

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MALBEC, INC., a Washington corporation,)	NO. 66495-6-I
)	
)	DIVISION ONE
Respondent,)	
)	UNPUBLISHED OPINION
v.)	
)	
M&D III, INC., a Washington corporation, CHUNG K. CHOE and MICHELLE CHOE, husband and wife, and the marital community comprised thereof, and DANIEL K. YOO and JANE DOE YOO, husband and wife, and the marital community comprised thereof,)	
)	
Respondents,)	
)	FILED: July 23, 2012
YOUNG S. OH & ASSOCIATES, P.S., a Washington professional service company,)	
)	
Appellant.)	
)	

Leach, C.J. — This appeal arises out of the sale and subsequent resale of an Argentine steakhouse in Seattle known as the Buenos Aires Grill. Young S. Oh & Associates¹ appeals from an adverse judgment entered following a bench trial. Because unchallenged findings of fact support the trial court’s conclusions of law and Oh otherwise fails to establish any error, we affirm.

¹ Judgment was entered against Young S. Oh & Associates and Oh individually. We refer to these parties collectively as “Oh.”

FACTS

Most of the specific details of the two transactions at issue in this lawsuit are not material to the claims raised on appeal. Briefly outlined, the relevant facts are as follows.

Malbec Inc. sold the Buenos Aires Grill to M&D III Inc. whose principals are Chung K. and Michelle Choe. M&D agreed to pay \$470,000, to be paid by a \$100,000 down payment and two promissory notes for the remaining \$370,000. M&D also signed a security agreement, pledging the assets of the restaurant to secure payment of the promissory notes. After M&D failed to make the required payments, Malbec filed this lawsuit to foreclose its security interest in the restaurant's assets.

After Malbec filed the complaint, it discovered that M&D had resold the restaurant to Daniel Yoo for \$700,000. Because the security agreement prohibited the sale without Malbec's consent and because Yoo was now in possession of the restaurant's assets, Malbec added Yoo as a defendant. Yoo filed cross claims against M&D and the Choes. He also sued Oh, who acted as escrow agent in the resale. Yoo alleged that Oh failed to inform him of Malbec's pending lawsuit and its recorded security interest.

Following a bench trial, the trial court entered comprehensive findings and conclusions and a judgment foreclosing Malbec's security interest. The

judgment awarded Malbec approximately \$180,000, the remaining balance on the notes, plus interest. The court found that the escrow agent, Oh, failed to perform in accordance with the escrow instructions and breached his statutory and fiduciary duties to Yoo. The court ordered that Oh, together with M&D and the Choes, reimburse Yoo for his share of liability to Malbec and for the costs Yoo incurred to defend against Malbec's claims and pursue his claims for indemnity.

Oh appeals. It appears that following entry of the judgment, the parties negotiated a settlement fully resolving Malbec's claims. None of the parties to the original lawsuit has filed a brief in response to Oh's appeal.

DECISION

Well-settled principles and the rules of appellate procedure govern our review. An appellant must set forth in its brief assignments of error that identify "each error a party contends was made by the trial court."² An appellant must also provide "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record."³ The rules of appellate procedure additionally require that "[r]eference to the record must be included for each factual statement."⁴ We need not consider

² RAP 10.3(a)(4).

³ RAP 10.3(a)(6).

⁴ RAP 10.3(a)(5).

arguments not supported by reference to the record, citation to authority, or meaningful analysis.⁵ Where the trial court has evaluated evidence in a bench trial, our review is limited to determining whether the findings are supported by substantial evidence and, in turn, whether those findings support the conclusions of law.⁶ Unchallenged findings of fact are verities on appeal.⁷

Oh claims that the trial court erred when it “accepted” the claims against him asserted by Yoo. He assigns no error, however, to any ruling or specific decision made by the court. Oh’s briefing associated with this assignment of error shows that he is actually challenging the factual basis for the trial court’s determination that he breached his duties as escrow agent and is liable for damages sustained by Yoo as a result.

Based on the evidence presented at trial, the trial court found breach of duty and liability as follows:

55. The Escrow Instructions specifically required Young S. Oh to conduct a UCC-1 search of M&D and M&D’s trade name, as well as an independent search of public records related to the sale of the Buenos Aires Grill. Young S. Oh was also required to identify and list all encumbrances impacting the Buenos Aires Grill.

.....

57. Young S. Oh breached its duty and the standard of care

⁵ Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

⁶ Standing Rock Homeowners Ass'n v. Misich, 106 Wn. App. 231, 242–43, 23 P.3d 520 (2001).

⁷ Moreman v. Butcher, 126 Wn.2d 36, 39, 891 P.2d 725 (1995); Zunino v. Rajewski, 140 Wn. App. 215, 220, 165 P.3d 57 (2007).

of an escrow agent when it failed to (1) provide Mr. Yoo with a copy and/or notice of the Complaint filed by Malbec and (2) conduct an accurate and complete UCC-1 investigation.

....
59. Young S. Oh and Mr. Oh did not exercise ordinary skill and diligence, and due or reasonable care in their employment, and Mr. Oh did not exercise the degree of skill, care and learning expected of a reasonably prudent escrow agent in the State of Washington. By operation of law, to the extent that the standard of duties of an escrow agent is held to that of an attorney, Oh breached such duties.

Based on these findings, the court concluded that

[a]s a result of Young S. Oh's breach of the Escrow Instructions and/or breach of its statutory and fiduciary duties, Mr. Yoo is entitled to a judgment against Young S. Oh and Associates and Young S. Oh, individually, jointly and severally, with M&D, Chung K. Choe and Michelle Choe, and their marital community,

for the amounts awarded to Malbec and for Yoo's reasonable costs and attorney fees.

Oh does not assign error to any of the court's findings of fact. They are, therefore, verities.⁸ Thus, we limit our review to whether the trial court's conclusions of law follow from and are supported by its findings of fact.⁹

The court found that the standard of care for an escrow agent required Oh to conduct a search of UCC recorded filings and to identify all encumbrances affecting the restaurant. He failed to perform these duties adequately when he

⁸ Zunino, 140 Wn. App. at 220.

⁹ In re Marriage of Schweitzer, 132 Wn.2d 318, 329–30, 937 P.2d 1062 (1997).

did not inform Yoo of Malbec's pending action to foreclose its lien and its recorded security interest. The court's legal conclusion that Oh breached his contractual, statutory, and fiduciary duties to the buyer as escrow agent is supported by and follows from the factual findings.

Oh also contends the trial court erred in failing to find that the value of Malbec's recorded security interest was \$10. But here again, Oh assigns no error to any ruling or finding made by the trial court.¹⁰ For the most part, he cites only to trial exhibits, which are attached as appendices to the brief but were apparently not designated as part of the appeal record. Even overlooking these deficiencies and assuming that Oh is challenging the denial of his motion for a directed verdict on this issue, his challenge fails. In that motion, Oh argued that the value of Malbec's interest secured by the promissory notes was \$10 because that was the total value of the assets. This argument was based on the bill of sale executed between Malbec and M&D, which recited that Malbec was to sell the restaurant's assets, equipment, and inventory to M&D for \$10. However, the court concluded that the fair market value of the assets was the total amount paid by Yoo, \$550,000 or \$700,000.¹¹ Substantial evidence supports this conclusion. The court then measured the liability to Malbec by the amounts

¹⁰ See RAP 10.3(a)(4).

¹¹ The trial court did not resolve the actual amount paid because both amounts exceed the balance of the secured debt.

remaining due on the two notes after deducting amounts M&D paid for debts owed by Malbec.

Finally, Oh claims he was denied the opportunity to present closing argument. Following presentation of the evidence, Oh's counsel informed the court that he intended to make two arguments: (1) Oh's liability was only derivative of Yoo's liability to Malbec and (2) Oh fulfilled his obligations as escrow agent. The court determined that further argument on these issues was not necessary and asked the parties to focus instead on the underlying issue of the extent of the buyers' liability to Malbec. Oh raised no objection. Beyond his conclusory assertion that the opportunity to present closing argument is "fundamental," Oh provides no analysis or authority to support his argument that the procedure was improper. Although we need not address this claim any further,¹² we note that Oh has not demonstrated any prejudice. We likewise do not review Oh's contention that the trial court erred in rejecting his proposed findings. The proposed findings are not included in the record on review, and Oh offers no argument in support of the assigned error.¹³

Affirmed.

WE CONCUR:

Leach, C. J.

Schmalzer, J.

Gonzalez, J.

¹² See RAP 10.3(a)(6); Cowiche Canyon, 118 Wn.2d at 809.

¹³ Cowiche Canyon, 118 Wn.2d at 809.

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