respondents in support of the motion. Nor have they included the reporter’s transcript of the hearing on the motion. And they have not included a copy of the complaint, which is critical, since “[t]he pleadings determine the issues to be addressed by a summary judgment motion [citations].” (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 84; see also *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381 [“the role of the pleadings [serve] as the outer measure of materiality in a summary judgment proceeding”].)

The party challenging a ruling by the trial court has the burden of showing reversible error by an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) Because there is an inadequate record, we must presume any matters that could have been

presented to support the trial court's judgment were in fact presented, and may affirm the trial court's determination on that basis. (*Bennett v. McCall* (1993) 19 Cal.App.4th 122, 127.) We will therefore reject any challenge to the court's order granting summary adjudication of the third and fourth causes of action.

III. *Standard of Review*

Appellants do not identify the standard of review applicable to this appeal. But their challenges to the judgment, insofar as they relate to the court's conclusion after trial,⁶ concern their claims that (1) the notice of default was wrongful, (2) there were no missing payments in March and April 2009 upon which the notice of default was based, (3) appellants paid off the loan in full before the trustee's sale, and (4) certain documents created in connection with the trustee's sale (i.e., the certificate of sale and the trustee's deed) were "fraudulent." It is clear that these challenges relate to the court's factual findings in support of the judgment and that the "deferential" (*Patterson Flying Service v. Department of Pesticide Regulation* (2008) 161 Cal.App.4th 411, 419) substantial evidence standard of review described below applies to appellants' challenges.

It is a fundamental proposition that a judgment or order is presumed correct on appeal. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) " 'All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is appellant's burden to overcome this presumption of correctness, which burden includes providing an adequate record demonstrating error. (*Ibid.*; see also Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2012) ¶ 8:17, pp. 8-5 to 8-6, rev. #1, 2012.) The doctrine of implied findings is "a natural and

⁶ As noted in part II, *ante*, any challenge to the court's order granting summary adjudication may not be pursued by appellants due to their failure to provide an adequate record.

logical corollary” to (1) the presumption of the correctness of the judgment, (2) the fact that all intendments and presumptions are made in favor of that correctness, and (3) appellant’s bearing the burden of demonstrating error with an adequate record.

(*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 58 (*Fladeboe*)).

This “doctrine requires the appellate court to infer the trial court made all factual findings necessary to support the judgment. [Citation.]” (*Ibid.*; see *Michael U. v. Jamie B.* (1985) 39 Cal.3d 787, 792-793, superseded by statute on other grounds as stated in *In re Zacharia D.* (1993) 6 Cal.4th 435, 448-449.) The doctrine of implied findings applies when—as is the case here—there is no statement of decision rendered. (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 267.)⁷

A disputed factual issue that has been resolved by the trial court is reviewed on appeal under the substantial evidence standard. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.) As explained by the Supreme Court a number of years ago, “In reviewing the evidence on such an appeal all conflicts must be resolved in favor of the respondent, and all legitimate and reasonable inferences indulged in to uphold the verdict if possible. It is an elementary, but often overlooked principle of law, that when a verdict 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 support the conclusion reached by the jury.

⁷ “In a nonjury trial the appellant preserves the record by requesting and obtaining from the trial court a statement of decision pursuant to California Code of Civil Procedure section 632 [and rule 3.1590]. The statement of decision provides the trial court’s reasoning on disputed issues and is our touchstone to determine whether or not the trial court’s decision is supported by the facts and the law.” (*Slavin v. Borinstein* (1994) 25 Cal.App.4th 713, 718.) Here, the record does not disclose that either party requested a statement of decision in accordance with Code of Civil Procedure section 632. The parties therefore waived such statement of decision. (*In re Marriage of Jeffries* (1991) 228 Cal.App.3d 548, 554, fn. 4.) Without a statement of decision, a reviewing court looks only to the judgment to determine error. (*In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 648.)

When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court.

[Citations.]” (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429; see also *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651-652.) Although the record must be reviewed in its entirety, “all of the evidence must be examined, but it is not weighed. All of the evidence most favorable to the respondent must be accepted as true, and that unfavorable discarded as not having sufficient verity, to be accepted by the trier of fact. If the evidence so viewed is sufficient as a matter of law, the judgment must be affirmed.” (*Estate of Teel* (1944) 25 Cal.2d 520, 527.)

It is the appellant’s burden to establish that the judgment is not supported by substantial evidence. (*Adoption of Allison C.* (2008) 164 Cal.App.4th 1004, 1011.) In meeting that burden, the appellant is charged with presenting an adequate record from which the error is demonstrated. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.) And in assessing whether substantial evidence supports the trial court’s factual findings, we consider the evidence in the light most favorable to the party prevailing below. (*Plumas County Dept. of Child Support Services v. Rodriguez* (2008) 161 Cal.App.4th 1021, 1026.)

IV. *The Judgment Entered After Court Trial*

A. *Procedural Bar to Claim of Error*

We have noted (see pt. I, *ante*) the noncompliant nature of appellants’ briefs and their failure to procure an adequate record. We identify here an additional procedural defect as it relates specifically to appellants’ challenge to the sufficiency of the evidence.

“ ‘The rule is well established that a reviewing court must presume that the record contains evidence to support every finding of fact, and an appellant who contends that some particular finding is not supported is required to set forth in his brief a summary of the material evidence upon that issue. Unless this is done, the error assigned is deemed to be waived. [Citation.] It is incumbent upon appellants to state fully, with transcript

references, the evidence which is claimed to be insufficient to support the findings.’ ” (*In re Marriage of Fink* (1979) 25 Cal.3d 877, 887; see also *Nwosu v. Uba, supra*, 122 Cal.App.4th at p. 1246 [“attack on the evidence without a fair statement of the evidence is entitled to no consideration when it is apparent that a substantial amount of evidence was received on behalf of the respondent”].) Here, appellants have failed to provide a summary of the material evidence (including evidence favorable to respondents) concerning their claims litigated in the court trial, including citations to the record. We may therefore treat their claim of error as waived. (*In re Marriage of Fink*, at p. 887.) But even were we to consider appellants’ challenge to the judgment as having not been waived, as discussed below, it nonetheless lacks merit.

B. *Merits of Challenge to Sufficiency of Evidence*

From the record before us—and without the benefit of having a copy of the complaint—we understand that the principal claim tried by the court concerned appellants’ contention that the notice of default upon which the foreclosure sale was based was defective. This contention appears to be the basis for appellants’ claims asserted in the first and second causes of action of the complaint (for declaratory relief and cancellation of notice of default, respectively), which claims were the subject of the court trial.

The evidence at trial was that in or about May 2008, appellants, as borrowers, executed a promissory note in the principal sum of \$225,000 in favor of the Trust, which was the lender. The loan was for a two-year term and required monthly payments of \$2,250, due on the first day of each month. The note was secured by a deed of trust encumbering non-owner occupied residential real property located at 5094 Roeder Road, San Jose, California (Roeder property). Verdeo was named trustee under the deed of trust, and the Trust was the beneficiary. Appellants signed a statement at the time of the loan that they intended to use some of the loan proceeds to improve the Roeder property.

According to Cary Long of Verdeo, “[t]his was a condition of the approval [of the loan].” No improvements to the property occurred after the loan was made.

Appellants failed to make the monthly payments under the note for March and April 2009. Verdeo, as trustee, sent out two separate notices to appellants in March 2009 concerning their failure to make the March 2009 payment. Having not received the March and April 2009 monthly payments, Verdeo referred the matter to Placer, which commenced foreclosure proceedings on April 16, 2009. A notice of default was prepared and mailed to appellants by Placer, indicating that as of April 21, 2009, appellants owed \$6,867.50 under the note and deed of trust. This amount consisted of two monthly payments of \$2,250, late charges of \$675, and accrued trustee’s fees, costs and expenses of \$1,692.50. At the time the notice of default was mailed and recorded, no payments from appellants for March and April 2009 had been received.⁸ According to Placer’s president, Robbins, there was no irregularity in the notice of default.

The nonjudicial foreclosure sale occurred on September 8, 2009, in San Jose. The property was sold to the beneficiary, the Trust. Prior to the foreclosure sale, appellants failed to make any payments required to cure the default. On September 11, 2009, Long, on behalf of Verdeo, signed a trustee’s deed upon sale relative to the Roeder property, conveying the property to the Trust.

As demonstrated by our recitation in the preceding three paragraphs of the evidence at trial, the court’s implied finding that there was no irregularity in connection with the notice of default was supported by substantial evidence. Notwithstanding Janet Cheng’s contrary testimony that no payments were owing at the time of the notice of default, the representatives of Verdeo and Placer (Long and Robbins, respectively)

⁸ Ron Robbins, president of Placer, testified that there was a check dated May 7, 2009, which was returned because “it was approximately \$2800 short of the amount it needed to be.”

testified—and reiterated that testimony repeatedly on cross-examination by Janet Cheng—that the March and April 2009 payments had not been received at the time the default notice was served (and were not received at any time thereafter). And notwithstanding Janet Cheng’s testimony that she did not receive the two letters preceding the notice of default indicating nonpayment on the loan or the notice of default itself, respondents presented evidence that Verdeo sent two separate default notices to appellants by regular and certified mail in March 2009 (the certified second notice being signed for by appellants), and sent the notice of default.

Further, although Janet Cheng testified that she was told by Long in September that the trustee’s certificate of sale was “cancelled,” both Long and Robbins testified repeatedly that there was never a cancellation of the trustee’s sale or the trustee’s deed and they never informed appellants of any such alleged cancellation. And notwithstanding Janet Cheng’s testimony that she “pa[id] off the mortgage” and therefore the foreclosure was improper, Long testified on several occasions that appellants did not pay off the loan at any time.

“A nonjudicial foreclosure sale is accompanied by a common law presumption that it ‘was conducted regularly and fairly.’ [Citations.] This presumption may only be rebutted by substantial evidence of prejudicial procedural irregularity. [Citation.] . . . It is the burden of the party challenging the trustee’s sale to prove such irregularity and thereby overcome the presumption of the sale’s regularity. [Citation.]” (*Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1258; see also *6 Angels, Inc. v. Stuart-Wright Mortgage, Inc.* (2001) 85 Cal.App.4th 1279, 1284.) There was substantial evidence supporting the court’s implied findings that there were no irregularities with respect to the notice of default or the foreclosure sale itself. Accordingly, we conclude that appellants’ attack on the judgment—even were we to ignore the significant procedural shortcomings of their appeal—must fail.

V. *Postjudgment Award of Attorney Fees*

Appellants contend in their briefs that the court abused its discretion in “award[ing] a huge amount of attorney fees to [respondents] . . .” We reject this challenge to an apparent postjudgment order entered in April 2012 awarding \$60,432 attorney fees and costs in favor of Brening and the Trust.⁹

A conclusory presentation in an appellate brief without argument or application of pertinent law to the circumstances of the case is inadequate, and any unsupported contentions may be deemed waived. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 (*Benach*); see also *In re S.C.* (2006) 138 Cal.App.4th 396, 410.) Here, other than making the conclusory assertion that the attorney fee award constituted an abuse of discretion, appellants make no argument and cite no authority in support of the claim. We therefore conclude that the challenge is waived. (*Benach*, at p. 852.)

DISPOSITION

The judgment and the subsequent order awarding attorney fees and costs are affirmed.

⁹ Appellants attached to their reply brief an order awarding attorney fees and costs filed in the superior court in this action on April 20, 2012. Assuming this to be a validly entered order—and we have no reason to doubt that it is, since respondents have not advised this court to the contrary, by motion to strike or otherwise—the order is technically reviewable herein, even though appellants did not file a separate notice of appeal from this postjudgment order. (*R.P. Richards, Inc. v. Chartered Construction Corp.* (2000) 83 Cal.App.4th 146, 158; *Grant v. List & Lathrop* (1992) 2 Cal.App.4th 993, 998.)

Márquez, J.

WE CONCUR:

Premo, Acting P.J.

Mihara, J.