

**IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT DIVISION TWO**

SCOTT DOUGLAS ORA, individually, and in his
derivative capacity as trustee of the Leo Robin
Trust, on behalf of the Leo Robin Trust

Petitioner and Appellant,

v.

HOLLYWOOD CHAMBER OF COMMERCE,
HOLLYWOOD CHAMBER'S BOARD OF
DIRECTORS, HOLLYWOOD WALK OF FAME,
WALK OF FAME COMMITTEE; and DOES 1
through 100 Inclusive,

Defendants and Respondents,

Court of Appeal
No. B321734

Superior Court
No. 21STCV23999

**APPEAL FROM THE SUPERIOR COURT OF
COUNTY OF LOS ANGELES**

The Honorable Judges

Bruce G. Iwasaki, Upinder S. Kalra and John P. Doyle

PETITION FOR REHEARING

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*To The Honorable Administrative Presiding Justice And
Associate Justices Of The Court Of Appeal For The Second
Appellate District Of The State Of California*

I. INTRODUCTION

This is a petition for rehearing by the Court of Appeal's after it affirmed the judgment of dismissal after the trial court sustained a demurrer without leave to amend. The grounds for seeking rehearing include that the Court of Appeal's decision contains 1) material omissions and misstatements of facts and 2) material misstatements of facts and unfounded contentions and 3) the decision is based upon a material mistake of law and 4) misinterpretation of the Robin ⚡ Contract. As a result, there are critical mistakes in the Court of Appeal's decision so the Appellant respectfully requests for rehearing in the Court and asking the court to correct its mistakes.

The Appellant has long argued that there is a contract between Mrs. Robin and actor Bob hope and the Hollywood Chamber of commerce, the Robin ⚡ Contract, and that the Appellant has standing and there is no statute of limitations to bar the causes of action.


In reaching the decision, the Court of Appeal's found it unnecessary to address these issues. With regard to the contract issue, the Court stated that "Because we resolve the appeal on these grounds, we need not address the parties' arguments about issues of contract formation or the statute of limitations applicable to breach of contract claims. (Ct. App. Dec., p. 8, FN no.5) and with regard to standing, the Court said "We agree with Ora that, at minimum, he has standing in his representative capacity to pursue a colorable claim regarding reinstatement of the star. Indeed, in 2020,

the Chamber of Commerce publicly admitted that it would need to work with "someone representing [Robin's] estate" to reinstate the star." (Ct. App. Dec., p. 8, FN no. 4)

After stripping out the issues regarding contract, the statute of limitations and standing and primarily focusing on the waiver by the Hollywood Chamber of the conditions precedent, in essence, the Court of Appeal's has affirmed the trial court's judgment on nothing that the trial court made any determination.

The Court of Appeal's who generally reviews what has occurred during the trial court has made serious efforts to analyze the Appellant's argument regarding the waiver by the Hollywood Chamber of the conditions precedent. The issue of the waiver was never fleshed out earlier because the trial court failed to acknowledge, overlooked and /or avoided this salient legal argument. The Respondent finally had broken its silence on the waiver by the Hollywood Chamber of the conditions precedent in its response brief with a terse two sentence statement with no analysis of the facts and no authorities or cases cited to support their conclusion.

Assuming the Court of Appeal's Court can decide on different grounds, even those not relied on by the trial court, the Appellant should be given an opportunity to argue and address the grounds. During oral argument, the Court of Appeal's kept most of the grounds for its decision close to the vest leaving the Appellant in the dark. It would be an injustice for Ora, the Petitioner and Appellant, not be given an opportunity to argue and address the grounds of the Court of Appeal's decision. This is why a petition for rehearing should be granted in this case.

There is a central error that is running through most of the grounds for rehearing which follow. The Court of Appeal's decision contains a material misinterpretation of the Robin  Contract covered in the Fifth Grounds infra on pp.14-15. What results is the Court of Appeal's decision contains an unfounded contention regarding that the Robin's star award had lapsed in the Sixth Grounds infra on pp.16-18 and contains a baseless contention regarding that the Hollywood Chamber did not waive performance of the conditions precedent in the Ninth Grounds infra on pp. 20-21. This further results in the Court of Appeal's decision containing many other mistakes. The Appellant believes that these mistakes have resulted in an erroneous decision by the Court of Appeal and that correcting the errors would lead to the reversal of the superior court's decision in its entirety.

II. GROUNDS FOR REHEARING

A. The First Grounds: There is a defect in the appeals process because the Court of Appeal's has affirmed the trial court's judgment on nothing that the trial court made any determination

First, as aforementioned above, after stripping out the issues regarding contract, the statute of limitations and standing and primarily focusing on the waiver by the Hollywood Chamber of the conditions precedent, in essence, the Court of Appeal's has affirmed the trial court's judgment on nothing that the trial court made any determination.

The Court of Appeal's resolved the Appeal strictly on the grounds that Appellant cannot establish performance of the contract's conditions precedent or a viable excuse for nonperformance. (Ct. App. Dec., p. 8) Although the trial court put this

forth, the trial court focused only on that the sponsors cannot establish performance of the contract's conditions precedent or a viable excuse for nonperformance.

The Court of Appeal's focus is making a determination for the first time that Appellant, himself, cannot establish performance of the contract's conditions precedent or a viable excuse for nonperformance. Therefore, there is a defect in the appeals process because the Court of Appeal's has affirmed the trial court's judgment on nothing that the trial court made any determination.

Assuming the Court of Appeal's Court can decide on different grounds, even those not relied on by the trial court, the Appellant should be given an opportunity to argue or address the grounds. This is why a petition for rehearing should be granted in this case.

B. The Second Grounds: The Court of Appeal's decision contains a material omission and misstatement of fact regarding reinstatement of the star

Second, in the section Ora's Campaign to Reinstate Robin's Star, the Court of Appeal's decision contains a material omission and misstatement of fact with this statement: "In September 2018, Leon Gubler (Gubler), then the President and Chief Executive Officer of the Chamber of Commerce, informed Ora that '[a]s [Martinez] has explained to you, we have existing protocols that must be followed to reinstate star approval.' Per those protocols, Gubler said that Ora's 'request[] [for] the fee to be reduced to \$4,000 . . . is not possible. The committee will never approve the reinstatement unless there is a sponsorship in place to pay the fee

at the current rate.” (Ct. App. Dec., p. 4) This quote of Gubler has a serious omission and taken out of context.¹

The omissions include "The earliest this can be done is at next year's Walk of Fame Committee meeting in June 2019.... There would be no purpose in our bringing this to the committee without that commitment. The application deadline for consideration by the committee is May 31, 2019, so you still have plenty of time to work on finding a sponsor. Please stay in touch with Ana, and advise her when you are able to find a sponsor. Then we would be happy to present it to the committee again."

When understood in its full context, this means that the Appellant would be required to resubmit a nomination application. A nomination application is required for the sponsorship as explained by Gubler which is more fully explained by Martinez in the Fifth Grounds *infra* on pp. 14-15. In other words, this is like the Appellant

¹ This is the complete email on September 5, 2018 that Leron Gubler sent to Ora: "I'm responding to your latest inquiry to Ana Martinez, our Walk of Fame Producer. Ana has briefed me on your request to reinstate the approval of a star for Leo Robin. As Ana has explained to you, we have existing protocols that must be followed to reinstate star approval. The earliest this can be done is at next year's Walk of Fame Committee meeting in June 2019. I understand that you are requesting the fee to be reduced to \$4,000, which was the fee that was in place back in 1990, when Mr. Robin was first approved. Unfortunately, that is not possible. The committee will never approve the reinstatement unless there is a sponsorship in place to pay the fee at the current rate. There would be no purpose in our bringing this to the committee without that commitment. The application deadline for consideration by the committee is May 31, 2019, so you still have plenty of time to work on finding a sponsor. Please stay in touch with Ana, and advise her when you are able to find a sponsor. Then we would be happy to present it to the committee again. Best regards, Leron Gubler, President & CEO, Hollywood Chamber of Commerce" (Ora's Comp., p. 12, Alleg. no. 41)

starting the nomination process all over again with no assurance of a star even with a sponsor.

The Court of Appeal's misunderstanding of the nomination process with the material omission and misstatement has resulted in the public having the wrong impression following the decision as evidenced by an article entitled *Court of Appeal: Offer to Install Lyricist on Hollywood Walk of Fame Lapsed* appearing on August 3, 2023 in the Los Angeles newspaper Metropolitan News-Enterprise with this false statement: "The man who wrote the lyrics to the Oscar-winning song, "Thanks for the Memory," sung by Bob Hope and Shirley Ross in the film, "The Big Broadcast of 1938," and came up with words to numerous other memorable tunes used in motion pictures and television, will have a star on the Hollywood Walk of Fame only if somebody comes up with \$40,000, in light of a decision by the Court of Appeal for this district." (A copy of this article is attached to this petition as Appendix A.)

Nothing could be further from the truth especially in light of this errant decision by the Court because Robin would first have to be nominated and then awarded the star. Robin's nomination application would be resubmitted and considered at the annual meeting with over 200 applications with sponsors. There is no guaranty of a star even with a sponsor. What could possibly go wrong? Ask the 90% of nominees who are disappointed every year.

C. The Third Grounds: The Court of Appeal's decision contains a material omission and misstatement of fact by the title for section II as Ora's Campaign to Reinstate Robin's Star

Third, the Court of Appeal's decision contains a material omission and misstatement of fact by the title for section II as Ora's Campaign to Reinstate Robin's Star. (Ct. App. Dec., p. 3.) To

describe it as Ora's campaign is inappropriate because this is a pejorative term often used by sponsors to get a star and or raise money for a star. Ora made it known in an interview with the Los Angeles Times that he would not raise money for the star.

Rather, Ora attempted to confer with the Hollywood Chamber to install Robin's ★ and/or to honor its obligation to install Robin's ★. There's no reason to use a disparaging term to describe Ora's efforts to honor his grandfather.

D. The Fourth Grounds: The Court of Appeal's decision contains material omissions and misstatements of facts regarding the ceremony and notifying Bob Hope or Robin's surviving relatives

Fourth, the Court of Appeal's decision contains a material omission and misstatement of fact regarding the ceremony. In the section Ora's Campaign to Reinstate Robin's Star, the Court of Appeal's decision contains a material omission and misstatement of fact with this statement: "In July 2018, Martinez told Ora that she 'd[id]n't know [if] that [reinstatement] will happen as [the star] has to be sponsored and you said you didn't want to have a ceremony or the fanfare that comes with the event which is why we do this.' A few days later, before the Chamber of Commerce had communicated any decision about the potential reinstatement, Ora wrote a second letter informing Martinez that he now wanted to have a star-studded dedication ceremony that he hoped would be 'a grand celebration' with an 'exceptional turnout.'" (Ct. App. Dec., p. 3)

It sounds like the Appellant changed his mind on the ceremony. The Court unfairly portrayed what took place by leaving out this part said by Ora, "Ora was confused. He never said he didn't

want to have a ceremony."² (Ora's Comp., p. 10, Alleg. no. 33) The Court has undeniably made the Appellant look like he changed his mind and responsible for the delay in the reinstatement of the star. The Appellant came into this Court believing that Lady Justice is blindfolded because justice is unbiased.

Further, the Court of Appeal's decision contains a material omission and misstatement of fact regarding notifying Bob Hope or Robin's surviving relatives. The pleading contained a news story by Ashley Lee from the Los Angeles Times on May 23, 2019, *Leo Robin never got his Walk of Fame star. Now his grandson is fighting for it*, as Exhibit 9, which reported: "A mistake it was not, noted Martinez to The Times. Back in 1989, before the ease of email and cellphones, honorees were not as repeatedly and actively pursued to secure their star as they are today. That means no follow-up letters and no calls to co-signers, even if Robin's application was co-signed by Hope, who has four stars on the Walk." The Court of Appeal's decision put its rosy spin on this as "Per the Chamber of Commerce's practices at the time, no further attempts were made to notify Hope or Robin's surviving relatives." (Ct. App. Dec., p. 3)

² This is the complete email from Ms. Martinez where the Court of Appeal's left out the last part: "'On July 10, 2018, that same day, almost exactly one year since Ora had last heard from Ms. Martinez, he received the following email, 'Hi Scott, I resent (sic) this to my boss. I don't know that it will happen as it has to be sponsored and you said you didn't want to have a ceremony or the fanfare that comes with the event which is why we do this. Let's see what he says.' Ora was confused. He never said he didn't want to have a ceremony.'" (Ora's Comp., p. 10, Alleg. no. 33)


E. The Fifth Grounds: The Court of Appeal's decision contains a material misinterpretation of the Robin ⚡ Contract regarding the conditions precedent where purportedly the Robin's star award had lapsed

Fifth, the Court of Appeal's decision contains a material misinterpretation of the Robin ⚡ Contract. The conditions precedent of the Robin ⚡ Contract are defined in the application as follows: "1. It is understood that the cost of installing a star in the Walk of Fame upon approval is \$40,000** and the sponsor of the nominee accepts the responsibility for arranging for payment to the Hollywood Historic Trust, a 501(c)3 charitable foundation. 2. It is further understood that, should the abovenamed nominee be chosen for placement in the Walk of Fame, said nominee guarantees to be present at the dedication ceremonies on a date and time mutually agreed upon with the Walk of Fame Committee. An induction ceremony must be scheduled within two years of June selection date, or the nomination must be re-submitted." Back in the year 1990, the cost was \$4,000 (Verified in allegation no. 15) and the recipient has up to five years to schedule their ceremony (Verified in allegation no. 16)." (Ora's Comp., p. 18, Alleg. no. 56)

Based on these terms, if the nomination must be re-submitted, then the Robin's star award had lapsed. The converse is true that if the nomination is not required to be resubmitted, then Robin's star award had not lapsed.

An indicator of a lapse would be if a nomination application is required like in this email Ms. Martinez sent to Ora on July 23, 2018 explaining that "Robins star lapsed" as follows:, "Dear Mr. Ora, I received your check for \$4,000 which [I] am sending back to you. The approval of Mr. Robins star lapsed many years ago. It would

need to be reinstated by the Walk of Fame Committee, which will next meet in June 2019. It is very likely the committee would require that the fee be raised to the current approved level. I am happy to present this to the committee for their consideration, but we are unable to accept or hold the check which you have sent. The application is at www.walkoffame.com. Sincerely, Ana Martinez, Vice President, Media Relations" (Appellant's FAC, Alleg. no. 37, p. 11, Exhibit 6)

There was no contemplation of the submission of an application on July 17, 2018 when Ms. Martinez sent Ora instructions on how to proceed forward, "Please let me know when you would like to do the ceremony and once you give me a date we can move forward." These instructions by Ms. Martinez are like for any run-of-the-mill honoree who was awarded a star and pursuant to the Robin  Contract. This shows that at this time, Robin's star award had not lapsed because Ms. Martinez did not state that it had lapsed and the nomination was not required to be resubmitted.

Most importantly, these instructions Ms. Martinez sent Ora on how to proceed prove there was a waiver. The Hollywood Chamber waived the conditions precedent which had a contractual limitations period by expressly stating that Ora could move forward to schedule the ceremony for installment of the star after the five year expiration period, an intention not to enforce the contractual limitations period.

What happened afterwards where Ms. Martinez sent Ora's letter to her back to him along with the check he'd made payable to the Hollywood Historic Trust for \$4,000 and cancelled the ceremony should have no bearing on the determination of a waiver. The disagreement on the price of the star should also have no bearing on the determination of a waiver.

F. The Sixth Grounds: The Court of Appeal's decision contains a material misstatement of fact and unfounded contention regarding the Robin's star award had lapsed

Sixth, the Court of Appeal's decision contains a material misstatement of fact and unfounded contention regarding the Robin's star award had lapsed. In the Court's analysis regarding the waiver by the Hollywood Chamber of the conditions precedent, the Court relies on this material misstatement of fact and unfounded contention, as follows: "Instead, its representatives consistently stated that Robin's star award had lapsed and would need to be reinstated according to the Walk of Fame Committee's policies, and that Ora would need to pay a sponsorship fee at contemporary rates." (Ct. App. Dec., p. 11) This contention is based on its flawed theory that that Robin's star award had lapsed in this false statement, "Instead, its representatives consistently stated that Robin's star award had lapsed...."

On the other hand, the Appellant's theory of events is supported by a reasonable interpretation of the Robin 🌟 Contract which the Court of Appeal's decision would assume was a valid contract. Accordingly, the determination should be based on the terms of the Robin 🌟 Contract and not self serving policies of the Hollywood Chamber. The Appellant will show his theory of the events which demonstrates his consistency in his pleadings.

The Robin 🌟 Contract provides in term no. 2, in part, "...An induction ceremony must be scheduled within two years of June selection date, or the nomination must be re-submitted." (Supra in the Fifth Grounds on pp.15-16) The acceptance letter provides further instructions, "Please contact Ana Martinez...at the Hollywood

Chamber of Commerce... and make arrangements for...ceremony" (Ora's Comp., p. 126, Exhibit 20.)

After Ora contacted Ms. Martinez, which is required by the instructions in the acceptance letter, Ms. Martinez sent Ora instructions on July 17, 2018 on how to proceed forward, "Please let me know when you would like to do the ceremony and once you give me a date we can move forward." This is in accordance with the Robin 🌟 Contract. There was no mention that "Robin's star award had lapsed...." In fact, these instructions by Ms. Martinez regarding installment of the Robin 🌟 with a ceremony incontrovertibly demonstrate that Robin's star award did not lapse. Further, the fact that nomination was not required to be resubmitted also shows that Robin's star award had not lapsed.

Then "On July 19, 2018, in an overnight envelope, Ora sent Ms. Martinez the date he selected in 2019 for Leo's star ceremony, April 6th, his birthday, along with a check for \$4,000, the fee that his grandmother and Bob Hope, the co-sponsors, had agreed to pay when they first filled out the application back in 1988." The fee is accordance with the terms under the Robin 🌟 Contract.

Next, Martinez reversed, about-face, her decision by 180 degrees and "On July 23, 2018, a further breach of the Robin 🌟 Contract by the Hollywood Chamber occurred when Ms. Martinez sent Ora's letter to her back to him along with the check he'd made payable to the Hollywood Historic Trust for \$4,000 and cancelled the ceremony..."

There is a huge shift from how Martinez wanted to proceed with installment of the Robin 🌟 with a ceremony to claiming that "Robin's star award had lapsed...." This demonstrates that the claim by the Court of Appeals that "Instead, its representatives

consistently stated that Robin's star award had lapsed..." (Ct. App. Dec., p. 11.) is patently false.

G. The Seventh Grounds: The Court of Appeal's decision contains a material misstatement of fact and an unfounded contention regarding that the Appellant cannot establish performance of the contract's conditions precedent or a viable excuse for nonperformance

Seventh, the Court of Appeal's decision contains a material misstatement of fact and an unfounded contention regarding that the Appellant cannot establish performance of the contract's conditions precedent or a viable excuse for nonperformance. (Ct. App. Dec., p. 8.)

The Appellant demonstrated in his briefs that he fulfilled performance of the Robin 🌀 Contract's conditions which refutes the Court of Appeal's unfounded contention otherwise. Appellant pleaded in allegation no. 73 that he fulfilled performance of the Robin 🌀 Contract's conditions³, as follows:

73. On July 19, 2018, in an overnight envelope, Ora sent Ms. Martinez the date he selected in 2019 for Leo's star ceremony, April 6th, his birthday, along with a check for \$4,000, the fee that his grandmother and Bob Hope, the co-sponsors, had agreed to pay when they first filled out the application back in 1988. Ora did everything in his power to fulfill performance of the Robin 🌀 Contract as quickly as possible following Ora's discovery of Robin's star on July 6, 2017 (delayed by the Hollywood Chamber's actions and inactions) which included a scheduled induction ceremony and Ora's

³ The Appellant's pleadings including the proposed amendments show there is a waiver by the Hollywood Chamber of the conditions precedent with a five year expiration date and that the Appellant performed the conditions which had no specified expiration date.

tendered payment of the original offer of \$4,000 in accordance with the Robin 🌟 Contract.

H. The Eighth Grounds: The Court of Appeal's decision contains a material misstatement of fact and unfounded contention regarding that the FAC does not plead a legally valid excuse for nonperformance of the conditions during the contractual period

Eighth, the Court of Appeal's decision contains a material misstatement of fact and unfounded contention regarding that the FAC does not plead a legally valid excuse for nonperformance of the conditions during the contractual period. (Ct. App. Dec., p. 10.)

In the event that Ora's tendered payment of the original offer of \$4,000 which was then returned to Ora would be considered nonperformance of the conditions (which the Appellant disagrees), then this would be deemed an excuse for nonperformance. The Appellant showed in his briefs a legally valid excuse for nonperformance of the conditions during the contractual period even though he did not use the word excuse which refutes the Court of Appeal's unfounded contention otherwise. Appellant pleaded in allegation no. 74 a legally valid excuse for nonperformance of the conditions during the contractual period, as follows:

74. On July 23, 2018, a further breach of the Robin 🌟 Contract by the Hollywood Chamber occurred when Ms. Martinez sent Ora's letter to her back to him along with the check he'd made payable to the Hollywood Historic Trust for \$4,000 and cancelled the ceremony as stated in her letter she wrote to him: "Dear Mr. Ora, I received your check for \$4,000 which [I] am sending back to you. The approval of Mr. Robins star lapsed many years ago. It would need to be reinstated by the Walk of Fame Committee, which will

next meet in June 2019. It is very likely the committee would require that the fee be raised to the current approved level. I am happy to present this to the committee for their consideration, but we are unable to accept or hold the check which you have sent. The application is at www.walkoffame.com. Sincerely, Ana Martinez, Vice President, Media Relations."

I. The Ninth Grounds: The Court of Appeal's decision contains a material misstatement of fact and unfounded contention regarding that the Hollywood Chamber did not waive performance of the conditions precedent

Ninth, the Court of Appeal's decision contains a material misstatement of fact and baseless contention regarding that the Hollywood Chamber did not waive performance of the conditions precedent. In the Court's analysis, the Court relies on this material misstatement of fact and unfounded contention, as follows: "Substantively, the exhibits attached to the FAC demonstrate that the Chamber of Commerce did not waive performance of the conditions precedent." (Ct. App. Dec., p. 11.) Then, the Court makes a material misstatement of fact and unfounded contention in FN no. 7, as follows: "To the extent that Ora's allegations characterize his correspondence with the Chamber of Commerce in a manner that conflicts with the actual text of that correspondence, we disregard those allegations. While we generally must take all facts alleged in the FAC as true, '[i]f facts appearing in the exhibits contradict those alleged, the facts in the exhibits take precedence.'" (Ct. App. Dec., p. 11, FN no. 7.)

The Appellant has demonstrated in his briefs and herein that his allegations are consistent to a fault with the actual text of the correspondence in the FAC. The Appellant has put forth a

reasonable interpretation of the Robin ⚡ Contract in the Fifth Grounds (supra on pp. 14-15) and a reasonable interpretation of the FAC to show that Robin's star award had not lapsed in the Sixth Grounds (supra on pp. 16-18) Therefore, it would be inappropriate to disregard these allegations since they are indeed true. "Because this matter comes to...[the Court] on demurrer, we take the facts from plaintiff's [FAC], the allegations of which are deemed true for the limited purpose of determining whether plaintiff has stated a viable cause of action. [Citation]." (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 885.)

J. The Tenth Grounds: The Court of Appeal's decision is based upon a material mistake of law because the Appellant cited many cases with authority to support finding that the Hollywood Chamber waived the conditions precedent

Tenth, the Court of Appeal's decision is based upon a material mistake of law because the Appellant cited many cases with authority to support finding that the Hollywood Chamber waived the conditions precedent.

The Court of Appeal's claim "And the cases Ora does cite to support finding waiver are inapposite" (Ct. App. Dec., p. 12.) is baseless. This false claim is accompanied with citing two cases. First, the court cites "(*Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1339 [describing cases in which a party's "tacit approval" of alternate payment plans or express acceptance of untimely payments waived performance])" (Ct. App. Dec., p. 12.) The Appellant still believes *Galdjie v. Darwish* supports his case as explained in the Eleventh Grounds infra on p. 23.

Second, the court also cites "*Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, 78–81 [a party

that approves sporadic tolling agreements during a contractual period of limitations may waive the right to enforce the original period of limitations].)" (Ct. App. Dec., p. 12.) The Appellant asserts that *Wind Dancer Production Group v. Walt Disney Pictures* is strong legal authority to support his case. In *Wind Dancer Production Group v. Walt Disney Pictures*, the court of appeal reversed because Disney waived a contractual limitations period due to the incontestability clause because of the prior failure to enforce the incontestability clause.

The case here has important similarities to *Wind Dancer Production Group v. Walt Disney Pictures*. Here, the sponsors were required to perform the conditions precedent on the Robin 🌟 Contract within five years after the origin of the contract. However, the Hollywood Chamber waived the conditions precedent which had a contractual limitations period by expressly stating that Ora could move forward to schedule the ceremony for installment of the star, an intention not to enforce the contractual limitations period. Further, the instant case has two different limitations periods like in *Wind Dancer Production Group* which held, "The time for filing suit also could be subject to two different limitations periods – one contractual and one statutory – depending upon the transactions underlying the claim." (*Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, 78) The Appellant has showed the substantial similarities between *Wind Dancer Production Group* and his case. Appellant avers that *Wind Dancer Production Group v. Walt Disney Pictures* is solid legal authority to support his case.

The Appellant cited many other cases with authority to support finding that the Hollywood Chamber waived the conditions precedent. The Appellant has demonstrated that the Hollywood

Chamber's "Waiver is the intentional relinquishment of a known right after knowledge of the facts." (*Roesch v. De Mota* (1944) 24 Cal.2d 563, 572) Further, the Appellant has also showed the Hollywood Chamber's "...waiver...[is by] express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right." (*Stephens & Stephens XII, LLC v. Fireman's Fund Ins. Co.* (2014) 231 Cal.App.4th 1131, 1148) The Appellant has proved a "waiver of a right...by clear and convincing evidence" (*City of Ukiah v. Fones* (1966) 64 Cal.2d 104, 107-108).

K. The Eleventh Grounds: The Court of Appeal's decision contains a material omission and misstatement of fact and is based upon a material mistake of law because it distorted Appellant's argument regarding the Hollywood Chamber waived the conditions precedent

Eleventh, the Court of Appeal's decision contains a material omission and misstatement of fact and is based upon a material mistake of law because it distorted Appellant's argument regarding the Hollywood Chamber waived the conditions precedent.

The Court of Appeal's contends, "On appeal, Ora argues that the Chamber of Commerce waived performance of the conditions precedent by 'continuing to deal with [him] after the dates specified in the contract.'" This argument fails both procedurally and substantively." This quote was taken out of context with no reference where this quote by Ora was taken from.

The Appellant made an analogy in his reply brief, "The Defendants waived performance of the conditions precedent and waived the time provisions by continuing to deal with Plaintiff after the dates specified in the contract based on the precedent of *Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1339." (Appel. Reply Brief,

p. 21) The court in *Galdjie v. Darwish* said, "(2) Applying this rule to the present case, the trial court found that Barbara Darwish waived the time provisions by continuing to deal with respondent after the dates specified in the contract." (*Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1340.) This was meant to be an analogy and does support Appellant's argument but is a far cry from the complete argument the Appellant made in his briefs and pleadings.

L. The Twelfth Grounds: The Court of Appeal's decision is based upon a material mistake of law because procedurally, the FAC did specifically allege that the Hollywood Chamber waived the conditions precedent

Twelfth, the Court of Appeal's decision is based upon a material mistake of law because procedurally, the FAC along with the proposed amendments did specifically allege that the Hollywood Chamber waived the conditions precedent of the Robin ☛ Contract. (*Hale v. Sharp Healthcare* (2010) 183 Cal.App.4th 1373, 1388 ["[E]xcuses must be pleaded specifically." [Citation.]"].)

The Court of Appeal's claim that the FAC did not specifically allege that the Hollywood Chamber waived the performance of the conditions is unfounded. (Ct. App. Dec., p. 10.) The Appellant pleaded specifically that the Hollywood Chamber waived the conditions precedent of the Robin ☛ Contract in allegation no. 72 with the proposed changes in the amendment, as follows:

72. On July 17, 2018, Ms. Martinez sent Ora an email where she stipulated, "From what I gather you are now willing to have the star dedication happen with a ceremony?? There is the sponsorship fee involved of 40,000.00. Please let me know when you would like to do the ceremony and once you give me a date we can move forward. I do have to get it re-instated by the Chair. Please let me

know if you do want to move forward. Thanks, Ana 'Handling the stars for many moons!' Producer, Hollywood Walk of Fame, Vice President of Media Relations, Hollywood Chamber of Commerce." These words and conduct gave up the Hollywood Chamber's right to require the conditions precedent before having to perform on the Robin 🌀 Contract based on well-established case law. Accordingly, the Defendants waived performance of the conditions precedent.

M. The Thirteenth Grounds: The Court of Appeal's decision is based upon a material mistake of law because the Court has not properly applied the standard established in Goodman v. Kennedy to the proposed amendments

Thirteenth, the Court of Appeal's decision is based upon a material mistake of law because the Court has not properly applied the standard established in *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349 to the proposed amendments. In *Goodman v. Kennedy*, the court held that it is the plaintiff's burden to show "in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading."

Appellant argued that the trial court abused its discretion by sustaining the demurrer without leave to amend, as he maintains that amendment could have cured the FAC. The Court of Appeal's makes this baseless contention: "This contention is not borne out by the minimal alterations he proposes on appeal, which would not have any substantive impact on the fatal defects in the FAC." (Ct. App. Dec., p. 12, FN no. 8.)

The Appellant's briefs extensively demonstrated "in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." The foundation of a waiver of conditions precedent was already made with allegations set forth

in the FAC and Appellant proposed an amendment to elaborate further regarding the Defendants waived performance of the conditions precedent

The Appellant also proposed an amendment regarding the waiver's impact on the statute of limitations to explain how that amendment will change the legal effect of his pleading which also included the effect on the contractual period. The Appellant absolutely met his burden based on the standard established in *Goodman v. Kennedy* to show "in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." The proposed amendments of the Appellant would 100% cure the defect.

N. The Fourteenth Grounds: The Court of Appeal's decision is based upon a material mistake of law because waiver is ordinarily a question for the trier of fact

Fourteenth, the Court of Appeal's decision is based upon a material mistake of law because waiver is ordinarily a question for the trier of fact. "Waiver is ordinarily a question for the trier of fact; '[h]owever, where there are no disputed facts and only one reasonable inference may be drawn, the issue can be determined as a matter of law.'" (*DuBeck v. California Physicians' Service* (2015) 234 Cal.App.4th 1254, 1265.)

The Appellant has argued that "there are no disputed facts and only one reasonable inference may be drawn, the issue can be determined as a matter of law." However, if there are disputed facts, then waiver is ordinarily a question for the trier of fact. It certainly should not be decided by the Court to make this determination if there are disputed facts and different reasonable inferences may be drawn.

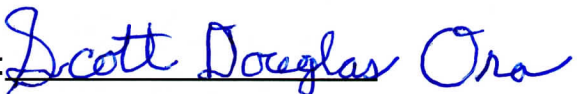
III. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the petition. For the foregoing grounds including that the Court of Appeal's decision contains 1) material omissions and misstatements of facts and 2) material misstatements of facts and unfounded contentions and 3) the decision is based upon a material mistake of law and 4) misinterpretation of the Robin ☛ Contract, there are critical mistakes in the Court of Appeal's decision so the Petitioner respectfully requests for rehearing in the Court and asking the court to correct its mistakes. The Appellant believes that these mistakes have resulted in an erroneous decision by the Court of Appeal and that correcting the errors would lead to the reversal of the superior court's decision in its entirety.

The Court of Appeal's who generally reviews what has occurred during the trial court has made earnest efforts to analyze the Appellant's argument regarding the waiver by the Hollywood Chamber of the conditions precedent. During oral argument, the Court of Appeal's kept most of the grounds for its decision under wraps so that the Appellant was blindfolded. Given these special circumstances, it is imperative that this Petition for Rehearing should be granted in this case. It would be an injustice for the Appellant not be given an opportunity to argue and address the grounds of the Court of Appeal's decision.

Executed in Sherman Oaks, California
DATED: August 14, 2023

Respectfully submitted,

By: 
Scott Douglas Ora
In Pro Per

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, Rules 8.204(c), I hereby certify that this Petition for Rehearing contains 6,319 words, including footnotes but not including the cover, the tables of contents and authorities and the caption page. In making this certification, I have relied upon the word count of Microsoft Word used to prepare the Petition.

Executed in Sherman Oaks, California
DATED: August 14, 2023

By: Scott Douglas Ora
Scott Douglas Ora
In Pro Per

APPENDIX A

Metropolitan News-Enterprise

Thursday, August 3, 2023

Page 3

Court of Appeal:

Offer to Install Lyricist on Hollywood Walk of Fame Lapsed

Chamber of Commerce Said in 1989 That Leo Robin, Who Wrote Words to 'Thanks for the Memory,' Other Memorable Songs, Would Be Honored if \$4,000 Fee Were Paid; Opinion Says 2017 Tender Came Too Late

By a MetNews Staff Writer



Lyricist Leo Robin, center, is seen with his songwriting partner, composer Ralph Rainger, left, and crooner Bing Crosby, rehearsing their new songs—"It's June in January," "Love Is Just around the Corner" and "With Every Breath I Take"—for Crosby's upcoming 1934 movie, "Here Is My Heart."

The man who wrote the lyrics to the Oscar-winning song, "Thanks for the Memory," sung by Bob Hope and Shirley Ross in the film, "The Big Broadcast of 1938," and came up with words to numerous other memorable tunes used in motion pictures and television, will have a star on the Hollywood Walk of Fame only if somebody comes up with \$40,000, in light of a decision by the Court of Appeal for this district.

The lyricist was Leo Robin, who died in 1984. Four years

later, his widow, Cherie Robin, nominated him for a star on the Walk of Fame, with Hope—who used “Thanks for the Memories” (with the title generally converted from “Memory” to “Memories”) as his theme song over a period of decades—as co-sponsor.

Favorable action was taken by the Hollywood Chamber of Commerce, which controls the placement of the dedicatory markers on Hollywood Boulevard and Vine Avenue. The chairman of its 1990 Walk of Fame Committee, KTLA television personality Johnny Grant (since deceased), sent a letter to the widow in 1989 advising that the posthumous honor was offered, but conditioned on payment of a \$4,000 sponsorship fee and the conducting of a ceremony within five years.

Hope Not Advised

However, Cherie Robin had died a year before the letter arrived, and it was marked “RETURN TO SENDER.” Upon its receipt by the Chamber of Commerce, pursuant to a practice then in effect, no notification was provided to Hope or to the lyricist’s survivors.

In 2017, Scott Douglas Ora, Leo Robin’s grandson and trustee of his trust, learned of the honor and tendered a check for \$4,000. It was returned with the explanation that the fee was now \$40,000.

Ora protested, to no avail, that the fee should be the same for his grandfather as for others selected as the 1990 honorees.

He sued for breach of contract and put forth tort theories that were dependent on the existence of a contract. In pro per, Ora appealed from a judgment of dismissal after Los Angeles Superior Court Judge Bruce G. Iwasaki sustained a demurrer to his first amended complaint, without leave to amend.

Ashmann-Gerst’s Opinion

Acting Presiding Justice Judith Ashmann-Gerst of Div. Two wrote the unpublished opinion affirming the judgment. She said:

“The award notification letter was sent to the address of Robin’s sponsor in June 1990. Under Ora’s theory of the contract, the conditions precedent needed to be performed by June 1995 to trigger the Chamber of Commerce’s contractual obligations. Yet Ora admits that no one attempted to satisfy these conditions until he mailed the Chamber of Commerce a letter containing a proposed date for the dedication ceremony and a \$4,000 check in July 2018, more than 23 years after the contract expired.”

She said that, “[c]ritically,” Ora “does not plead a legally valid excuse for nonperformance of these conditions during the contractual period,”

elaborating in a footnote:

“The mere failure of an offeror to actually receive a mailed letter communicating acceptance is not a legally valid excuse for nonperformance under California law.”

Ashmann-Gerst declared:

“[T]he demurrer was properly sustained as to Ora’s breach of contract claim because the conditions that triggered the Chamber of Commerce’s alleged contractual duty were never performed. Moreover, because amendment cannot cure this defect, the demurrer was properly sustained without leave to amend.”

The case is *Ora v. Hollywood Chamber of Commerce*, B321734. Reid E. Dammann and Violaine Brunet of Gordon Rees Scully Mansukhani were attorneys on appeal for the Hollywood Chamber of Commerce.

“Thanks for the Memory” was recorded over the years by such vocalists as Bing Crosby, Ella Fitzgerald, and Rosemary Clooney, with Frank Sinatra introducing a version in 1981 with new words. Robin also wrote the lyrics to “Diamonds Are a Girl’s Best Friend,” sung by Marilyn Monroe in the 1953 movie “Gentlemen Prefer Blondes,” and to “Prisoner of Love,” “Blue Hawaii,” “Love Is Just around the Corner,” and “For Every Man There’s a Woman.”

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1. At the time of service I was at least 18 years of age and **not a party to this legal action**.
2. My ☐ residence ☒ business address is (*specify*):
 1000 Corporate Ctr Dr suite 100 Monterey Park CA 91754
3. I mailed or personally delivered a copy of the following document as indicated below (*fill in the name of the document you mailed or delivered and complete either a or b*):

PETITION FOR REHEARING

- a. ☒ **Mail**. I mailed a copy of the document identified above as follows:

- (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**
- (a) ☐ **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
- (b) ☒ **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of 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 a sealed envelope(s) with postage fully prepaid.
- (2) Date mailed: August 15, 2023
- (3) The envelope was or envelopes were addressed as follows:
- (a) Person served:
- (i) Name: Dammann Reid Attorney for Respondent
- (ii) Address:
 Gordon Rees Scully Mansukhani, LLP
 633 West Fifth Street, 52nd Floor
 Los Angeles CA 90071
- (b) Person served:
- (i) Name: Brunet Violaine Attorney for Respondent
- (ii) Address:
 Gordon Rees Scully Mansukhani, LLP
 633 West Fifth Street, 52nd Floor
 Los Angeles CA 90071
- (c) Person served:
- (i) Name:
- (ii) Address:

☐ Additional persons served are listed on the attached page (*write "APP-009, Item 3a" at the top of the page*).

- (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state): Monterey Park, California

Case Name: Scott Douglas Ora v. Hollywood Chamber of Commerce, Et al.	Court of Appeal Case Number: B321734
	Superior Court Case Number: 21STCV23999

3. b. ☒ **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served: Office of the Clerk Dept. 58 (Delivered for the attention of Honorable Judge Bruce G. Iwasaki)

(a) Name: Honorable Judge Bruce G. Iwasaki

(b) Address where delivered:

Los Angeles County Superior Court

Stanley Mosk Courthouse

111 N Hill Street Los Angeles CA 90012

(c) Date delivered: August 15, 2023

(d) Time delivered:

(2) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

☐ Names and addresses of additional persons served and delivery dates and times are listed on the attached page (*write "APP-009, Item 3b" at the top of the page*).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 15, 2023

Frank Gomez

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



Frank Gomez

(SIGNATURE OF PERSON COMPLETING THIS FORM)