Filed 9/4/18 Joiner v. Sanchez CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ROBERT D. JOINER et al., Plaintiffs and Respondents, v. IDILIO SANCHEZ et al., Defendants and Appellants.	B282965 (Los Angeles County Super. Ct. No. VC064110)

APPEAL from a judgment of the Superior Court of Los Angeles County, Patrick T. Meyers, Judge. Reversed with instructions.

Estelle & Kennedy, Michael L. Kennedy and Anne C. Tressler for Defendant and Appellant Idilio Sanchez

Ferguson Case Orr Paterson, Wendy C. Lascher, Joshua C. Hopstone; Law Office of Sergio A. White and Sergio A. White for Defendants and Appellants Narciso Sanchez, Idelsis Sanchez Gheldof, and Al's Body Shop of Huntington Park, Inc.

Law Offices of JD Sanchez and JD Sanchez for Plaintiffs and Respondents.

On July 3, 2014, Robert L. Joiner (Robert Sr.), Mary Joiner (Mary), and Robert D. Joiner (Robert Jr.) (collectively, the plaintiffs) filed a complaint alleging breach of contract, fraud and conversion against Al's Body Shop, Narciso Sanchez (Narciso), Idilio Sanchez (Idilio) and Idelsis Sanchez Gheldof (Idelsis) (collectively, the defendants) over the repair of a Flying Spur Bentley belonging to Robert Jr. and the defendants' failure to return a S500 Mercedes Benz and a Chevrolet Biscayne belonging to Robert Sr. and Mary.[1] After a two-day bench trial, the trial court found that the defendants were not liable for breach of contract or fraud with respect to any of the vehicles but did find that the defendants had taken actions constituting conversion with respect to the Mercedes and the Chevrolet. While the trial court awarded the plaintiffs no damages for the conversion of the Chevrolet, the court awarded the plaintiffs $211,590.06 for the conversion of the Mercedes.

The defendants now appeal the trial court's judgment, contending that the trial erred in six ways; specifically arguing that: (1) the trial court erred in awarding loss of use damages for the Mercedes instead of the fair market value of the converted property as required by Civil Code[2] sections 3336 and 3354; (2) even if the trial court did not err in awarding loss of use damages for the Mercedes, the court erred in awarding over $211,000 for loss of use of a damaged 16-year-old vehicle of unknown mileage and condition; (3) the trial court erred in

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[1] To avoid confusion, we identify individuals who share the same surname by their first names. No disrespect is intended.

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

calculating the duration of loss of use damages through the date of trial; (4) the trial court erred in awarding both loss of use damages and interest thereon; (5) the trial court erred in imposing joint and several liability on Narciso and Idelsis; and (6) the trial court erred in finding Idilio liable for conversion.

With respect to liability, we hold that the trial court erred in imposing joint and several liability on Narciso and Idelsis, and erred in finding Idilio liable for conversion. With respect to damages, we hold that the trial court erred in awarding loss of use damages for the Mercedes. We therefore reverse the trial court's judgment. Pursuant to Civil Code section 3336, the trial court is directed to award plaintiffs $6,250—the market value of the Mercedes at the time of the conversion—plus interest from the time of the conversion. Only Al's Body Shop may be held liable for this judgment.[3]

FACTUAL HISTORY

Robert Jr. is an executive with Opulence Exotica, which sells, leases and rents exotic vehicles and transports high-end business executives. In 2012, Robert Jr. bought a 2006 Bentley Flying Spur (the Bentley) from a car dealership in New Jersey. On August 4, 2012, while driving the Bentley from New Jersey to California, Robert Jr. was involved in a multi-vehicle accident, causing damage to the Bentley. Robert Jr. reported the accident to his insurance company, the Automobile Club of Southern California (AAA). An insurance adjustor from AAA inspected the

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[3] Given that the trial court erred in awarding loss of use damages for the Mercedes instead of the fair market value of the converted property, we need not reach the defendants' other arguments on appeal regarding loss of use damages.

Bentley and referred Robert Jr. to Executive Motor Coach for the repairs.[4]

Robert Jr. was unhappy with the paint job performed by Executive Motor Coach. In the past, Robert Jr. had vehicles repaired at Al's Body Shop; he convinced AAA to authorize further repair work be performed at Al's Body Shop. Robert Jr. initially dealt with Idilio Sanchez, who falsely told Robert Jr. that he owned Al's Body Shop.[5] In January 2013, Idilio provided Robert Jr. the first repair estimate for the Bentley, which reflected an estimated cost of $7,280 to repair damage to its front bumper, doors, and other body work. Idilio initially expected the work to take two to three weeks to complete.

The repair estimate prepared by Idilio was less detailed than the repair estimate prepared by AAA. Idilio's estimate also contemplated 103 hours of anticipated labor to replace, remove, install or repair 33 line items of work on the Bentley—only two hours less than AAA's estimate of 105 total labor hours to repair 106 line items. Idilio later testified that his estimate was based on his observation of additional damage to the Bentley's suspension, radiator, and underbody. According to Robert Jr.,

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[4] The original estimated repair costs totaled $23,863.37, which AAA paid to Executive Motor Coach. The trial court determined that the insurance estimate offered by the plaintiffs was adulterated, unreliable, incomplete, and lacking foundation.

[5] Idilio's father Narciso actually owned Al's Body Shop. Idilio worked at the shop from 2005 until August 2013, overseeing production and making repair estimates, until he was fired for stealing. Narciso's daughter Idelsis worked at the shop for approximately 21 years, mainly doing accounting work and recordkeeping.

Idilio's discovery of this additional damage led to supplemental repair requests to AAA.

Robert Jr. testified that he drove the Bentley to Al's Body Shop and left it there, paying Idilio $7,300 in cash for the anticipated repairs. After starting work on the Bentley, Idilio found additional damage to its suspension, including bent controls and bent struts. Idilio told Robert Jr. that it was not safe to drive the Bentley with this kind of damage to the suspension. Robert Jr. declined to have Idilio repair the suspension at this time.

Idilio completed the body work within two to three weeks and Robert Jr. was pleased with the results. Robert Jr. paid cash to a clerk at Al's Body Shop, who gave Robert Jr. a final invoice. Idilio again raised the Bentley's suspension damage with Robert Jr. and asked about the vehicle's insurance. Robert Jr. said that the Bentley's insurance had lapsed and that the vehicle was no longer insured. Robert Jr. drove the Bentley off the Al's Body Shop lot in February 2013. However, Robert Jr. returned the Bentley to Al's Body Shop in March 2013, where AAA conducted an additional inspection of the vehicle.[6] In the end, AAA paid approximately $49,550 for repairs made to the Bentley.

By May 2013, the remaining repair work remained incomplete. Robert Jr. then went to Al's Body Shop, demanded

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[6] According to Idilio, the inspection revealed additional damage to the Bentley caused by the August 4, 2012 accident, including damage to the undercarriage, wheels, axles, struts and gas tank. However, the trial court found it "utterly implausible" that this damage could have gone unnoticed by all the inspectors, adjusters, and mechanics who had examined the vehicle up to that date.

the Bentley's return, and took back the vehicle. On May 20, 2013, Robert Jr. had the S500 Mercedes Benz (the Mercedes) and Chevrolet Biscayne (the Chevrolet) towed to Al's Body Shop for repairs.[7] Robert Jr. was not provided with a work authorization form and did not ask for one. There is no evidence that Robert Jr. or Idilio obtained permission from Al's Body Shop or Narciso to bring these two vehicles to the shop for repairs.

At some point in the fall of 2013, Robert Jr. called Al's Body Shop to check on the status of the Mercedes and the Chevrolet and asked for Idilio. Robert Jr. was told that Idilio had been fired from Al's Body Shop for stealing money. Robert Jr. asked about the Mercedes and the Chevrolet and was told that work could not be done on the vehicles under these circumstances.

On March 12, 2014, Narciso wrote a letter to Robert Jr. regarding disposition of the two vehicles. On March 17, 2014, Robert Jr. went with his cousins and two tow trucks to Al's Body Shop to pick up the vehicles. However, Robert Jr. was not permitted to remove the vehicles from the premises without first signing a release of liability form. Robert Jr. also spoke with Idelsis, who indicated that Al Body's Shop had no money to give to Robert Jr.

Mary then contacted Al's Body Shop to ask when the Mercedes would be ready. Mary spoke with Idelsis who said that the vehicle could not be repaired by Al's Body Shop. Mary

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[7] According to Robert Jr., he brought the two vehicles to Al's Body Shop so that Idilio could " 'work off' " money Idilio owed to Robert Jr. Although the defendants' opening brief describes Robert Jr.'s and Idilio's alleged financial improprieties and purported insurance fraud, these facts are not germane to our resolution here.

subsequently received a fax purporting to be a copy of a certified letter sent by Narciso on behalf of Al's Body Shop to Robert Jr. on March 12, 2014. The letter said that, as of August 9, 2013, Al's Body Shop was under new management and, in accordance with its pre-existing policy, a work authorization form was required from the owner of any vehicle before repairs could begin. As there was no such form for the Mercedes or the Chevrolet, the vehicles had to be picked up from Al's Body Shop within three days.[8] The letter warned that unless the vehicles were picked up within that time, there would be "no choice but to lien sale your vehicles and storage fees will be [sic] remain in effect."

The March 12, 2014 letter further advised that before the vehicles could be released, Robert Sr. and Mary had to sign a purportedly attached release of liability form and provide a copy of the registered owners' driver's licenses. However, no release of liability form was attached to the letter. The letter was also unsigned, although the names of Narciso and Al's Body Shop were printed on the letter with a blank space for signature.

On March 13, 2014, Mary received a second fax, which was signed by Narciso on behalf of Al's Body Shop. The letter stated that Narciso had contacted the state Bureau of Automotive Repair regarding the dispute and that "[w]e have decided to refuse to service and/or store your vehicles on our premises any longer." The letter included a release of liability form that, along with copies of the vehicles' registrations and driver's licenses of the registered owners, was required for release of the vehicles.

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[8] The letter stated that storage fees of $49,980 had accrued but that if the vehicles were picked up within three days, the storage fees would be waived.

The letter requested that the vehicles be removed by 5:00 p.m. on March 18, 2014 in order to avoid a lien sale.

On March 16, 2014, Robert Sr. and Mary faxed a letter to Narciso and Al's Body Shop, disputing the information in the letters they had received and denying that they had intended to abandon the vehicles. On March 17, 2014, Mary, Mary's nephew, and Robert Jr. went to Al's Body Shop with two tow trucks and drivers to remove the vehicles. Narciso and Idelsis were on the premises at the time. The police were called and two officers came to observe. Mary refused to sign the release of liability form proffered by Narciso, Idelsis and Al's Body Shop, and they, in turn, refused to release the vehicles. On March 18, 2014, Mary sent a letter to Narciso, as manager of Al's Body Shop, relaying her account of what had occurred. That same day, Narciso and Al's Body Shop sent a fax to Robert Sr. with a revised release of liability form stating they would waive the storage fees and tow cost for the vehicles if Robert Sr. signed the form.

On April 18, 2014, Al Body's Shop filed a notice of lien sale for both vehicles, which was sent to Robert Sr. and Mary on April 22, 2014. Al's Body Shop filed the lien sale documents for the vehicles using form DMV form REG. 668, a form used for vehicles valued at less than $4,000. On May 5, 2014, the lien sale application for the Mercedes was denied. On April 26, 2014, Robert Sr. and Mary filed a complaint with the Bureau of Automotive Repair. As part of their complaint, Robert Sr. and Mary stated that the combined value of the two vehicles was well over $30,000.

PROCEDURAL HISTORY

On May 23, 2014, Al's Body Shop filed a small claims suit against Robert Sr. and Mary, alleging that the shop was owed

storage fees of $5,000 for the Mercedes and the Chevrolet for the time period from March 12, 2014 through May 12, 2014. On July 3, 2014, the plaintiffs brought an unlimited civil action against Narciso, Idelsis, Idilio, and Al's Body Shop, alleging breach of contract, fraud, and conversion claims.[9] The first cause of action for breach of contract was brought solely by Robert Jr. and the remaining causes of action were brought by all the plaintiffs.

The complaint was never served on the defendants. Instead, on July 14, 2014, the plaintiffs filed a first amended complaint (FAC), again alleging breach of contract, fraud, and conversion claims and requesting compensatory and punitive damages, as well as attorney fees and other relief. Each cause of action was alleged against Narciso, Idelsis, and Idilio, individually, as well as Al's Body Shop, a California corporation. On August 20, 2014, Narciso, Idelsis, and Al's Body Shop filed a joint answer to the FAC, in which they generally and specifically denied each and every allegation in the FAC and raised twelve affirmative defenses.

The case dragged on for nearly two years with little to no discovery conducted by the parties. Trial ultimately took place on June 28 and June 29, 2016. At the end of the trial, the trial court had the parties submit a written closing brief. On October 5, 2016, the trial court issued a proposed statement of decision. The parties were given 20 days to file objections. The defendants timely filed objections to the proposed statement of decision. Among other matters, the defendants specifically objected to the

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[9] The defendants' small claims suit was combined with the unlimited civil case for trial.

trial court's award of loss of use damages without considering the traditional measure of conversion damages as set forth in Civil Code section 3336. The trial court issued its final statement of decision on February 16, 2017.

THE TRIAL COURT DECISION

The trial court held that the plaintiffs had failed to meet their burden of proof on the first and second causes of action for breach of contract as well as the third cause of action for fraud. However, the trial court held, the plaintiffs had proved more likely than not that the defendants were liable for conversion of the vehicles.

The trial court then set about calculating the plaintiffs' damages for the alleged conversion. The court first noted that while Robert Jr. had testified about his experiences renting automobiles, such examination was limited to renting a Mercedes S500 without reference to any particular model year, wear, age, mileage or any other vehicle condition. Robert Jr. opined that the rental value of the Mercedes, regardless of age or condition, was $300 to $500 per day.[10] The trial court disregarded these estimated ranges of daily leasing rates as "inflated and unreasonable," noting, among other things, that the

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[10] Robert Jr. testified that he leased Mercedes Benz S500 vehicles "[a]ll the time," including within the year before trial. Without regard to model year, mileage, or condition, Robert Jr. opined that such vehicles typically leased for $300 to $500 per day. However, there was no evidence that Robert Jr. had ever leased the Mercedes in this case to anyone.

Mercedes had a suspension problem, was in need of repair, and had been towed to Al's Body Shop.[11]

The trial court next noted that Robert Sr. and Mary had served a subpoena on the State Bureau of Automotive Repairs in the small claims case. In response, the agency had produced fourteen photos of the Mercedes and the Chevrolet. The trial court took judicial notice of the photos and concluded that "the foregoing photographs taken by the investigator of the exterior of the said Mercedes Benz in May, 2014 depicted that said vehicle exterior was in reasonably good condition." The trial court also noted that Mary had testified she regularly used the vehicle and said it was "in excellent condition," despite the acknowledged need for repairs.

Balancing these factors, the trial court observed that a "transient state of disrepair of such a vehicle may warrant that such vehicle occupy a lower estimated range of daily rental values." When determining the damage award for the Mercedes, the trial court reviewed Civil Code sections 3333 and 3336, coming up with a daily rental value of $150 per day. The trial

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[11] The plaintiffs' original complaint alleged that the Mercedes had an air suspension problem. Idilio testified that, according to Robert Jr., the Mercedes needed work on its shocks. Robert Jr. testified that the Mercedes had been in disrepair for a month or so before he brought it to Al's Body Shop. The Mercedes was 16 years old at the time of trial. Mary testified that the right door of the Mercedes was " 'down,' " but was otherwise in "excellent condition" and she regularly and frequently used the vehicle. Photos of the vehicle reflected that the "vehicle exterior was in reasonably good condition."

court awarded no damages for the Chevrolet.[12] The trial court calculated that 1,087 days had elapsed between the alleged conversion on March 17, 2014 and trial. Multiplying 1,087 by $150 per day, the trial court came to a figure of $163,050. The trial court then added prejudgment interest of 10 percent per annum on the entire amount for the entire period, a total of $48,556.29. Adding these figures together, the trial court came to a total damage award of $211,606.29. The trial court also found that Idilio, Narciso, Idelsis, and Al's Body Shop were jointly and severally liable for this damage award.

Judgment was entered on March 6, 2017. The judgment awarded the plaintiffs total compensatory damages in the amount of $211,590.06, consisting of compensatory economic damages in the amount of $162,750, and prejudgment interest thereon in the amount of $48,379.06. The prejudgment interest was calculated at a 10 percent annual rate "pursuant to Civil Code sections 3287 and 3289" from March 17, 2014 to the date judgment was entered. The trial court also ordered that the defendants transport and return the Mercedes and the Chevrolet to Robert Sr. and Mary.

On March 30, 2017, the defendants moved for a new trial. The defendants argued, in part, that the trial court committed an

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[12] According to the trial court, the previous determination of the Chevrolet's rental value of $65 to $75 a day lacked sufficient foundation. The trial court found that the Chevrolet had no rental value because it "was clearly not roadworthy" and no evidence was presented that it "had any capacity or likelihood of being operated legally on a public roadway." The plaintiffs do not contest this finding. Thus, on appeal, only the Mercedes's damages are at issue.

error of law in using loss of use as the measure of damages instead of market value as required by Civil Code section 3336. The defendants further argued the award of over $200,000 in damages was excessive and manifestly unjust. Attached to the motion was a National Automobile Dealers Association appraisal report showing that, as March 25, 2017, a 2000 Mercedes S500 had a market value of $1,200 in fair condition; $2,425 in average condition; $3,475 in clean condition; and $6,250 in clean condition if sold retail.[13] The defendants further argued that the $150 daily rental value of the Mercedes assessed by the trial court was unsupported by the evidence. The trial court denied the motion for a new trial on May 4, 2017, and the defendants timely appealed.

STANDARD OF REVIEW

"An appellant's challenge to damages, depending upon its specific nature, may be subject to a substantial evidence, abuse of discretion, or de novo standard of review." (*JMR Construction Corp. v. Environmental Assessment & Remediation Management, Inc.* (2015) 243 Cal.App.4th 571, 583.) The question of whether "a certain measure of damages is permissible given the legal right the defendant has breached, is a matter of law, subject to de novo review." (*New West Charter Middle School v. Los Angeles Unified School Dist.* (2010) 187 Cal.App.4th 831, 843.) But where the measure of damages is legally permissible, a trial court's choice of that measure, among other legally permissible measures

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[13] According to the parties' settled statement, the plaintiffs presented no evidence at trial regarding the current fair market value of the Mercedes or Chevrolet. The plaintiffs also presented no evidence that the vehicles had been rented or leased prior to being dropped off at Al's Body Shop.

of damages, is reviewed for abuse of discretion. (*Ibid*.) A trial court abuses its discretion when it applies the wrong legal standards applicable to the issue at hand. (*Bailey v. Taaffe* (1866) 29 Cal. 422, 424; *City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297–1298.)

On a motion for new trial, the amount of damages is a fact question committed to the discretion of the trial judge and an award of damages will not be disturbed if it is supported by substantial evidence. (See *Westphal v. Wal–Mart Stores, Inc.* (1998) 68 Cal.App.4th 1071, 1078; *Miller v. San Diego Gas & Elec. Co.* (1963) 212 Cal.App.2d 555, 560.) The evidence is insufficient to support a damage award " 'only when "no reasonable interpretation of the record" supports the figure.' " (*San Diego Metropolitan Transit Development Bd. v. Cushman* (1997) 53 Cal.App.4th 918, 931.)

DISCUSSION

I. The court erred in awarding loss of use damages

The defendants concede that Robert Sr. and Mary owned the Mercedes and that the vehicle was at Al's Body Shop between March 2014 and the date of trial. Thus, their appeal focuses only on the third element of conversion—damages.[14] The defendants

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[14] "Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages. Conversion is a strict liability tort. The foundation of the action rests neither in the knowledge nor the intent of the defendant. Instead, the tort consists in the breach of an absolute duty; the act of conversion itself is tortious. Therefore, questions of the defendant's good faith, lack of

contend that the trial court erred in awarding loss of use damages instead of the fair market value of the converted property as required by sections 3336 and 3354.

In general, "the measure of [tort] damages, except where otherwise expressly provided . . . is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not." (§ 3333.) However, with respect to conversion, the measure of damages is: "First—The value of the property at the time of the conversion, with the interest from that time, *or*, an amount sufficient to indemnify the party injured for the loss which is the natural, reasonable and proximate result of the wrongful act complained of and which a proper degree of prudence on his part would not have averted; and [¶] Second—A fair compensation for the time and money properly expended in pursuit of the property."[15] (§ 3336, emphasis added.)

When estimating damages, "the value of property, to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing in the market nearest to the place where the property ought to have been put into his possession, and at such time after the breach of duty upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase." (§ 3354.) In any event, "[w]hatever the proper measure of

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knowledge, and motive are ordinarily immaterial." (*Burlesci v. Peterson* (1998) 68 Cal.App.4th 1062, 1066.)

[15] "By its terms, . . . section 3333 does not apply to conversion since . . . section 3336 is an express provision otherwise." (*Lueter v. State of California* (2002) 94 Cal.App.4th 1285, 1302 (*Lueter*).)

damages may be, in a given case, the recovery therefor is still subject to the fundamental rule that damages which are speculative, remote, imaginary, contingent, or merely possible cannot serve as a legal basis for recovery." (*Frustuck v. City of Fairfax* (1963) 212 Cal.App.2d 345, 367–368.) Lastly, "[a] plaintiff has a duty to mitigate damages and cannot recover losses it could have avoided through reasonable efforts." (*Thrifty-Tel, Inc. v. Bezenek* (1996) 46 Cal.App.4th 1559, 1568.)

Taking this statutory framework into account, California courts have long held that: "As a general rule, the value of the converted property is the appropriate measure of damages, and resort to the alternative occurs only where a determination of damages on the basis of value would be manifestly unjust." (*Lueter, supra,* 94 Cal.App.4th at p. 1302.) "Accordingly, a person claiming damages under the alternative provision must plead and prove special circumstances that require a measure of damages other than value, and the [factfinder] must determine whether it was reasonably foreseeable that special injury or damage would result from the conversion." (*Ibid*.)

In other words, "[a]lthough the first part of section 3336 appears to provide for alternative measures of recovery, the first of the two measures, namely the value of the property converted at the time and place of conversion with interest from that time, is generally considered to be the appropriate measure of damages in a conversion action." (*Myers v. Stephens* (1965) 233 Cal.App.2d 104, 116 (*Myers*).) "The determination of damages under the alternative provision is resorted to only where the determination on the basis of value at the time of conversion would be manifestly unjust." (*Ibid*.)

Here, the evidence and admissions made by the parties established the value of the Mercedes to be $6,250.[16] Accordingly, under the first alternative of section 3336, the trial court would have been obliged to award damages in the sum of $6,250, plus interest from the time of the conversion. However, since the trial court awarded damages in the sum of $211,590.06, it is apparent that the court did so upon the basis of the second alternative of section 3336, namely, "an amount sufficient to indemnify the party injured for the loss which is the natural, reasonable and proximate result of the wrongful act complained of and which a proper degree of prudence on his part would not have averted." As stated in *Myers*, *supra*, 233 Cal.App.2d at

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[16] As noted above, the plaintiffs presented no evidence regarding the current fair market value of the Mercedes, while the defendants presented evidence that a 2000 Mercedes S500 had a market value of $1,200 in fair condition; $2,425 in average condition; $3,475 in clean condition; and $6,250 in clean condition if sold retail. Furthermore, although Robert Jr. opined that the rental value of the Mercedes, regardless of age or condition, was $300 to $500 per day—an amount the trial court reduced to $150—the plaintiffs presented no evidence that the Mercedes had ever been rented or leased before it was left at Al's Body Shop. The failure of proof precludes the loss of use damages sought by the plaintiffs. Indeed, CACI No. 3903M, cited with approval by the trial court, provides that to recover damages for loss of use, the plaintiff must *prove* the reasonable cost to rent a similar item of personal property for the amount of time reasonably necessary to repair or replace the item of personal property. In other words, when a car's owner has been deprived of the use of the vehicle, "he is entitled, *upon proper pleading and proof*, to recover for loss of use." (See *Reynolds v. Bank of America* (1959) 53 Cal.2d 49, 50–51, italics added.)

pages 116–117, "[o]ur immediate inquiry, therefore, is whether, under the circumstances of the instant case, damages were properly assessable under the second alternative, and, if so, whether such measure of damages was properly applied."

Based on our review of the record, we conclude that the damages in this case were not properly assessable under the second alternative of section 3336. At the outset, we note that the plaintiffs satisfied none of the requirements necessary to invoke section 3336's second alternative. While the plaintiffs claimed loss of use damages in the FAC, they did not contend that assessing damages based on the value of the vehicles at the time of their conversion would be manifestly unjust. The plaintiffs did not explain why they could not be made whole by an award of the Mercedes's value at the time of conversion and there is no evidence in the record that the Mercedes had any sentimental value to the defendants or that it could not have been replaced by another vehicle at or around the time of conversion. In short, the plaintiffs neither pleaded nor proved any special circumstances requiring a measure of damages other than value. "In the absence of special circumstances, the appropriate measure of damages for the conversion of personal property is the fair market value of that property plus interest from the date of conversion, the standard first listed in section 3336." (*Lint v. Chisholm (*1981) 121 Cal.App.3d 615, 624.)

On appeal, the plaintiffs simply direct us back to the trial court's statement of decision to justify the court's reliance on section 3336's second alternative. However, the trial court's explanation as to why it relied on section 3336's second alternative does not aid us here. As noted by the trial court when denying the new trial motion, the FAC alleged that the

defendants' conversion caused the plaintiffs to suffer loss of use of their vehicles. Indeed, it was undisputed that the vehicles had been in the possession, custody and control of Al's Body Shop since early April 2013. According to the trial court, "[t]he peculiar nature and protracted duration of the detention" of the vehicles at Al's Body Shop "struck the court as unusual and unwarranted." Under these circumstances, the court continued, it was not persuaded that the first alternative set forth in section 3336 afforded an appropriate measure of damages. In other words, the vehicles' unusual and lengthy detention at the shop constituted special circumstances which therefore allowed the trial court, in the exercise of its discretion, to apply the second alternative measure of damages in section 3336.

Although the trial court cited three cases which applied section 3336's second alternative when awarding damages based on loss of use of vehicles or other personal property—*Moreno v. Greenwood Auto Center* (2001) 91 Cal.App.4th 201; *Tucker v. Hagerty* (1918) 37 Cal.App. 789; and *Harris v. Dixon Cadillac Co.* (1982) 132 Cal.App.3d 485—these cases are not persuasive. In *Moreno,* the jury was instructed on both measures of damages under section 3336, even though the sole issue presented to the jury related to the loss of use of the subject vehicle. (*Moreno*, at p. 209-210.) Thus, it appeared that neither measure of damages was given inherent precedence over the other. However, given that the jury instructions in *Moreno* were not at issue on appeal and, consequently, the *Moreno* opinion did not discuss whether the jury should have been instructed on both measures, we decline to derive any meaning from this particular fact.

It is true that *Tucker v. Hagerty*, *supra*, 37 Cal.App. 789 and *Harris v. Dixon Cadillac Co.*, *supra*, 132 Cal.App.3d 485 both

held that the measure of damages for loss of use is the reasonable rental value of the property for the period in which the plaintiff was wrongly deprived of its use. (*Tucker*, at p. 793; *Harris*, at pp. 490–491.) However, in both cases, as pointedly noted in each opinion, the plaintiff had filed a replevin action, rather than a conversion claim, and were thus governed by Code of Civil Procedure section 667, rather than Civil Code section 3336.[17] (See *Tucker*, at p. 796; *Harris*, at p. 488.) This is a distinction with a difference. In a replevin case, the successful party is entitled to recover, as damages for the detention, the value of such use during the period that he was wrongfully deprived thereof. (*Harris*, at pp. 490–491.) "The reason for the rule in replevin is that interest or the value of the property does not furnish adequate compensation for the wrongful detention." (*Tucker*, at p. 792.) It is unclear why the plaintiffs in this case did not file a writ of replevin or include a replevin claim in the FAC. Nevertheless, the plaintiffs' failure to prove the Mercedes' rental value likely would have dashed such a claim given that "damages which cannot be ascertained with reasonable certainty,

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[17] According to section 667: "In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery cannot be had, and damages for the detention." Similarly, Code of Civil Procedure section 627 provides in relevant part that in an action for the recovery of specific personal property, if the property has not been delivered to the prevailing plaintiff, the jury "must find the value of the property, and, if so instructed, the value of specific portions thereof, and may at the same time assess the damages, if any are claimed in the complaint . . ., which the prevailing party has sustained by reason of the taking or detention of such property."

or which are contingent or speculative, cannot be allowed in an action of replevin." (*Id.* at p. 793.) Indeed, the *Tucker* court "assume[d] that there was sufficient evidence to support the judgment upon this issue of rental value as being the damages for the detention." (*Ibid.*) Given the dearth of evidence presented to the trial court in this case, we cannot make the same assumption.[18]

In addition to relying on inapposite cases, and disregarding the plaintiffs' failure to plead and prove special circumstances, the trial court did not determine whether it was reasonably foreseeable that special injury or damage would result from the conversion (see *Lueter, supra,* 94 Cal.App.4th at p. 1302), and thus did not make the requisite findings in order to apply

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[18] Even in replevin cases, appellate courts have reduced award amounts when the disparity between the value of the vehicle and the amount of damages allowed for its detention have been deemed excessive—especially when little to no evidence established the car's rental value. (See, e.g., *Booth v. People's Finance etc.* (1932) 124 Cal.App. 131, 141–142.) Although the *Booth* court said it would not reverse an award simply because a car's rental value was shown to be in excess of the actual value of the car, there was no testimony supporting the amount of the damages allowed and, the appellate court noted, "there is something wrong . . . when the rental value of the car is held to be so greatly in excess of its actual value." (*Id.* at p. 141.) As Division Two of this court noted back in 1920: "It must be apprarent at once that there is something wrong with a scale of damages that allows three times as much for the detention of an article from the possession of the owner for a period of two years as could have been recovered if the trespasser had completely smashed it up and destroyed it in the first instance." (*Mutch v. Long Beach Imp. Co.* (1920) 47 Cal.App. 267, 268–269.)

section 3336's second measure of damages. As noted by the defendants, no reasonable person in their position could reasonably foresee that they could be charged with an amount 30 to 100 times the value of the property at issue. Nor did the trial court examine whether the imposition of such an amount was reasonably foreseeable in this case. Given that neither the plaintiffs nor the trial court complied with the requirements necessary to invoke section 3336's second alternative, we reverse and remand to the trial court with instructions to award plaintiff $6,250—the market value of the Mercedes at the time of the conversion—plus interest from the time of the conversion, as mandated by section 3336's first alternative.[19]

II. The court erred in imposing joint liability

The trial court found that Idilio, Narciso, Idelsis, and Al's Body Shop were jointly and severally liable for conversion as well as the resulting damage award. Although it is undisputed that the Mercedes remained at Al's Body Shop throughout the case, there is no evidence that Idilio, Narciso or Idelsis personally possessed the vehicle at any time.[20]

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[19] Thus, we need not reach the defendants' argument that even assuming loss of use damages were an available measure of damages, the trial court erred when calculating such damages.

[20] Idilio was fired from Al's Body Shop in August 2013, seven months before the plaintiffs were denied possession of the vehicles. Thus, Idilio could not have exercised any possession over the vehicles when Robert Jr. first requested their return in March 2014. The trial court acknowledged as much when noting that Robert Jr. and Mary had sought to recover the vehicles from the shop and were denied such recovery on March 14, 2014, by Narciso, Idelsis and Al's Body Shop.

Furthermore, the FAC did not plead any facts to establish conspiracy, alter ego, or any other legal theory to pierce the corporate veil; there was no evidence introduced at trial to this effect; and the trial court's decision does not contain any findings necessary to impose joint and several liability on Idilio, Narciso or Idelsis. Thus, the trial court erred in holding the individual defendants liable for any injury committed by Al's Body Shop.

A claim "based upon the alter ego theory is not itself a claim for substantive relief." (*Hennessey's Tavern, Inc. v. American Air Filter Co.* (1988) 204 Cal.App.3d 1351, 1359.) It is a procedural device by which courts will disregard the corporate entity in order to hold the alter ego individual liable on the obligations of the corporation. (*Ibid.*) "In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone." (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.) Factors a trial court may consider when determining whether the doctrine should be invoked include the "commingling of funds and other assets of the two entities, . . . identical equitable ownership in the two entities, use of the same offices and employees," "disregard of corporate formalities," "identical directors and officers," and "use of one as a mere shell or conduit for the affairs of the other." (*Id.* at pp. 538–539.)

In sum, a corporation is ordinarily "regarded as a legal entity, separate and distinct from its stockholders, officers and

directors," and that "[b]efore a corporation's obligations can be recognized as those of a particular person, the requisite unity of interest and inequitable result must be shown." (*Leek v. Cooper* (2011) 194 Cal.App.4th 399, 411.) "These factors comprise the elements that must be present for liability as an alter ego." (*Ibid.*) The essence of the alter ego doctrine is not that the individual shareholder becomes the corporation, but that the individual shareholder is liable for the actions of the corporation. (*Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 300.) For all other purposes, the separate corporate existence remains. (*Id.* at p. 301.)

Here, the FAC does not contain an introductory allegation that the named defendants were acting in concert and each an agent of the other. Nor does the body of the FAC address the issue. Instead, the FAC is completely silent on the subject of agency, alter ego, corporate veil, or joint and several liability. With respect to Narciso, the plaintiffs neither pleaded nor proved that Al's Body Shop was his alter ego. For example, the FAC did not allege that Narciso commingled funds with Al's Body Shop, diverted corporate assets, failed to maintain corporate records or formalities, failed to conduct transactions at arm's length, manipulated records, or committed some other legal violation or failure that could give rise to an allegation of alter ego. Thus, the FAC neither specifically alleged alter ego liability, nor alleged facts showing a unity of interest and inequitable result from treatment of the corporation as the sole actor. Nor do the plaintiffs argue that any such evidence was introduced at trial. Therefore, Narciso's status as owner of Al's Body Shop cannot render him personally liable for conversion.

With respect to Idelsis, there is no evidence she personally committed any wrong or harmed the plaintiffs in any way. Rather, she was an employee who handled the bookkeeping for Al's Body Shop. According to the FAC, on March 13, 2014, when Mary called Al's Body Shop, Idelsis answered the phone and told Mary that her vehicles had not been repaired and that Idilio no longer worked at the shop. This was the extent of Idelsis' wrongful conduct as alleged in the FAC. Moreover, the plaintiffs presented no evidence at trial—and cite no such evidence on appeal—demonstrating that Idelsis participated in the alleged wrong committed by Al's Body Shop (or by Narciso on behalf of Al's Body Shop) or that she had any control or business authority to make decisions affecting the Mercedes. Thus, there is no basis to hold Idelsis personally liable for the alleged conversion committed by Al's Body Shop and the judgment against her must be reversed.

DISPOSITION

The judgment is reversed. Pursuant to Civil Code section 3336, the trial court is directed to award plaintiffs $6,250—the market value of the Mercedes at the time of the conversion—plus interest from the time of the conversion. Only Al's Body Shop may be held liable for this judgment. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J. CHANEY, J.