

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

CRAIG ALEXANDER,

Plaintiff and Appellant,

v.

CODEMASTERS GROUP LIMITED et al.,

Defendants and Respondents.

F038832

(Super. Ct. No. CV06406)

**ORDER MODIFYING OPINION
AND DENYING REHEARING
[NO CHANGE IN JUDGMENT]**

THE COURT:

It is ordered that the opinion filed herein on November 15, 2002, and reported in the Official Reports [___ Cal.App.4th ___] be modified in the following particulars:

1. Under the heading **PROCEDURAL BACKGROUND**, in the fourth paragraph beginning “Mr. Wheelwright’s deposition” (p. 3), after the third sentence, insert the following:

At the beginning of the hearing, the superior court stated, “I’m going to only consider relevant evidence.” Counsel for Codemasters did not orally request specific rulings on the evidentiary objections and the superior court said nothing further about the evidentiary objections of Codemasters.

2. Under the heading **PROCEDURAL BACKGROUND**, in the fifth paragraph beginning “Judgment was entered” (p. 3), the fourth sentence is deleted and the following inserted in its place:

Alexander’s notice of appeal and appellate briefs do not directly challenge any purported evidentiary rulings of the superior court.

3. Under the heading **FACTS**, in the 11th paragraph beginning “In paragraph 10” (p. 5), delete footnote 2, which will require renumbering of all subsequent footnotes.

4. Under the heading **FACTS**, in the 16th paragraph beginning “Alexander’s stock options” (p. 6), delete the third sentence.

5. In part I., below the heading **I. Standard of Review** (p. 8), insert the subheading **A. Summary Judgment**.

6. Delete the fifth paragraph under part I. beginning “As to the admissibility of evidence” (p. 9) and insert the following subheading, paragraphs, and footnote:

B. Evidence Considered on Appeal

First, for purposes of reviewing a motion for summary judgment, we do not consider evidence “to which objections have been made and sustained.” (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.) Where a plaintiff does not challenge the superior court’s ruling sustaining a moving defendant’s objections to evidence offered in opposition to the summary judgment motion, “any issues concerning the correctness of the trial court’s evidentiary rulings have been waived. [Citations.] We therefore consider all such evidence to have been ‘properly excluded.’ [Citation.]” (*Lopez v. Baca* (2002) 98 Cal.App.4th 1008, 1014-1015.)³

Second, where no objection was made, the evidence is admitted in evidence and therefore is part of the record an appellate court must consider. (*Haskell v. Carli* (1987) 195 Cal.App.3d 124, 129-130.) It is well settled that the failure to object, even to otherwise inadmissible evidence, waives the defect. (Evid. Code, § 353, subd. (a) [to preserve the right to challenge erroneously received evidence, litigant must make a timely objection]; Code Civ. Proc., § 437c, subd. (b) [evidentiary objections not made at summary judgment hearing shall be deemed waived].)

Third, where evidentiary objections were filed in the superior court, but the record contains no rulings on those objections, the objections are waived and the objected-to evidence is considered as having been admitted

³When a superior court’s rulings on evidentiary objections are challenged on appeal, an abuse of discretion standard is applied. (*Walker v. Countrywide Home Loans, Inc.* (2002) 98 Cal.App.4th 1158, 1169.)

in evidence as part of the record for purposes of the appeal. (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 670, fn. 1; Code Civ. Proc., § 437c, subds. (b), (c); see *City of Long Beach v. Farmers & Merchants Bank of Long Beach* (2000) 81 Cal.App.4th 780 [exception to waiver rule where further attempts by attorney to obtain rulings would be fruitless].)

Fourth, when a superior court states that it considered only admissible evidence, we do not view such a statement as an implied ruling sustaining evidentiary objections, but as “an implied overruling of any objection not specifically sustained.” (*Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 736; see *Sambrano v. City of San Diego* (2001) 94 Cal.App.4th 225, 234-238; but see *Biljac Associates v. First Interstate Bank* (1990) 218 Cal.App.3d 1410, 1419.)

In accordance with the rule set forth in *Laird*, the question before us is whether any of Codemasters’ objections were “specifically sustained.” The superior court’s oral statements that it would consider only admissible or relevant evidence as well as the statement in the July 5, 2001, order that it considered “only the evidence that was admissible” impliedly overruled Codemasters’ 15 evidentiary objections except to the extent that those objections were *specifically sustained* elsewhere in the court’s written order.

7. Under part II.A.2., the second paragraph beginning “However, the terms and conditions” (p. 15) is modified to read as follows:

However, the terms and conditions of the United States stock option plan do not apply to Alexander’s stock options because there was never any agreement that his stock options would be issued under that plan. Indeed, based on fact No. 50 of Codemasters’ separate statement, the superior court found that there was never any certainty whether Alexander’s grant of stock options would be issued through the plan being developed for other United States employees, though a discretionary stock option plan that applied to Mr. Wheelwright, Ms. Gosbell and other senior managers of Codemasters Group Limited, or whether a separate plan would be prepared for Alexander alone.

The petition for rehearing filed by Codemasters Group Limited and Codemasters Yosemite, Inc., is denied.

This modification does not effect a change in the judgment.

GOMES, J.

WE CONCUR:

ARDAIZ, P.J.

CORNELL, J.