Filed 9/29/16 Johnson v. Hartunian CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

DALE JOHNSON, Plaintiff and Respondent, v. DONALD R. HARTUNIAN, Defendant and Appellant; CARL BERNARD et al., Defendants and Respondents.	B259514 (Los Angeles County Super. Ct. No. SC112331)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa Hart Cole, Judge. Affirmed.

Myer Law Firm and Scott D. Myer for Defendant and Appellant.

Todd & Associates and Matthew P. Todd for Plaintiff and Respondent.

Hosp, Gilbert & Bergsten and Warren L. Gilbert for Defendants and Respondents.

Plaintiff and respondent Dale Johnson was injured after defendant and appellant Donald Hartunian attacked him at James Beach, a restaurant. Johnson sued Hartunian, as well as defendants and respondents James Beach; Carl Bernard, the security guard working that night; and X-Zero Protective Services, Inc., the security company for which Bernard worked (collectively, the James Beach defendants). As to Hartunian, a jury found in Johnson's favor on battery and negligence causes of action, and punitive damages were assessed against Hartunian. On appeal, Hartunian primarily contends that reversal of the judgment is required due to errors in the special verdict form and the absence of evidence to support the verdict and punitive damages. We disagree and affirm the judgment.

BACKGROUND

I. The incident at James Beach

James Beach is a restaurant with a bar in Venice. Carl Bernard worked for X-Zero, which provided security for James Beach. On the night of October 13, 2010, Bernard was working as the security guard at James Beach. Hartunian was at James Beach that night with a date, Susan Grey.

Johnson also went to James Beach that night. Because Johnson had been loud the last time he'd been at the restaurant, Bernard gave him a warning. Inside, at the bar, Johnson was with his acquaintances Chris White and Gilbert Tena. Bernard told White to leave, either because White didn't have identification or because he was being loud. This upset Johnson, who vociferously protested. According to Bernard, Johnson jumped up and down "like he was doing jumping jack's" and screamed he wouldn't leave. John Binder, who was tending the bar, agreed that Johnson got "worked up."[1] Johnson admitted he "did kind of talk loud."

Binder was trying to calm Johnson when Hartunian, taking a circuitous route through the restaurant, "came from behind [Johnson], got him in a chokehold, and

[1] Around this time, Bernard called 911.

brought him down." According to Johnson, he was "half standing, half sitting" on a barstool when Hartunian attacked him from behind and grabbed and threw him to the floor. Hartunian stomped on Johnson's left leg twice, and Johnson felt a "popping." Johnson tried to stand, but couldn't.

Tena pulled Hartunian off Johnson, and Johnson told Tena not to let Hartunian get away. Although people told Hartunian to stay, he "ran out." Tena chased Hartunian, who got into his car, an Aston Martin. Tena tried to punch Hartunian through the car's open window. Although his leg was bothering him, Johnson testified that he managed to stand in front of the car to prevent Hartunian from leaving.[2] When Hartunian revved his engine, Johnson tried to stab the tires with his keys.

After this altercation, "Dr. Uniton" and Dr. Mark Ganjianpour diagnosed Johnson with a torn anterior cruciate ligament (ACL),[3] and, in October 2012, Dr. Ganjianpour performed surgery to repair it. It was Dr. Ganjianpour's understanding that the injury occurred when Johnson was attacked from behind and dropped to the ground. The attacker stomped on Johnson's knee several times. Dr. Ganjianpour found that Johnson's injury was consistent with Johnson's story.

II. Johnson sues Hartunian and the James Beach defendants

Johnson filed his lawsuit in 2011. After the issue of punitive damages was bifurcated for trial, the matter was submitted to the jury on these theories: premises liability and negligence as to James Beach; negligence as to X-Zero; intentional infliction of emotional distress and negligence as to Bernard; and battery, intentional infliction of emotional distress and negligence as to Hartunian.

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[2] There was conflicting testimony about what happened outside the restaurant: Bernard and Hartunian testified that Johnson got on the hood of Hartunian's car; Tena testified that he got on the car's hood; and Johnson denied jumping onto the hood.

[3] Dr. Ganjianpour also diagnosed Johnson with a meniscus tear.

The jury rendered its special verdict on March 12, 2014. The jury found in favor of James Beach, X-Zero and Bernard on all causes of action.[4] But the jury found against Hartunian on Johnson's battery and negligence causes of action. The jury apportioned 85 percent of responsibility for Johnson's damages to Hartunian and 15 percent to Johnson. The jury awarded Johnson $96,000 in damages.[5] The jury also found that Hartunian acted with malice, oppression or reckless disregard for Johnson's safety.

III. Punitive damages phase of the proceedings

A. *The evidence*

After the jury rendered its verdict on March 12, 2014, the punitive damages phase of the trial began that same day, with plaintiff beginning his examination of Hartunian. Trial resumed on March 13, but on that day, Johnson and Hartunian, who was represented by counsel, waived a jury. The jury was therefore discharged, and the punitive damages trial was continued, ultimately to May.

Hartunian was the sole witness at the continued punitive damages trial. An attorney practicing primarily personal injury law, Hartunian has his own practice: the Law Offices of Donald Hartunian. His brother provides him with office space. In 2010 or 2011, Hartunian's business filed for bankruptcy.

In response to plaintiff's second notice to appear and to produce documents, Hartunian produced only limited documents, for example, his 2009 individual federal

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[4] After the jury rendered its verdict in favor of the James Beach defendants, the court dismissed their cross-complaint for indemnity against Hartunian. Hartunian raises no issue on appeal in connection with the cross-complaint. And to the extent Hartunian intended, by referring to alleged improprieties committed by defense counsel for James Beach during voir dire, to raise an issue, he does not otherwise discuss voir dire in the Legal Discussion portion of his brief or cite legal authority on the issue. Any contention regarding voir dire is therefore waived. (See generally *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 [contentions waived when there is failure to support them with reasoned argument and citations to authority].)

[5] The jury awarded: $81,000 in past economic losses including medical expenses; $5,000 in past noneconomic losses, including physical pain/mental suffering; and $10,000 in future noneconomic losses, including physical pain/mental suffering.

income tax return showing an adjusted gross income of $34,731. With respect to income from his law office, Hartunian produced a ledger, which went through May 9, 2014. After that date, his law office received approximately $4,000 but not more than $10,000. In April 2014, he settled a case for $90,000 and received $21,000 in attorney fees and costs from the settlement. He didn't produce documents showing his law firm's expenses, but his firm is "in the red." He did produce statements showing he owes $1,856.82 to Discover, $5,968.46 on his Wells Fargo platinum card, and $23,109.03 to Chase. He had a $121.28 balance with Wells Fargo.

He and his sister own a condominium in the Marina City Club in Marina Del Rey, but the mortgage is in his sister's name. He pays rent, which increased to $5,000 from $3,200 or $3,500 as a result of the bank impounding real estate taxes. His brother pays the approximate $1,000 monthly homeowner's dues. The condominium was purchased in 2007, and although the loan is for $650,000, Hartunian listed it for $625,000. Hartunian denied having an interest in property in Riverside County, Encino and Lawndale.

Hartunian has two cars: the Aston Martin, which his brother won in a golf tournament and which Hartunian leased then purchased, and a Range Rover. He makes payments on the cars but has no statements to show the amount of those payments. Other than the condominium, Hartunian owns no real estate. He has no stocks, bonds, retirement account, IRA, CDs, annuity, boats, aircraft, insurance policies or jewelry of value.

B. *The trial court's ruling*

The trial court found it "unquestionable" that punitive damages were appropriate, given the physical harm to Johnson, inflicted with reckless disregard for his and the other patrons' safety. "There was no justification" for "why Mr. Hartunian would take it upon himself to engage in that kind of conduct, and I don't believe he was thinking of how that might affect other people who were present at the restaurant." Nothing Johnson did warranted Hartunian "taking him down in a martial arts style." The physical harm to

Johnson was "fairly significant," resulting in substantial medical expense and placing Johnson in an even more "desperate [financial] position" than he was in before the attack.

Using the ledger Hartunian produced, the court found that he had a "fairly profitable legal practice" that generated income "well in excess of $250,000 per year." The court came to this conclusion based not only on the ledger but also on Hartunian's "willful" noncompliance with plaintiff's notice to produce documents and on his evasive testimony. As to documents, Hartunian "took some care" to ensure that only limited ones were produced; for example, he produced listings for condos other than his and credit card face sheets but not the attached expenses. He didn't produce documents to substantiate how much he paid for rent and what were his law firm and personal expenses. As to Hartunian's testimony, he couldn't answer basic questions without prolonged hesitation. "That type of testimony, which was replete throughout his testimony today, showed that, in my mind, Mr. Hartunian was not being completely forthright with regard to either his income or his expenses." The trial court therefore drew "reasonable inferences from the failure of [Hartunian] to produce any of the relevant documents which he, by his own testimony, says are most relevant."

The court concluded that Hartunian made in excess of $250,000 per year and appeared "to live well beyond his means. He pleads insolvency, he doesn't pay his taxes, he doesn't pay his homeowner dues, but he has two rather expensive cars. That he's upside down in those cars, I have no reason to know why. But that he chooses to spend his money in that manner is something that I cannot judge either, but I can look at the income and assess punitive damages in relation to the income." Citing Hartunian's conduct, his failure to admit responsibility, and his "complete lack of awareness of what he did and how that affected other people," the court doubled the jury's damage award of $81,600 ($96,000 less the 15 percent fault attributed to Johnson) to arrive at a punitive damages award of $163,200. The jury's damage award was "an important figure because I do believe that the punitive damages" imposed "must bear some relation to the total damages that were incurred and were attributable to" Hartunian's conduct.

C. *Judgment and the new trial motion*

Judgment was entered on July 7, 2014 in the amount of $244,800. Hartunian filed his notice of intent to move for a new trial on July 22, 2014. He argued there was an irregularity in the proceedings because his attorney "practically abandoned him at trial by merely showing up" "with merely a yellow pad and a pen" and by failing to call witnesses, i.e., Grey (Hartunian's date from that night) and a police officer. Hartunian also argued that his wealth was improperly referred to during the liability phase of the trial. As to punitive damages, Hartunian argued he was entitled to have the jury decide it, the award was excessive, and the proceedings were irregular. The trial court denied the motion on September 10, 2014. This appeal followed.

CONTENTIONS

Hartunian contends on appeal: **I.** the trial court erred by failing to include "self-defense" or "defense of others" in the special verdict form, **II.** there was insufficient evidence he caused Johnson's injury, **III.** the punitive damages award was excessive, and there was insufficient evidence to support it, **IV**. the trial court abused its discretion by denying the motion for new trial, and **V.** the court failed to issue a statement of decision that complied with Code of Civil Procedure section 632.

DISCUSSION

I. The record is inadequate to review Hartunian's claim regarding the special verdict form.

In connection with the intentional infliction of emotional distress cause of action, the special verdict included this interrogatory: "Was Donald Hartunian exercising his legal right to defend himself or others?"[6] But the special verdict did not contain a similar

[6] The jury was instructed on self-defense: "Donald Hartunian claims that he is not responsible for Dale Johnson's harm because he was acting in self defense or the defense of others. To succeed, Donald Hartunian must prove both of the following: [¶] 1. That Donald Hartunian reasonably believed that Dale Johnson was going to harm him/or other bar patrons; and [¶] 2. That Donald Hartunian used only the amount of force that was reasonably necessary to protect him or other bar patrons."

interrogatory as to the battery and negligence causes of action. This omission, Hartunian contends, was error.

A special verdict is fatally defective if it does not allow the jury to resolve every controverted issue. (Code Civ. Proc., § 624; *Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1240; *Saxena v. Goffney* (2008) 159 Cal.App.4th 316, 325.) But defects in a special verdict can be waived or forfeited. (*Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 263-264 [failure to object to a verdict before discharging a jury and to request clarification or further deliberation precludes party from later questioning the validity of that verdict if the alleged defect was apparent at the time the verdict was rendered and could have been corrected]; *Taylor*, at p. 1242; *Behr v. Redmond* (2011) 193 Cal.App.4th 517, 529-530.)

Assuming that the failure here to include questions about self-defense or defense of others in the battery and negligence causes of actions was a "defect," it was one apparent on the face of the verdict that could have been raised either before the form went to the jury or after its verdict. But we cannot determine, on this record, whether the issue was discussed or objected to, and, therefore, whether any defect was waived or forfeited. Rather, the record on appeal merely shows that the last day of testimony was March 11, 2014. According to the minute order from that day, the verdict form was discussed off the record.[7] The record contains no statement about the outcome of those discussions. All we know is that the next day, March 12, the "Special Verdict (Revised)" form went to the jury. It is therefore unclear whether Hartunian agreed to the special verdict form, although that appears to be the case, given that the parties discussed it and that the "revised" verdict form went to the jury. The record on appeal is inadequate for us to review any contention that the special verdict form was defective. Hartunian thus has not

[7] Liability phase of the trial began March 4, 2014 and concluded March 12, 2014, when the jury rendered its special verdict. The appellate record does not contain reporter's transcripts from March 11, 12, and 13. It is unclear whether there was a court reporter for those days.

met his burden on appeal of showing error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575 [we cannot evaluate contentions absent transcript or settled statement; party challenging judgment has burden to show reversible error].)

Were we to consider the issue and any error, we would, in any event, find no prejudice. (See generally *Taylor v. Nabors Drilling USA, LP*, *supra*, 222 Cal.App.4th at p. 1244 [defective special verdict form is subject to harmless error analysis].) The jury found that Hartunian acted with malice, oppression or reckless disregard for Johnson's safety. It is unlikely the jury would have made that finding had it believed that Hartunian was acting in self-defense or in defense of others.

As to that finding—that Johnson acted with malice, oppression or reckless disregard—Hartunian raises one additional argument why the special verdict is defective or inconsistent. The verdict instructed: "If you answered 'yes' as to Defendant Donald Hartunian on the claims for battery *and* intentional infliction of emotional distress, and awarded damages against that defendant, do you find by clear and convincing evidence that defendant acted with malice, oppression, or reckless disregard for the safety of Plaintiff Dale Johnson?" (Italics added.) The question should have been in the disjunctive, i.e., battery *or* intentional infliction of emotional distress. Because the jury found that Hartunian committed a battery but not intentional infliction of emotional distress, he thus contends that the verdict is inconsistent.

This amounts to a typo—one that could have been caught before the form was submitted to the jury or before the jury was discharged. In any event, as Hartunian concedes, it is unlikely in the extreme that the jury answered "yes" to the question on the mistaken belief it had found Hartunian guilty of intentional infliction of emotional distress. We discern no irreconcilable inconsistency. (See generally *Zagami, Inc. v. James A. Crone, Inc.* (2008) 160 Cal.App.4th 1083, 1092 [special verdict is inconsistent if there's no possibility of reconciling its findings with each other]; *Hasson v. Ford*

Motor Co. (1977) 19 Cal.3d 530, 540-541, overruled on another ground in *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580.)

II. Substantial evidence supports the judgment.

Hartunian's next contention, that there is insufficient evidence he caused Johnson's injury, rests on *Hartunian's* version of events. Hartunian's version of events was he saw no security that night, and, concerned about his and other patrons' safety, he confronted Johnson. When Johnson "flinched" at Hartunian, Hartunian thought Johnson was going to attack him or others. Hartunian took Johnson down but did not stomp on Johnson's leg. Johnson chased Hartunian out of the restaurant and jumped on Hartunian's car, falling in the process. This fall caused any injury Johnson claimed.

The substantial evidence standard of review requires us to examine the evidence as a whole, including evidence which does not support Hartunian's version of events. " ' "When a finding of fact is attacked on the ground that there is not any substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether there is any substantial evidence contradicted or uncontradicted which will support the finding of fact." ' [Citations.] ' "[W]e have no power to judge of the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom." ' [Citations.] Our role is limited to determining whether the evidence before the trier of fact supports its findings." (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 766.) A party challenging the sufficiency of evidence to support a finding must summarize the evidence on that point, both favorable and unfavorable, and show how and why it is insufficient. (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409.) Hartunian's failure to adhere to this appellate practice permits us to consider the issue waived.

Even so, there is more than sufficient evidence Hartunian caused Johnson's injury. Johnson testified that Hartunian grabbed and threw him to the ground and stomped on his knee. Johnson was unable to move unassisted thereafter. Two doctors, Uniton and

Ganjianpour—diagnosed Johnson with a torn ACL. Dr. Ganjianpour added that Johnson's injuries were consistent with Johnson's version of events.

Hartunian, however, attacks Dr. Ganjianpour's testimony as resting on "false facts." Hartunian points to Johnson's admission that, notwithstanding his knee pain, he managed to get outside, stand in front of Hartunian's car and stab Hartunian's tires with keys. This, Hartunian argues, undermines Johnson's story that his knee injury occurred in the bar. Nonetheless, the jury was entitled to believe Johnson's or any other witness's entire story or just parts of it. "[T]he trier of fact may accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted" and " 'the jury properly may reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected available material.' " (*Stevens v. Parke, Davis & Co.* (1973) 9 Cal.3d 51, 67-68.)

III. Punitive damages

In connection with the punitive damages award, Hartunian argues that A. the jury that decided the case-in-chief should have decided punitive damages, B. the award was excessive and unsupported by the evidence, and C. the court failed to issue a statement of decision.

A. *Hartunian waived a jury trial*

Hartunian asserts first that the punitive damages award must be reversed because the jury that decided his liability did not decide punitive damages. The general rule that the same trier of fact who decided liability must decide punitive damages (Civ. Code, § 3295, subd. (d)) does not apply here, because Hartunian waived a jury trial on the damage issue. (See *Medo v. Superior Court* (1988) 205 Cal.App.3d 64 [defendant can waive the "same jury" requirement].) Hartunian concedes his waiver but contends it was not knowing. Nothing in the record supports that contention.

Nothing in the record supports Hartunian's other meritless imputation: that the approximate two-month delay from the start of the punitive damages trial in March to its

conclusion in May somehow deprived the trial court of its impartiality and, as a result, denied him a fair trial. The record contains absolutely no hint of bias, loss of the court's objectivity or an indication that the court became "inflamed with passion and prejudice" against Hartunian.

B. *Punitive damages award is not excessive*

Punitive damages may be awarded where the defendant acted with oppression, fraud, or malice by clear and convincing evidence. (Civ. Code, § 3294, subd. (a).) In evaluating whether an award is excessive, we evaluate the nature of the defendant's wrongdoing, the actual harm to the plaintiff, and the defendant's wealth. (*Neal v. Farmers Ins. Exchange* (1978) 21 Cal.3d 910, 928; *Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, 77 (*Bankhead*).) We also "consider, among other factors, whether the 'measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff' by comparing the amount of compensatory damages to the amount of punitive damages." (*Nickerson v. Stonebridge Life Ins. Co.* (2016) 63 Cal.4th 363, 367; see also *BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559, 568 [Fourteenth Amendment's due process clause prohibits imposition of grossly excessive punitive damages]; *Bullock v. Philip Morris USA, Inc.* (2011) 198 Cal.App.4th 543, 558.)

We review a challenge to the sufficiency of evidence to support punitive damages by considering whether the record contains substantial evidence to support a determination by clear and convincing evidence. (*Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 891.) The plaintiff bears the burden of proof on a claim for punitive damages. (*Baxter v. Peterson* (2007) 150 Cal.App.4th 673, 680.) An award can be so disproportionate to a defendant's ability to pay that it is excessive for that reason alone. (*Ibid.*) There must, therefore, be meaningful evidence of the defendant's financial condition. (*Ibid.*; see also *Adams v. Murakami* (1991) 54 Cal.3d 105, 112 [punitive damages award may also be excessive if it is disproportionate to the defendant's financial condition].) Net worth is a common,

although not exclusive, measure of a defendant's financial condition and ability to pay. (*Baxter*, at p. 680; *Bankhead*, *supra*, 205 Cal.App.4th at p. 79.)

Hartunian argues that the punitive damages award must be reversed because the trial court relied on his gross income or worth, as opposed to net income or worth, of which he further contends there was insufficient evidence. Normally, evidence of earnings or profit would be insufficient to establish ability to pay, without also considering the " 'liabilities side of the balance sheet.' " (*Baxter v. Peterson*, *supra*, 150 Cal.App.4th at p. 680.) But if there was little evidence from which the trial court here could form a more holistic view of Hartunian's financial condition, that was a situation of his own making. Hartunian, for example, selectively produced documents, making an effort to show he owed the IRS money but little effort to show how he spent his money. He thus produced only the face sheets from credit card statements (omitting pages that would show what he spends money on) and only a few recent bank statements. He did not produce documents verifying he spends $3,200 or $5,000 in rent or his claimed law firm expenses to substantiate that his business was "in the red." Hartunian also gave evasive and ambiguous testimony about his interest in the Marina del Rey condo and his tax returns. His prolonged hesitation before answering basic questions about, for example, his sources of income prompted the court to say, "[T]his is your opportunity to express yourself before the court. [¶] . . . [¶] And I will tell you that I think most people know their sources of income. [¶] . . . [¶] And by taking a long amount of time between the question and the answer and appearing to not know your sources of income, that – that's surprises me. . . ."

Thus, where, as here, the defendant intentionally concealed or withheld information concerning his assets, a trial court is given "wide latitude" to make inferences unfavorable to the defendant. (*County of San Bernardino v. Walsh* (2007) 158 Cal.App.4th 533, 547; Evid. Code, § 413.) The court here drew such negative inferences against Hartunian: "Which gets me to Mr. Hartunian's testimony itself. I tried to mention to [him] that when he's asked a basic question like, 'What is your brother's

name?' and he takes, you know, a minute or two to recall his own brother's name, that does cast some suspicion on his testimony. That type of testimony, which was replete throughout his testimony today, showed that, in my mind, Mr. Hartunian was not being completely forthright with regard to either his income or his expenses. [¶] That's consistent with the manner in which he produced documents. And it's well and good, and it's completely appropriate to say that the plaintiff bears the burden by clear and convincing evidence with regard to the amount of punitive damages imposed. But the court does draw reasonable inferences from the failure of the defendant to produce any of the relevant documents which he, by his own testimony, says are most relevant."

Given Hartunian's intentional obfuscation, inferentially designed to hide his net worth and financial condition, he may not now claim on appeal that there is insufficient evidence of his net worth. We therefore conclude that there was sufficient evidence to support the trial court's findings that Hartunian was not insolvent[8] and that Hartunian had an income in excess of $250,000, based on the ledger. Under these circumstances and based on this evidence, we see nothing excessive or unconstitutional about the court's two-to-one ratio, based on a doubling of the compensatory damages award of $81,600 to $163,200. (See, e.g., *Nickerson v. Stonebridge Life Ins. Co.*, *supra*, 63 Cal.4th at p. 367 [ratios greatly exceeding "9 or 10 to 1" are unconstitutional, absent special justification]; *Bankhead*, *supra*, 205 Cal.App.4th at pp. 87, 88-90; *Bullock v. Philip Morris USA, Inc.*, *supra*, 198 Cal.App.4th at p. 563 [single digit multipliers are more likely to comport with due process].)

Nor can we agree with Hartunian that his conduct was insufficiently reprehensible to warrant imposition of punitive damages. Hartunian responded to Johnson's loutish but nonviolent behavior with physical violence, attacking Johnson from behind and forcing him to the ground and stomping on his leg. (See *Bankhead*, *supra*, 205 Cal.App.4th at

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[8] In connection with a prior right to attach order, the trial court had found that Hartunian was insolvent. But after hearing the evidence at the punitive damages trial, the court found, "That really is not the case."

p. 85 [suggesting that physical harm to the plaintiff increases the degree of reprehensibility].) Hartunian concedes his behavior "may have not been the wisest course of action." He is correct.

IV. The new trial motion

Hartunian contends that the trial court abused its discretion by denying his motion for a new trial. The grounds for that motion were his trial counsel's alleged malpractice. Counsel, for example, showed up at "trial with merely a yellow pad and a pen," failed to call witnesses, misrepresented his status as an associate in a law firm, misadvised Hartunian to waive a jury trial on punitive damages, and allowed himself to be sandbagged by codefense counsel. But, in a civil case, "negligence of trial counsel is not a ground upon which a new trial may be granted." (*In re Marriage of Liu* (1987) 197 Cal.App.3d 143, 155.)

To the extent the motion was based on the failure to call Grey and a police officer, there is no showing that this was newly discovered evidence. (Code Civ. Proc., § 657.) Grey's deposition was taken in September 2012, years before the trial. Hartunian does not even identify the police officer who should have been called at trial.

V. The statement of decision

On the same day the court held the punitive damages phase of the trial, Hartunian requested a statement of decision, under Code of Civil Procedure section 632. After the court explained its punitive damages ruling on the record, it said that the reporter's transcript of the trial would serve as its statement of decision. Such a procedure, however, has been disapproved. (*Whittington v. McKinney* (1991) 234 Cal.App.3d 123, 130.) Still, the error can be waived. (*Ibid.*; but see *Miramar Hotel Corp. v. Frank B. Hall & Co.* (1985) 163 Cal.App.3d 1126, 1127 [failure to issue statement of decision when timely request for one is made is reversible per se].)[9] Here, the court set forth the

[9] Whether a trial court's error in failing to issue a statement of decision upon a timely request is reversible per se is on review in the Supreme Court. (*F.P. v. Monier* (2014) 222 Cal.App.4th 1087, review granted Apr. 16, 2014, S216566.)

factual and legal reasons for its conclusion that Hartunian should be liable for $163,200 in punitive damages and said that the reporter's transcript would be its statement of decision. Hartunian's counsel did not then object, and Hartunian cites no part of the record on appeal showing that an objection was ever made. The issue is waived or forfeited. (See *Whittington*, at p. 130.) Moreover, given the detailed nature of the trial court's decision, as reflected in the reporter's transcript, that transcript fulfilled the underlying purposes of Code of Civil Procedure section 632, for example, to make the case easily reviewable and to inform the parties of the precise facts found by the court. (*Whittington*, at p. 127.)

DISPOSITION

The judgment is affirmed. Respondents may recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

EDMON, P. J.

STRATTON, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.