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Attorneys for Plaintiff and Cross-Defendant, YU CHUNG KOO

LOS ANGELES SUPERIOR COURT

AUG 3 0 2010

JOHN A. CLARKE, CLERK

LANGE WILLIAMS, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL JUDICIAL DISTRICT

YU CHUNG KOO, an individual,

Plaintiff,

VS.

HUANG CHO HONG, an individual a/k/a Zhao Huang Hong a/k/a Zhao Joe Hong a/k/a Joe Hong; XI FAN HONG, an individual a/k/a Fred Hong; SIU LING LI, an individual a/k/a Salina Li; YAN NAN HONG, an individual; HONGYE STONE, INC., a California corporation; HY STYLE STONE DEPOT, INC., a California corporation,

Defendants.

SIU LING LI, HUANG CHO HONG, and HY STONE DEPOT, INC.,

Cross-Complainants,

Case No.: BC 414375

Assigned to Hon. Mark V. Mooney Dept. 68

[PROPOSED] JUDGMENT ON VERDICT IN JURY TRIAL

[PROPOSED] JUDGMENT ON VERDICT IN JURY TRIAL

000169

CASE NO.: BC 414375

Case 6	3:11-ap-01704-DS Doc 14 Filed 01/20/12 Entered 01/20/12 10:51:51 Desc Main Document Page 3 of 16		
• •			
]	vs.		
2	YU CHUNG KOO, and DOES 1 through 10,		
3	Cross-Defendants.		
4	Closs-Detendants.		
5	This action came regularly for trial on August 2, 2010, in Department 68 of the Superior		
6	Court, the Honorable Judge Mark V. Mooney Presiding. Carlos A. Lloreda, Jr., Robin Mashal,		
7	and Peter Y. Hong appeared as attorneys for plaintiff YU CHUNG KOO. Lawrence Hoodack for		
8	the Law Offices of Dale C. Frailey & Associates appeared as attorney for defendants/cross-		
9	complainants HUANG CHO HONG, an individual a/k/a Zhao Huang Hong a/k/a Zhao Joe Hong		
10	a/k/a Joe Hong, XI FAN HONG, an individual a/k/a Fred Hong, SIU LING LI, an individual		
31	a/k/a Salina Li, YAN NAN HONG, an individual, HONGYE STONE, INC., a California		
12	corporation, and HYSTONE DEPOT, INC., a California corporation.		
13	A jury of 12 persons was impaneled and sworn. Witnesses were sworn and testified.  After hearing the evidence and the arguments of attorneys, the jury was instructed by the Court		
14	and retired to consider its verdict.		
15	After returning into court and being called, the jurors answered their names and rendered		
16	their verdict in writing in words and figures as follows:		
17	"Ton and alain and an afthe ton and a district		
18	"For each claim, select one of the two options listed.		
19	"On Yu Chung Koo's claim for Fraud in Inducement  X we find in favor of Yu Chung Koo and against Huang Cho Hong		
20	(Joe Hong), Xi Fan Hong (Fred Hong), Yan Nan Hong, and Siu Ling Li.		
21	we find in favor of Huang Cho Hong (Joe Hong), Xi Fan Hong (Fred Hong), Yan Nan Hong, and Siu Ling Li and against Yu Chung Koo.		
22	"On Yu Chung Koo's claim for Breach of Contract,		
23	X we find in favor of Yu Chung Koo and against Huang Cho Hong		
24	(Joe Hong), Xi Fan Hong (Fred Hong), Yan Nan Hong, and Siu Ling Li.  ———— we find in favor of Huang Cho Hong (Joe Hong), Xi Fan Hong		
25	(Fred Hong), Yan Nan Hong, and Siu Ling Li and against Yu Chung Koo.		
26	"On Yu Chung Koo's claim for Breach of Fiduciary Duties,		
27	X we find in favor of Yu Chung Koo and against Huang Cho Hong (Joe Hong), Xi Fan Hong (Fred Hong), Yan Nan Hong, and Siu Ling Li.		
28			
	-2-		
	[PROPOSED] JUDGMENT ON VERDICT IN JURY TRIAL CASE NO.: BC 414375		

we find in favor of Huang Cho Hong (Joe Hong), Xi Fan Hong (Fred Hong), Yan Nan Hong, and Siu Ling Li and against Yu Chung Koo.

"Complete this section below only if you find in favor of Yu Chung Koo on at least one of his claims.

We award Yu Chung Koo the following damages: \$1,500,000.

"If you found in favor of Yu Chung Koo on either his cause of action for Fraud in Inducement or his cause of action for Breach of Directors' Fiduciary Duties, do you find that plaintiff has proved by clear and convincing evidence the defendants engaged in that conduct with malice, oppression, or fraud?

\_\_X\_\_ Yes \_\_\_\_\_ No

"Complete the section below only if you answered the previous question yes.

"We award Yu Chung Koo punitive damages, if any, as against the following defendants:

\$35,000 Huang Cho Hong (Joe Hong)

\$25,000 Xi Fan Hong (Fred Hong)

\$15,000 Yan Nan Hong

\$15,000 Siu Ling Li."

#### IT IS ADJUDGED that:

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- 1. Plaintiff, YU CHUNG KOO, recover judgment on the merits against defendants HUANG CHO HONG, an individual a/k/a Zhao Huang Hong a/k/a Zhao Joe Hong a/k/a Joe Hong, XI FAN HONG, an individual a/k/a Fred Hong, SIU LING LI, an individual a/k/a Salina Li, YAN NAN HONG, an individual, and against each of them, jointly and severally, in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000), in compensatory damages, with interest at an annual rate of Ten Percent (10%) from the date of entry of this Judgment until paid;
- 2. Plaintiff, YU CHUNG KOO, recover judgment on the merits against defendant HUANG CHO HONG, an individual a/k/a Zhao Huang Hong a/k/a Zhao Joe Hong a/k/a Joe Hong, in the amount of Thirty Five Thousand Dollars (\$35,000), in punitive damages, with interest at an annual rate of Ten Percent (10%) from the date of entry of this Judgment until paid;
- 3. Plaintiff, YU CHUNG KOO, recover judgment on the merits against defendant XI FAN HONG, an individual a/k/a Fred Hong, in the amount of Twenty Five Thousand Dollars

-3-

(\$25,000), in punitive damages, with interest at an annual rate of Ten Percent (10%) from the date of entry of this Judgment until paid;

- 4. Plaintiff, YU CHUNG KOO, recover judgment on the merits against defendant YAN NAN HONG, an individual, in the amount of Fifteen Thousand Dollars (\$15,000), in punitive damages, with interest at an annual rate of Ten Percent (10%) from the date of entry of this Judgment until paid;
- 5. Plaintiff, YU CHUNG KOO, recover judgment on the merits against defendant SIU LING LI, an individual a/k/a Salina Li, in the amount of Fifteen Thousand Dollars (\$15,000), in punitive damages, with interest at an annual rate of Ten Percent (10%) from the date of entry of this Judgment until paid;
- 6. Plaintiff, YU CHUNG KOO, recover against the Defendants, and against each of them, jointly and severally, costs in the amount of \$ 27, 683. 95

Dated: 8-30-10

Hon. Mark V. Mooney Judge of the Superior Court

Case 6;11-ap-01704-DS	Doc 14 Filed 01/20/12 Entered 01/20/12 10:51:51  Main Document Page 6 of 16	Desc
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1		PROOF OF SERVICE
2	and n	I am employed in the County of Los Angeles, State of California. I am over the age of 18 ot a party to the within action. My business address is 1875 Century Park East, Suite 600,
3	1 2	ngeles, California 90067-2507.
5		On August 18, 2010, I served on the interested parties in this action $\boxtimes$ a true and correct of OR $\square$ the original of the foregoing document(s) described as: [PROPOSED] [PROPOSED]
7		(BY MAIL) By placing said documents in postage pre-paid envelope(s), sealed and
8 -		addressed as shown on the attached service list, and depositing the same with the United States Postal Service the same day. I am readily familiar with this firm's business practice
9		for collection and processing of correspondence by U.S. Mail. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter
10		date is more than one day after the date stated in this proof of service.
11		(BY OVERNIGHT DELIVERY) By placing said documents in Overnite Express™ envelope(s), sealed and addressed as shown on the attached service list, and depositing the
12	same with in the Overnite Express <sup>TM</sup> deposit box at Los Angeles, California, scheduled pickup time, to be delivered to the parties the next day.	
14		(BY FACSIMILE) By causing the said document(s) to be transmitted by electronic
15		facsimile machine to the facsimile number(s) of those parties specifically indicated on the attached service list, in compliance with the California Rules of Court, with no error reported by the machine.
16		
17		(BY PERSONAL SERVICE) I hand delivered said documents to the address(es) indicated on the attached service list.
19	$\boxtimes$	(STATE) I declare under penalty of perjury under the laws of the State of California, that the above is true and correct.
20		(FEDERAL) I declare that 🔲 I am a member of the bar of this court OR 🔲 I am
21		employed in the office of a member of the bar of this court at whose direction this service was made, and that the above is true and correct.
22		Executed on August 18, 2010, at Los Angeles, California.
23		
25		V axu
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27		,
28		
		-5-
	[PROPOS	SED] JUDGMENT ON VERDICT IN JURY TRIAL CASE NO.: BC 414375

[PROPOSED] JUDGMENT ON VERDICT IN JURY TRIAL

173A

CASE NO.: BC 414375

## NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

## IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

### SECOND APPELLATE DISTRICT

### **DIVISION TWO**

YU CHUNG KOO,

Plaintiff and Respondent,

V.

HUANG CHO HONG et al.,

Defendants and Appellants.

B228431

(Los Angeles County Super. Ct. No. BC414375)

COURT OF APPEAL - SECOND DIST.

FILED

OCT 11 2011

JOSEPH A. LANE

Clerk

Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark V. Mooney, Judge. Affirmed.

Law Offices of Dale C. Frailey & Associates, Dale C. Frailey and Lawrence Hoodack, for Defendants and Appellants.

Hong & Mashal, Robin Mashal and Peter Y. Hong for Plaintiff and Respondent.

\* \* \* \* \*

Defendants and appellants Huang Cho Hong, Siu Ling Li, Xi Fan Hong, and Yan Nan Hong appeal from a judgment following a jury trial, entered against them and in favor of plaintiff and respondent Yu Chung Koo. Because appellants have not satisfied their burden on appeal of providing both an adequate appellate brief and an adequate record from which we can properly review alleged claims of error, we deem all issues purportedly raised in their opening brief waived. Even if we were to reach those issues on the merits, we would conclude that judgment was properly entered.

Accordingly, we affirm.

# Appellants' Burden on Appeal

"A judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error." (Denham v. Superior Court (1970) 2 Cal.3d 557, 564.) Thus, appellants must make a challenge. In so doing, appellants must raise claims of reversible error or other defect, and "present argument and authority on each point made." (County of Sacramento v. Lackner (1979) 97 Cal.App.3d 576, 591.) "[F]ailure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal." (Berger v. Godden (1985) 163 Cal.App.3d 1113, 1119.) In addition, "a party challenging a judgment has the burden of showing reversible error by an adequate record." (Ballard v. Uribe (1986) 41 Cal.3d 564, 574.) "Failure to provide an adequate record on an issue requires that the issue be resolved against [appellants]. [Citation.]" (Hernandez v. California Hospital Medical Center (2000) 78 Cal.App.4th 498, 502.) Appellants have failed to meet their burden on appeal in both regards.

### Inadequate Brief and Record

The major problem with appellants' appeal lies in their opening brief. Assertions that "the verdict is against the law" and that there were "irregularities in the proceedings" are made without support or any attempt to argue the applicability of the law to the facts of this case. Although some case citations are provided, the brief does not "support each point by argument and . . . by citation of authority," in violation of California Rules of Court, rule 8.204(a)(1)(B). (See also Benach v. County of Los Angeles (2007) 149 Cal.App.4th 836, 852 [appellant bears the burden of supporting a point with reasoned argument]). It is not our role to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. (Badie v. Bank of America (1998) 67 Cal.App.4th 779, 784–785.)

The opening brief is not the only failure of appellants, the record also is inadequate. Appellants allege errors related to jury instructions and the trial verdict, but provide no reporter's transcripts from the seven-day trial in this case. Similarly, appellants allege an abuse of discretion by the trial court in denying a motion for continuance, but fail to provide a transcript of the motion hearing. "[I]t is presumed that the unreported trial testimony would demonstrate the absence of error." (Ehrler v. Ehrler (1981) 126 Cal.App.3d 147, 153–154.) It is the burden of the party challenging a judgment on appeal to provide an adequate record to assess error. (Ketchum v. Moses (2001) 24 Cal.4th 1122, 1140–1141.) Where, as here, appellants fail to furnish an adequate record of the challenged proceedings, their claim on appeal must be resolved against them. (Rancho Sante Fe Assn. v. Dolan-King (2004) 115 Cal.App.4th 28, 46.)

## Were We to Reach the Issues, We Would Affirm the Judgment

To the extent we can determine what appellants are seeking on appeal, and setting aside the procedural obstacles noted above, appellants are not entitled to the relief

requested. Appellants claim the jury reached a verdict against one of the defendants (Siu Ling Li) that was not supported by the jury instructions given to them.

Although appellants claim in their opening brief that "[p]laintiff/[r]espondent's counsel prepared jury instructions in this matter which were read and given to the jury," the record indicates that the parties submitted 56 "Joint [Proposed] Jury Instructions" of which 32 were given to the jury. Some jury instructions referred to "defendants" collectively, while others made specific references to individual defendants by name. Respondent's counter that the trial court prepared a general verdict form which was reviewed, modified, and agreed to by the parties, is unchallenged by appellants. The record indicates that the jury returned a general verdict in favor of respondent, Yu Chung Koo.

A general verdict implies findings on all issues in one party's favor. (City of San Diego v. D.R. Horton San Diego Holding Co., Inc. (2005) 126 Cal.App.4th 668, 678.) "If the verdict is ambiguous the party adversely affected should request a more formal and certain verdict. Then, if the trial judge has any doubts on the subject, he may send the jury out, under proper instructions, to correct the informal or insufficient verdict.' [Citations.]" (Woodcock v. Fontana Scaffolding & Equip. Co. (1968) 69 Cal.2d 452, 456.) Failure to object to a verdict before the discharge of a jury and to request clarification or further deliberation precludes a party from later questioning the validity of that verdict if the alleged defect was apparent at the time the verdict was rendered and could have been corrected. (Henrioulle v. Marin Ventures, Inc. (1978) 20 Cal.3d 512, 521.)

The purported defect in the verdict was apparent and could have been brought to the attention of the trial judge, but appellants forfeited their challenge to the verdict by failing to assert it before the jury was discharged. (Bell v. Bayerische Motoren Werke Aktiengesellschaft (2010) 181 Cal.App.4th 1108, 1130.)

Appellants also contend the trial court erred in denying their motion to continue the trial and reopen discovery. The record indicates the complaint was filed on May 22, 2009, and trial was set for August 2, 2010. Appellants brought an ex parte motion at the

Final Status Conference on July 23, 2010, to continue the trial, based in part on the fact that they had not concluded the deposition of respondent, Yu Chung Koo.

"[A] reviewing court should not disturb the exercise of a trial court's discretion unless it appears that there has been a miscarriage of justice. . . . 'Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered. The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there had been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power.' [Citations.]" (Denham v. Superior Court, supra, 2 Cal.3d at p. 566.)

Again, we have not been provided with a transcript of the hearing on appellants' ex parte application, or even the notice of ruling. It is appellants' burden to show that the ruling constituted an abuse of the court's discretion, and appellant has failed to meet this burden.

### DISPOSITION

The judgment is affirmed. Respondent to recover costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

			, Acting P. J.
		DOI TODD	
We concur:			
ASHMANN-GERST	, J.		
ASHIVIANN-CERS I			
	, J.		
CHAVEZ			

Main Document Page 13 of 16 Default Judgment (Based on Prior Judgment) - Page 2

In re CHAPTER: 7 Xi Fan Hong CASE NO.: 6:10-bk-45949-DS Debtor.

	lers that have been entered are placed on a CM/ECF docket.
PROOF OF SERVI	CE OF DOCUMENT
I am over the age of 18 and not a party to this bankruptcy case	se or adversary proceeding. My business address is:
A true and correct copy of the foregoing document described MENT; COPY OF JUDGMENT; DECISION OF COURT OF a in chambers in the form and manner required by LBR 5005-2	APPEAL will be served or was served (a) on the judge
Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing the document. On I checke	CTRONIC FILING ("NEF") - Pursuant to controlling General document will be served by the court via NEF and hyperlink to distinct the CM/ECF docket for this bankruptcy case or adversary in the Electronic Mail Notice List to receive NEF transmission at
bankruptcy case or adversary proceeding by placing a true an	rson(s) and/or entity(ies) at the last known address(es) in this d correct copy thereof in a sealed envelope in the United States I service addressed as follow. Listing the judge here constitutes
served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on and/or entity(ies) by personal delivery, or (for those who conse	Service information continued on attached page  SMISSION OR EMAIL (indicate method for each person or entity I served the following person(s) nted in writing to such service method) by facsimile transmission declaration that mailing to the judge will be completed no later
I declare under penalty of perjury under the laws of the Unite 12/29/11 Robin Mashal	☐ Service information continued on attached page d States of America that the foregoing is true and correct.

Type Name

Date

Main Document Page 14 of 16 Default Judgment (Based on Prior Judgment) - Page 3

CHAPTER: Xi Fan Hong CASE NO.: 6:10-bk-45949-DS Debtor.

### **ADDITIONAL SERVICE INFORMATION** (if needed):

Xi Fan Hong 33600 Spring Brook Circle Temecula, CA 92592

In re

Michael Y. Lo, Esq. Law Offices of Michael Y. Lo 506 N. Garfield Avenue, Suite 280 Alhambra, CA 91801

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Todd Frealy, Esq. Michelle S. Grimberg, Esq. LEVENE, NEALE, BENDER, ET. AL. 10250 Constellation Blvd., Suite 1700 Los Angeles, CA 90067

Phone: (310) 229-1234 Fax: (310) 229-1244

United States Trustee 725 S. Figueroa Street **Suite 2600** Los Angeles, CA 90017

Hon. Deborah Saltzman United States Bankruptcy Court 3420 Twelfth Street, Third Floor Riverside, CA 92501-3819

Clerk: (951) 774-1026

Case 6:11-ap-01704-DS Doc 14 Filed 01/20/12 Entered 01/20/12 10:51:51 Desc

Main Document Page 15 of 16

Default Judgment Based on Prior Midgment) - Page 4

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In re		CHAPTER:	7
Xi Fan Hong	Debtor.	CASE NO.:	6:10-bk-45949-DS

### **NOTE TO USERS OF THIS FORM:**

- 1) Attach this form to the last page of a proposed Order or Judgment. Do not file as a separate document.
- 2) The title of the judgment or order and all service information must be filled in by the party lodging the order.
- 3) Category I. below: The United States trustee and case trustee (if any) will always be in this category.
- 4) Category II. below: List ONLY addresses for debtor (and attorney), movant (or attorney) and person/entity (or attorney) who filed an opposition to the requested relief. <u>DO NOT</u> list an address if person/entity is listed in category I.

NOTICE OF ENTERED ORDER AND SERVICE LIST
Notice is given by the court that a judgment or order entitled ( <i>specify</i> ) DEFAULT JUDGMENT BASED ON PRIOR JUDGMENT; COPY OF JUDGMENT; DECISION OF COURT OF APPEAL was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:
1. <u>SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")</u> - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of 1/20/12 , the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.
United States Trustee Karl T. Anderson, Chapter 7 Trustee
□ Service information continued on attached page
II. <u>SERVED BY THE COURT VIA U.S. MAIL:</u> A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:
Service information continued on attached page
III. <u>TO BE SERVED BY THE LODGING PARTY:</u> Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below:
□ Service information continued on attached page

Case 6:11-ap-01704-DS Doc 14 Filed 01/20/12 Entered 01/20/12 10:51:51 Desc Main Document Page 16 of 16 Default Judgment (Based on Prior Judgment) - Page 5 F 9021-1.5

In re	CHAPTER: 7
Xi Fan Hong	Debtor. CASE NO.: 6:10-bk-45949-DS

### **ADDITIONAL SERVICE INFORMATION** (if needed):

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F 9021-1.5