

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION No. 3

DENNIS SOLOMON, ) Court of Appeal No. **B281416**  
)  
Petitioner and Appellant, ) (Superior Ct No. BP153887)  
)  
v )  
)  
HOOVER LOUIE, )  
)  
Objector and Respondent. )  
\_\_\_\_\_ )

Appeal from a Judgment  
of the Superior Court, County of Los Angeles  
Honorable Maria E. Stratton, Judge

---

**RESPONDENT'S BRIEF**

---

RUSSELL, MIRKOVICH & MORROW  
Joseph N. Mirkovich, Esq. SBN.: 45644  
Margaret E. Morrow, Esq. SBN.: 145306  
One World Trade Center, Suite 1660  
Long Beach, CA 90831-1660; (562) 436-9911  
e-mail: counsel@rumlaw.com

Attorneys for Objector/Respondent  
HOOVER LOUIE

<b>COURT OF APPEAL</b>	<b>APPELLATE DISTRICT, DIVISION</b>	COURT OF APPEAL CASE NUMBER: B281416
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 45644 NAME: Joseph N. Mirkovich, Esq. FIRM NAME: RUSSELL, MIRKOVICH & MORROW STREET ADDRESS: One World Trade Center, Suite 1660 CITY: Long Beach STATE: CA ZIP CODE: 90831-1660 TELEPHONE NO.: (562)436-9911 FAX NO.: (562)436-1897 E-MAIL ADDRESS: jmirkovich@rumlaw.com ATTORNEY FOR (name): Objector/Respondent Hoover Louie		SUPERIOR COURT CASE NUMBER: BP153887
APPELLANT/ PETITIONER: DENNIS SOLOMON RESPONDENT/ REAL PARTY IN INTEREST: HOOVER LOUIE		
<b>CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</b>		
(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE		
<b>Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.</b>		

1. This form is being submitted on behalf of the following party (name): Objector/Respondent Hoover Louie
2. a.  There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b.  Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
--	-------------------------------

- (1)
- (2)
- (3)
- (4)
- (5)

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: May 2, 2018

\_\_\_\_\_  
Joseph N. Mirkovich  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
/s/ Joseph N. Mirkovich  
(SIGNATURE OF APPELLANT OR ATTORNEY)

## TABLE OF CONTENTS

	Page
<b>TABLE OF AUTHORITIES.....</b>	<b>5</b>
<b>STATEMENT OF THE CASE.....</b>	<b>9</b>
<b>STATEMENT OF FACTS.....</b>	<b>11</b>
<b>PROCEDURAL HISTORY.....</b>	<b>16</b>
<b>STATEMENT OF APPEALABILITY.....</b>	<b>20</b>
<b>STANDARD OF REVIEW. ....</b>	<b>20</b>
<b>a. All Presumptions Favor the Judgment....</b>	<b>20</b>
<b>b. Appellant’s failure to provide an adequate     record limited his appeal to purported     errors appearing on the face of the record.     He failed to address the record; he is in     default. ....</b>	<b>21</b>
<b>c. Without a reporter’s transcript, Appellant’s     exhibits must be disregarded. ....</b>	<b>24</b>
<b>ARGUMENT. ....</b>	<b>25</b>
<b>a. Summary of Argument. ....</b>	<b>25</b>

<b>b.</b>	<b>The trial court’s judgment should be upheld. Appellant failed to comply with his burden of limiting his appeal to the face of the record. He is in default. . . . .</b>	<b>25</b>
<b>c.</b>	<b>Respondent Trustee Hoover Louie has standing. . . . .</b>	<b>27</b>
<b>d.</b>	<b>Appellant’s argument that the “Adumdum” was never authenticated lacks merit because it is not purported error that appears on the face of the record. . . . .</b>	<b>29</b>
<b>e.</b>	<b>The burden of proof under Probate Code §21380 remained with Appellant. . . . .</b>	<b>32</b>
<b>f.</b>	<b>Appellant’s challenge to the execution of the Addendum has no merit. . . . .</b>	<b>33</b>
<b>g.</b>	<b>The trial court correctly denied Appellant’s Petition for an Accounting. . . . .</b>	<b>34</b>
<b>h.</b>	<b>Appellant’s Summary of Material Errors of Fact is unsupported by the record. It lacks merit. . . . .</b>	<b>37</b>
<b>i.</b>	<b>Appellant’s argument that he was denied discovery is unsupported by the record. It lacks merit. . . . .</b>	<b>37</b>

**j. Appellant’s claim that the trial court erred in denying his request for a jury trial has no merit. . . . . 39**

**k. Appellant’s claims of anti-Semitism, Prejudice of the Court and Extraordinary Circumstances are fanciful and troubling. . . . . 39**

**CONCLUSION. . . . . 40**

**CERTIFICATE OF COMPLIANCE. . . . . 42**

## TABLE OF AUTHORITIES

### Cases

	Page
<i>Ballard v. Uribe</i> , 41 Cal. 3d 564 (1986).....	21, 24
<i>Bond v. Pulsar Video Productions</i> , 50 Cal. App. 4 <sup>th</sup> 918 (1996). . . . .	23
<i>Burnete v. La Casas Dana Apartments</i> , 148 Cal. App. 4 <sup>th</sup> 1262 (2007). . . . .	11
<i>Christie v. Kimball</i> , 202 Cal. App. 4 <sup>th</sup> 1407 (2012). . . . .	38
<i>Contra Costa County v. Pinole Point Properties, LLC</i> , 235 Cal. App. 4 <sup>th</sup> 914 (2015). . . . .	25
<i>Eby v. Chaskin</i> , 47 Cal. App. 4 <sup>th</sup> 1045 (1996). . . . .	22, 30, 34, 37
<i>Estate of Beach</i> , 15 Cal. 3d 623 (1975).....	39
<i>Estate of Desmond</i> , 223 Cal. App. 2d 211 (1963). . . . .	27
<i>Estate of Fain</i> , 75 Cal. App. 4 <sup>th</sup> 973 (1999). . . . .	22

<i>Estate of Ferrall v. Bank of America</i> , 33 Cal. 2d 202 (1948).....	28
<i>Estate of Miller</i> , 243 Cal. App. 2d 352 (1966). . . . .	24, 31
<i>FLIR Systems, Inc. v. Parrish</i> , 174 Cal. App. 4 <sup>th</sup> 1270 (2009). . . . .	32
<i>Foust v. San Jose Construction Company, Inc.</i> , 198 Cal. App. 4 <sup>th</sup> 181 (2011). . . . .	21, 31, 37, 38
<i>Haywood v. Superior Court</i> , 77 Cal. App. 4 <sup>th</sup> 949 (2000). . . . .	38
<i>In re England’s Estate</i> , 214 Cal. 298 (1931). . . . .	39
<i>In re Marriage of Balcof</i> , 141 Cal. App. 4 <sup>th</sup> 1509 (2006). . . . .	32
<i>Kelly v. CB&amp;I Constructors, Inc.</i> , 179 Cal. App. 4 <sup>th</sup> 442 (2009). . . . .	24
<i>Landry v. Berryessa Union School Dist.</i> , 39 Cal. App. 4 <sup>th</sup> 691 (1995). . . . .	27
<i>Lickter v. Lickter</i> , 189 Cal. App. 4 <sup>th</sup> 712 (2010). . . . .	38
<i>National Secretarial Service, Inc. v. Froehlich</i> , 210 Cal. App. 3d 510 (1989). . . . .	23

<i>Orange County Water Dist. v. Sabic Innovative Plastics US LLC,</i> 14 Cal. App. 5 <sup>th</sup> 343 (2017). . . . .	26
<i>Osgood v. Landon,</i> 127 Cal. App. 4 <sup>th</sup> 425 (2005). . . . .	26
<i>Portico Management Group, LLC v. Harrison,</i> 202 Cal. App. 4 <sup>th</sup> 464 (2012). . . . .	28
<i>Rappleyea v. Campbell,</i> 9 Cal. 4 <sup>th</sup> 975 (1994).. . . . .	11
<i>Roach v. Coffey,</i> 73 Cal. 281 (1887). . . . .	29
<i>SCI California Funeral Services, Inc. v. Five Bridges Foundation,</i> 203 Cal. App. 4 <sup>th</sup> 549 (2012). . . . .	24
<i>Stevens v. Owens-Corning Fiberglass Corp.,</i> 49 Cal. App. 4 <sup>th</sup> 1645 (1996). . . . .	21
<i>Williams v. Inglewood Board of Realtors,</i> 219 Cal. App. 2d 479 (1963). . . . .	24
<i>Winograd v. American Broadcasting Co.,</i> 68 Cal. App. 4 <sup>th</sup> 624 (1998). . . . .	20



Statutes

Code of Civil Procedure § 631.8. . . . . 11, 19  
Code of Civil Procedure § 631.8(a). . . . . 12  
Code of Civil Procedure § 904.1(a)(1). . . . . 20  
Probate Code §16002. . . . . 35  
Probate Code §16003. . . . . 28  
Probate Code §16004. . . . . 35  
Probate Code §17200. . . . . 16  
Probate Code §21380. . . . . 32, 41

Rules of Court

Cal. Rules of Court, Rule 8.163. . . . . 22  
Cal. Rules of Court, Rule 8.204(c). . . . . 42

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION No. 3

DENNIS SOLOMON, ) Court of Appeal No. **B281416**  
)  
Petitioner and Appellant, ) (Superior Ct No. BP153887)  
)  
v )  
)  
HOOVER LOUIE, )  
)  
Objector and Respondent. )  
\_\_\_\_\_ )

**RESPONDENT’S BRIEF**

**STATEMENT OF THE CASE**

This appeal and underlying litigation arises from Appellant Dennis Solomon’s (“Appellant”) profound dissatisfaction when he learned that his aunt, Dorothy Horwitz (“Mrs. Horwitz”), amended the Dorothy Horwitz Family Trust dated March 6, 2012 (“Trust”), to leave him only \$5.00 and the bulk of the Trust to 12 charities. (RA 14;

13.) To address his disappointment, Appellant filed a Petition for an order to invalidate the amendment. He based his attack on the Trust amendment on the following grounds: failure to provide a copy of the trust; conversion and concealment of assets; actions adverse to the beneficiary; failure to preserve trust assets; and constructive fraud and breach of fiduciary duty. (RA 14; CT12.) Later, he filed another Petition, in the same action, to compel an accounting of the Trust by Respondent Trustee Hoover Louie (“Respondent”), and to determine the validity of the Trust. (RA 14.)

The Petitions were tried to the court on June 15, 16, 17 and 20, 2016. The only witnesses that Appellant called, other than himself, were Hoover Louie’s counsel, Margaret Morrow and Joe Ling, and Nicholas Sanchez, a beneficiary. Curiously, he failed to call any witness to the Trust

amendment including the notary, Mrs. Horwitz's health care providers, Trustee Hoover Louie, or persons who were with Mrs. Horwitz in her final months. (RA 4-12.) At the conclusion of Appellant's case, Respondent moved for judgment pursuant to Code of Civil Procedure § 631.8 ("CCP §631.8"). The trial court correctly granted the motion because Appellant failed to sustain his burden of proof on either of the Petitions. (RA 12, 18, 19.)

Appellant appeals the trial court's decision denying, with prejudice, both of his Petitions for lack of proof.

### **STATEMENT OF FACTS**

Appellant<sup>1</sup> failed to provide a reporter's transcript of

---

<sup>1</sup>Appellant argues for deferential treatment because of his pro per status. (AOB 8-10.) "A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation."

*Rappleyea v. Campbell*, 9 Cal. 4<sup>th</sup> 975, 985 (1994). *See also Burnete v. La Casas Dana Apartments*, 148 Cal. App. 4<sup>th</sup> 1262, 1267 (2007).

the trial or a Settled Statement. However, the trial court issued a Ruling on Submitted Motion dated August 3, 2016, which is included in Respondent's Appendix. (RA 12-20.) That Ruling is deemed a Statement of Decision. *See* Code of Civil Procedure § 631.8(a). Respondent's Statement of Facts is based on the facts set forth in the Ruling.

On March 6, 2012, Mrs. Horwitz created the Dorothy Horwitz Family Trust dated March 6, 2012. It provides that after payment of her final debts and expenses, the residue of the trust shall be distributed to Murray Solomon, Appellant Dennis Solomon, Nicolas Sanchez, and various charitable organizations listed in Schedule B. However, no charitable organizations were listed in Schedule B. (RA 13.)

In pertinent part, the Trust also provides that any amendment to the Trust must be executed in writing by the trustor and delivered to the trustee. Finally, the Trust

provides that the trustee shall not be required to render periodic payments to any person, but shall render accounts at the termination of a trust and on a change of trustees to the person and in the manner required by law. (RA 13.)

On November 18, 2013, the Trust was amended by way of an Affidavit and Addendum to the Trust, consisting of five pages. The first two pages are form documents with a notary stamp and a signature of “Doris Tucker Notary Public” on the signature line for a notary public. Page 3 is an Addendum which changes the distribution of the Trust by assigning specific gifts to particular charities and individuals. The Addendum reads:

“Upon my death the only ones to enter my condo and absolutely no one else are; The Aparicio’s and Hoover Louie [sic]. Rose can take what she wants except for the wood and tile sculptures, which are to be shipped prepaid to Murray

Solomon. All household goods to be given to the Salvation Army or Goodwill. Condo is to be sold as is, by Rose Aparicio's Realtor; Steven Tran, the proceeds are to be used to pay my executor Hoover Louie [sic]. The balance is to be distributed amongst charities. All monies used by me before my death, are to be deducted from charities. I have three safe deposit boxes, one is at Bank of America at Valley and Ivar in the city of Rosemead, and listed under Walter & Dorothy Horwitz. The 2<sup>nd</sup> is at Wells Fargo on Las Tunas drive in Temple City and is listed under Dorothy Horwitz. The 3<sup>rd</sup> is at Chase Bank on Las Tunas Drive in Temple City CA, and is listed under Dorothy Horwitz. The safe deposit keys are at my home in the bedroom nightstand under a poster of Boston. Sell all jewelry and add to charities.

Jewelry to be sold and proceeds to go to St. Jude Childrens charity." (RA 13.)

The Addendum has a signature line with a signature “Dorothy Horwitz” dated November 18, 2013. It also had a signature line for “Witness” which was executed and dated November 18, 2013. (RA 13.)

Page 4 follows with a list of charities which are to receive specific monetary amounts. The two biggest bequests of \$300,000 each go to St. Jude and Los Angeles Children’s hospital. Next are the American Lung Association and American Heart Association, each receiving \$100,000. Next are \$50,000 bequests to Alzheimer’s Foundation and Kidney Foundation. The Braille Institute on Vermont Avenue in Hollywood and the American Diabetes Association are each to receive \$5,000. Muscular Dystrophy and Multiple Scherosis (sic) (Montel Williams) each receive \$10,000. Finally, the Los Angeles Mission is given \$15,000. (RA 13.)

Page 4 also directs that two automobiles be donated to



Cars for Causes and the proceeds given to the Union Mission in Los Angeles. (RA 13.)

Finally, page 5 has a list entitled “Distribution of Assets.” Rose Aparicio is given \$25,000 to hold for Nicolas Sanchez until November 2, 2020. If both Rose and Nicolas expire before November 2, 2020, the money is to be given to St. Jude. (RA 14.)

Andrea Ebert is given \$10,000. Edward Liu is given “[A]ll patio plants plus floor to ceiling ladder in garage.” Murray Solomon is given \$5,000. Dennis Solomon is given \$5.00. (RA 14.)

On November 25, 2013, one week after executing the addendum, Mrs. Horwitz died. (RA 14.)

## **PROCEDURAL HISTORY**

On July 17, 2014, Appellant filed a Petition pursuant to Probate Code Sec. §17200 Invalidating the Purported

November 18, 2013 Addendum. (CT 12.)

On December 5, 2014, he filed an Amended Petition for Order Invalidating the Purported November 18, 2013 Addendum. The Amended Petition includes three claims for relief that list grounds upon which the Addendum can be invalidated: lack of testamentary and contractual capacity; undue influence by Rose Aparicio and others; constructive fraud; breach of fiduciary duty. The prayer for relief asks the court to invalidate the Addendum; instruct successor trustee Hoover Louie to distribute the trust assets in accordance with the original Trust document; and direct trustee Hoover Louie to prepare and file an accounting. (RA 14.)

On January 22, 2015, Respondent filed an answer and objections to the Amended Petition. (RA 14.)

On January 23, 2015, Appellant filed a Supplement to

the Amended Petition. (RA 14.) On August 5, 2015, he filed a 2<sup>nd</sup> Supplement to the Amended Petition. The 2<sup>nd</sup> Supplement added Fourth, Fifth and Sixth Claims for Relief for fraud in drafting the addendum; forgery of Dorothy Horwitz's signature to the Addendum; and breach of fiduciary duty to the Trust. (RA 14.)

On January 11, 2016, Appellant filed a First Amended Petition for an Accounting; for a complete Copy of the Terms of the Trust; for the Determination of the Validity of the Purported Trust Addendum. The Amended Petition included six claims for relief based on the following theories: failure to provide a copy of trust; conversion and concealment of assets; actions adverse to beneficiary; failure to preserve trust assets; and constructive fraud and breach of fiduciary duty. The Amended Petition also asked the court to compel trustee Hoover Louie to provide an

accounting. (RA 14.)

On June 14, 2016, trustee filed objections to the First Amended Petition. (RA 14.)

The matter was tried on both Petitions. A court trial began on June 15, 2016. The following causes of action were pursued against Respondent: Lack of Testamentary Capacity; Undue Influence; Constructive Fraud and Breach of Fiduciary Duty; Forgery; Order for an Accounting; Failure to Provide a Copy of the Trust; Concealment and Conversion of Assets; Failure to Preserve Trust Assets. (RA 4-5; 18-19.)

On June 20, 2016, after Appellant rested his case, Respondent moved for judgment pursuant to CCP §631.8. The trial court took the matter under submission. (RA 10-11.)

On August 3, 2016, the trial court issued its Ruling on

Submitted Matter, finding against Appellant on all causes of action in both Petitions based on his “failure to present sufficient, credible evidence in support of his two amended petitions.” (RA 18-19.)

Appellant’s request for a Settled Statement was denied as being untimely. (RA 23.)

### **STATEMENT OF APPEALABILITY**

Appellant Dennis Solomon appeals a judgment entered following trial. A final judgment is appealable pursuant to Code Civil of Procedure §904.1(a)(1).

### **STANDARD OF REVIEW**

**a. All Presumptions Favor the Judgment.**

“A judgment or order of a lower court is presumed correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.” *Winograd v. American Broadcasting Co.*, 68 Cal. App. 4<sup>th</sup> 624, 631 (1998).

Appellant “bears the burden of overcoming this presumption by showing error on an adequate record.” *Stevens v. Owens-Corning Fiberglass Corp.*, 49 Cal. App. 4<sup>th</sup> 1645, 1657 (1996). *See also Ballard v. Uribe*, 41 Cal. 3d 564, 574 (1986) [“. . . a party challenging a judgment has the burden of showing reversible error by an adequate record.] Appellant failed to carry that burden. He failed to show error and to provide an adequate record.

- b. Appellant’s failure to provide an adequate record limited his appeal to purported errors appearing on the face of the record. He failed to address the record; he is in default.**

Appellant failed to provide a reporter’s transcript in support of his appeal and that failure affects and limits the standard of review<sup>2</sup>.

---

<sup>2</sup>“. . . [A]ppellate courts have refused to reach the merits of an appellant’s claims because no reporter’s transcript of a pertinent proceeding or a suitable substitute was provided.” *Foust v. San Jose Construction Company, Inc.*,

“Where no reporter’s transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary matters*. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. [Citation.] The effect of this rule is that an appellant who attacks a judgment but supplies no reporter’s transcript will be precluded from raising an argument as to the sufficiency of the evidence. [Citations.]” *Estate of Fain*, 75 Cal. App. 4<sup>th</sup> 973, 992 (1999). (Emphasis in the original.)

Moreover,

“[t]he reviewing court will presume that the record in an appeal includes all matters material to deciding the issues raised. If the appeal proceeds without a reporter’s transcript, the presumption applies only if the claimed error appears on the face of the record.” Cal. Rules of Court, Rule 8.163.

Without a reporter’s transcript, appellate “review is therefore limited to errors that appear on the face of the record.” *Eby v. Chaskin*, 47 Cal. App. 4<sup>th</sup> 1045, 1048, fn. 4 (1996). The appellate court must conclusively presume the

---

198 Cal. App. 4<sup>th</sup> 181, 186 (2011). Such is the case here.

trial court correctly ruled based on what occurred in the unreported proceedings. *National Secretarial Service, Inc. v. Froehlich*, 210 Cal. App. 3d 510, 521-522 (1989). *See also Bond v. Pulsar Video Productions*, 50 Cal. App. 4<sup>th</sup> 918, 924 (1996) [“The sufficiency of the evidence is not open to review. The trial court’s findings of fact and conclusions of law are presumed to be supported by substantial evidence and are binding on the appellate court, unless reversible error appears on the record.”]

Appellant’s record consists of the Clerk’s Transcript, some trial court exhibits and miscellaneous documents. However, his record does not include any minutes of the trial nor the trial court’s Ruling on Submitted Matter. Without the Ruling on Submitted Matter in his record, Appellant cannot comply with the applicable standard of appellate review because there is no relevant record to



review. The lack of a relevant record is fatal to his appeal. *Ballard*, supra, 575.

Moreover, Appellant is estopped from addressing the relevant record in his reply brief. Matters not raised in the opening brief will be considered abandoned. *SCI California Funeral Services, Inc. v. Five Bridges Foundation*, 203 Cal. App. 4<sup>th</sup> 549, 573, fn. 18 (2012); *Kelly v. CB&I Constructors, Inc.*, 179 Cal. App. 4<sup>th</sup> 442, 452 (2009) [“point not raised in opening brief will not be considered.”]

**c. Without a reporter’s transcript, Appellant’s exhibits must be disregarded.**

Another consequence of not having a reporter’s transcript is that the appellate court cannot consider the exhibits that Appellant has submitted as part of his record. An appellate court may not consider exhibits without a record of the testimony given at trial. *Estate of Miller*, 243 Cal. App. 2d 352, 353-354 (1966); *Williams v. Inglewood*

*Board of Realtors*, 219 Cal. App. 2d 479, 481-482 (1963).

## ARGUMENT

### a. Summary of Argument.

“The Appellant has the burden of demonstrating prejudicial error based on an adequate record and appropriate legal argument.” *Contra Costa County v. Pinole Point Properties, LLC*, 235 Cal. App. 4<sup>th</sup> 914, 925 (2015). As previously stated, Appellant failed to meet his burden in both respects: he failed to provide an adequate record and he failed to make an appropriate, relevant legal argument that addressed the record.

### b. **The trial court’s judgment should be upheld. Appellant failed to comply with his burden of limiting his appeal to the face of the record. He is in default.**

Appellant fails to present a facially sufficient legal argument for reversal because he did not limit his appeal to the face of the record. He ignored the record. Instead, he

fashioned his own record that focused on extraneous documents purporting to support his claim. He ignored any evidence favorable to the Respondent and any part of the trial court's ruling that could affirm its decision, including its findings and conclusions. His opening brief reads like a trial brief.

“[A] record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed.” *Osgood v. Landon*, 127 Cal. App. 4<sup>th</sup> 425, 435 (2005).

Appellant's brief is an accumulation of rambling and disjointed arguments. It lacks clarity and any cogent legal argument. The absence of cogent legal argument allows the appellate court to treat an appellant's contentions as waived. *Orange County Water Dist. v. Sabic Innovative Plastics US, LLC*, 14 Cal. App. 5<sup>th</sup> 343, 383 (2017). *See also*

*Landry v. Berryessa Union School Dist.*, 39 Cal. App. 4<sup>th</sup> 691, 699-700 (1995) [“When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary.”] The fact that Appellant failed to identify a single error on the record presumes that there is none.

Moreover, the trial court found Appellant “not a reliable witness.” (RA 19.) His “testimony was heartfelt, fanciful, and not credible. Moreover, by outlandishly ascribing anti-semitic beliefs to trustee’s counsel, he did his credibility no favors. The court finds petitioner not credible.” (RA19.) It is the exclusive function of the trial court to determine the credibility of the witnesses. *Estate of Desmond*, 223 Cal. App. 2d 211, 215 (1963). Appellant’s arguments should be viewed in this light.

**c. Respondent Trustee Hoover Louie has standing.**

On appeal, Appellant argues that Respondent lacks standing under Probate Code §16003. “As a general rule, the trustee is the real party in interest with standing to sue and defend on the trust’s behalf.” *Portico Management Group, LLC v. Harrison*, 202 Cal. App. 4<sup>th</sup> 464, 473 (2012).

Appellant’s cases are inapposite. His citation to *Estate of Ferrall v. Bank of America*, 33 Cal. 2d 202, 204 (1948), is based on the rule

“prohibiting appeals by a trustee from orders merely determining which beneficiaries are entitled to a share in a particular fund . . . Under such circumstances, the trustee is therefore to be regarded as a mere stakeholder with no duties to perform other than to pay out funds to the various claimants as ordered by the proper court, and the beneficiaries must then protect their own rights.” *Id.*

That is not the case here. Respondent Trustee is defending the integrity of an amendment to a trust, which Appellant is challenging, and not determining how beneficiaries are to share in a particular fund.

Appellant's reliance on *Roach v. Coffey*, 73 Cal. 281 (1887), at 282, is also misplaced. Respondent is not litigating "the claims of one set [of devisees] against the other." *Id.* Instead, as *Roach* states, he is fulfilling "his duty to preserve the estate, and distribute it as the court shall direct." *Id.* Appellant's claim that Respondent lacks standing has no merit.

**d. Appellant's argument that the "Adumdum" was never authenticated lacks merit because it is not purported error that appears on the face of the record.**

Appellant's argument about the purported invalidity of the Adumdum<sup>3</sup> is based on a number of contentions: that the Addendum "was never admitted or plead as authentic or admitted by default" (AOB 11); that there is evidence of signature forgery (AOB 12, 14 and 15); that there is no mathematical probability of authenticity (AOB 12); and that

---

<sup>3</sup>"Adumdum" is Appellant's characterization of the Addendum.

there was no authentication (AOB 14-15). These unfounded allegations must be rejected because they are neither errors nor appear on the face of the record. Appellant's argument regarding alleged lack of authentication of the Addendum is unsupported and must be rejected. The Addendum was the trial court's Exhibit A (RA 15) and Appellant has identified no error on the record to dispute that admission.

Appellant's claim of signature forgery was expressly rejected by the trial court:

As to the forgery allegation, [Appellant] brought in no experts and relied on his own lay opinion about the forged signature. However, [Appellant] himself was not a reliable witness. (RA 19.)

Appellant failed to identify any error on the face of the record to dispute this finding. Accordingly, that argument has no merit. *Eby, supra* at 1048, fn. 4.

Moreover, none of the exhibits that Appellant cites in support of his argument, (AOB 12-13, fns. 7-11), was

admitted into evidence. (RA 6-11.) Only one, (AOB 12, fn. 9), was marked for identification at trial. (RA 10-11.) Since these exhibits were not part of the Ruling and do not appear on the record, they must be disregarded. Moreover, an appellate court may not consider exhibits without a record of the testimony given at trial. *Estate of Miller*, supra at 353-354.

Appellant's argument regarding Mathematical Probability of Authenticity must also be disregarded. It was not preserved for appeal. There is no mention of it in the trial court's Ruling on Submitted Matter and the presumption is that it was not raised in the trial court. *Foust*, supra, 186 fn. 2.

Appellant's argument on this point and arguments throughout his brief are attempts to retry the case. Appellate courts "do not retry cases on appeal and . . . do not



substitute . . . [their] discretion for that of the trial court.”  
*FLIR Systems, Inc. v. Parrish*, 174 Cal. App. 4<sup>th</sup> 1270, 1276  
(2009). *See also In re Marriage of Balcof*, 141 Cal. App. 4<sup>th</sup>  
1509, 1531 (2006) [“Appellate courts ‘do not reweigh  
evidence or reassess the credibility of witnesses. . .’ Put  
another way, ‘[t]he Court of Appeal is not a second trier of  
fact . . .’”]. Accordingly, Appellant’s arguments should be  
dismissed. They have no merit and exceed the limitations of  
the appeal.

**e. The burden of proof under Probate Code  
§21380 remained with Appellant.**

The trial court addressed the burden of proof for a  
party attempting to invalidate a trust. It noted that

where the contestant can show a party was in a  
fiduciary relationship with the decedent, the burden  
shifts to the fiduciary to show no undue influence or  
duress. (RA 18.)

The trial court found that “petitioner has presented no

evidence to shift the burden . . .” (RA 18.)

Appellant has failed to identify any error on the face of the record to dispute this finding by the trial court. He has no facts from the record nor any law to support his argument. Thus, his argument regarding the burden of proof has no merit.

**f. Appellant’s challenge to the execution of the Addendum has no merit.**

Appellant attacks Mrs. Horwitz’s execution of the Addendum (AOB 16) and the jurat (AOB 17). The trial court noted that

Overall, [Appellant] posited two overarching theories: that Dorothy’s signature on the Addendum was not her signature and that the addendum was invalid because the notary affixed the her signature to it at a later date. (RA 18.)

[Appellant’s] second global allegation is that by failing to sign the Addendum when Dorothy executed the document, the notary invalidated the Addendum. (RA 19.)

The trial court found that

[Appellant] brought in no admissible evidence that the notary belatedly signed the addendum. Even if she did sign it at a later date and that tardiness invalidates the notarization, notarization is not required to validate the document. [Citation.] Neither the law nor the Trust itself requires notarization of Dorothy's signature. (RA 19.)

Appellant failed to identify any error on the face of the record pertaining to the foregoing findings by the trial court.

*Eby*, supra at 1048, fn. 4. He provided no facts from the record nor relevant law to support his argument. His argument has no merit.

**g. The trial court correctly denied Appellant's Petition for an Accounting.**

In its Ruling, the trial court noted that "[Appellant] asks the court for an order compelling an accounting." (RA 19.) It found that

[b]eneficiaries are not entitled to an accounting if the trust itself waives an accounting. The trust at section

6.12, page 16 waives an accounting. (RA 19.)

In support of his argument that he is entitled to an accounting, Appellant makes four contentions: that Respondent breached his duty of loyalty under Probate Code §16002 (AOB 17-18); that Respondent was in violation of Probate Code §16004 because he had an interest adverse to the beneficiary (AOB 18); that there was proof of undue influence (AOB 19-21); and that Mrs. Horwitz lacked capacity. (AOB 21-22.)

The trial court addressed each of those claims.

First, the court rejected Appellant's allegation that Hoover Louie concealed and converted Mrs. Horwitz's assets purportedly in excess of \$20 million. It found that this allegation was not proven at trial. Moreover,

[Appellant] called no witnesses, including Louie, to testify about the trustee's actions. The only testimony he presented was his own: to wit, that he felt that he was being given the "runaround" when he inquired

about the estate after [Mrs Horwitz's] death. There was no testimony that Louie in any way used trust assets for his own personal benefit or profit. There was no evidence that Louie pursued any interest or agenda adverse to the trust. (RA 19.)

Appellant provided no facts from the record to dispute the trial court's finding or to show that it was error.

Next, the trial court noted that Appellant "alleged that the trustee failed to preserve trust assets and unduly influenced [Mrs. Horwitz] to change her Trust." (RA 19.)

The court found that

[a]gain, there was no evidence presented as to any acts by the trustee or any motive to act as petitioner alleged. Indeed, Louie is not a beneficiary of the Trust under any version thereof. (RA 19.)

Appellant provided no facts from the record to dispute the trial court's finding or to show that it was error.

Finally, the trial court noted that "[Appellant] repeats his allegations of lack of testamentary capacity, undue influence, duress, fraud, and breach of fiduciary duty." It

found that “the record does not support these allegations.” (RA 19.) Appellant failed to identify any error on the face of the record pertaining to the trial court’s finding. *Eby*, supra at 1048, fn. 4. He cited no facts from the record nor relevant law to support his argument. His argument lacks merit.

**h. Appellant’s Summary of Material Errors of Fact is unsupported by the record. It lacks merit.**

Appellant claims nine separate “material errors of fact.” (AOB 25.) Appellant’s argument of material errors is unintelligible, irrelevant and unsupported by the record. These allegations are not mentioned in the trial court’s Ruling and the presumption is that they were not raised in the trial court. *Foust*, supra, at 186 fn. 2. Appellant’s argument has no merit.

**i. Appellant’s argument that he was denied discovery is unsupported by the record. It lacks merit.**

Appellant contends that he was denied discovery, alleging a number of instances to support his argument. (AOB 25-27.) However, there is nothing in the record to support those allegations. An appellate court will “decline to find error on a silent record,” *Haywood v. Superior Court*, 77 Cal. App. 4<sup>th</sup> 949, 955 (2000), and “cannot presume error from an incomplete record.” *Christie v. Kimball*, 202 Cal. App. 4<sup>th</sup> 1407, 1412 (2012). *See also Foust*, supra, 186 fn. 2.

Since Appellant did not seek writ review but review on appeal from a judgment, he must show not only that the trial court erred, but that the error was prejudicial, i.e. that the trial court would not have denied his Petitions if it had granted his motion to compel. *Lickter v. Lickter*, 189 Cal. App. 4<sup>th</sup> 712, 740 (2010). He failed to show that any alleged error was prejudicial and that the trial court would not have denied his Petitions had it granted his motion to compel.

The denials of Appellant's Petitions were apparently based, at least in part, upon his lack of credibility, which is independent of discovery. (RA 19.) His denial of discovery argument has no merit.

**j. Appellant's claim that the trial court erred in denying his request for a jury trial has no merit.**

Appellant alleges that "California law was recently changed to remove his right to a jury trial." (AOB 26.) That is incorrect. It has long been held that "jury trials in probate proceedings were unknown to the common law, and hence must have express statutory authority to be allowed. (Numerous citations.]" *In re England's Estate*, 214 Cal. 298, 300 (1931). *See also Estate of Beach*, 15 Cal. 3d 623, 642 (1975). Appellant's claim is unsupported by law and has no merit.

**k. Appellant's claims of anti-Semitism, Prejudice of the Court and Extraordinary Circumstances are fanciful and troubling.**



Respondent does not believe that he needs to address Appellant's arguments of anti-Semitism, prejudice of the court and extraordinary circumstances other than to state that they are made without reference to any error on the record. These arguments exceed the standard of appellate review in this matter. They should be dismissed, at best, as fanciful.

### **CONCLUSION**

Respondent Hoover Louie respectfully requests that the Court of Appeal deny Appellant Dennis Solomon's appeal and uphold the findings and conclusions set forth in the trial court's Ruling on Submitted Matter. Appellant has offered no credible argument to dispute the trial court's findings.

Without a reporter's transcript, Appellant is limited to identifying purported errors on the record and showing that

such errors, if any, had a prejudicial effect on the outcome of the case. He failed to carry that burden because he failed to include the relevant record. As a result, he could not comply with the relevant standard of review, resulting in a brief that is entirely without merit.

Moreover, the burden of proof remained with Appellant pursuant to Probate Code §21380. The trial court correctly found against him on all causes of action in both Petitions based on his failure to present sufficient, credible evidence to support his claims. The judgment should be upheld.

Dated: May 2, 2018

Respectfully submitted,  
RUSSELL, MIRKOVICH  
& MORROW

By: /s/ Joseph N. Mirkovich  
Joseph N. Mirkovich, Esq.  
Attorneys for  
Objector/Respondent  
HOOVER LOUIE

## CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 4,721 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: *May 2, 2018*

RUSSELL, MIRKOVICH  
& MORROW

By: /s/ Joseph N. Mirkovich  
Joseph N. Mirkovich, Esq.  
Attorneys for  
Objector/Respondent  
HOOVER LOUIE

## **PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I am over the age of eighteen years and not a party to the within entitled action; my business address is One World Trade Center, Suite 1660, Long Beach, California 90831-1660.

On this 2<sup>nd</sup> day of May, 2018, I caused service of the following document(s) described as **RESPONDENT'S BRIEF**, on the interested party(ies) in this action as follows:

**Dennis Solomon**

**Plaintiff Pro Se**

**75 North Main Street, #552**

**Randolph, MA 02368**

**(508) 394-9221 / fax (617) 890-1947**

**e-mail: horwitzdw@gmail.com**

(BY U.S. MAIL) By placing a true copy thereof enclosed in a sealed envelope(s) addressed as above, and placing each for collection and mailing on that date following ordinary business practices. I am "readily familiar" with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service in Long Beach, California, in a sealed envelope with postage fully prepaid.

Additionally, I caused the document identified above to be electronically served on all parties and the California

Supreme Court through TrueFiling, which will submit a separate proof of service.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.

Executed on this 2<sup>nd</sup> day of May, 2018, at Long Beach, California.

/s/ Joseph N. Mirkovich  
Joseph N. Mirkovich