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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MAURICIO ROSILHO,

Plaintiff and Respondent,

v.

DAVID LI-MIN YOUNG et al.,

Defendants and Appellants.

B260905

(Los Angeles County
Super. Ct. No. BC457174)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert L. Hess, Judge. Affirmed in part, reversed in part.

Duane Morris, Paul J. Killion, Cyndie M. Chang, and Christopher B. Yeh for Plaintiff and Respondent.

Law Offices of Stephen P. Chang, Steven P. Chang and Gene H. Shioda for Defendant and Appellant David Li-Min Young.

Law Office of Jason Y. Lie and Jason Y. Lie for Defendant and Appellant Jimmy Chen.

INTRODUCTION

Plaintiff Mauricio Rosilho and defendant David Li-Min Young are Brazilian residents and former business partners who co-owned two parcels of real property in the City of San Gabriel. In August 2003, Rosilho's interests in the San Gabriel properties were conveyed via grant deeds to Young. Co-defendant Jimmy Chen notarized the grant deeds. Shortly thereafter, the properties were sold to a third party. In March 2011, Rosilho sued Young, alleging that he had never agreed to transfer the properties, that the transfers were fraudulent, and that Young had improperly concealed the transfers from him. Rosilho also sued notary Chen, alleging that Chen had conspired with Young to conceal the fraudulent transfers, that Chen and Young had conspired to destroy Chen's notary books, and that Chen had destroyed the notary books allegedly documenting the transfers.

The jury found Young liable for concealment and determined that Rosilho had suffered \$753,000 in damages as a result of the concealment. It further found that Rosilho did not and could not have discovered the fraudulent transfers prior to March 2008.

The jury found Chen not liable for conspiring with Young to conceal the fraudulent transfers. However, the jury found Chen did destroy his notary books, and that he and Young conspired to destroy the books. It determined that Rosilho suffered \$753,000 in damages as a result of the destruction of the books.

On appeal, Young contends the matter should not have been submitted to the jury because the trial court erred in denying his motion for summary judgment based on the applicable statute of limitations. He further contends the trial court abused its discretion in limiting evidence about foreign

litigation between himself and Rosilho, arguing that the evidence was material to the statute of limitations issue. Chen argues that the causes of action asserted against him were time-barred, and that the damages assessed were speculative. For the reasons stated below, we reject Young's challenges to the jury verdict. We also reject Chen's argument that the claims against him were time-barred. However, we conclude that the damages assessed against Chen for the destruction of the notary books were speculative. Accordingly, we reverse that award of damages.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

In March 2011, Rosilho filed a complaint for damages against Young and Chen, and in July 2011, he filed a first amended complaint (FAC) alleging causes of action for concealment, fraud, declaratory relief, conspiracy and aiding and abetting. The FAC alleged that Rosilho had a one-third ownership interest in two parcels of real property in San Gabriel. On August 29, 2003, Young allegedly conveyed Rosilho's interest in the properties to himself without Rosilho's knowledge or consent, by executing two grant deeds purportedly containing Rosilho's signatures. Chen allegedly conspired with and assisted Young in committing the fraud by notarizing the forged deeds. On or about September 23, 2003, Young sold the properties to a third party for \$2,030,000. The FAC alleged Rosilho was never informed of the fraudulent conveyance of his interest in the properties to Young, and that he only learned of it in July 2010. Rosilho sought damages in an amount not less than \$676,666 -- one-third the selling price of the properties -- punitive damages, pre- and postjudgment interest, and attorney fees and costs.

Both Young and Chen filed answers to the FAC, generally denying the allegations and asserting a statute of limitations defense.

On July 11, 2013, Chen filed a motion for judgment on the pleadings, arguing that the causes of action in the FAC asserted against him were time-barred under Code of Civil Procedure section 338, subdivision (f)(3).¹ That statute provides that regardless of the time of discovery, no action against a notary arising from the notary's acts in his "official capacity" may be brought more than six years after the notarial acts were committed. (§ 338, subd. (f)(3).) Chen argued that as all the claims asserted against him in the 2011 complaint arose from his alleged act of notarizing the grant deeds in 2003, they were time-barred. The trial court granted Chen's motion for judgment on the pleadings, but permitted Rosilho to amend his complaint.

In August 2013, Rosilho filed a second amended complaint (SAC). Similar to the FAC, the SAC alleged that Young and Chen conspired to defraud Rosilho of his share of the proceeds from the sale of the two San Gabriel properties by forging his signatures on the grant deeds and concealing the transaction. The forged deeds were notarized on August 29, 2003, and filed with the Los Angeles Recorder's Office on September 30, 2003. The SAC again asserted causes of action against both defendants for conspiracy (1st), fraud (2nd), fraudulent business practices (4th), civil conspiracy (5th), and aiding and abetting (6th). For the first time, the SAC asserted a claim (3rd) against Chen alone

¹ All further statutory citations are to the Code of Civil Procedure, unless otherwise indicated.

for destroying the notary books memorializing the signing of the grant deeds, in violation of Government Code section 8221.²

A. *Chen's Challenge to the SAC*

Chen demurred to the SAC, again arguing that all causes of action were barred by the statute of limitations set forth in section 338, subdivision (f)(3) because they were based on official notarial acts. In opposition, Rosilho argued, inter alia, that the third cause of action for destruction of notary books in violation of Government Code section 8221 was timely under its specific statute of limitations, set forth in Government Code section 8221, subdivision (b), which provides a four-year limitations period following discovery of the destruction of notary books.³ Rosilho argued that he did not discover the destruction until December 2012, when Chen revealed in his deposition that he had “shredded” the books after his commission ended in September 2008. Thus, the claim asserted in the August 2013 SAC was timely. In reply, Chen did not dispute the applicability of

² Government Code section 8221, subdivision (a) provides: “If any person shall knowingly destroy, deface, or conceal any records or papers belonging to the office of a notary public, such person shall be guilty of a misdemeanor and be liable in a civil action for damages to any person injured as a result of such destruction, defacing, or concealment.”

³ Government Code section 8221, subdivision (b) provides: “Notwithstanding any other limitation of time described in Section 802 of the Penal Code, or any other provision of law, prosecution for a violation of this offense shall be commenced within four years after discovery of the commission of the offense, or within four years after the completion of the offense, whichever is later.”

Government Code section 8221, subdivision (b), but argued that the trial court should rule that “[a]ll Causes of Action except the Third Cause of Action are dismissed based on the six year statute of repose in section 338(f).”

On November 20, 2013, the trial court sustained Chen’s demurrer to the second cause of action for fraud, but overruled the demurrer as to the remaining causes of action for concealment, civil conspiracy, aiding and abetting, and destruction of notary books.

B. *Young’s Challenge to the SAC*

In response to the SAC, Young moved for summary judgment on the ground that the causes of action in the FAC were time-barred. (See § 338 [three-year limitations period for actions based on fraud or concealment].) Young argued that Rosilho was not entitled to the discovery rule delaying accrual of the causes of action because Rosilho was on inquiry notice as of 2003. Specifically, Young asserted that several events should have “trigger[ed]” an inquiry, including the closing in 2002 of a joint account established to handle the rental income from the San Gabriel properties, “multiple litigations since 2003” between Rosilho and Young, and the cessation of annual reports or rental income from the properties after 2002.

Rosilho opposed the motion, contending there were triable issues of material fact as to whether he was on inquiry notice in 2003. Specifically, Rosilho argued that he believed his signature was required to transfer his interests in the San Gabriel properties, and nothing supported a reasonable belief that Young, a Brazilian resident, “would travel to the United States from Brazil and forge Plaintiff’s signature in order to fraudulently obtain Rosilho’s interest in the San Gabriel Properties.” As to the

cessation of annual reports, Rosilho reasonably believed that Young had stopped providing them “to spite his former friend and litigation adversary.” As to the closing of the joint bank account and the lack of rental income, Rosilho asserted he believed that because of the breakdown in his relationship with Young, Young closed the joint account and opened a new account without Rosilho. Moreover, because “management of the property was self-sustaining and self-contained,” he believed “the rental income was being retained and applied toward property management expenses.” As to the foreign litigation between the parties, those lawsuits concerned the division of separate partnership assets in a foreign company and had nothing to do with the San Gabriel properties. Rosilho argued that it was unreasonable and absurd for a person engaged in litigation to “assume that his or her adversary committed a criminal or illegal act of forgery pertaining to unrelated subject matter, simply by virtue of the fact that the parties are adversaries in business litigation.”

The trial court denied Young’s motion for summary judgment, finding the undisputed facts did not “compel the conclusion that plaintiff should have reasonably suspected wrongdoing more than three years prior to the filing of this action.” The court noted that a number of events relied upon by Young, including the cessation of annual reports and the closing of the joint bank account, occurred *before* the recordation of the allegedly fraudulent deeds, and that “[i]mmediate inquiry at the time of those events would not have revealed the transfer, which constitutes the fraud.”

C. *Rosilho's Motion in Limine*

Subsequently, Rosilho moved to limit introduction at trial of evidence of the ongoing foreign litigation between Young and himself in Brazil and Uruguay. In his motion, Rosilho stated that evidence about (1) the existence of the foreign litigation, (2) the countries involved, (3) the number of lawsuits, (4) the dates of each lawsuit, (5) the parties involved, and (6) the posture of the parties (plaintiff or defendant) could properly be admitted. However, he argued that other facts about the foreign litigation should be excluded under Evidence Code section 352, as they were irrelevant to the issues in the instant case, and their introduction would result in an undue consumption of time and undue prejudice. He noted that the San Gabriel properties were not at issue in any of the foreign litigation, and that discussion of the specific claims asserted in the several lawsuits could mislead the jury into considering facts and claims not relevant to the instant litigation.

Young opposed Rosilho's motion in limine. Although agreeing that the six categories of facts identified by Rosilho could be introduced, Young also sought to introduce evidence about the "claims/cause of action or counterclaims of the parties." Young argued that without identifying the bases for the lawsuits, the jury would not know why the parties were suing each other abroad.

At the hearing on Rosilho's motion to limit evidence of the foreign litigation, the trial judge stated that Young had not persuaded him that a discussion of all the claims in the foreign litigation would be beneficial to the jury: "I am disinclined at the moment to go beyond where the litigation is pending, how many suits, who the parties are, and the date of inception. I am

disinclined to get into a description of the various claims that each [party] has against each other.” The parties were ordered to meet and confer, in an attempt to agree on a “reasonably circumscribed” description of the foreign litigation. Subsequently, the parties stipulated to a “Joint Summary of Foreign Litigation,” that described the foreign litigation, including the parties, their posture, the foreign locations, and the dates filed. The document showed that the parties were involved in five lawsuits, the first one of which was filed in April 2005. Young was the plaintiff in three of the lawsuits, and Rosilho in two. Young did not reassert his objection to the exclusion of evidence of the specific claims asserted in each lawsuit.

D. *Jury Trial*

A jury trial was held on the causes of action for concealment, civil conspiracy, aiding and abetting, and destruction of the notary books. The jury also was asked to determine whether the causes of action in the FAC were timely, i.e., whether Rosilho was entitled to delayed accrual under the discovery rule.

At trial, Rosilho testified that he, Young and Young’s brother Daniel Young are Brazilian residents who were friends and former partners in a large Brazilian company, named Sudan, and other businesses in Brazil and Uruguay. Rosilho was Young’s best man at his wedding. In 1993, the three men jointly purchased two parcels of real property in San Gabriel, California. Rosilho was interested in purchasing the properties for their potential to appreciate and for “safety,” as they were located in the United States. Rental income was not an investment objective. The properties were not related to the men’s ongoing business partnerships.

Young's accountant, Jack Tam, had recommended the properties. Because Tam was based in San Gabriel, he managed the properties on behalf of the three men. Tam handled, among other things, payments of maintenance costs and property taxes and the collection of rents. Tam sent annual reports to Young, who would then distribute them to the others. Tam never communicated with Rosilho or Daniel Young about the properties.

The rents were deposited into a bank account in the three men's names, and upkeep costs were paid from that joint account. The properties were "self-reliant": the rent proceeds generally covered taxes and upkeep, with modest profits in one or two years.

Disagreements in the management of Sudan resulted in Rosilho's leaving the "administration" of the company in October 2002 and resigning his directorship in April 2003. Rosilho stopped communicating with either Young or Daniel Young afterward, and when the first foreign lawsuit was filed in 2005, their only contacts were through their respective attorneys. In late 2009 or early 2010, Rosilho reconnected with Daniel Young. From Daniel, Rosilho learned for the first time that the San Gabriel properties had been sold. He was "shocked" because he believed that his signature was required in order to sell the properties.

Rosilho testified he did not sign the grant deeds purporting to transfer his interest in the properties to Young. After observing that the signatures on the deeds had his name backward -- "Rosilho Mauricio" instead of "Mauricio Rosilho" -- he testified he never signed his name in that manner. Rosilho also testified he never gave Young (or anyone else) permission to sign

the deeds on his behalf. Rosilho stated that he never traveled to the United States in 2003, and that he was in Brazil on August 29, 2003, the date the deeds were signed. Rosilho produced Brazilian government documents showing he did not travel outside Brazil in July, August or September of 2003. He further testified he never received any of the proceeds from the sale of the San Gabriel properties.

After comparing contemporaneous exemplars of Rosilho's signature with the signatures on the forged deeds, Frank Hicks, a forensic handwriting expert, opined that the signatures on the deeds probably were not made by Rosilho. Hicks also challenged the contradictory opinion of Andrea McNichol, a "graphologist" retained by Young. Hicks explained that graphology is not a field of forensic science, but a "parlor game" that purports to determine personality traits from handwriting. Hicks further explained that McNichol's opinion was not credible because she relied on recent, instead of contemporaneous, writing exemplars and on identifying characteristics in Rosilho's signature (such as the "European A") not recognized by any credible expert.

Daniel Young testified that his brother, defendant Young, had discussed selling the San Gabriel properties in 2002. Daniel had told his brother, "If you want to sell the property, Mauricio will have to sign his signature." Young responded, "I will handle everything. Don't worry." On August 29, 2003, Daniel Young signed the two grant deeds at issue. He also signed in Chen's notary book. While he, Young and Chen were present at the signing, Rosilho was not. Later, when he asked Young about the sale of the properties, Young told his brother, "Yes, I've already handled it." Neither Rosilho nor Daniel Young ever received any of the sale proceeds. In fact, Young told Daniel, "I will never pay

[Rosilho].” Toward the end of 2009, Daniel Young reached out to Rosilho to discuss allocation of assets following the dissolution of Sudan. During their conversation, he mentioned that the San Gabriel properties had been sold. Rosilho was shocked.

Following Rosilho’s presentation of evidence, Young and Chen moved for directed verdicts on the concealment cause of action and the related conspiracy and aiding and abetting claims, arguing that Rosilho was on inquiry notice in 2003. The trial court denied the motions, determining that the facts did not compel a finding that Rosilho should have discovered the fraud. “He’s in a different country. He doesn’t speak English. He’s not in contact with Mr. Tam. Mr. Tam is [defendant] Young’s man. [Rosilho] has no information that suggests that this transfer has occurred.” Finally, the court observed that notice of recordation of the forged grant deeds was sent to Young or Tam, not Rosilho.

E. *Jury Verdicts*

On April 25, 2014, the jury returned verdicts largely in favor of Rosilho. First, it found that Rosilho did not know and could not, with reasonable diligence, have discovered that his share in the San Gabriel properties had been transferred to Young before March 11, 2008. When asked, “Did Plaintiff Mauricio Rosilho know in 2003 that his share of the San Gabriel Properties had been transferred to David Young?” the jury answered, “No.” When asked, “did Defendant David Young intentionally fail to disclose an important fact that Plaintiff Mauricio Rosilho did not know and could not reasonably have discovered?” the jury answered, “Yes.” When asked, “Did Plaintiff Mauricio prove that before March 11, 2008, he did not discover, nor with reasonable diligence could he have

d[i]scovered, the facts constituting David Young's deception?" the jury answered, "Yes."

The jury also found that Rosilho did not sign the grant deeds, that Young and Rosilho were tenants-in-common, and that Young intentionally failed to disclose the transfer of the properties. When asked "What are plaintiff Mauricio Rosilho's damages for this deception?" the jury answered, "\$753,000."⁴

The jury found Chen was not liable on the conspiracy or aiding and abetting claims, determining that he was unaware Young planned to conceal the improper transfer of the San Gabriel properties from Rosilho. However, the jury found Chen guilty of knowingly destroying, defacing or concealing his notary books. When asked, "What are Plaintiff Mauricio Rosilho's damages as a result of such destruction, defacing or concealment?" the jury answered "\$753,000." It further found that Young conspired with and aided and abetted Chen in destroying the notary books.

In a separate proceeding, the jury found Young and Chen acted with malice, oppression and fraud. It awarded Rosilho \$188,250 in punitive damages against Young, but declined to assess any punitive damages against Chen.

On October 21, 2014, judgments against Young and Chen were entered. Young and Chen were deemed "jointly and severally" liable for \$753,000 in damages, and Young separately liable for \$188,250 in punitive damages. In addition, the trial court assessed compound prejudgment interest against Young at

⁴ At trial, Rosilho presented evidence that the properties sold for \$2,259,000. In closing argument, his counsel requested that the jury award one-third of that amount (\$753,000) as compensatory damages.

the rate of seven percent per year from September 30, 2003 (the date of the forged grant deeds) and against Chen from September 11, 2008 (the date Chen destroyed the notary books).

F. *Motions for a New Trial*

On November 6, 2014, Chen moved for a new trial on the ground that the damages assessed were excessive. He argued that in light of the jury's finding that he was not complicit in Young's acts of concealment against Rosilho, an award of damages identical to those assessed against Young was improper.

Rosilho opposed Chen's new trial motion on damages. He argued that "Chen's destruction of his notary books was a continuation of his original wrongful act of notarizing the fraudulent deeds, and that Rosilho was injured by Chen because Chen's destruction of the notary books furthered Young's fraud." Rosilho explained: "Chen's notary books evidenced Young's fraud against Rosilho, either by showing that Young was present (and that Rosilho was not) when the fraudulent deeds were signed, or alternatively, by failing to show any record at all for the date in question. Either way, the notary book[s] would have implicated both Young and Chen in wrongdoing, and both Young and Chen benefitted [from] their destruction because there was less evidence of their wrongdoing."

Young also filed a motion for a new trial, arguing that the trial court prejudicially erred in excluding relevant and material information about the foreign litigation, viz., the specific claims asserted in the five lawsuits. Young argued that evidence of the specific nature of the claims would have refuted Rosilho's allegation of an ongoing fiduciary relationship between the parties and would have supported a claim that Rosilho was not diligent in discovering the improper transfer.

Rosilho opposed Young's motion for a new trial, contending that Young had failed to show the trial court abused its discretion in limiting evidence concerning the foreign litigation. Rosilho argued that Young failed to demonstrate that the foreign litigation, which started in 2005 and thus postdated the 2003 fraud, refuted his allegation of an ongoing fiduciary relation as under California law, tenants-in-common are fiduciaries. Rosilho also argued that Young had forfeited any challenge to the trial court's evidentiary ruling by agreeing to the stipulated joint summary of foreign litigation without objection.

The trial court denied all motions for a new trial. Defendants separately appealed from the judgment

DISCUSSION

A. *Young's Challenges to the Judgment*

Young challenges the judgment on two grounds. First, he contends the trial court improperly excluded evidence concerning the specific nature of the claims asserted in the foreign litigation. Second, he contends the matter should not have been heard by a jury, as the trial court erred in denying his motion for summary judgment on the SAC. We find no error.

As detailed above, Rosilho moved to limit evidence concerning the foreign litigation between Young and himself under Evidence Code section 352, and Young sought to introduce evidence of the specific legal claims asserted in the foreign litigation. The trial court stated it was "disinclined" to allow evidence of the legal claims and ordered the parties to meet and confer on the evidence to be presented to the jury. The parties subsequently stipulated to a "joint summary" describing the foreign litigation, which did not include the legal claims. Young

now contends the trial court abused its discretion in excluding evidence of the specific legal claims, arguing that the evidence “relate[d] to the Statute of Limitations and whether [Rosilho] acted reasonably when he filed his action eight (8) years after the fact when other legal actions in similar nature were previously filed between these parties.”

Young’s challenge to the trial court’s evidentiary ruling is arguably forfeited, as Young agreed, without objection, to a stipulated summary of the foreign litigation that did not include a description of the legal claims. (See *In re Marriage of Broderick* (1989) 209 Cal.App.3d 489, 501 [“appellant waives his right to attack error by expressly or implicitly agreeing or acquiescing at trial to the ruling or procedure objected to on appeal”].) Even assuming the objection was preserved, we find no abuse of discretion. Evidence of the foreign litigation had limited probative value, as it involved claims under Brazilian and Uruguayan law unrelated to the San Gabriel properties.⁵ To the extent Young sought to persuade the jury that the existence of litigation between Rosilho and himself should have put Rosilho on notice of a breakdown in the business relationship, he was permitted to -- and did -- present evidence of the foreign litigation and make that argument. Any details concerning the precise nature of the litigated claims would have been, at best, cumulative and at worst, time-consuming, irrelevant, confusing and potentially prejudicial. In light of the limited probative value

⁵ We note that neither below nor on appeal did Young’s counsel provide details of the specific claims asserted in the five lawsuits. In response to the court’s inquiry, counsel first stated that he “didn’t think it was important,” and later claimed he would have to consult with his client’s Brazilian counsel.

and the obvious risk of undue consumption of time and confusion, the trial court's ruling was well within its discretion under Evidence Code section 352.

Young also contends the trial court erred in denying his motion for summary judgment based on the statute of limitations. However, a party may not challenge a trial court's denial of a motion for summary judgment where it "moves for summary judgment on the ground that there is no triable issue of fact, the motion is denied, and the same questions raised by the motion are then decided adversely to the unsuccessful moving party after a trial on the merits which is itself free from prejudicial error." (*Waller v. TJD, Inc.* (1993) 12 Cal.App.4th 830, 836; accord, *Buckner v. Milwaukee Electric Tool Corp.* (2013) 222 Cal.App.4th 522, 539 [same]; *California Housing Finance Agency v. Hanover/California Management & Accounting Center, Inc.* (2007) 148 Cal.App.4th 682, 688 (*Hanover*) [same]; see also *Ortiz v. Jordan* (2011) 562 U.S. 180, 183-184 [under federal rules of procedure, party may not appeal an order denying summary judgment after full trial on the merits].) Here, the statute of limitations issue was squarely presented to the jury, and thus, Young's challenge to the trial court's order denying summary judgment is not cognizable on appeal. (See *Hanover, supra*, at p. 689 [defendants may not challenge denial of summary judgment motion based on statute of limitations where issues "were fully litigated at trial and determined adversely to defendants"].)

To the extent Young challenges the trial court's denial of his motion for a directed verdict, we agree with the trial court that the evidence presented at trial did not compel a finding that Rosilho was on inquiry notice in 2003 of Young's wrongdoing, or that Rosilho could have discovered the wrongdoing before March

2008. The fact that the parties were in litigation did not place Rosilho on notice that Young might commit -- or had already committed -- an illegal act in an unrelated matter. The events which Young alleges should have triggered Rosilho's suspicions earlier than March 2008 were adequately explained or shown to be irrelevant. The joint bank account was closed before the fraudulent transfers occurred, and as the trial court noted, immediate inquiry would not have revealed Young's deception. The lack of rental income was explained by Rosilho's testimony that the property did not generate net income every year. And Rosilho's failure to receive annual reports was attributable to the fact that he had no contact with Young after April 2003. Rosilho testified that he did not learn of the sale until he was informed of it by Daniel Young in 2009 or 2010, and Daniel Young's own testimony bolstered Rosilho's claim. In short, far from compelling the conclusion that Rosilho should have suspected Young's misconduct earlier, the evidence amply supported the jury's finding that Rosilho neither knew nor, in the exercise of reasonable diligence, could have known of Young's concealment before March 2008.

B. *Chen's Challenges to the Judgment*

Chen raises two challenges to the judgment against him. First, he contends the trial court erred in not dismissing all causes of action against him based on the statute of limitations in section 338, subdivision (f)(3), following his motion for judgment on the pleadings, his demurrer, his motion for a directed verdict and his posttrial motions. Second, he asserts the damages assessed by the jury for his destruction of the notary books were speculative. We reject the former contention, but agree with the latter.

Chen's contention that all the claims against him are time-barred under section 338, subdivision (f)(3), ignores the fact that the jury found in his favor on all causes of action *except* the claim for destruction of notary books under Government Code section 8221, subdivision (a). He fails to address that claim or the fact that it is governed by a different statute of limitations, namely Government Code section 8221, subdivision (b), which provides for a four-year limitations period following discovery of the destruction of the notary books.⁶ Here, the uncontradicted evidence showed that Rosilho did not learn of Chen's destruction of the notary books until December 2012, when Chen admitted during his deposition that he had shredded the books. As the SAC containing the cause of action under Government Code section 8221 was filed in August 2013, the claim was timely.

Chen's contention that the jury's \$753,000 damages award was speculative has merit. Under Government Code section 8221, subdivision (a), a person who knowingly destroys a notary book is "liable in a civil action for damages to any person injured as a result of such destruction." The determination of the damages resulting from the destruction of the notary books thus depends on the injury to the plaintiff. The trial court ruled that damages arising from Chen's admitted notarizing of the forged grant deeds were time-barred, and Rosilho does not challenge that ruling on appeal. Thus, no injury is cognizable based on that act. In his SAC, Rosilho alleged that he was injured because

⁶ As noted, when Rosilho, in opposition to Chen's demurrer to the SAC, asserted that the third cause of action was governed by Government Code section 8221, subdivision (b), Chen's reply did not contest this. Rather, Chen sought dismissal of all causes of action "except the Third."

“Chen’s acts furthered Defendants’ active concealment of Defendants’ fraud and forgery relating to the San Gabriel Properties.” However the jury expressly found Chen did not conspire with or aid and abet Young in concealing facts from Rosilho. Thus, the jury’s verdict vitiated any claim of injury based on the furtherance of such concealment.

Rosilho argues that Chen’s destruction of his notary books made it “more difficult” for Rosilho to discover the forgery and the improper property transfers. That may be. But Rosilho ultimately proved the forgery and the improper transfers and obtained a verdict against Young for the damages resulting from those acts. He identified no additional damages resulting from any delay in discovering Young’s malfeasance. As the judgment against Young included an award of prejudgment interest from the time the forged grant deeds were filed and recorded, Rosilho can show no injury for which he was not fully compensated by the verdict against Young. Nor can he point to any quantifiable injury resulting from the only claim against Chen on which he prevailed, viz., the destruction of the notary books.⁷

In sum, there is no evidentiary support for the jury’s finding that Chen’s destruction of his notary books resulted in a loss of \$753,000 to Rosilho. Rather, that is the amount attributable to Young’s fraudulent transfer and subsequent sale of the two properties. As Chen was found not to have conspired with, or aided or abetted Young in that misconduct, he cannot be

⁷ Had Rosilho demonstrated that as a result of Chen’s destruction of his notary books, Rosilho had incurred the costs of an expert or other expenses attributable to Chen’s conduct, he would have been entitled to recover them. Neither at trial nor on appeal did Rosilho identify such damages.

held liable for the damages resulting from it. To the extent Chen's conduct delayed Rosilho's discovery of Young's fraudulent acts, that delay was not shown to have been a separate and independent source of damage to Rosilho. Accordingly, the award of \$753,000 against Chen must be reversed.

DISPOSITION

The judgment awarding \$753,000 in damages against Chen is reversed. In all other respects, the judgment is affirmed. Rosilho is awarded his costs on appeal against Young pertaining to Young's claims on appeal. Otherwise, the parties are to bear their own costs on appeal.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.