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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

GLENN OLILANG, Plaintiff and Respondent, v. MICHAEL HERRERA et al., Defendants and Appellants.	B254220 (Los Angeles County Super. Ct. No. LC091709)

APPEAL from a judgment of the Superior Court of Los Angeles County, Maria E. Stratton, Judge. Affirmed in part and reversed in part.

Hess, Hess & Herrera and Alejandro H. Herrera for Defendants and Appellants.

Law Office of John A. Bunnett and John A. Bunnett for Plaintiff and Respondent.

In 2009, during the midst of the Great Recession, Glenn Olilang (Olilang), like so many others, found himself in economic difficulty following the collapse of the real estate market. His house in Lakewood, California (the Property), was "upside down"—that is, he owed more to his lenders than the house was worth. As a result, he entered into a "principal reduction" program for distressed homeowners administered by Michael Herrera and Juan Herrera (collectively, the Herrera brothers or the defendants).

The defendants, or so they promised Olilang, would purchase the Property through a short sale[1] and then resell the house back to Olilang at a lower price than he originally paid and help finance the repurchase. The defendants, however, never mentioned to Olilang that prior to repurchasing his home he would have to lease the Property back from the defendants for a period of time. Olilang learned about the leaseback requirement in October 2010 only after he had sold his house to defendants and after he had paid them $45,000 in fees and down payment deposits. After Olilang refused to participate in the leaseback, the Property was subsequently sold at foreclosure following defendants' failure to meet their financial obligations to the

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[1] "In a short sale, the borrower sells the home to a third party for an amount that falls short of the outstanding loan balance; the lender agrees to release its lien on the property to facilitate the sale; and the borrower agrees to give all the proceeds to the lender." (*Coker v. JPMorgan Chase Bank*, N.A. (2016) 62 Cal.4th 667, 671.)

third party lender with whom they had re-encumbered the property.

In 2014, following a bench trial, the trial court found the Herrera brothers and others guilty of fraud and violation of the Home Equity Sales Contract Act (Civ. Code, § 1695 et seq.[2]) (the Act). The trial court awarded Olilang $157,462 in damages and $62,000 in attorney fees.

On appeal, the Herrera brothers contend principally that the judgment was not supported by substantial evidence and that the damages award was excessive. We reverse the judgment as to damages only and remand for further proceedings.

BACKGROUND

I. The operative complaint

On November 4, 2010, Olilang and his cousin, Juliet Ocuma (Ocuma) (collectively, plaintiffs), filed their initial complaint in this action. Ocuma joined the lawsuit because she had helped Olilang purchase the Property in 2007 by acting as a co-signor on the loans, and thus her name was on the Property's title. However, as far as she was concerned, she had no ownership interest in the Property. In fact, in 2007, two years before the events at issue in the second amended complaint (SAC) occurred, Ocuma quitclaimed the Property to Olilang.

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[2] All further statutory references are to the Civil Code unless otherwise indicated.

On May 16, 2012, plaintiffs filed their SAC, the operative complaint in this action. The SAC named as defendants a number of individuals besides the Herrera brothers (Richard Sindell, Ivan Marin Diaz, Lupe Vargas, Fresvinda Chue, Moses Jordan, Hydee Meza, and Marc Lantzman), as well as a number of entities (The Herrera Sindell Group, Inc., Golden State Capital Group, Inc. dba Co-Op Management, H&S Holdings Company, LLC, the Lantzman Mortgage Fund, Quantrell Properties, LLC, and Electric Capital, LLC).[3]

The SAC alleged that some of the defendant entities (The Herrera Sindell Group, Inc., Golden State Capital Group, Inc. dba Co-Op Management, H&S Holdings Company, LLC, and Quantrell Properties, LLC) were the alter egos of certain individual defendants (the Herrera brothers, Richard Sindell, Ivan Marin Diaz, Lupe Vargas, Fresvinda Chue, Moses Jordan, Hydee Meza).

The SAC alleged fourteen causes of action: fraudulent misrepresentation, negligent misrepresentation, negligence,

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[3] Claims against certain defendants were resolved prior to trial. In January and March 2013, respectively, the court entered default judgments against Hydee Meza and Ivan Marin Diaz. In May 2013, plaintiffs dismissed with prejudice their claims against Electric Capital, LLC, Mark Lantzman (individually and as Trustee for the Lantzman Family Trust) and the Lantzman Mortgage Fund. In November 2013, plaintiffs dismissed without prejudice their claims against Quantrell Properties, LLC.

negligence per se–violation of Corporations Code section 25401, negligence per se–violation of Business and Professions Code sections 10130 and 10139, negligence per se–violation of Penal Code section 470, official misconduct of notary public, RICO Violations, breach of contract, rescission, intentional infliction of emotional distress, intentional violations of statutes, cancellation of deed, quiet title, and declaratory relief.

II. The trial

A. THE CREDIBLE TESTIMONY OF PLAINTIFFS

From November 13-15, 2013, the court conducted a bench trial on the claims asserted in the SAC.[4] Olilang, his mother, Fe Olilang, who assisted him in his discussions and negotiations with the defendants, and Ocuma testified that they were repeatedly misled in their dealings with the defendants and, moreover, the defendants used irregular and illegal methods to acquire the Property.

Specifically, the Olilangs testified that in October 2009 they met with Juan Herrera, Lupe Vargas, Fresvinda Chue, who, as representatives of the Herrera Sindell Group, Inc.[5]

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[4] In their briefs, the parties refer to a joint stipulation of facts that they apparently entered into on the first day of the trial. However, no such stipulation is in the record before us.

[5] Juan Herrera formed HSG in 2009. Although HSG bears defendant Richard Sindell's name, and although the HSG website identifies him as one of HSG's "co-founders," Sindell denied at trial any involvement with the company,

(HSG) offered them the following principal reduction program: after Glenn Olilang stopped paying on his mortgage loan and allowed the Property to go into foreclosure, HSG would purchase the Property through a short sale and then resell the Property back to Olilang; in addition, HSG would finance the repurchase for five years at six percent interest plus an additional mark-up depending on the value of the Property.[6] The cost to participate in the program was $5,000, an amount that would be become part of the down payment at the time of the repurchase. In other words, as a participant in this program Olilang would not have to pay any commission or broker fees. Critically, none of the defendants told Olilang or his mother that he would be

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stating the he merely "allowed" Juan Herrera to use his name, explaining, "what's in a name." Michael Herrera went even further in attempting to distance himself from HSG. Although HSG's website also identified him as a "co-founder," he testified that he never held a position with HSG and was not "associated . . . in any way" with HSG. Nevertheless, Michael Herrera conceded that he was involved in "every transaction" that HSG entered into with homeowners of distressed properties.

[6] The amount of the mark-up would be determined along a sliding scale. So, for example, if HSG purchased the Property for $300,000 or higher, HSG would add $70,000 to the repurchase price. If, however, the price HSG paid to purchase the Property was between $100,000 and $299,000, HSG would add only $50,000 to the price that Olilang would have to pay to repurchase the Property.

required to lease the Property back from them. When they testified, Juan Herrera, Lupe Vargas, Fresvinda Chue did not contradict the testimony offered by Olilang and his mother on the terms of the principal reduction program as initially presented to them.

In reliance on defendants' representations, Olilang, who until that time had not missed any loan payments, immediately stopped paying on his mortgage loans. Then, in late 2009, he paid defendants $5,000.

In July 2010, HSG demanded that Glenn Olilang pay an additional $5,000 for "processing the papers," which he reluctantly did since the short sale had not yet gone through and the Property was in foreclosure.

During July and August 2010, the financial terms of the repurchase agreement between HSG and Olilang changed several times as evidenced by several "statements" prepared by HSG. On July 22, 2010, the proposed repurchase price of the Property was to be $420,000 with $42,000 down and monthly payments of $3,371. HSG then modified the deal so that the repurchase price was $450,000 with a $30,000 down payment and a monthly payment of $4,383. On August 3, 2010, HSG modified the deal yet again: the repurchase price would remain at $450,000 but the down payment would be increased to $50,000 and the monthly payment lowered back to $3,800. When the Olilangs complained, Juan Herrera agreed to turn the $5,000 paper processing fee into a credit toward the down payment. In none of these statements did HSG mention a lease back period.[7]

On August 6, 2010, Olilang paid HSG a down payment deposit of $35,000, bringing his total payments to $45,000 or 10 percent of the Property's repurchase price.

On or about August 8, 2010, Olilang and Ocuma signed a default purchase agreement (the Agreement). The Agreement indicated that H&S Holdings,[8] not HSG, was to purchase the Property for $350,000 in an "all cash" transaction.[9]

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[7] It is also unclear from these statements what was the basis for the changes in the repurchase price. The only appraisal of the Property in evidence was not performed until August 13, 2010—10 days after the last deal statement and five days after the parties formalized their agreement.

[8] Juan Herrera founded H&S Holdings. Michael Herrera subsequently took over the company to hold his properties. For consideration of $1, H&S Holdings would quit claim the property it acquired to other entities owned and operated by Michael Herrera. Michael Herrera admitted that there was "no difference" between H&S Holdings and the other entities except the name. He further admitted that he made these transfers in order to "protect" himself from people such as the plaintiffs.

[9] The difference between the purchase price as set forth in the Agreement ($350,000) and the repurchase price as set forth in the August 3, 2010 HSG deal statement ($450,000), indicates that defendants had increased their "mark-up" from $70,000 to $100,000 for a sale price of greater than $300,000.

There were, however, a number of irregularities made in connection with the Agreement. First, the Agreement contained no option for Olilang to repurchase the Property. Second, the Agreement made no mention of a leaseback requirement. Third, nothing in the Agreement indicated that the purchaser was going to re-encumber the Property. In fact, the Agreement expressly states that the purchase was "all cash" and that there is "no loan contingency." Fourth, although the Agreement identified H&S Holdings as the buyer on the first page of the document, it identified no buyer on the last page of the document. Fifth, the Agreement was dated May 10, 2010, not August 8, 2010. Sixth, although Michael Herrera signed the Agreement, the buyer's initials at the bottom on each page were "JH," not "MH." Seventh, although the Agreement identified the listing broker as defendant Richard Sindell (Sindell) of defendant Golden State Capital Group (Golden State),[10]

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[10] Juan Herrera also founded Golden State. Michael Herrera served as Golden State's chief executive officer, until he surrendered his real estate license in order to avoid having to fight allegations of wrongdoing. Sindell also served as one of Golden State's officers—either secretary or chief financial officer. "[P]redominately all" of Golden State's brokerage activities pertained to transactions generated by HSG. In fact, plaintiffs introduced evidence that in 2008 Golden State filed a fictitious business name statement under the name "Herrera Sindell Group." In addition, Golden State managed properties owned by

Olilang never signed a listing agreement with Golden State or had any discussions with either Sindell or anyone from Golden State prior to signing the Agreement. Eighth, the last page of the agreement indicated that Olilang had a right to cancel the Agreement by a certain date but that date is not identified, nor was that date ever identified. Finally, the last page of the Agreement also refers to an attached notice of cancellation, but no such notice of cancellation was attached.

The notarized grant deed transferring the Property to H&S Holdings also contained a number of questionable elements. The document is dated August 8, 2010, but Olilang did not sign it until August 30, 2010. In addition, the document purports to have been signed by "Juliet Olilang." However, Ocuma has never gone by the name "Juliet Olilang." Far more troubling, Ocuma never appeared before the notary, defendant Hydee Meza, and never signed the grant deed or authorized anyone to sign for her.

On October 4, 2010, after receiving no information regarding the repurchase of the Property, Fe Olilang contacted HSG. In response, HSG told her that Olilang would have to sign a lease agreement. When the Olilangs objected to leasing the Property, HSG sent Olilang a three-day notice to quit the Property and a proposed lease agreement. Olilang refused to sign the lease agreement.

Michael Herrera; in fact, Michael Herrera owned most of the properties managed by Golden State.

Less than a month later, plaintiffs filed suit. Michael Herrera never returned the $45,000 that Ololiang gave to defendants as a down payment to repurchase the Property.

Overall, the trial court found the testimony of Olilang, Fe Olilang, and Ocuma to be "credible."

B. THE INCREDIBLE TESTIMONY OF DEFENDANTS

In contrast to the credible testimony offered by the plaintiffs, the trial court found the testimony of the principal defendants—the Herrera brothers and Sindell—to be the exact opposite.

For example, with regard to Michael Herrera the trial court concluded that he "was not credible. His numerous denials of knowledge about his brother's business were not credible. His testimony generally placed all blame for any irregularities on Sindell or Juan Herrera. [¶] Moreover, his testimony was generally contradicted by Sindell or Juan Herrera (through the deposition excerpts received during trial[11]) as all three pointed the finger at each other with respect to the creation of and purpose for the various entities involved in this transaction. The court came away from the trial believing that the three of them were doing the best

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[11] Juan Herrera did not testify at trial because at that time he was in federal prison serving a 30-month sentence following his guilty plea to felony bank fraud. The federal district court found Juan Herrera "jointly and severally liable with his co-participant Michael Herrera," who also pleaded guilty. The bank fraud to which the Herrera brothers pleaded guilty involved real estate short sales.

they could to extricate themselves from the action by denying as much knowledge as they could and then creating as much confusion about their business holdings as possible."

As for Sindell, the trial court found his testimony to be "quite incredible. His denials of involvement in the founding of several of these entities were not credible. His failure to correct published 'errors' about his involvement with the entities was telling and prompted the court to believe the 'errors' were in fact truth. His testimony, in conjunction with the deposition testimony of Juan Herrera was not believable in any way."

C. THE TRIAL COURT'S FINDINGS

Given the credibility gap between the plaintiffs and defendants, the trial court ruled in favor of the plaintiffs on two causes of action: the fraud/intentional misrepresentation claim and the violation of the Act claim.

As to the fraud claim, the trial court found that defendants induced Olilang to "agree to their principal reduction program while omitting two material facts: first, that the program required a 'lease back' period before [he] could buy back his property; and second, that HSG intended to re-encumber the property with a loan from a third party." On the violation of the Act claim, the trial court found as follows: defendants failed to give Glenn Olilang "a 5-day right to cancel notice as part of the . . . [A]greement. [Citation.] Nor did the [A]greement set out the entire negotiated contract and its complete terms. The [A]greement omitted the leaseback 'requirement.' "

The court further found that with the exception of the notary (Hydee Meza), "each defendant is the alter ego of each other. The court finds a complete unity of interest and ownership, notwithstanding (and in part because of) the incredible denials of any connection by the Herrera brothers and Richard Sindell. The paperwork involved in these transactions almost cavalierly switches from naming one entity to naming another, as if they were one and the same. The court finds that the entities were controlled by the three individual defendants interchangeably. Properties started out owned by one entity and went through changes of ownership on paper and for nominal consideration ($1), while in reality the profits generated by the properties were owned and controlled by the individual defendants. [¶] Moreover[,] the adherence to the fiction of these entities as having a 'separate existence' would sanction a fraud and promote injustice. As Michael Herrera stated, his entities were created to protect himself against people like plaintiff. Yet it was people like plaintiff—distressed homeowners—who were victimized by the fraud perpetrated by Sindell and the Herrera brothers through these companies and groups. The court finds that the purpose of these numerous entities was to disguise the fraud and, most important, the identities of the individuals behind the fraud."

On January 3, 2014, the trial court awarded Olilang $157,462 in damages, interest, and civil penalties. The court entered judgment that same day. On January 24, 2014, the Herrera brothers and Sindell filed a timely notice of appeal from the judgment. On May 12, 2014, the trial court awarded Olilang $62,000 in attorney fees. No notice of appeal was filed regarding the attorney fee award. On October 3, 2014, this court dismissed Sindell's appeal pursuant to California Rules of Court, rule 8.100(c), leaving the Herrera brothers as the only active appellants.

DISCUSSION

I. The judgment is supported by substantial evidence

Defendants argue that at trial the plaintiffs told "a great story, but, really that is all it is: a great story," a "far-fetched story," a story unsupported by the evidence. As discussed below, we disagree.

A. Standard of review

In reviewing a judgment based upon a statement of decision following a bench trial, we apply a substantial evidence standard of review to the trial court's findings of fact. (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 364 (*Foreman*); *Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981.) "A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133). Specifically, "[u]nder the doctrine of implied findings, the reviewing court must infer, following a bench trial, that the trial court impliedly made every factual finding necessary to support its decision." (*Fladeboe v. American Isuzu Motors Inc*. (2007) 150 Cal.App.4th 42, 48.)

Under the deferential substantial evidence standard, our analysis unfolds in two steps. "First, one must resolve all explicit conflicts in the evidence in favor of the respondent and presume in favor of the judgment all *reasonable* inferences. [Citation.] Second, one must determine whether the evidence thus marshaled is substantial. While it is commonly stated that our 'power' begins and ends with a determination that there is substantial evidence [citation], this does not mean we must blindly seize any evidence in support of the respondent in order to affirm the judgment. . . . '[I]f the word "substantial" [is to mean] anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with "any" evidence. It must be reasonable . . . , credible, and of solid value . . . .' [Citation.] The ultimate determination is whether a *reasonable* trier of fact could have found for the respondent based on the *whole* record." (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1632–1633, fns. omitted.)

" 'The testimony of a witness, even the party himself, may be sufficient' " to constitute substantial evidence. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614; *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 201; Evid. Code, § 411.) However, a substantial evidence review is not properly a challenge to the weight and credibility of the testimony presented, and this court may not reweigh evidence or reappraise the credibility of witnesses. (*Eidsmore v. RBB, Inc*. (1994) 25 Cal.App.4th 189, 195; *Foreman*, *supra*, 144 Cal.App.4th at p. 365.) Moreover, a trier of fact may accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted. (*Stevens v. Parke, Davis & Co*. (1973) 9 Cal.3d 51, 67–68.)[12]

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[12] Although defendants acknowledge the substantial evidence standard and its limitations, they refuse to accept it, arguing that the trial court should have found for them on various affirmative defenses—some of which defendants pled in their answer (such as "unclean hands") and some of which they did not (such as unjust enrichment)—and thereby reached a different result. Such arguments are unavailing under the substantial evidence standard. " 'Even in cases where the evidence is undisputed or uncontradicted, if two or more different inferences can reasonably be drawn from the evidence *this court is without power to substitute its own inferences or deductions for those of the trier of fact* . . . .' " (*Jonkey v. Carignan Construction Co*. (2006) 139 Cal.App.4th 20, 24, italics added.) Our job under the substantial evidence standard, in other words, is not to ignore or supplant the conclusions reached by the trier of fact. Rather, we are to determine merely if the trier's findings were supported by substantial evidence. Even if the trier's findings are against the weight of evidence, they will be upheld if supported by evidence that is of ponderable legal significance and reasonable in nature. (*Ibid*.)

B. SUBSTANTIAL EVIDENCE SUPPORTS THE FRAUD/INTENTIONAL MISREPRESENTATION FINDING

To establish a claim for fraudulent or intentional misrepresentation, the plaintiff must prove: "(1) the defendant represented to the plaintiff that an important fact was true; (2) that representation was false; (3) the defendant knew that the representation was false when the defendant made it, or the defendant made the representation recklessly and without regard for its truth; (4) the defendant intended that the plaintiff rely on the representation; (5) the plaintiff *reasonably relied on the representation*; (6) the plaintiff was harmed; and, (7) the plaintiff's reliance on the defendant's representation was a substantial factor in causing that harm to the plaintiff." (*Manderville v. PCG & S Group, Inc*. (2007) 146 Cal.App.4th 1486, 1498; *Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230–231.)

Here, evidence of ponderable legal significance supported each element. Olilang and Fe Olilang credibly testified that defendants did not accurately present to the Olilangs the material terms of the principal reduction program in the fall of 2009; among other things, defendants failed to disclose that Olilang would have to lease back the Property from them for some undisclosed period of time before he could repurchase it. At trial, defendants presented no contradictory testimony about the representations made to the Olilangs in the fall of 2009. Olilang's and his mother's testimony and the documents memorializing the parties' agreement established that the defendants knew that that their representations about the material terms of the program were either false or made with reckless disregard for the truth. For example, the Agreement, which Michael Herrera conceded was the "only" agreement between the parties regarding the sale of the Property to the defendants, did not disclose the leaseback requirement, even though the leaseback was a material part of the "deal." Moreover, the Agreement did not contain any reference to the leaseback requirement even though, as Sindell conceded, it was required under the law to disclose "all material terms." In fact, the undisputed evidence is that the first time Olilang learned about the leaseback requirement was in October 2010—a year after he first approached HSG and months after he sold the Property to defendants, who, despite telling him in writing that they were purchasing the Property in an "all cash" transaction, actually purchased Property with two mortgage loans. In addition, Olilang's undisputed testimony proved his reliance on defendants' misrepresentations and that he would not have entered into the Agreement but for those misrepresentations. Compelling and clear evidence that his reliance was a substantial factor in causing him harm derives from these events—in October 2009, he stopped making payments on his mortgage loans; in late 2009, he paid a $5,000 option fee; in July 2010, he paid a $5,000 paper processing fee even though he was told he would not have to pay such fees; and, then in August 2010, he paid a $35,000 down payment to repurchase the Property.

In sum, we hold that the trial court's finding that the defendants were liable for fraud is supported by substantial evidence.

C. SUBSTANTIAL EVIDENCE SUPPORTS THE FINDING OF A VIOLATION OF THE ACT

In determining whether defendants' conduct violated the Act, " 'we apply well-established rules of statutory construction. The goal of statutory construction is to ascertain and effectuate the intent of the Legislature.' " (*Capon v. Monopoly Game LLC* (2011) 193 Cal.App.4th 344, 352.)

The Act is designed to protect "homeowners in financial distress," who "are vulnerable to the importunities of equity purchasers who induce homeowners to sell their homes for a small fraction of their fair market values through the use of schemes which often involve oral and written misrepresentations, deceit, intimidation, and other unreasonable commercial practices." (§ 1695, subd. (a).) In order to protect homeowners in financial distress from, "fraud, deception, and unfair dealing by home equity purchasers" (*ibid*.), the Act requires that they be provided "with information necessary to make an informed and intelligent decision regarding the sale of his or her home to an equity purchaser." (§ 1695, subd. (d)(1).) To that end, the Act prohibits "representations that tend to mislead" and affords homeowners "a reasonable and meaningful opportunity to rescind sales to equity purchasers." (*Ibid*.)

The Legislature also declared that buyers of homes in foreclosure "have a significant impact upon the economy and well-being of this state and its local communities, and therefore [the Act is] necessary to promote the public welfare." (§ 1695, subd. (c).) To effectuate the intent and purposes of the statute, the Legislature stated that it "shall be liberally construed." (§ 1695, subd. (d)(2).)

The basic structure of the Act has been summarized as follows: "[T]he Act seeks to regulate transactions between an equity purchaser and an equity seller resulting in the sale of residential real property in foreclosure. At the heart of the scheme is the requirement that the agreement between buyer and seller be in writing, with specific terms aimed at protecting the homeowner. (§§ 1695.2, 1695.3, 1695.5.) The contract must include the total consideration given, terms of payment and terms of any rental agreement; a conspicuous statement of the right to cancel within five business days or until 8:00 a.m. on the day scheduled for foreclosure, with an attached notice of cancellation; and a conspicuous notice that until the right to cancel has ended, the equity purchaser cannot ask the seller to sign a deed or any other documents. (§§ 1695.3–1695.5.) The equity purchaser must provide, and complete, the contract in conformity with these terms. (§ 1695.6, subd. (a).) [¶] During the 'cooling off' period, the equity purchaser cannot take title to the property by written instrument or recordation thereof; transfer or encumber any interest in the property; or pay the seller any consideration. (§ 1695.6, subd. (b).) Moreover, the purchaser cannot make untrue or misleading statements about the value of the property, any foreclosure proceeds, or the terms of sale. (§ 1695.5, subd. (d).) Additionally, when the seller grants the residence by an instrument purporting to be an absolute conveyance but reserves or is given an option to repurchase, the equity purchaser cannot grant any interest in the property to another without the written consent of the seller. (§ 1695.6, subd. (e).) Finally, it is unlawful to take unconscionable advantage of the property owner in foreclosure. (§ 1695.13.) Depending on the nature of the violation, the aggrieved seller may be entitled to rescission, other equitable relief or damages, including exemplary damages. (§§ 1695.7, 1695.14.)" (*Segura v. McBride* (1992) 5 Cal.App.4th 1028, 1035–1036, fns. omitted (*Segura*).)

Here, most notably, the undisputed evidence showed that the Agreement failed to provide the purported rental agreement by which Olilang was expected to lease back the Property; indeed, the Agreement did not mention the lease back requirement at all. In addition, the Agreement failed to disclose the fact that the buyer, H&S Holdings and Michael Herrera, intended to encumber the Property with two loans. Finally, the Agreement did not provide the statutory notice of cancellation or even the date by which Olilang could cancel or rescind the Agreement.

Defendants argue, inter alia, that no violation of the Act occurred because the Act is confined to distressed homeowners who are equity sellers and Olilang was neither—he had a "substantial income" and "no equity in the property at all." Defendants' argument lacks merit. The Act defines an " 'equity seller' " as "any seller of a residence in foreclosure." (§ 1695.1, subd. (c).) In other words, Olilang's income at the time is irrelevant. Moreover, Olilang was a seller of a residence in foreclosure. When Olilang signed the Agreement on August 8, 2010, foreclosure of the Property was set for August 11, 2010. Consequently, the trial court properly determined Olilang to be an equity seller under the Act.

Accordingly, we hold that the trial court's finding that the defendants violated the Act is supported by substantial evidence.

D. SUBSTANTIAL EVIDENCE SUPPORTS THE ALTER EGO FINDING

"Ordinarily, a corporation is regarded as a legal entity separate and distinct from its stockholders, officers and directors. Under the alter ego doctrine, however, where a corporation is used by an individual or individuals, or by another corporation, to perpetrate fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, a court may disregard the corporate entity and treat the corporation's acts as if they were done by the persons actually controlling the corporation." (*Communist Party v. 522 Valencia, Inc.* (1995) 35 Cal.App.4th 980, 993.)

As our Supreme Court has explained, "There is no litmus test to determine when the corporate veil will be pierced; rather the result will depend on the circumstances of each particular case. There are, nevertheless, two general requirements: '(1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow.' " (*Mesler v. Bragg Management Co*. (1985) 39 Cal.3d 290, 300; *CADC/RADC Venture 2011-1 LLC v. Bradley* (2015) 235 Cal.App.4th 775, 788.)

Under the first prong, courts consider a wide array of factors, such as the following: "the use of the same office or business location; the employment of the same employees and/or attorney"; "the use of a corporation as a mere shell, instrumentality or conduit for a single venture or the business of an individual or another corporation"; and the "use of a corporate entity as a shield against personal liability, or the use of a corporation as a subterfuge of illegal transactions." (*Associated Vendors, Inc. v. Oakland Meat Co*. (1962) 210 Cal.App.2d 825, 839–840; see *Tomaselli v. Transamerica Ins. Co*. (1994) 25 Cal.App.4th 1269, 1285, fn. 13.) "No single factor is determinative, and instead a court must examine all the circumstances to determine whether to apply the doctrine." (*VirtualMagic Asia, Inc. v. Fil-Cartoons, Inc*. (2002) 99 Cal.App.4th 228, 245.)

Here, considerable evidence demonstrated a unity of interest between and among the various entities associated with Sindell and the Herrera brothers. For example, Michael Herrera testified that although Golden State was founded by his brother, most of the properties managed by

Golden State were owned by Michael Herrera. He further testified that although he was not “associated in any way” with HSG he was involved in “every transaction” that HSG entered into with homeowners of distressed properties, he used and relied upon HSG employees, and HSG paid for leasehold improvements on properties owned solely by him. In addition, Michael Herrera testified that although his brother founded H&S Holdings, Michael Herrera used the company to hold properties that he owned, before transferring them for nominal consideration to other shell entities for the sole purpose of protecting them from plaintiffs such as Olilang. For his part, Juan Herrera testified that H&S Holdings occupied the same business premises as HSG and HSG paid the rent.

Defendants’ argument that there was “not . . . one piece of evidence to suggest that corporate formalities were not followed at every step of the way” misses the point. Adherence to corporate formalities is only one possible and nondeterminative factor that courts consider in determining whether to apply the alter ego doctrine. As discussed above, plaintiffs presented the trial court with a wide array of evidence showing a unity of interest between the defendants and the entities they controlled.

In light of the unity of interest testimony and documents, and in light of our holding that there was substantial evidence supporting the fraud finding, which militates a conclusion that an inequitable result will arise if the alter ego doctrine is not applied here, we hold that the trial court's alter ego finding is supported by substantial evidence.

E. DEFENDANTS WAIVED THEIR ARGUMENT REGARDING THE ADMISSION OF JUAN HERRERA'S DEPOSITION TESTIMONY

Section 2025.620 of the Code of Civil Procedure provides that an adverse party may use the deposition of a party for "for any purpose"—that is, for impeachment purposes or as substantive evidence against such party (i.e., an admission). (Code Civ. Proc., § 2025.620, subd. (b).) "It is not ground for objection to the use of a deposition of a party under this subdivision by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing." (*Ibid*.) As one respected practice guide has stated, "[s]ince the deposition [of a party] can be used 'for any purpose,' the adverse party can simply pick up the transcript and read the deposition testimony directly into evidence." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2016) ¶ 8:879, p. 8E–149.)

At trial, plaintiffs, over the objection of the defendants introduced the deposition testimony of an adverse party, Juan Herrera. On appeal, defendants challenge the admission of Juan Herrera's deposition testimony, but do so in only the most cursory manner—a single sentence that does not identify the purported error and that is unsupported by any discussion of the issue or the law or even by a single citation to any legal authority of any kind.

A touchstone legal principle governing appeals is that "the trial court's judgment is presumed to be correct, and the appellant has the burden to prove otherwise by presenting legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited. [Citations.] [¶] It is the appellant's responsibility to support claims of error with citation and authority; this court is not obligated to perform that function on the appellant's behalf." (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655–656.) More specifically, an appellant must present each point separately in the opening brief under an appropriate heading, showing the nature of the question to be presented and the point to be made; otherwise, the point will be forfeited. (Cal. Rules of Court, rule 8.204(a)(1)(B); *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830–1831, fn. 4.) This rule is "designed to lighten the labors of the appellate tribunals by requiring the litigants to present their cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass." (*Landa v. Steinberg* (1932) 126 Cal.App. 324, 325.)

In other words, it is not this court's role to construct theories or arguments that would undermine the judgment and defeat the presumption of correctness. Rather, an appellant is required to present a cognizable legal argument in support of reversal of the judgment. "When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary." (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699–700.) "Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, [they are] waived." (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99.)

By failing to discuss in any meaningful manner their challenge to the trial court's admission of the deposition testimony of Juan Herrera, defendants waived their right to address this issue on appeal.

II. The trial court erred in setting the amount of compensatory damages

The trial court awarded Olilang compensatory damages in the amount of $102,500—$45,000 in compensation for the payments he made to HSG; and $57,500 in "lost equity." The amount of Olilang's lost equity was apparently determined as follows: H&S Holdings paid a total of $357,500 to purchase the property. At the time, the Property had a fair market value of $415,000. The difference between the two amounts being $57,500.

Defendants maintain that the damages award is excessive, that it should be limited to just the $45,000 that Olilang paid HSG.[13]

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[13] Defendants also argue that they are entitled to set-offs because plaintiffs resolved claims against certain other defendants prior to trial. However, there is nothing in the

We reverse the damages award and remand for further proceedings, because there is a difference between lost equity and lost value. The trial court's damage determination, notwithstanding its nomenclature, seems to be designed to restore to Olilang a loss in value, not a loss in equity. However, as discussed below, the evidence and analysis supporting an award for either a loss of equity or a loss of value is incomplete.

Under the Act, an injured equity seller, inter alia, "shall recover *actual* damages." (§ 1695.7, italics added.) The Act, however, does not define what constitutes an equity seller's actual damages or provide express guidance on how those damages are to be calculated. To date, courts interpreting the Act have not provided much guidance other than to hold that damages based on a loss of a seller's equity or on a loss of his/her repurchase rights should be measured as of the time of the Act's violation. (*Segura*, *supra*, 5 Cal.App.4th at pp. 1038–1039.)

With regard to damages for lost equity, courts have stated that because the Act is designed to "prevent below market sales on the eve of foreclosure" that objective is "achieved by valuing the homeowner's *true equity* at the time of transfer or sale to the equity purchaser." (*Segura*, *supra*,

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record before us indicating that plaintiffs entered into a settlement with any of the dismissed defendants, let alone that those settlements were determined to be in good faith pursuant to Code of Civil Procedure section 877. Accordingly, we decline to address defendants' argument.

5 Cal.App.4th at p. 1039, italics added.) As for a loss of repurchase rights, the measure of damages "would be the difference between the value of the property at the time of the breach and the repurchase price." (*Ibid.*) Such a measure of damages would be "akin to damages for breach of an agreement to convey real property," which would include "the difference between [the] agreed price and [the] value of the property at the time of breach." (*Ibid.*, italics omitted.)

To the extent that the trial court's award of $57,500 was truly in compensation for "lost equity," it was based on incomplete analysis and evidence. The SAC alleged that when he purchased the Property in 2005, Olilang took out two mortgage loans, the first in the principal sum of $466,400; the second in the sum of $116,600. The SAC, however, was silent with respect to how much money, if any, Olilang used as a down payment. Compounding matters further, at trial, Olilang testified that before he went to HSG, he had his mortgage loans modified. However, the parties did not introduce any evidence about how that loan was modified or how that modification affected Olilang's equity. At trial, the evidence was limited to testimony that when he approached HSG, Olilang was "upside down"—that is, he owed more to his lenders than the house was worth. There was, in other words, no evidence about how far he was "upside down" either in October 2009, when he first approached HSG, or in August 2010, when he sold the Property to defendants. As a result, the award of $57,500 in lost equity was not and could not have based on a searching analysis of Olilang's "true equity" at the time of the transfer to defendants. (*Segura*, *supra*, 5 Cal.App.4th at p. 1039.)

To the extent that the trial court's award of $57,500 was not truly for Olilang's purported lost equity, but was in actuality for the loss of his re-purchase rights, the award was also based on incomplete analysis and evidence. While the value of the Property at the time of the violation was undisputed ($415,000), there was conflicting evidence about the amount of the repurchase price. According to plaintiffs, the repurchase price—as described to them in October 2009 by defendants—was to be based on the short sale price plus some amount over and above that price. Accordingly to Fe Olilang, she was told by defendants in 2009 that a $70,000 mark-up was to be added if the short sale price was in excess of $300,000. However, there was documentary evidence suggesting that the agreed-upon mark-up had been increased to $100,000 by August 2010.[14] Moreover, it is unclear from the record what the correct short sale price should be—the price listed in the Agreement ($350,000) or the actual amount of the short sale price ($357,500). Even if the short sale purchase price and the HSG mark-up most favorable to Olilang are used, it appears from the record before us that Olilang had no lost value to recover: a short sale price of $350,000 and a $70,000 mark-up yields a repurchase price of $420,000, which is $5,000 *more* than the appraised value of the Property. If the price and mark-up

[14] See, note 9, above.

least favorable to Olilang are used, it is even more plain that there is no lost value for him to recover: a short sale price of $357,500 and a $100,000 mark-up yields a repurchase price of $457,500, which is $42,500 *more* than the appraised value of the Property.

In light of this evidentiary and analytical shortfall, we reverse the damages award and remand for further proceedings consistent herewith.

III. Defendants waived their right to challenge the attorney fees award

Defendants argue that in awarding Olilang his attorney fees, the trial court "failed to consider the fact that [he] was not entitled to attorney's fees under the contract [he] alleged in the action." They also argue that because Olilang only prevailed on two of his 14 causes of action and recovered only a fraction of the total damages sought,[15] he cannot be considered the prevailing party.

Whatever the merit of defendants' argument,[16] we cannot consider it. Defendants waived their right to

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[15] At trial, plaintiffs sought to recover in excess of $667,000, $500,000 of which was to be in punitive damages.

[16] In passing, we note that Olilang did not seek to recover his attorney fees pursuant to the terms of the Agreement or as the prevailing party in the lawsuit. He sought, as his motion for attorney fees makes abundantly clear, to recover his fees pursuant to the express terms of the Act, which makes recovery mandatory: "The equity seller

challenge the attorney fee award as they failed to file the requisite notice of appeal. If an order awarding attorney fees is made, as here, postjudgment, it is separately appealable and requires a separate timely notice of appeal. (*Silver v. Pacific American Fish Co., Inc*. (2010) 190 Cal.App.4th 688, 694; *DeZerega v. Meggs* (2000) 83 Cal.App.4th 28, 43; *Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 45–46.) Defendant's failure in this regard deprives us of jurisdiction to review the attorney fee order.

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shall recover . . . reasonable attorneys' fees and costs." (§ 1695.7, italics added.)

DISPOSITION

The damages award is reversed. In all other respects, the judgment is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

LUI, J.