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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THOMASS DEACON BLAQUELOURDE, Plaintiff and Appellant, v. JAMES PATRICK TANNER et al., Defendants and Respondents.	A126731 (Humboldt County Super. Ct. No. DR070898)

Thomass Deacon Blaquelourde filed suit against James Tanner, Anna Ball (respondents) and Rick Hoss in Humboldt County over a real property dispute. The trial court dismissed the suit after several successful demurrers and Blaquelourde's failure to post an undertaking pursuant to Code of Civil Procedure section 1030.[1] Because Blaquelourde has neither challenged the legal basis for the demurrers in his appellate briefs nor provided us an adequate record for review, we affirm.

BACKGROUND

The facts of the underlying dispute between Blaquelourde, respondents and Hoss[2] are not relevant to the issues presented in this appeal. Blaquelourde filed suit in November 2007. There followed a series of demurrers and motions to strike, which culminated with an order sustaining respondents' demurrer to Blaquelourde's fourth

[1] All further statutory references are to the Code of Civil Procedure.

[2] Variably spelled "Haas." As it is unclear which spelling is correct, we will use "Hoss" to conform to the usage in the notice of appeal.

amended complaint without leave to amend. Although the court had granted Blaquelourde a continuance to file a late opposition to the demurrer to the fourth amended complaint, he failed to either do so or attend the hearing.

On the same day, the court granted respondents' motion to dismiss the action for Blaquelourde's failure to file a court-ordered undertaking pursuant to section 1030. The court set a September 21, 2009 dismissal hearing as to Hoss, the only remaining defendant. On September 21, the court noted the case had been dismissed without prejudice as to respondents and, when Blaquelourde failed to appear at the dismissal hearing, dismissed the action without prejudice as to Hoss as well.

Judgment of dismissal in favor of Hoss was entered on September 23, 2009. Noting that the judgment failed to dispose of the action in its entirety, respondents asked the court to correct what was apparently a clerical error in the judgment "[b]ecause the plaintiff's case against James Patrick Tanner or Anna Ball has been dismissed and a demurrer sustained without leave to amend." On November 5, 2009, the court entered an amended judgment of dismissal as to all defendants.

Blaquelourde filed this appeal on October 5, 2009, designating it as from a judgment of dismissal after an order sustaining a demurrer and from a judgment pursuant to section 1030. We construe it as an appeal from the final judgment of dismissal as to all defendants.

DISCUSSION

" 'When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.' " (*Stanton Road Associates v. Pacific Employers Ins. Co.* (1995) 36 Cal.App.4th 333, 340-341.)

Here, our careful and thorough examination of Mr. Blaquelourde's briefs yields the inescapable conclusion that he has failed to address the order sustaining the demurrer

that is one of two independently sufficient bases for the judgment of dismissal.[3] While Blaquelourde argues in his reply brief that the judgment of dismissal was solely due to his inability to post security as required by the section 1030 motion and not due to the demurrer, he is mistaken. The amended judgment makes no such distinction. It states in its entirety: "Upon the complaint of Thomass Blaquelourde, filed herein as amended, [¶] Judgment is hereby entered in favor of defendants, James Patrick Tanner, Anna Ball, and Rick Hoss (named herein as Rick Haas), and against plaintiff, Thomass Blaquelourde. Plaintiff shall take nothing by way of his complaint. The foregoing action is dismissed with prejudice as to defendants, James Patrick Tanner and Anna Ball. The foregoing action is dismissed without prejudice as to defendant Rick Hoss (named herein as Rick Haas). The prevailing defendants are awarded their costs of suit." It is settled law that an appellate court will affirm the ruling of the trial court on any proper basis

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[3] Blaquelourde's opening brief identifies the following claims of error by the trial court: "The court erred abusing its discretion in dismissing the suit when plaint[i]ff had relocated to California, rendering the statute moot and inapplicable . . . . The court erred abusing its discretion by ignoring plaintiff's demonstrated indigency and *in forma pauperis* status creating manifest injustice. [¶] The court erred abusing its discretion in ruling defendants had a reasonable [likelihood] to prevail when no evidence so indicates. [¶] The court erred abusing its discretion by ignoring cited case law regarding dismissal and showing of indigency in requirement of an undertaking. [¶] The court erred abusing its discretion in allowing counsel for defendants to make bad faith assertions, imposing sanctions when answers to request for admission were timely served on August 16, 2008 [Proof of service by LUCY GREGER dated 8/16.2008 and actual mailing witnessed by plaintiff] said answers (statements obviously concealed by counsel) and various other bad faith statements and insinuations. [¶] The court erred abusing its discretion in failure to reduce amount of bloated legal fees estimated, in that defendant Ball has no claim for fees or undertaking, even though her larger loan purchased the first deed of trust and Tanner's promissory note has not ripened, nor has he complied with [its] foreclosure terms. [¶] The court erred in awarding <u>defendants</u> attorney's fees when only defendant Tanner has even a colorable claim to fees and costs predicated solely on deed of trust & assignment of rents. [¶] The court erred abusing its discretion in failure to consider equity matters which are flexible and need not be those specifically pled. [¶] The court erred in failing to consider plaintiff's repeated demands for a balance due (accounting) in order to repay the loans. Plaintiff was at that time prepared to repay the loans at interest. [¶] The court erred in failing to consider the terms of the promissory note and that defendant Tanner **<u>complied with none</u>** of its terms."

presented by the record. (*Cates v. California Gambling Control Com.* (2007) 154 Cal.App.4th 1302, 1312.) As the judgment is independently supported—and compelled—by the order sustaining the demurrer without leave to amend, Blaquelourde's failure to challenge the ruling on demurrer is fatal to his appeal.

It is equally fatal to Blaquelourde's appeal that the record in this court fails to include even one of the five complaints he filed in the superior court. Blaquelourde concedes they were omitted from the clerk's transcripts and "has no theory as to why said complaints are not included." This omission would make it impossible for us to review the trial court's ruling sustaining the demurrer even if Blaquelourde's brief included any challenge to it. " ' "It is elementary that the burden is on an appellant to show sufficient basis for the reversal of the order or judgment from which he appeals." . . . "In the absence of a contrary showing in the record, all presumptions in favor of the action of the trial court will be indulged by an appellate court." ' " (*Buckhart v. San Francisco Residential Rent etc., Bd.* (1988) 197 Cal.App.3d 1032, 1036; see also *Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119-1120 [inadequate briefing]; *Cosenza v. Kramer* (1984) 152 Cal.App.3d 1100, 1102 [inadequate record].) "It is the duty of counsel to refer the reviewing court to the portion of the record which supports appellant's contentions on appeal. [Citation.] If no citation 'is furnished on a particular point, the court may treat it as waived.' " (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) Our Supreme Court has made it clear that pro per litigants are held to the same standards as those represented by lawyers. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

Finally, Blaquelourde touches on many other points whose significance to either the ruling on the demurrer or the motion for an undertaking are unclear. For example, he argues defendants wrongfully prevented him from repaying a loan by refusing to provide an accounting; accuses opposing counsel of committing "perpetual perjury" and engaging in various other misdeeds, including stealing Blaquelourde's evidence; and claims the trial court ruled on critical motions after being "disqualified by a 170.6 motion." These and other claims lack adequate references to the record in this case, and are bereft of

cogent argument relating the cited legal principles to the challenged rulings. Faced with such inadequate briefing, we deem these assertions abandoned for purposes of appeal. (*Berger v. Godden, supra,* 163 Cal.App.3d at pp. 1119-1120; *Strutt v. Ontario Sav. & Loan Assn.* (1972) 28 Cal.App.3d 866, 873; *Fox v. Erickson* (1950) 99 Cal.App.2d 740, 742; see generally 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 589, pp. 667-668; § 594, p. 671.)[4]

DISPOSITION

The judgment is affirmed.

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Siggins, J.

We concur:

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Pollak, Acting P.J.

_____
Jenkins, J.

[4] Blaquelourde has filed a motion to augment the record on appeal with nine documents, seven of which appear not to have been filed in the trial court until after entry of judgment, which he says are relevant to the court's ruling on the section 1030 motion. The augmentation request is denied because (1) the documents have no claimed relevance to the ruling on the demurrer, and therefore cannot aide Blaquelourde's appellate arguments (see *People v. Gaston* (1978) 20 Cal.3d 476, 482); and (2) as to seven of the nine specified documents, there is no indication that these were before the trial court when it ruled. (See *Rollins v. City and County of San Francisco* (1974) 37 Cal.App.3d 145, 147-148.)