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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JAIPAL DHIMAN,

Plaintiff, Cross-defendant and
Appellant,

v.

DARSHAN DHIMAN,

Defendant, Cross-complainant
and Appellant.

B289711 c/w B291408

(Los Angeles County
Super. Ct. No. PC056907)

APPEALS from a judgment and a postjudgment order of the Superior Court of Los Angeles County, Ross M. Klein and Dudley W. Gray II, Judges. Affirmed.

Blank Rome, Gregory M. Bordo, Christopher J. Petersen and Craig N. Haring, for Plaintiff, Cross-defendant and Appellant.

Mousavi & Lee, Thomas A. Pistone and Amy A. Mousavi for Defendant, Cross-complainant and Appellant.

Defendant, cross-complainant and appellant Darshan Dhiman, M.D. (Darshan) appeals a judgment that was entered following the denial of his motion for mistrial and the denial of his request for the imposition of a constructive trust on certain real property.¹

Plaintiff, cross-defendant and appellant Jaipal Dhiman (Jaipal) appeals a postjudgment order denying his motion for prejudgment interest. (Civ. Code,² § 3287, subd. (a).)³

We conclude the trial court properly denied Darshan's motion for mistrial and his request for the imposition of a constructive trust, as well as Jaipal's motion for prejudgment interest. Therefore, the judgment and postjudgment order are affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

1. Overview

Darshan and Jaipal are brothers who jointly invested in real property over the years. This appeal relates to the following transactions:

The sale of the Lewis Avenue property and Darshan's conversion of the sale proceeds. Darshan and Jaipal jointly owned certain real property in Long Beach (the Lewis Avenue property). Following the sale of the property for \$1.375 million, Darshan

¹ We refer to the parties by their first names for purpose of clarity, not out of any disrespect. (*Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 990, fn. 1.)

² All statutory references are to the Civil Code, unless otherwise specified.

³ The two appeals have been consolidated for purposes of oral argument and decision.

retained Jaipal's one-half share of the \$512,708 net sale proceeds. Jaipal sued Darshan for conversion of his share of the proceeds.

The refinancing of the Garden Grove property followed by Jaipal's acquisition of the Gladbeck property. Darshan and Jaipal jointly owned certain real property in Garden Grove (the Garden Grove property). Jaipal fraudulently induced Darshan to sign documents that enabled Jaipal to refinance the Garden Grove property and to take out \$39,811 in cash. Jaipal used the refinancing proceeds to purchase certain real property in Northridge (the Gladbeck property) in his own name. Darshan sued Jaipal for damages and to impose a constructive trust on the Gladbeck property.

2. Pleadings.

In February 2016, Jaipal filed suit against Darshan. Jaipal's operative second amended complaint (SAC) pled ten causes of action, but he proceeded at trial on only two of those: conversion by Darshan of Jaipal's 50 percent share of the net proceeds from the sale of the Lewis Avenue property, and a constructive trust in other real property not relevant here.

Darshan, in turn, filed a cross-complaint against Jaipal. As relevant to this appeal, Darshan pled that Jaipal fraudulently induced him to sign a grant deed to their Garden Grove property, which transferred sole title to Jaipal. After Jaipal fraudulently obtained sole title, he refinanced the Garden Grove property and used the loan proceeds to purchase the Gladbeck property in his name alone. After completing the refinancing, Jaipal recorded another grant deed restoring title in the Garden Grove property to both Darshan and Jaipal. Darshan's cross-complaint sought damages that he sustained as a result of the fraud, punitive

damages, and the imposition of a constructive trust on the Gladbeck property.

3. *Trial and verdict.*

On January 29, 2018, the parties commenced a jury trial. The equitable issues were severed and were to be tried following the jury's determination of the legal issues.

On February 1, 2018, the jury returned a mixed verdict. The special verdict found in favor of Darshan on his fraud claim, and awarded him damages of \$19,905.80 (one-half of the Garden Grove refinancing proceeds)⁴ for Jaipal's false representation of fact, plus \$15,000 for Jaipal's concealment of facts. The jury also found that Jaipal acted with malice, oppression or fraud, so as to necessitate further proceedings on the issue of punitive damages.

The jury found in favor of Jaipal on his claim that Darshan had converted Jaipal's 50 percent interest in the net sale proceeds generated by the sale of the Lewis Avenue property, and awarded Jaipal \$256,354.

4. *Subsequent proceedings as to punitive damages and Darshan's request for a constructive trust.*

On February 1, 2018, with trial of equitable issues and the issue of punitive damages still pending, the matter was continued to February 28, 2018 due to the court's unavailability until that date.

⁴ The \$19,905.80 that the jury awarded to Darshan for false representation is equivalent to 50 percent of the \$39,811.59 that Jaipal cashed out by refinancing the Garden Grove property. Also, the \$39,811.59 in refinancing proceeds that Jaipal derived from the Garden Grove property approximated Jaipal's \$39,255 down payment on the Gladbeck property.

Unfortunately, the trial judge (Hon. Ross M. Klein) died in the interim. The parties appeared on February 28, 2018 before Judge Gray, to whom the matter had been reassigned.

Darshan made a motion for mistrial, arguing that he was entitled to have the equitable issues decided by the judge who heard the evidence, and that he could not be compelled to accept a decision on his request for constructive trust from a different judge.

In opposition, Jaipal argued the constructive trust claim was not viable because the special verdict did not include the predicate factual findings for the imposition of a constructive trust on the Gladbeck property. Specifically, there was no question to the effect “ ‘Did Jaipal Dhiman commit fraud *with . . . respect to the Garden Grove refinance proceeds?*’ That question wasn’t asked.” (Italics added.) Instead, the special verdict merely asked whether Jaipal “made a false representation of a fact to [Darshan]?”

The trial court denied Darshan’s motion for mistrial and also denied Darshan’s request for the imposition of a constructive trust on the Gladbeck property. The trial court agreed with Jaipal’s counsel that the jury did not make predicate factual findings that would enable the court to impose a constructive trust on the Gladbeck property.

Separately, after hearing additional testimony, the jury awarded Darshan \$128,177 in punitive damages.

5. *Jaipal’s request for prejudgment interest on his conversion damages.*

Jaipal subsequently filed a motion for prejudgment interest pursuant to section 3287, subdivision (a), on the \$256,354 that was awarded to him for Darshan’s conversion of Jaipal’s share of

the Lewis Avenue sale proceeds. Jaipal argued that an award of prejudgment interest in the amount of \$97,524 was mandatory because there was no dispute as to the amount that he was owed, i.e., one-half of the \$512,708 net sale proceeds from the Lewis Avenue property.

In opposition, Darshan argued that because the amount of conversion damages could not have been resolved except by verdict or judgment, prejudgment interest was not appropriate. Darshan cited Jaipal's allegation in the SAC that Jaipal had been damaged in an amount in excess of \$350,000 due to Darshan's conversion of Jaipal's portion of the Lewis Avenue net sales proceeds, but the jury determined that Jaipal's damages amounted to only \$256,354.

On April 19, 2018, after hearing the matter, the trial court entered an order denying Jaipal's motion for prejudgment interest.

Darshan filed a timely notice of appeal from the judgment, and Jaipal filed a timely notice of appeal from the postjudgment order denying his motion for prejudgment interest.

CONTENTIONS

Darshan contends that because Judge Klein died in the midst of trial, the motion for mistrial should have been granted, and the trial court further erred in summarily denying his request to impose a constructive trust on the Gladbeck property.

Jaipal contends he is entitled to prejudgment interest on the damages he was awarded on his conversion claim relating to the net sale proceeds of the Lewis Avenue property. Darshan filed a motion for appellate sanctions, contending that Jaipal's appeal is frivolous.

DISCUSSION

I.

The trial court properly denied Darshan's request for a constructive trust on the Gladbeck property because Darshan cannot recover both a money judgment and a decree imposing a constructive trust.

Darshan contends that due to the death of Judge Klein, he is entitled to a new trial on all issues because he is entitled to have his equitable claim for the imposition of a constructive trust decided by the same judge who heard the evidence at trial. Darshan's theory is based on the premise that he is entitled to recover *both* a money judgment *and* a decree imposing a constructive trust on the real property that Jaipal purchased with the Garden Grove property refinancing proceeds.

Jaipal, in turn, argues that by obtaining a verdict for money damages, Darshan was precluded from obtaining an order imposing a constructive trust on the Gladbeck property.

The issue of whether Darshan was entitled to the remedy of an order imposing a constructive trust, after having obtained a verdict for damages, is a question of law. As explained, we agree with Jaipal that Darshan cannot recover both a money judgment and a decree imposing a constructive trust. We thus uphold the trial court's ruling denying Darshan's request for a constructive trust, although not for the reason stated by the trial court. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19.)⁵

⁵ Because we conclude Darshan could not obtain both a constructive trust on the Gladbeck property and a money judgment, it is unnecessary to address the trial court's ruling that it could not impose a constructive trust because the jury

The remedy of a constructive trust “is not based on the plaintiff’s legal title but is available because a party has an equitable title to real property when legal title is in another. The remedy compels the transfer of property from the person wrongfully holding it to the rightful owner. *The constructive trust remedy is an alternative remedy to the recovery of a money judgment. A plaintiff cannot recover both a judgment for money and a decree imposing a constructive trust.*” (Miller & Starr, California Real Estate (4th ed.) § 40:115, fns. omitted, italics added; see, e.g. *Fowler v. Fowler* (1964) 227 Cal.App.2d 741, 745 (*Fowler*) [“plaintiff, however, cannot have a judgment declaring the defendant to be a constructive trustee *and* a personal judgment for money invested in the subject property”]; see also *Title Ins. and Trust Co. v. Ingersoll* (1910) 158 Cal. 474, 481 [“The beneficiary of a trust . . . cannot have a judgment declaring the defendant a trustee of specific property bought with trust funds, and decreeing such property to be the property of the beneficiary, and also a personal judgment for the money invested by the defendant in that property”]; *Alder v. Drudis* (1947) 30 Cal.2d 372, 383 [“[d]amages and restitution are alternative remedies and an election to pursue one is a bar to invoking the other”]; cf. *DuBarry International, Inc. v. Southwest Forest Industries, Inc.* (1991) 231 Cal.App.3d 552, 564 [“ ‘ “[i]f a given state of facts entitles one to recover damages upon the theory of tort, and the same state of facts entitles him to recovery upon the theory of contract, it would seem plain that recovery could not be twice had simply because the facts would support recovery upon either theory” ’ ”].)

failed to make predicate factual findings that would support the grant of equitable relief.

Here, Darshan obtained a money judgment for Jaipal's fraudulent conduct in refinancing the Garden Grove property—as indicated, the jury awarded Darshan \$19,905.80 which represented one-half of the refinancing proceeds that Jaipal extracted from the Garden Grove property. Additionally, Darshan was awarded \$128,177.21 in punitive damages. Having obtained the remedy of a money judgment, Darshan was not entitled to the additional remedy of a constructive trust on the Gladbeck property.

Darshan attempts to avoid the prohibition against double recovery by distinguishing *Fowler*. There, the plaintiff sued to establish a constructive trust in a home owned by the defendant to the extent of monies advanced by her to remove an encumbrance thereon and to make improvements to the home; she also sought damages for fraud in the amount of the funds that she had expended on the defendant's home. (*Fowler, supra*, 227 Cal.App.2d at p. 743.) *Fowler* held that the plaintiff could not have both a judgment declaring the defendant to be a constructive trustee and a judgment for money invested in the subject property. (*Id.* at p. 745.)

Darshan contends that *Fowler* is inapposite because it involved just a single property, for which the plaintiff sought both damages and a constructive trust, while here, Darshan was successful on his claim that Jaipal defrauded him by taking money out of the Garden Grove property to acquire *another* property, the Gladbeck property. The distinction identified by Darshan is an irrelevancy—regardless of the number of properties at issue, Darshan can recover for Jaipal's fraud only once. Thus, he can recover money damages for Jaipal's fraudulent conduct in refinancing the Garden Grove property to

purchase the Gladbeck property, *or* a constructive trust for an interest in the Gladbeck property, but not both.

Accordingly, the trial court (Judge Gray) properly denied Darshan’s request for a constructive trust on the Gladbeck property.

II.

The trial court properly denied Jaipal’s request for prejudgment interest because his damages were uncertain until fixed by the verdict.

Section 3287 states in relevant part at subdivision (a): “A person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day[.]” Under this provision, if damages are certain, interest must be awarded as a matter of right. (*State of California v. Continental Ins. Co.* (2017) 15 Cal.App.5th 1017, 1038.) On appeal, we independently determine whether damages were ascertainable for purposes of the statute. (*Ibid.*) Thus, our standard of review is *de novo*.

Damages are “ ‘ “deemed certain or capable of being made certain within the provisions of subdivision (a) of section 3287 *where there is essentially no dispute between the parties concerning the basis of computation of damages if any are recoverable* but where their dispute centers on the issue of liability giving rise to damage.” [Citations].’ [Citation.] Thus, “ ‘ [t]he test for recovery of prejudgment interest under [Civil Code] section 3287, subdivision (a) is whether *defendant* actually know[s] the amount owed or from reasonably available information could the defendant have computed that amount. [Citation.]’ [Citations.] ‘The statute . . . does not authorize

prejudgment interest where the amount of damage, as opposed to the determination of liability, “depends upon a judicial determination based upon conflicting evidence and it is not ascertainable from truthful data supplied by the claimant to his debtor.” [Citations.]’ [Citation.] Thus, *where the amount of damages cannot be resolved except by verdict or judgment, prejudgment interest is not appropriate.*’ ’ ’ (Duale v. Mercedes-Benz USA, LLC (2007) 148 Cal.App.4th 718, 729, first italics added.)

Applying these principles, the trial court properly determined that the amount of damages Darshan owed Jaipal for converting Jaipal’s share of the Lewis Avenue sale proceeds was not calculable prior to trial. In his pleadings, Jaipal alleged he was entitled to at least \$350,000 of the \$512,708 net proceeds from the sale of the Lewis Avenue property, because, among other things, he provided \$190,000 of the \$290,000 down payment toward the purchase of that property. Jaipal later changed his position and testified at trial that he contributed \$42,000 toward the down payment for the Lewis Avenue property. Darshan, in turn, testified that he provided the entire down payment for the Lewis Avenue property. Thus, there was conflicting evidence as to the parties’ respective shares of the Lewis Avenue property proceeds. The jury, as the trier of fact, resolved the parties’ conflicting claims and determined that Jaipal’s damages from the conversion of those proceeds amounted to \$256,354. Where, as here, “ ‘there is a large discrepancy between the amount of damages demanded in the complaint and the size of the eventual award, that fact militates against a finding of the certainty mandated by [Civil Code section 3287].’ ”

(*Wisper Corp. v. California Commerce Bank* (1996) 49 Cal.App.4th 948, 961.)

In sum, because the amount of Jaipal's conversion damages could not be ascertained until the jury returned its verdict, the trial court properly denied Jaipal's motion for prejudgment interest on his Lewis Avenue property sale proceeds.

DISPOSITION

Both the judgment, and the postjudgment order denying prejudgment interest, are affirmed. Darshan's motion for appellate sanctions is denied. The parties shall bear their respective costs on appeal.

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EDMON, P. J.

We concur:

LAVIN, J.

DHANIDINA, J.