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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ARDAS YANIK, Plaintiff and Appellant, v. PENIK BEN TASCIAN, as Administrator etc., Defendant and Respondent.	B220500 (Los Angeles County Super. Ct. No. VC051282)

APPEAL from a judgment of the Superior Court of Los Angeles County, William J. Birney, Judge. Affirmed.

Ardas Yanik, in pro per, for Plaintiff and Appellant.

Choate & Choate, Joseph Choate, Jr., and Bradley L. Cornell for Defendant and Respondent.

Plaintiff and appellant Ardas Yanik appeals from a judgment in favor of defendant and respondent Penik Ben Tascian (the Administrator), as the administrator of the estate of Dogan Levon Tasciyan, in this action to recover money on a contract related to the sale of property. The trial court found that Yanik was not entitled to compensation, because he participated in the negotiations of the purchase agreement between Tasciyan and a third party without being licensed as a real estate broker or salesperson. Yanik contends the court's finding is not supported by substantial evidence. We conclude substantial evidence supports the court's finding, and therefore, we affirm.[1]

FACTS

Tasciyan owned property in Bellflower. When Yanik purchased a neighboring property, Tasciyan asked if he wanted to buy Tasciyan's property or help him sell it. Yanik is not licensed as a real estate agent or broker. He has invested in other properties with licensed real estate agent Javid Elist. Yanik and Elist met with Tasciyan several times to negotiate the purchase of Tasciyan's property on behalf of their limited liability company, Lankershim & Vanowen Properties, LLC. In February 2007, escrow was opened for Lankershim to purchase the property for $670,000. However, Yanik could not raise the amount necessary for the purchase. In addition, after studying environmental and zoning issues, he concluded the property was contaminated. Elist was familiar with Yanik's research on the contamination and zoning issues.

On March 6, 2007, Tasciyan and Yanik executed a document entitled "Property Sale Commission Agreement." The document stated, "I, as Mr. Dogan L. Tasciyan[,] am giving authorization to Mr. Ardas Yanik to sell my property, in the event of a sale of my property at 9403 E. Artesia Blvd., Bell Flower. I promised to give 6 [percent] commission to Mr. Ardas Yanik to sell my property, but if he could sell more [than]

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[1] Yanik's motion to augment the record with the reporter's transcript of proceedings in the trial court on October 26, 2009, is granted.

$600,000[,] I will pay him 10 [percent] commission instead of 6 [percent]. As is if Mr. Ardas Yanik customer buys it. As soon as the escrow closes, I will pay his commission directly to him." A handwritten notation added, "(No [other commission] or Broker Fees)" followed by Yanik's initials. Elist was present at the meeting when Tasciyan and Yanik executed the document.

Yanik spoke about the property with Victor Ambriz, who is a licensed real estate agent. Ambriz sent clients to Yanik to look at the property, but none of them were interested. Ambriz never met with Tasciyan.

Elist decided to purchase the property with two other partners through their company U.S.A. Properties Investment, LLC (USA). Yanik informed USA about the contamination issues. He assisted USA with the physical inspection of the property and due diligence. Yanik did all of the negotiations for them. He negotiated the amount of the purchase price between Tasciyan and Elist, and helped Elist negotiate a price reduction of $20,000.

On March 9, 2007, Tasciyan entered into an agreement with USA to purchase the property for $650,000. A deed transferring the property was recorded on March 16, 2007. A few days later, USA sold the property to Jo Jo Investments.

Tasciyan died on May 17, 2007. On January 29, 2008, Yanik filed a creditor's claim for $65,000 with the Administrator. On March 31, 2008, the Administrator rejected Yanik's claim.

PROCEDURAL BACKGROUND

On July 3, 2008, Yanik filed a complaint in propria persona against the Administrator to recover the money owed under the commission agreement. A trial commenced on October 26, 2009. At the conclusion of Yanik's case, the Administrator made a motion for judgment pursuant to Code of Civil Procedure section 631.8. The trial court found Yanik acted as more than a mere finder and granted the motion. Yanik filed a notice of appeal on November 3, 2009. The court entered judgment in favor of the

Administrator on November 23, 2009. In the interest of justice, Yanik's premature notice of appeal will be construed as being from the November 23, 2009 judgment.

DISCUSSION

Standard of Review

"The purpose of Code of Civil Procedure section 631.8 is 'to enable the court, when it finds at the completion of plaintiff's case that the evidence does not justify requiring the defense to produce evidence, to weigh evidence and make findings of fact.' [Citation.] Under the statute, a court acting as trier of fact may enter judgment in favor of defendant if the court concludes that plaintiff failed to sustain its burden of proof. [Citation.] In making the ruling, the trial court assesses witness credibility and resolves conflicts in the evidence. [Citations.]" (*People ex rel. Dept. of Motor Vehicles v. Cars 4 Causes* (2006) 139 Cal.App.4th 1006, 1012.)

"On appeal, we . . . are bound by [the] trial court's findings that are supported by substantial evidence." (*People ex rel. Dept. of Motor Vehicles v. Cars 4 Causes*, *supra*, 139 Cal.App.4th at p. 1012.) We view the evidence in the light most favorable to the judgment, resolve all evidentiary conflicts in favor of the prevailing party and indulge all reasonable inferences possible to uphold the trial court's findings. (*San Diego Metropolitan Transit Development Bd. v. Handlery Hotel, Inc.* (1999) 73 Cal.App.4th 517, 528.)

"Consequently, where a trial court's factual finding is challenged on the ground there is no substantial evidence to sustain it, the power of the reviewing court begins and ends with the determination as to whether, on the whole record, there is substantial evidence, contradicted or uncontradicted, that will support the trial court's determination. [Citation.]" (*San Diego Metropolitan Transit Development Bd. v. Handlery Hotel, Inc.*, *supra*, 73 Cal.App.4th at p. 528.)

"[W]hen the decisive facts are undisputed, the reviewing court is confronted with a question of law and is not bound by the findings of the trial court. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.) In other words, the appellate court is not bound by a trial court's interpretation of the law based on undisputed facts, but rather is free to draw its own conclusion of law. (*Torrey Pines Bank v. Hoffman* (1991) 231 Cal.App.3d 308, 317.)" (*San Diego Metropolitan Transit Development Bd. v. Handlery Hotel, Inc.*, *supra*, 73 Cal.App.4th at p. 528.)

No Compensation for the Acts of a Real Estate Broker or Salesperson

Yanik contends there is no substantial evidence to support the trial court's finding that he performed the acts of a real estate broker or salesperson without a license. We disagree—substantial evidence supports the trial court's finding.

A real estate broker is "a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others: [¶] (a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or [purchasers] of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity." (Bus. & Prof. Code, § 10131, subd. (a).) A real estate salesman is a "person who, for a compensation or in expectation of a compensation, is employed by a licensed real estate broker to do one or more of the acts" permitted by statute for real estate brokers to perform. (Bus. & Prof. Code, § 10132.)

"It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the department [of real estate]." (Bus. & Prof. Code, § 10130.) "No person engaged in the business or acting in the capacity of a real estate broker or a real estate salesman within this State shall bring or maintain any action in the courts of this State for the collection of compensation for the performance of any of the acts mentioned in this article without alleging and proving that he was a duly

licensed real estate broker or real estate salesman at the time the alleged cause of action arose." (Bus. & Prof. Code, § 10136.)

"It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesman licensed under the broker employing or compensating him . . . . [¶] No real estate salesman shall be employed by or accept compensation from any person other than the broker under whom he is at the time licensed." (Bus. & Prof.Code, § 10137.)

A person who simply finds and introduces two parties to a real estate transaction does not need to be licensed as a real estate broker or salesperson to claim payment. (*Tyrone v. Kelley* (1973) 9 Cal.3d 1, 9.) "Such an intermediary or middleman is protected by the finder's exception to the real estate licensing laws[.]" (*Id.* at p. 8.) "The finder is a person whose employment is limited to bringing the parties together so that they may negotiate their own contract, and the distinction between the finder and the broker frequently turns upon whether the intermediary has been invested with authority or duties beyond merely bringing the parties together, usually the authority to participate in negotiations. [Citations.]" (*Id.* at p. 9.) It is a question of fact whether a person acted as a finder or a broker, based on the person's conduct after the introduction of the principals to the transaction. (*Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 31.)

Yanik did more than merely introduce prospective parties. The written agreement with Tasciyan gave Yanik authority to sell his property, including the authority to negotiate the purchase price. Elist testified that Yanik participated in the negotiation of the agreement for USA, including helping Elist negotiate a reduction in the purchase price. The trial court's finding that Yanik's actions crossed the line from a mere finder to those of a real estate broker or salesperson is supported by substantial evidence.

Yanik contends he should be compensated for non-broker services that he provided in connection with the transaction. However, Yanik's contract with Tasciyan did not include any non-broker services. The evidence showed any additional work that Yanik performed in connection with the property was on behalf of himself as a potential

buyer or on behalf of USA. There was no evidence that Yanik performed any non-broker services for Tasciyan.

DISPOSITION

The judgment is affirmed. Respondent Penik Ben Tascian, as the administrator of the estate of Dogan Levon Tasciyan, is awarded his costs on appeal.

KRIEGLER, J.

We concur:

TURNER, P. J.

KUMAR, J.*

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* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.