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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MOJDEH MICHELLE DANESHRAD, Plaintiff and Appellant, v. NICK DANESH, Defendant and Respondent.	B346183 (Los Angeles County Super. Ct. No. 20STCV24883)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kevin Clement Brazile, Judge. Affirmed.

Mojdeh Michelle Daneshrad, in pro. per., for Plaintiff and Appellant.

Builders Law Group and Nick M. Campbell for Defendant and Respondent.

Plaintiff Mojdeh Michelle Daneshrad appeals from a judgment in favor of defendant Nick Danesh. Plaintiff's complaint alleged defendant misrepresented or failed to disclose material facts when he sold a property to plaintiff. Following a bench trial, the trial court found plaintiff had not satisfied the burden of proof on any of her causes of action. We hold substantial evidence supports the trial court's findings and affirm.

BACKGROUND

1. Complaint

Plaintiff filed a complaint against defendant, as well as a real estate brokerage, the brokerage's agents, and a real estate appraiser, alleging "omissions and misrepresentations" in connection with a sale of a property to plaintiff. Plaintiff alleged the defendants misrepresented or failed to disclose certain facts leading plaintiff to believe, falsely, that 1) she was purchasing a larger property than she actually purchased; 2) the sale included permitted plans for construction on the property; 3) the single-family residence on the property could be leased or sold; and 4) the lots included in the sale could be separately developed. Plaintiff alleged the property in fact did not include one of the parcels she was led to believe would be included in the sale, there were no permitted construction plans, the single-family residence was a guest house that could not be leased or sold, and the lots were tied together and could not be separately developed. Plaintiff asserted causes of action against defendant for negligent misrepresentation, nondisclosure of material facts, fraudulent concealment, and fraudulent misrepresentation; against the brokerage and its agents for negligent misrepresentation, breach

of fiduciary duty, constructive fraud, and professional negligence; and against the appraiser for negligent misrepresentation and professional negligence.

Plaintiff settled with the real estate brokerage, agents, and appraiser, leaving only defendant in the lawsuit. Plaintiff and defendant proceeded to a bench trial.

2. Relevant trial evidence

We summarize the trial evidence relevant to our disposition of this appeal.

A real estate listing for the property described it as "a total of five parcels" with a "1 bedroom 1 bathroom home," "[p]lans for 5,000 sq ft house on top section of property in addition to the already existing house," "room for an additional 3rd house on the property," and "Private Guest unit w/ private entry and remodeled bathroom w/ huge shower."

A 2017-dated document entitled "Agreement Between Owner and Architect" (boldface & some capitalization omitted) described an architect's promised services for defendant, including preparing architectural plans for converting the existing structure on the property to an accessory dwelling unit, and preparing additional architectural drawings for an approximately 4,000-square-foot single-family residence. The agreement attached an aerial-view drawing and several conceptual drawings of a structure from different angles.

The purchase agreement executed by plaintiff and defendant indicated the sale would include a total of five parcels, each identified by a 10-digit number. An inspection advisory attached to the purchase agreement advised plaintiff to "investigate the condition and suitability of all aspects of the property," including "lot size" and "governmental requirements"

"affecting the current or future use of the Property, its development or size," such as "[p]ermits, inspections, certificates, [and] zoning." (Boldface & some capitalization omitted.)

An addendum to the purchase agreement stated, "Property to be sold in 'As Is' condition." A disclosure statement signed by defendant and plaintiff recommended plaintiff inspect the property.

The purchase agreement further indicated the real estate brokerage and its agents would serve as dual agents representing both buyer (plaintiff) and seller (defendant).

There was evidence plaintiff performed a physical inspection of the entire property before the close of escrow, as did an inspector hired by plaintiff. Plaintiff's mortgage lender hired an independent appraiser to assess the property, and plaintiff obtained title insurance. The appraiser was a defendant in plaintiff's lawsuit, and plaintiff testified she had filed or would soon file a lawsuit against the title insurance company as well.

A map of the property provided by defendant to plaintiff before the sale identified six parcels, each with a unique 10-digit number. The map is mostly black and white, but the fourth parcel is colored yellow. The fourth parcel's 10-digit number does not match any of the five numbers listed in the purchase agreement. The other five parcels' numbers largely match those in the purchase agreement, although two of the parcels' numbers have digits transposed (2275-103-008 (purchase agreement) vs. 2275-013-008 (map), 2275-108-013 (purchase agreement) vs. 2275-018-013 (map)).

A "Certificate of Occupancy" (some capitalization omitted) issued by the City of Los Angeles in 1982 described the structure on the property as "accessory living quarters." Defendant

testified he provided this document to the real estate agents prior to the close of escrow.

A "Covenant and Agreement to Hold Property as One Parcel" (boldface & some capitalization omitted) recorded with Los Angeles County in 1985 indicated the property "shall be held as one parcel and no portion shall be sold separately."

3. Statement of decision

Following the close of plaintiff's case, defendant moved for judgment under Code of Civil Procedure section 631.8. The trial court granted the motion and issued a statement of decision ruling in favor of defendant on all causes of action.

The court made the following findings:

Plaintiff received five parcels from the sale as promised in the sales agreement.

There was no evidence the dual agents received false or misleading information from defendant that they passed on to plaintiff. Defendant never made any direct disclosures to plaintiff, and there was no evidence he failed to make any required disclosures to the dual agents. Defendant did not prevent plaintiff from investigating the property.

Defendant never represented that the structure on the property was a single-family dwelling. The listing described the structure as a one-bedroom and one-bath home, which it appeared to be based on photographs admitted into evidence. There was insufficient evidence, moreover, that defendant drafted, prepared, or approved the property listing, "which was most likely done by dual agents based upon the prior property listing that [defendant] relied upon when he purchased the property." Defendant never represented the property had an approved building permit or city-approved plans for a future

home. "There was merely an agreement with an architect for a conceptual design of a home on the property."

Plaintiff signed an advisory recommending she investigate the boundaries of the property, building permits, zoning, and other government requirements. Defendant sold the property to plaintiff " 'in As Is condition.' " (Boldface omitted.) Plaintiff, although an attorney and experienced real estate agent, failed to investigate available government records concerning the property as advised. Plaintiff, the title insurance company, the appraiser, or plaintiff's property inspector should have discovered the certificate of occupancy and recorded covenant indicating the structure on the property was an accessory living quarters and the parcels were tied together.

The court found defendant credible in terms of the information he provided to the dual agents. The court also found defendant credible in terms of what facts he knew or did not know about the property. The court found plaintiff not credible in terms of the disclosures made to her before the close of escrow. The court specifically found credible defendant's testimony that he provided the certificate of occupancy to the dual agents prior to close of escrow. The court found not credible plaintiff's testimony that she did not receive the certificate of occupancy. The court noted that "[f]or unknown reasons Plaintiff elected not to call any of the 3 dual agents to testify at trial," and therefore there was no testimony from the agents contradicting defendant's testimony.

The court found plaintiff had failed to prove her cause of action for negligent misrepresentation because defendant made no representations to plaintiff that were untrue, defendant made no untrue representations that he intended plaintiff to rely upon,

plaintiff did not rely on any untrue representations by defendant, and there was insufficient evidence any representations by defendant were a substantial factor in any harm suffered by plaintiff.

The court found plaintiff had failed to prove her cause of action for nondisclosure of material facts because there was insufficient evidence defendant knew plaintiff did not know or could not reasonably discover the parcels were tied together, and indeed plaintiff could reasonably have discovered the lots were tied together from available government records.

The court found plaintiff had failed to prove her cause of action for fraudulent concealment because there were no concealed facts, defendant did not intentionally fail to disclose any material facts, plaintiff could have discovered the lots were tied together from investigation of government records, defendant did not prevent plaintiff from discovering any material facts, and there was insufficient evidence defendant intended to deceive plaintiff.

The court found plaintiff had failed to prove her cause of action for fraudulent misrepresentation because defendant made no false misrepresentations of material facts; there was insufficient evidence of any intentional false representation, or that defendant knew a representation was false when he made it or that he was reckless with regard to its truth; plaintiff could have discovered material facts by reasonable investigation; and the property was sold in "as is" condition.

Plaintiff timely appealed.

DISCUSSION

A. Motion for Judgment and Standard of Review

"After a party has completed his presentation of evidence in a trial by the court, the other party, without waiving his right to offer evidence in support of his defense or in rebuttal in the event the motion is not granted, may move for a judgment. The court as trier of the facts shall weigh the evidence and may render a judgment in favor of the moving party . . . , or may decline to render any judgment until the close of all the evidence." (Code Civ. Proc., § 631.8, subd. (a).) " ' "In making the ruling, the trial court assesses witness credibility and resolves conflicts in the evidence." ' [Citation.]" (*Orange County Water Dist. v. MAG Aerospace Industries, Inc.* (2017) 12 Cal.App.5th 229, 239 (*Orange County Water Dist*).) The trial court " ' "may enter judgment in favor of the defendant if the court concludes that the plaintiff failed to sustain its burden of proof. . . ." ' [Citation.]" (*Ibid.*)

" ' "The standard of review after a trial court issues judgment pursuant to Code of Civil Procedure section 631.8 is the same as if the court had rendered judgment after a completed trial — that is, in reviewing the questions of fact decided by the trial court, the substantial evidence rule applies." ' [Citation.]" (*Orange County Water Dist.*, *supra*, 12 Cal.App.5th at p. 239.) " ' "But, we are not bound by a trial court's interpretation of the law. . . ." ' [Citation.] ' "We review legal issues . . . under a de novo or independent standard." ' [Citation.]" (*Id.* at pp. 239–240.)

When reviewing for substantial evidence, "we 'liberally construe[ ]' findings of fact 'to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the

findings.' [Citation.] 'We may not reweigh the evidence and are bound by the trial court's credibility determinations.' [Citation.]" (*McPherson v. EF Intercultural Foundation, Inc.* (2020) 47 Cal.App.5th 243, 257.)

" 'The substantial evidence standard of review takes on a unique formulation where, as here, "the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals." ' [Citation.]" (*Symons Emergency Specialties v. City of Riverside* (2024) 99 Cal.App.5th 583, 597.) In that circumstance, " ' " 'the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) "uncontradicted and unimpeached" and (2) "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding." ' " ' [Citation.]" (*Garcia v. KND Development 52, LLC* (2020) 58 Cal.App.5th 736, 744; accord, *Symons Emergency Specialties*, at p. 597.)

B. Elements of Plaintiff's Causes of Action

"Negligent misrepresentation requires an assertion of fact, falsity of that assertion, and the tortfeasor's lack of reasonable grounds for believing the assertion to be true. It also requires the tortfeasor's intent to induce reliance, justifiable reliance by the person to whom the false assertion of fact was made, and damages to that person." (*SI 59 LLC v. Variel Warner Ventures, LLC* (2018) 29 Cal.App.5th 146, 154.)

" ' "In the context of a real estate transaction, '[i]t is now settled in California that where the seller knows of facts materially affecting the value or desirability of the property . . .

and also knows that such facts are not known to, or within the reach of the diligent attention and observation of the buyer, the seller is under a duty to disclose them to the buyer. [Citations.]' [Citations.] Undisclosed facts are material if they would have a significant and measurable effect on market value. [Citation.]" ' " (*RSB Vineyards, LLC v. Orsi* (2017) 15 Cal.App.5th 1089, 1097 (*RSB Vineyards*).)

" 'To establish a claim for fraudulent misrepresentation, the plaintiff must prove: "(1) the defendant represented to the plaintiff that an important fact was true; (2) that representation was false; (3) the defendant knew that the representation was false when the defendant made it, or the defendant made the representation recklessly and without regard for its truth; (4) the defendant intended that the plaintiff rely on the representation; (5) the plaintiff reasonably relied on the representation; (6) the plaintiff was harmed; and (7) the plaintiff's reliance on the defendant's representation was a substantial factor in causing that harm to the plaintiff." ' [Citation.]" (*Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 605–606 (*Graham*).)

"The required elements for fraudulent concealment are: (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact to the plaintiff; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would not have acted as he or she did if he or she had known of the concealed or suppressed fact; and (5) plaintiff sustained damage as a result of the concealment or suppression of the fact." (*Graham*, *supra*, 226 Cal.App.4th at p. 606.)

C. Substantial Evidence Supports the Judgment

Plaintiff had the burden of proof below, and fails to show that as a matter of law the evidence compelled a ruling in her favor.

The trial court found plaintiff had failed to prove numerous elements of her causes of action, but we focus on the court's finding plaintiff either received or could have discovered the information she alleged defendant misrepresented or omitted — in other words, defendant did not mispresent or conceal anything from her. This finding, if supported by substantial evidence, is fatal to plaintiff's causes of action, all of which require a misrepresentation or material omission. We discuss each claimed misrepresentation/omission in turn.

1. Alleged misrepresentation that sale would include an additional parcel

Plaintiff alleged defendant led her to believe the sale would include a parcel, which she calls parcel 4, that was not, in fact, part of the sale. The trial court found plaintiff received all the parcels promised in the purchase agreement. Substantial evidence supports this finding.

The purchase agreement listed five parcels each identified by a 10-digit number. Prior to the sale, defendant provided plaintiff with a map of the property showing six parcels. The 10-digit numbers listed on parcels 1, 2, 3, 5, and 6 match those in the purchase agreement, apart from two instances of transposition of digits (plaintiff raises no argument concerning the transposition). The fourth parcel's 10-digit number, however, is not listed in the purchase agreement. This is substantial evidence defendant did not misrepresent that parcel 4 was

included in the sale, as well as substantial evidence plaintiff could not reasonably rely on any representations that conflicted with the purchase agreement's express identification of the five parcels being sold.

2. Alleged failure to disclose legal status of structure on property

Plaintiff alleged defendant misrepresented or failed to disclose the legal status of the structure on the property, which was not a standalone residence but accessory living quarters. The trial court noted the city-issued certificate of occupancy identifying the structure as accessory living quarters, and found credible defendant's testimony that he provided that certificate to plaintiff before the sale was consummated. Accordingly, the court found defendant had disclosed the legal status of the structure to plaintiff, and even if he had not, the certificate of occupancy was publicly available and therefore discoverable by plaintiff upon reasonable investigation. The certificate and defendant's testimony are substantial evidence supporting the trial court's findings.

3. Alleged failure to disclose parcels were tied together

Plaintiff alleged defendant failed to disclose the five parcels were legally tied together and could not be separated for purposes of sale or development. The trial court noted the covenant tying the parcels together was recorded and thus available in county records, and found plaintiff or those assisting her in investigating

the property[1] could have discovered that covenant through reasonable investigation. The recorded covenant is substantial evidence nothing was concealed from plaintiff that she could not reasonably discover.

4. Alleged misrepresentation sale would include completed architectural plans

Plaintiff alleged the listing for the property stating "[p]lans for 5,000 sq ft house on top section of property," as well as defendant's subsequent disclosure of an agreement between him and an architect attaching conceptual drawings, led her to believe the sale would include completed plans for a residence on the property. Substantial evidence supports the trial court's finding defendant never promised completed or approved plans.

The listing merely states "plans" without any more information, which the trial court reasonably could have concluded did not constitute a promise of plans at any particular stage of completion. Defendant then disclosed the full extent of those plans to plaintiff, that being conceptual drawings and an agreement with an architect. Although plaintiff alleged this disclosure led her to believe defendant would also provide completed plans — that is, plaintiff allegedly believed defendant for some reason disclosed the conceptual drawings but not the plans themselves — the trial court reasonably could find the

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[1] The property was evaluated by plaintiff's inspector, her lender's appraiser, the title insurance company, and according to plaintiff, a contractor, a developer, and a surveyor. As noted, the appraiser was a defendant in the instant litigation, and plaintiff either had, or intended to file a lawsuit against the title insurance company too.

disclosure in fact supported the opposite conclusion, that defendant had disclosed all there was and no more was forthcoming. Put another way, the court could find it was not reasonable for plaintiff to assume without further inquiry, based solely on the listing and defendant's disclosure of the agreement and drawings, that defendant was holding back additional, completed plans that he would hand over at some point in the future.

Although at trial plaintiff testified the dual agents told her she would be provided with plans following close of escrow, she acknowledged defendant did not make these representations to her. Nor does plaintiff identify any evidence defendant instructed or otherwise caused the dual agents to make those representations. Regardless, the trial court did not have to believe plaintiff's testimony; the court, in fact, noted plaintiff's lack of credibility in its statement of decision.

D. We Reject Plaintiff's Contrary Arguments

Plaintiff argues the trial court erred in concluding sale of the property "as is," the buyer's inspection advisory, the availability of government records, and a lack of direct communications between plaintiff and defendant defeated plaintiff's claims as a matter of law. Plaintiff contends the trial court, in an earlier order denying defendant's motion for summary judgment, rejected the proposition that those circumstances defeated plaintiff's claims, and the court's ruling against her at trial conflicted with that earlier order. Plaintiff acknowledges the purported conflict between the summary judgment ruling and the court's ruling at trial does not establish reversible error, but argues the "inconsistency . . . underscores that the judgment rested on legal shortcuts the court had

previously recognized were insufficient to defeat the claims as a matter of law."

We disagree with plaintiff's characterization of the statement of decision. Nowhere in the statement of decision did the court conclude that the "as is" status of the sale, the buyer advisory, or any other circumstances absolved defendant of liability as a matter of law. Rather, the listed circumstances were among the factual findings upon which the court based its conclusion that, inter alia, plaintiff could not reasonably rely on any assurances from defendant or the dual agents without conducting her own investigation, and that investigation would have revealed through available government records the information plaintiff alleged defendant failed to disclose. In other words, the court found defendant did not withhold any material information plaintiff and those assisting her could not have discovered through reasonable investigation.

Plaintiff argues there was no evidence that the information defendant allegedly failed to disclose to her was available in public records. It was not defendant's burden to show the information was available through publicly available records, but plaintiff's burden to show it was not available. In any event, the covenant tying the lots together was recorded, which is substantial evidence supporting an inference the document was publicly available. As for the certificate of occupancy, the court found defendant provided that document to the dual agents to give to plaintiff, and therefore it is irrelevant whether plaintiff could have discovered that document on her own.

Plaintiff argues the record does not support a finding that she could have discovered the covenant regarding tying the lots through investigation. She claims she offered evidence that she,

along with a developer, contractor, and surveyor, all investigated the property, including its legal status, and none discovered the government records at issue. The question before us is not whether there is evidence supporting plaintiff's claims, but whether there is substantial evidence supporting the trial court's findings. The trial court was not obligated to accept plaintiff's evidence of investigation, and indeed could conclude based on plaintiff's alleged inability to discover the recorded covenant that plaintiff's investigation was inadequate. We must defer to these findings and all supporting inferences from those findings.

Plaintiff argues case law holds that a plaintiff's negligence in discovering falsity is not a defense to intentional fraud. She argues it is also not a defense that a plaintiff continues with a transaction despite discovering the fraud. Assuming arguendo plaintiff accurately characterizes the law, it is inapplicable here because the trial court expressly found insufficient evidence defendant had the intent or knowledge necessary to prove intentional fraud. Specifically, the court found insufficient evidence defendant intended to deceive plaintiff, made representations he knew to be false, made representations recklessly without regard for the truth, or knew plaintiff did not know about the lot-tie covenant and/or could not reasonably discover it. (*Graham*, *supra*, 226 Cal.App.4th at p. 606 [fraudulent concealment requires intent to defraud]; *id.* at pp. 605–606 [fraudulent misrepresentation requires proof defendant knew representation was false or made representation recklessly without regard for its truth]; *RSB Vineyards*, *supra*, 15 Cal.App.5th at p. 1097 [nondisclosure tort requires proof defendant knew the nondisclosed information was neither " ' " 'known to, or within the reach of the diligent attention and

observation of the [plaintiff]' " ' "].) Plaintiff does not address these findings on appeal, and therefore forfeits any challenge to them. (*Sierra Palms Homeowners Assn. v. Metro Gold Line Foothill Extension Construction Authority* (2018) 19 Cal.App.5th 1127, 1136 [issue not raised in appellate briefing forfeited].)

At most, plaintiff contends defendant's testimony stating he believed the lot-tie covenant was not something he needed to disclose to plaintiff "supported Plaintiff's theory that the nondisclosure was deliberate." Identifying evidence purportedly supporting plaintiff's theory is insufficient to overcome the trial court's contrary findings which, again, are supported by substantial evidence. Also, to prove fraud through concealment or nondisclosure, it is not enough to show a defendant deliberately withheld information, absent proof the defendant intended to defraud or knew the plaintiff did not have the information and could not obtain it. (*Graham*, *supra*, 226 Cal.App.4th at p. 606; *RSB Vineyards*, *supra*, 15 Cal.App.5th at p. 1097.) Plaintiff identifies no evidence compelling any such findings.

Plaintiff argues the trial court erred in presuming constructive knowledge on her part from unrecorded instruments. Assuming arguendo principles of constructive knowledge could apply here, the lot-tie covenant *was* recorded. The trial court found plaintiff had *actual* knowledge of the certificate of occupancy because defendant provided it to her.

Plaintiff argues her trial testimony established "she did not receive the certificate [of occupancy] before closing, . . . and that even when she later obtained it after the sale, she understood it as referring to the guest unit rather than as a document negating Defendant's repeated representation that the property included a

legal single-family home." In making this argument, plaintiff seems to be saying although the certificate of occupancy informed her there was a guest unit on the property legally designated as accessory living quarters, this did not provide notice that there was not *also* a single-family home on the property as defendant allegedly represented to her. A belief, however, that the property included a single-family residence in addition to the accessory living quarters would not have been reasonable given that a simple visual inspection of the property would have confirmed there was no structure apart from the accessory living quarters.

Plaintiff argues defendant's testimony he disclosed the certificate of occupancy is not credible because it was self-serving and unsupported by third-party or documentary evidence. She further contends defendant's testimony was impeached by his own earlier statements and other documents. Credibility findings are for the trial court to make, and we must defer to them when reviewing for substantial evidence. Even if arguendo inconsistent statements undercut the trial court's credibility finding, plaintiff identifies no statements by defendant contradicting his testimony that he provided the certificate of occupancy. At most, she musters a general attack on his credibility by identifying purportedly inconsistent statements by defendant regarding whether the structure on the property was a single-family home as opposed to accessory living quarters.[2]

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[2] In defendant's interrogatory responses and declaration in support of his summary judgment motion, he characterized the structure as an accessory dwelling unit. At trial, in contrast, he testified he read the certificate of occupancy to indicate the structure had been converted from an accessory unit to a single-family residence. The trial court sustained defense counsel's

Those statements have no bearing on whether defendant provided the certificate of occupancy, which was the basis for the trial court's conclusion that plaintiff could not reasonably have been misled to believe the structure was a single-family home.

Plaintiff argues the trial court was wrong, on the basis plaintiff did not call the dual agents to testify, to accept defendant's testimony that he disclosed the certificate of occupancy. Plaintiff contends, "The absence of agent testimony is not affirmative proof that disclosure occurred." Defendant did not have the burden to affirmatively prove disclosure. Rather, plaintiff had the burden to show she had *not* received the disclosure. The trial court found plaintiff had not met this burden, in part because there was no corroborating testimony from the dual agents. The trial court could take into account the absence of corroborating evidence from key witnesses to the transactions at issue in evaluating credibility as the trier of fact.

Plaintiff argues evidence defendant provided necessary disclosures to the dual agents, even if accepted, does not establish those disclosures reached plaintiff. Again, it was not defendant's burden to prove plaintiff received the disclosures, but plaintiff's burden to prove she did not.

Plaintiff argues the trial court erred in excluding as hearsay text messages and e-mails from the dual agents sent after the close of escrow purportedly indicating the agents were looking for the architectural plans to provide to plaintiff. She argues that evidence, if admitted, was relevant to show, inter

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relevance objection to this testimony, stating, "[T]he document says what [the structure] is. If [defendant] thought it was a single family home, and the document says something else, I'm going to go by the document. He's wrong."

alia, why plaintiff continued to believe permitted plans existed. Assuming arguendo this is so, the trial court found insufficient evidence defendant had conveyed false information to the dual agents to pass on to plaintiff, and therefore any liability for misrepresenting the existence of plans would fall on the dual agents, not defendant.

Plaintiff further argues the excluded text messages and e-mails would have proven any plans given to the agents were not disclosed to plaintiff before closing. We do not understand this argument. Plaintiff's causes of action do not allege defendant failed to disclose or provide completed plans to plaintiff, but rather defendant in fact had no completed plans but misled plaintiff to believe he did. Plaintiff's causes of action therefore assume the agents had no plans to give plaintiff, apart from the architect agreement and conceptual drawings. Given this allegation, any evidence the agents were searching for the nonexistent plans postclosing is irrelevant.[3]

[3] We deny plaintiff's request to disregard defendant's appellate brief as untimely filed.

DISPOSITION

The judgment is affirmed. Defendant is awarded his costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.