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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

SAVOY COMMUNITY ASSOCIATION, Plaintiff, Cross-Defendant, and Appellant, v. JANICE M. ZHANG, Defendant, Cross-Complainant, and Appellant.	B226979 (Los Angeles County Super. Ct. No. BC393894

APPEAL from a judgment of the Superior Court of Los Angeles County, Yvette M. Palazuelos, Judge. Affirmed in part and reversed in part with directions.

Richardson Harman Ober, Kelly G. Richardson, J. Andrew Douglas and Brian D. Moreno for Plaintiff, Cross-Defendant, and Appellant.

Irell & Manella, Michael H. Strub, Jr. and Zachary T. Elsea for Defendant, Cross-Complainant, and Appellant.

INTRODUCTION

Plaintiff and appellant Savoy Community Association (the Association) appeals from a judgment against it on the cross-complaint of Janice M. Zhang. Zhang appeals from a judgment against her on the complaint of the Association. Zhang purchased a condominium unit in the Association's building. Zhang's disability required her to remove carpeting in the unit and replace it with hardwood flooring. When she applied to install the flooring, and after her flooring was installed, the Association refused to provide a reasonable accommodation of her disability, took disciplinary actions against Zhang, and imposed numerous financial and other penalties against Zhang. We conclude that substantial evidence supports the judgment finding that the Association discriminated against Zhang by refusing to provide reasonable accommodation of her physical disability. We also conclude that the trial court's grant of equitable relief in eliminating financial penalties against Zhang was not an abuse of discretion.

We determine, however, that the trial court erroneously struck the jury's finding that the Association's conduct in refusing to allow Zhang a reasonable and necessary accommodation was done with malice, oppression or fraud. We reverse the order striking punitive damages claims and remand for the trial court to conduct a new trial limited to the issue of the amount of punitive damages to be awarded Zhang. Reversal of the order striking punitive damages for a new trial of the amount of punitive damages also requires reversal of a post-judgment order finding that neither Zhang nor the Association was the prevailing party in the actions. Following trial of the limited issue of the amount of punitive damages required, the trial court may again rule on the parties' motions for attorney's fees and costs which may be awarded to the prevailing party in the actions. The judgment is otherwise affirmed.

FACTUAL AND PROCEDURAL HISTORY

Janice Zhang suffers from hereditary Hashimoto's thyroiditis, acute allergies to chemicals in perfume, cleaners, and chlorine, some foods, and dust and mites, and a t-cell mediated immunodeficiency. Her allergies require her to avoid dust and mites in carpets, which cause allergic reactions, and also to avoid hair, makeup, and household chemical cleaning products. Her physician testified that Zhang had to strictly avoid carpeting, dust mites, and common chemicals. Zhang's condition would not limit a major life activity if Zhang practiced strict avoidance, but if Zhang did not practice strict avoidance, her condition would limit a major life activity. Zhang's physician testified that Zhang had a physical disability. Her allergies also affect her home life, in that she has to live in a home with no carpet and she does not use household chemical cleaning products. Her allergies also affect her personal life, in that usually she does not go to parties or movie theaters, where there are carpets.

In 2006, Zhang purchased a studio unit in the Savoy, a large condominium development at First Street and Alameda Street in downtown Los Angeles, in order to live closer to where she works. The Savoy fills a large city block, and has three courtyards which divide the building into three sections, and amenities which include water features, a pool, spa, a sports café, fitness center, business center, conference room, screening room, rooftop, and terrace. A homeowners association, the Savoy Community Association (the Association), governs the Savoy. Lynne Collman is a professional manager who has been general manager of the Association since January 1, 2006. The Association charges monthly homeowner dues, which Zhang has paid since she purchased her unit in June 2006. She paid on time, and never missed a monthly payment. At the time of trial she was current in payment of monthly dues.

Zhang looked at several units in the Savoy before buying a studio on the fourth floor. The unit she chose had carpet in it, but she did not want to move in with the carpeting in the unit. Before she purchased the unit, she wanted to make sure hardwood flooring could be installed and asked Collman about removing the carpet and putting in a hardwood floor. Collman told Zhang she could install hardwood floors, and added that

many other units approved by the Association had already installed hardwood flooring. Being informed that she could install a hardwood floor was a factor in Zhang's decision to purchase the studio unit. Zhang's real estate agent, Janis Tista, knew Zhang was looking for a unit with hardwood floors. Tista met with Collman and other representatives of the Savoy and explained Zhang's allergies and her requirement of hardwood flooring. Tista was not told that installing hardwood floors would be a problem.

Collman did ask Zhang to use an Association-approved contractor, and Zhang asked for a referral. Collman gave her two referrals, and Zhang picked the one located in Los Angeles, M and R Flooring Design. The owner of M and R Flooring, Modesto Reyes, was familiar with the Savoy and Collman had contacted him on previous occasions to help residents with flooring. In at least one previous installation at the Savoy, Reyes had used a quarter-inch layer of cork under the hardwood floor. Collman had given Zhang documents indicating that the Association required a 53 sound rating for the hardwood floor. Zhang asked Reyes if he knew about this requirement. Zhang testified that Reyes told her that the materials he was going to use in her unit were specifically designed for the condominium, with a sound rating of 61, which exceeded the 53 sound rating. Zhang chose the bamboo top flooring layer. Zhang felt assured that Reyes could install a hardwood floor that would meet the Association's requirements. Reyes submitted plan specifications to the Association on June 6, 2006, 22 days before escrow closed on Zhang's unit.

Three days before escrow closed, Zhang spoke to Collman about making sure that the Association approved her application for a bamboo floor. She asked to speak with an Association board member, but Collman stated that the members lived in Newport Beach and Zhang could not talk to them face to face. Collman told Zhang that if she did not hear anything back from the Association before escrow closed, it meant the application was approved. Zhang heard nothing from the Association by the date escrow closed on June 28, 2006, and she believed that the flooring application was approved. Zhang

testified that she would not have closed escrow if she had not been told that the application was approved.

One hour after escrow closed on June 28, 2006, however, Zhang received a faxed letter from Collman stating that the Design Review Committee had not approved Zhang's application to install bamboo flooring in her unit. The letter referred to section 2.9.5 of the CC&R's, requested written documentation from a licensed engineer, architect, or qualified consultant that noise mitigating properties of the proposed flooring were "the same as, substantially similar to, or better than the materials originally installed." The letter referred Zhang to the Association's acoustical engineer, John LoVerde. LoVerde would later testify that given the conditions of the building, it would not be possible to install a hard floor that was as quiet as a carpeted floor. LoVerde testified that carpet would always be significantly better in having lower sound levels into the space below Zhang's unit.

Zhang testified that she had Reyes install the hardwood flooring on July 4, 2006, because he was available on that date. When Zhang had Reyes install the flooring, she thought she had received verbal approval from the Association and believed she was following the Association's instructions.

When the Association learned that Zhang replaced the carpet with hardwood flooring, it sent Zhang an August 10, 2006, letter requesting that she attend a hearing to provide information about the flooring and to discuss this non-compliance with the Association's architectural guidelines. In a September 12, 2006, letter, Zhang requested information about how many units had hardwood floors and how thick hardwood floors and underlayment were in those units. The Association did not provide this information. Zhang requested dispute resolution. In an October 9, 2006, letter to the Association Board, Zhang stated that due to her health reasons, before her escrow closed she was told by the developer and the Association that hardwood floors were allowed as long as Zhang used a Board-approved licensed flooring contractor. The letter attached a letter from Lauren Frank, whose unit was directly below Zhang's unit, stating that there was no noise disturbance to her.

On October 31, 2006, Zhang sent a letter to the Association requesting documentation of instances where the Association Board approved a contractor's proposal to install hardwood floors in other units which were not on the ground level. Zhang also stated that she installed a hardwood floor because of her chemical sensitivity disability and removed a carpet which could be hazardous to her by triggering severe allergic reactions. The Board responded with a "License Agreement Regarding Wood Flooring Installed by Homeowner," which stated: "Homeowner has installed wood flooring in an area of the Unit not permitted by the Association governing documents[.]" The License stated that Zhang was granted a revocable license to own and maintain wood flooring in her unit. The License stated that the license could be revoked with 30 days written notice from the Association to Zhang or immediately if the Association received a written objection to the license or a written noise complaint by the owner of the unit directly under Zhang's unit. The license also stated "nothing herein shall prevent Association from revoking the license at any time." Zhang found this provision unacceptable and did not sign the license agreement.

The Association rules require a homeowner submitting a remodeling proposal to make a $1,000 deposit with the application. The deposit covers excess charges that might be incurred, plan check fees, consulting fees, fines, and legal costs. Zhang submitted a $1,000 deposit to the Association on June 6, 2006, three weeks before escrow closed on her unit. The Association deposited Zhang's check into its operating account on July 25, 2006.

The Association required a $500 move-in deposit, but granted Zhang's request that she not be required to pay the $500 move-in deposit because she had already deposited $1,000 in connection with her remodeling proposal. There was a $50-per-hour charge for moves which went past 5:00 p.m. Zhang's move into her unit ran three hours late, incurring a $150 charge, which was subtracted from her deposit on July 25, 2006, leaving $850 of Zhang's original $1,000 deposit. That $850 was, at that point, supposed to be returned, but in fact was never returned to Zhang. On August 4, 2006, the Association charged Zhang $850 and retained the $850 amount, which was never paid to Zhang.

The Association was charged a $225 fee by its acoustical consultant, John LoVerde. Zhang's remodeling deposit was supposed to defray the cost of consultant expenses. The Association charged Zhang $225, instead of deducting that amount from Zhang's $1,000 deposit. Zhang paid her monthly homeowner assessment on time and in full. However, the Association charged her a late fee and interest every month due to the $225 charge, which it failed to subtract from her deposit.

Because Zhang did not pay the $225 fee, the Association considered her delinquent, charged her interest and penalties, and took away some of Zhang's rights and privileges. In September 2007, the Association suspended Zhang's voting rights as an owner and member and suspended Zhang's ability to use the swimming pool, spa, gym, yoga room, sports bar, internet café, library, conference room, sun deck, and screening room. The Association also removed Zhang's name from the directory of names at the front entrance, which prevented visitors from calling Zhang's unit for her to remotely open the door for them. Guests had to use their cell phone to call Zhang, who then had to come downstairs to open the entrance door. In September 2007 the Association revoked Zhang's right to have packages delivered to the Savoy security office, which caused deliveries from UPS to be returned to the sender.

Before December 2008, keys provided access to the lobby and stairs of the Savoy. In December 2008, the system was changed to an "I" key to open building doors and doors to amenities. The front door of the Savoy is open to residents from 9:00 a.m. to 5:00 p.m., Monday through Friday. During other hours, Savoy residents are supposed to use a side door, which requires an "I" key. Since Zhang had no "I" key, she had to use her remote control to open the garage door and enter through the garage, which was the only way she could enter before 9:00 a.m. or after 5:00 p.m. Between 9:00 a.m. and 5:00 p.m. on weekdays, at times the security guard was on patrol or not on duty and the front entrance door was locked, Zhang could not use the front entrance door. Using the driveway to the garage was difficult, because there was only a sloping driveway for vehicles and no pedestrian walkway. Twice Zhang was almost hit by cars exiting the garage, and had to run back to the sidewalk to avoid a collision with a car.

From her Savoy condominium unit, Zhang often walked to Little Tokyo for a meal or to shop, and for exercise. She had to take her garage remote control with her since she had no "I" key and had no other way to enter the building. On December 25, 2008, she went to Little Tokyo, forgot to take her garage remote control, and could not get into the building when she returned. The security guard refused to open the door for her. She was locked out of the building for three hours. Zhang called the police, and after the police spoke to the guard, he opened the door for her. She was locked out two other times when she forgot her garage remote. Both times she had to call the police to gain entrance to the Savoy.

On October 2, 2007, the Association filed a complaint against Zhang for breach of CC&R's by installing hardwood flooring in her unit, failing to submit necessary documents for approval before installing that flooring, and installing hardwood flooring that failed to meet sound mitigation requirements in the Association's governing documents. The complaint also alleged causes of action for declaratory relief, and injunctive relief.

On November 19, 2007, Zhang filed a cross-complaint against the Association for intentional misrepresentation and negligent misrepresentation by representing to Zhang that she would be allowed to install a hardwood floor, violation of Civil Code section 1360 [owner of separate interest may modify a condominium unit to alter conditions which could be hazardous to persons who are physically disabled], and conversion of Zhang's $1,000 security deposit. Zhang filed a first amended and supplemental cross-complaint on August 18, 2009, which added a claim for housing discrimination in violation of Government Code sections 12980, subdivision (h) and 12989.1.

On November 20, 2009, the Association filed and recorded a lis pendens noticing the pendency of the action.

At the conclusion of the trial, the jury by special verdict made the following findings. 1) By installing flooring in her unit, Zhang breached governing documents of the Association. 2) Zhang did not have the right to return of her entire $1,000 deposit. 3) Zhang suffered from a disability, and the Association knew, or should have been

reasonably expected to know, of her disability. 4) A reasonable accommodation in rules, policies, practices or services was necessary to afford Zhang an equal opportunity to use and enjoy her unit, but the Association refused to allow that reasonable accommodation. 5) Zhang was harmed, and the Association's conduct was a substantial factor in causing Zhang's harm. 6) Zhang's damages were $623.64. 7) The Association's conduct in refusing to allow Zhang a reasonable and necessary accommodation was done with malice, oppression, or fraud.

On its own motion the trial court struck the punitive damages claim, i.e., that the Association's conduct in refusing to allow Zhang a reasonable and necessary accommodation was done with malice, oppression, or fraud.

On February 2, 2010, the Association filed a motion for directed verdict based on jury error. Based on discussions with seven jury members and the affidavit of the jury foreperson, the Association argued that the finding of housing discrimination was based on a finding that the Association should not have used an alleged accounting error as a basis to deny Zhang access to the building and its amenities. The trial court denied the motion for a directed verdict.

The parties submitted post-trial briefing of remaining claims for declaratory and injunctive relief for determination by the trial court. Savoy argued that the trial court should find that the CC&R's bound Zhang, that no trial evidence showed that Zhang's flooring complied with governing documents or could be modified to comply with sound mitigation requirements, and that the jury never found Zhang was entitled to an accommodation as to her flooring. Savoy argued that the trial court should order Zhang to remove hardwood flooring from her unit and replace it with carpet. In seeking declaratory and injunctive relief against Savoy, Zhang argued that Savoy violated Civil Code section 1360 and Government Code section 12927 by denying a reasonable accommodation for Zhang's disability. Zhang further argued that she should be permitted to keep her hardwood floors, and that Savoy should be enjoined from taking further action against Zhang's flooring and from depriving Zhang of common area privileges. Zhang also argued that she was entitled to a civil penalty of $10,000 for

Savoy's housing discrimination. The trial court ordered the parties to meet and confer on a proposed judgment, and if they could not agree each party was to file a proposed judgment addressing a flooring condition that met Zhang's health requirements and addressed Savoy's sound mitigation concerns.

The trial court found that Zhang's proposed judgment more closely comported with the jury's findings. The trial court ruled on the equitable claims and issued a judgment on jury verdict on August 10, 2010.

The judgment ordered that the Association should recover from Zhang by way of its complaint as follows. Within 180 days, Zhang was to replace existing bamboo flooring with either (a) carpet equivalent to that installed by the builder, or (b) wood flooring at least one-half inch thick and a cork underlay at least one-half inch thick or one-quarter-inch thick "QuietCork" material. If Zhang chose the second alternative of replacing existing bamboo flooring with wood flooring, the parties were to submit to the trial court a sound test report no later than ten days after installation of new flooring.

The judgment ordered that Zhang should recover from the Association by way of her cross-complaint as follows. 1) Zhang was to recover money damages of $623.64. 2) The trial court issued a declaration pursuant to Civil Code section 1060 that Zhang had the right to a reasonable accommodation for her disability, and that installation in her Savoy unit of wood flooring at least one-half inch thick and of a cork underlay of at least one-half-inch thick or one-quarter-inch thick "QuietCork" material would constitute a reasonable accommodation for Zhang's disability and would satisfy Savoy's governing documents. 3) Savoy was permanently enjoined against taking any further action against Zhang by virtue of the flooring in her condominium unit that the judgment ordered her to install. 4) Savoy was ordered immediately to restore all benefits and amenities which were to be afforded to Savoy condominium owners, and to remove all charges of interest and late fees and any other charges on her homeowner's association account, such that her account balance should be $0. 5) Savoy was ordered, within five days of the judgment, to dissolve and extinguish the notice of pendency of action that if filed with the Los Angeles County Recorder's Office.

The judgment ordered that the trial court declined to award attorney's fees and costs to either party, although either party was permitted to move for attorney's fees and costs. Both parties filed motions for attorney's fees and costs. The Association filed a motion for new trial and for judgment notwithstanding the verdict. On December 3, 2010, having determined that there was no prevailing party, the trial court ruled that the parties' motions for attorney's fees were moot.

On August 27, 2010, the Association filed a timely notice of appeal from the judgment. On November 24, 2010, the Association filed a notice of appeal from the September 28, 2010, order denying the Association's motion for JNOV. On December 30, 2010, the Association filed a notice of appeal from orders on post-trial motions.

Zhang filed a timely notice of cross-appeal from the August 20, 2010, judgment on October 4, 2010. Zhang filed a notice of cross-appeal from orders on post-trial motions on January 21, 2011.

ISSUES

The Association claims on appeal that:

1. There was no evidence to support the verdict against the Association for housing discrimination;

2. The trial court awarded Zhang double damages and improper equitable relief by wiping out the balance of Zhang's account;

3. The Association was entitled to an award of its attorney's fees and costs.

Zhang claims on cross-appeal that:

1. The trial court improperly struck the jury's finding that the Association acted with malice, oppression, or fraud;

2. Zhang is entitled to attorney's fees and costs because the Fair Employment and Housing Act attorney fee statute should supersede similar clauses in other statutes.

DISCUSSION

1. *Substantial Evidence Supported the Judgment Regarding Housing Discrimination*

The Association claims that there was no evidence to support the housing discriminatiomn against it.

A. *Housing Discrimination and the Standard of Review*

Government Code section 12955 makes it unlawful "[f]or the owner of any housing accommodation to discriminate against or harass any person because of the . . . disability . . . of that person." (*Id*. at subd. (a).)

For purposes of housing discrimination, " 'disability' includes, but is not limited to, any physical or mental disability as defined in Section 12926." (Gov. Code § 12955.3.) Section 12926, subdivision (l) states that " '[p]hysical disability' includes, but is not limited to, all of the following:

"(1) Having any physiological disease, disorder, [or] condition . . . that does both of the following:

"(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

"(B) Limits a major life activity. For purposes of this section:

"[¶] . . . [¶]

"(ii) A physiological disease, disorder, condition . . . limits a major life activity if it makes the achievement of the major life activity difficult.

"(iii) 'Major life activities' shall be broadly construed and includes physical, mental, and social activities and working."

Under Government Code section 12927, subdivision (c)(1), housing discrimination includes: "any . . . denial or withholding of housing accommodations;[1] includes provision of inferior terms, conditions, privileges, facilities, or services in connection with those housing accommodations; includes harassment in connection with those housing accommodations; . . . includes the refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the disabled person, if the modifications may be necessary to afford the disabled person full enjoyment of the premises . . . and includes refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling."

"In order to establish discrimination based on a refusal to provide reasonable accommodations, a party must establish that he or she (1) suffers from a disability as defined in [the California Fair Employment and Housing Act], (2) the discriminating party knew of, or should have known of, the disability, (3) accommodation is necessary to afford an equal opportunity to use and enjoy the dwelling, and (4) the discriminating party refused to make this accommodation." (*Auburn Woods I Homeowners Assn. v. Fair Employment & Housing Com*. (2004) 121 Cal.App.4th 1578, 1592.)

For purposes of housing discrimination, "[p]roof of a violation causing a discriminatory effect is shown if an act or failure to act that is otherwise covered by this part . . .has the effect, regardless of intent, of unlawfully discriminating on the basis of . . . disability[.]" (Gov. Code, § 12955.8, subd. (b).)

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[1] "Housing accommodation" means "any building, structure, or portion thereof that is occupied as, or intended for occupancy as, a residence by one or more families and any vacant land that is offered for sale or lease for the construction thereon of any building, structure, or portion thereof intended to be so occupied." (Gov. Code, § 12927, subd. (d).)

The parties agree that the standard of review is substantial evidence. "In resolving the issue of the sufficiency of the evidence, we are bound by the established rules of appellate review that all factual matters will be viewed most favorably to the prevailing party [citations] and in support of the judgment [citation]. All issues of credibility are likewise within the province of the trier of fact. [Citation.] 'In brief, the appellate court ordinarily *looks only at the evidence supporting the successful party, and disregards the contrary showing*.' [Citation.] All conflicts, therefore, must be resolved in favor of the respondent." (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925-926.)

B. *Substantial Evidence Supported the Jury Verdict Finding Discrimination by the Association Based on a Refusal to Provide Reasonable Accommodation*

Substantial evidence supported the jury finding that Zhang suffered from a disability. Zhang suffers from hereditary Hashimoto's thyroiditis, acute allergies to chemicals in perfume, cleaners, and chlorine, some foods, and dust and mites, and a t-cell mediated immunodeficiency. Her allergies require her to avoid dust and mites in carpets, which cause allergic reactions. Her physician testified that Zhang had to strictly avoid carpeting, dust mites, and common chemicals. Zhang's physician testified that Zhang had a physical disability. Her allergies also affect her home life, in that she has to live in a home with no carpet.

Substantial evidence supported the jury finding that the Association knew of her disability. Zhang's real estate agent, Janis Tista, explained Zhang's allergies to Collman and other representatives of the Savoy and informed them that Zhang's allergies required her to live with hardwood flooring. Tista was not told that installing hardwood floors would be a problem.

Substantial evidence supported the jury finding that accommodation was necessary to afford an equal opportunity to use and enjoy the dwelling. Zhang's physician testified that Zhang had to strictly avoid carpeting, dust mites, and common chemicals. Moreover, if Zhang did not practice strict avoidance of these things, her condition would limit a major life activity. She had to live in a home with no carpet.

Substantial evidence supported the jury finding that the Association refused to allow reasonable accommodation in the rules, policies, practices or services as necessary to afford Zhang an equal opportunity to use and enjoy her dwelling unit. Zhang's contractor submitted plan specifications for installation of a hard floor meeting the Association's requirements 22 days before escrow closed on Zhang's unit. Three days before escrow closed, Zhang spoke to Collman about making sure that the Association approved her application for a bamboo floor. Collman told Zhang that if she did not hear anything back from the Association before escrow closed, it meant the application was approved. Zhang heard nothing from the Association before escrow closed on June 28, 2006, and she believed that the flooring application was approved. One hour after escrow closed, however, Zhang received a faxed letter from Collman stating that the Design Review Committee had not approved Zhang's application to install bamboo flooring in her unit. The letter referred to CC&R's section 2.9.5 and requested written documentation from a licensed engineer, architect, or qualified consultant that noise mitigating properties of the proposed flooring were "the same as, substantially similar to, or better than the materials originally installed." The letter referred Zhang to the Association's acoustical engineer, John LoVerde. LoVerde later testified that it would not be possible to install a hard floor that was as quiet as a carpeted floor. Thus the Association misled Zhang by informing her that her application would be approved if she heard nothing from the Association before escrow closed. When it denied her application, the Association required installation of flooring the same as, substantially similar to, or better than the carpeting originally installed in Zhang's unit. The Association's own witness testified that no hard flooring could satisfy that criteria. Thus in substance the Association refused to allow reasonable accommodation in the rules, policies, practices or services as necessary to afford Zhang an equal opportunity to use and enjoy her dwelling unit.

On October 31, 2006, Zhang sent a letter to the Association requesting documentation of instances where the Association Board approved a contractor's proposal to install hardwood floors in other units which were not on the ground level. The Board responded with a "License Agreement Regarding Wood Flooring Installed by Homeowner," which stated that Zhang was granted a revocable license to own and maintain wood flooring in her unit. The License stated that the license could be revoked with 30 days written notice from the Association to Zhang or immediately if the Association received a written objection against the license or a written noise complaint by the owner of the unit directly under Zhang's unit. The license also stated "nothing herein shall prevent Association from revoking the license at any time." Zhang did not sign this license. The license, revocable at any time, again was a refusal to reasonably accommodate Zhang's disability.

2. *The Trial Court's Grant of Equitable Relief in Reducing Zhang's Association Account Balance to $0 Was Not An Abuse of Discretion*

The Association claims that the trial court, as part of its equitable relief, eliminated the outstanding balance on Zhang's account with the Association without first crediting that account with damages awarded by the jury. The Association argues that this was a double recovery.

The jury verdict found that the Association's conduct was a substantial factor in causing Zhang harm, and that Zhang's damages were $623.64. The judgment ordered Zhang to recover $623.64 in money damages from the Association. Pursuant to the trial court's equitable rulings, the judgment also ordered the Association to remove all charges of "interest" and "late fees" and any other charges on Zhang's homeowner's association account, such that her account balance as of August 10, 2010, should be $0.

Zhang had paid a $1,000 deposit with her remodeling proposal. Because Zhang's move into her unit ran three hours late, a $150 charge was taken from her deposit, leaving $850 of Zhang's original $1,000 deposit. That $850 was never returned to Zhang. On August 4, 2006, the Association recharged Zhang $850, which allowed the Association to retain Zhang's $850.

The Association was charged a $225 fee by its acoustical consultant, John LoVerde. The Association charged Zhang $225 instead of deducting that amount from Zhang's $1,000 deposit. The Association charged her a late fee and interest every month due to the $225 charge which it failed to apply to her deposit.

Zhang's complaint for housing discrimination sought reimbursement of Zhang's move-in security deposit. Zhang's cause of action for declaratory and injunctive relief sought an injunction against the Association continuing to showed that she owed $250 with penalties for non-payment for an acoustic review of her bamboo floor.

Declaratory relief and injunctive relief are equitable remedies. (*Hartley v. Superior Court* (2011) 196 Cal.App.4th 1249, 1258.) The trial court, sitting in equity, has broad, flexible power. (*MacFarlane v. Peters* (1980) 103 Cal.App.3d 627, 631.) That equitable power encompassed the power to order the balance of Zhang's account with the Association reduced to $0. The evidence showed that the Association retained $850 which should have been returned to Zhang, and charged Zhang $225, plus monthly interest, which should have been deducted from Zhang's remodeling deposit. We find no abuse of discretion in the trial court's grant of equitable relief.

3. *The Order Striking Punitive Damages Must Be Reversed and Remanded for a New Trial Limited to the Issue of the Amount of Punitive Damages*

In connection with Zhang's cause of action for housing discrimination, the special verdict found the Association's conduct in refusing to allow Zhang a reasonable and necessary accommodation was done with malice, oppression, or fraud. After judgment, on its own motion the trial court struck the punitive damages claim.

"[A]ppellate review of trial court orders granting nonsuits, directed verdicts, or judgments notwithstanding the verdict—orders that finally terminate claims or lawsuits—is quite strict. All inferences and presumptions are against such orders." (*People v. Ault* (2004) 33 Cal.4th 1250, 1266.) An appellate court reviews a grant or denial of a motion for JNOV de novo using the same standard as the trial court. (*Oakland Raiders v. Oakland-Alameda County Coliseum, Inc*. (2006) 144 Cal.App.4th 1175, 1194.) In ruling on a JNOV motion, the trial court may not weigh the evidence or judge witnesses'

credibility, and must accept evidence tending to support the verdict as true unless such evidence is incredible on its face. The court may grant a JNOV only when, disregarding conflicting evidence and indulging in every legitimate inference which may be drawn from plaintiff's evidence, no evidence is sufficiently substantial to support the verdict. In reviewing that order, an appellate court must read the record in the light most advantageous to the plaintiff, resolve all conflicts in plaintiff's favor, and give the plaintiff the benefit of all reasonable inferences in support of the original verdict. (*Carter v. CB Richard Ellis, Inc*. (2004) 122 Cal.App.4th 1313, 1320.)

The jury heard evidence that after informing Zhang that installing hardwood flooring would not be a problem and that if she heard nothing regarding her application to install that flooring before the close of escrow she should consider that application approved, the Association denied her request to install hardwood flooring one hour after escrow closed.

Zhang sent a letter to the Association requesting instances where the Association Board approved installation of hardwood floors in other units not on the ground level and informing the Association that she installed hardwood floors because of her disability. The Association responded with a License Agreement which allowed the Association to revoke the license at any time.

The jury heard evidence that the Association retained an $850 remodeling deposit which was supposed to be returned to Zhang, which was supposed to defray the cost of consultant expenses. The Association failed to subtract a $225 charge for an acoustical consultant from Zhang's remodeling deposit, and then considered Zhang delinquent, charged her interest and penalties every month, and took away some of Zhang's rights and privileges.

The jury heard evidence that the Association suspended Zhang's voting rights as an owner and member, denied her access to and use of the Savoy's swimming pool, spa, gym, yoga room, sports bar, internet café, library, conference room, sun deck, and screening room, and removed Zhang's name from the directory of names at the front entrance, which prevented visitors from calling Zhang's unit for her to remotely open the

door for them. Guests had to use their cell phone to call Zhang, who then had to come downstairs to open the entrance door. The Association revoked Zhang's right to have packages delivered to the Savoy security office. The Association did not provide Zhang with an "I" key, making it impossible to use the front entrance to the Savoy and forcing her to enter through a driveway to the garage, which was unsafe for pedestrians and caused her to nearly be struck by cars on several occasions. On three occasions, a security guard refused to open the entrance door, causing her to be locked out of the building.

These actions are further manifestations of the Association's refusal to allow Zhang a reasonable and necessary accommodation. Substantial evidence supported the jury's finding that the Association's conduct in refusing to allow Zhang a reasonable and necessary accommodation was done with malice, oppression, or fraud. We reverse the trial court's order striking the punitive damages claim, and direct the trial court to conduct a new trial limited to the issue of the amount of punitive damages required. (*Bullock v. Philip Morris USA, Inc*. (2008) 159 Cal.App.4th 655, 696.)

4. *The Post-Judgment Order Finding No Party Prevailed in the Actions Is Reversed and Remanded for Redetermination*

The reversal of the order striking punitive damages for a new trial of the amount of punitive damages also requires reversal of the post-judgment order finding that neither Zhang nor the Association was the prevailing party in the actions. Following trial of the limited issue of the amount of punitive damages required, the trial court may again rule on the parties' motions for attorney's fees and costs which may be awarded to the prevailing party, if either party is so determined, in the actions.

DISPOSITION

The order striking the punitive damages claim and the order determining that neither party was prevailing party are reversed, and the matter is remanded to the trial court to conduct a new trial limited to the issue of the amount of punitive damages to be awarded Zhang. At the conclusion of that trial, the trial court may again rule on the parties' motions for attorney's fees and costs which may be awarded to the prevailing party, if either party is so determined, in the actions. The judgment is otherwise affirmed. Costs on appeal are awareded to Janice M. Zhang.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.