

Mack Film Development, LLC v. Johnson

Decided Aug 25, 2010

NOT TO BE PUBLISHED

APPEAL from a judgment of the Superior Court of Los Angeles County, Ct. No. BC335581, Robert L. Hess, Judge.

Freund & Brackey, Jonathan D. Freund and Craig A. Huber for Defendants and Appellants.

Quinn Emanuel Urquhart Oliver & Hedges, Quinn Emanuel Urquhart & Sullivan, John M. Pierce and Daniel H. Bromberg for Plaintiffs and Respondents.

KRIEGLER, J.

Defendants and appellants Grant Johnson and Benevolent Partners, L.P., appeal from a judgment following a jury trial in favor of plaintiffs and respondents Mack Film Development, LLC, Millie Film Development, LLC, and Robert Cort Productions, Inc. (RCP) in this action for breach of contract and fraud. Defendants contend: 1) the trial court's examination of Johnson during the trial deprived them of a fair and impartial trial; 2) the jury awarded duplicative damages and the trial court improperly apportioned the damages to RCP's fraud claim rather than Mack and Millie's claim for breach of contract; and 3) the trial court erred by relieving plaintiffs of their burden to prove Johnson's financial condition and the award of punitive damages was excessive.

We conclude defendants failed to object to the trial court's examination of Johnson during trial, and therefore, the objection is waived. The trial court did not err by apportioning damages for out-of-pocket expenses to RCP's fraud claim, and Johnson waived any objection to the lack of

evidence of his financial condition by failing to respond to a court order with meaningful evidence. Therefore, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Robert Cort produces films through RCP and other companies. Cort needed to secure financing of \$5 million for a motion picture development deal with Paramount Pictures. Benevolent is a private equity investment fund owned and managed by Johnson. Johnson wanted an exclusive arrangement to invest in the Paramount deal and promised that he could fund the required amount in full. After investigating Johnson's credentials, Cort agreed. In fact, Benevolent had less than \$1 million immediately available to invest. Although Johnson had invested more than \$3 million of his own liquid net worth in Benevolent, and Benevolent's total capitalization was \$20 million as of January 2007, these funds were committed to specific projects and not available to guarantee funding for the Paramount deal.

In March 2003, Johnson and Cort entered into a written agreement for Benevolent to invest \$5 million in a new limited liability company that would develop theatrical motion picture projects for RCP. Based on this commitment, RCP formed Mack and Millie. In May 2003, Benevolent, Mack, and Millie executed a term credit agreement under which Benevolent agreed to provide \$4.85 million to the development companies. Cort agreed to invest the balance of \$150,000.