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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

MAHSHID SOLEIMANI, Plaintiff and Appellant, v. FERESHTEH NOSRATIAN, Defendant and Respondent.	B265911 (Los Angeles County Super. Ct. No. SC122392)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lawrence Cho, Judge. Reversed with directions.

Law Offices of Cyrus S. Naim and Cyrus S. Naim for Plaintiff and Appellant.

Yadegar, Minoofar & Soleymani and Pedram Minoofar for Defendant and Respondent.

Plaintiff Mahshid Soleimani and defendant Fereshteh Nosratian[1] entered into an oral agreement to exchange interests in real property, and subsequently executed grant deeds that purported to carry out the exchange. However, the transfer from Fereshteh did not deliver clear title to Mahshid, and thus Mahshid was not able to procure title insurance or sell the property. Mahshid sued Fereshteh for breach of contract; at the conclusion of Mahshid's presentation of evidence, the trial court granted a directed verdict for Fereshteh, concluding that Mahshid had failed to make a prima facie showing of the amount of her damages.

We reverse. Procedurally, a directed verdict is only available in the context of a jury trial, and thus it was not an appropriate vehicle for resolving this matter, which was tried to the court. On the merits, we conclude that Mahshid made a prima facie showing of the amount of her damages, and also demonstrated an entitlement to the alternative remedy of specific performance. Accordingly, Mahshid is entitled to a retrial.

I.
Factual Background

A. The Parties and Properties

Mahshid and Fereshteh are sisters-in-law. Fereshteh was married to Mahshid's brother, James Nosratian, who died in 2011. Mahshid was married to Tourage Soleimani, whom she later divorced.

During their marriage, the Soleimanis invested with the Nosratians in two real estate ventures, both of which are at issue in this litigation. They are as follows:

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[1] Because many of the individuals involved in this proceeding share last names, we refer to them by their first names.

Keystone property: The Soleimanis and Nosratians each owned a 50 percent interest in a five-unit apartment building located at 3741 Keystone Avenue, Los Angeles (the Keystone property).

Armacost partnership: Tourage and James were the sole owners and general partners of a general partnership referred to as Armacost West Condominiums (the Armacost partnership), the sole asset of which was undeveloped land located at 1730 Armacost Avenue, Los Angeles (the Armacost property). Tourage had a 75 percent interest, and James had a 25 percent interest, in the partnership.

As part of the Soleimani divorce proceedings, Tourage transferred to Mahshid his interest in the Keystone property and the Armacost partnership.

B. Mahshid and Fereshteh Agree to Exchange Their Interests in the Armacost and Keystone Properties

After James's death in late 2011, Mahshid approached Fereshteh about selling the Armacost property. Fereshteh was reluctant to sell, but she offered to exchange a 25 percent interest in the Armacost property for a 25 percent interest in the Keystone property. Both Fereshteh and Mahshid appear to have believed that the exchange would give Mahshid full ownership of the Armacost property, and thus would allow her to sell it without Fereshteh's involvement.

Fereshteh's daughter, Nicole Nosratian, an attorney, negotiated the exchange for her mother. In a January 31, 2012 email to Nicole, Mahshid stated that she believed the two properties had approximately the same value, and therefore the exchange was fair: "I would be happy to give up 25% of my ownership in Keystone in exchange [for] your mom's 25% interest in [the] Armacost land. Based on the value of Keystone (no, God as my witness I did not get a comp, I am using the number which

your mom told me was on the tax bill), and the approximate value of the land, I would be comfortable with this." Nicole responded: "We can do a transfer of her 25% interest in Armacost for your 25% interest in Keystone. This will allow you to move forward. Let me know how you want to proceed with the paperwork and I will help you finish it asap."

Initially, Mahshid and Nicole discussed retaining an attorney to prepare the transfer deeds. However, because the attorney they contacted was not immediately available, Mahshid proposed "do[ing] this on our own" through a document preparation company. Nicole agreed.

Nicole testified that the deeds initially prepared by Mahshid did not attribute a value to the Keystone and Armacost properties. Nicole testified, "At that time both of these properties had about the same value. So the 25 percent was worth $150,000. . . . So I asked [the document preparer] to put $150,000 [on the deeds]."

On February 14, 2012, Nicole emailed the document preparer, told him the value of the interests to be exchanged "is $150,000," and asked to have the transfer and city taxes calculated on the basis of that value. About a week later, Mahshid emailed Nicole that "[a]s you wished the value has been determined as $150,000."

Nicole testified that she asked to have the deeds reflect the value of each property as $150,000 "because that was what the property was worth." Fereshteh similarly testified that in connection with the transfer, "$150,000 was agreed upon between [Fereshteh, Nicole, and Mahshid] to be put as the value of the 25 percent of each property."

The purported transfer of the properties took place on February 23, 2012, through the execution of two grant deeds. The first deed purported to transfer from Armacost West

Condominiums, a general partnership, to Mahshid "[t]he Southeast 41 feet of the Southwest 147 feet of Lot 3, Book 15, of the Pacific Farms Tract, in the City of Los Angeles . . . as per Map recorded in Book 1, Pages 43 and 44 of Maps, in the Office of the County Recorder of said County. (100% of Fereshteh Nosratian's undivided 25% interest in the General Partnership.) [¶] Commonly known as 1730 Armacost Avenue, Los Angeles." The second deed transferred half of Mahshid's 50 percent interest in the Keystone property (i.e., a 25 percent interest in the property) to Fereshteh. Each deed stated that a documentary transfer tax of $165 and a city tax of $675 had been computed on the property's value.

C. Mahshid Purchases a Condominium and Attempts to Sell the Armacost Property

Shortly before the February 23, 2012 transfer, Mahshid purchased a condominium located at 10122 Empyrean Way. She testified that she intended to sell the Armacost property within 180 days of her purchase of the condominium so that the purchase and sale would qualify for tax purposes as a "1031 exchange."[2]

By May 2012, Mahshid apparently had found a buyer for the Armacost property. She attempted to procure title insurance in connection with the sale, but she was told the property was uninsurable because she did not have clear title. She

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[2] Pursuant to section 1031 of the Internal Revenue Code, "[n]o [taxable] gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment." (26 U.S.C. §1031(a)(1).) To come within this section, both the purchase and sale of the like-kind properties must occur within 180 days. (*Id.*, § 1031(a)(3).)

subsequently emailed Nicole that "[t]he original partnership agreement was under your dad's name. Now only your mom has assigned her share to me. I am being told that I need to make it clear that she had the legal right to sell me [James's] share as well."

On May 4, 2012, Nicole responded in an email that she had not known that her parents' joint 25% share in the Armacost property had not transferred automatically to her mother upon her father's death, and said, "I, just like you, thought that my father's interest automatically transfers to the surviving spouse after death. . . . Let's find a solution." However, the matter was not resolved by August 2012, and thus Mahshid's attempted sale of the Armacost property could not be completed.

D. Fereshteh Acquires Her Deceased Husband's Interest in the Armacost Partnership

In August 2012, Fereshteh hired a lawyer to help her put into her own name the community property she and her husband had jointly owned during his lifetime. On December 11, 2012, the superior court issued a spousal property order finding that James Nosratian died intestate on July 11, 2011, and ordering that his "[u]ndivided twenty-five percent (25%) interest in Armacost West Condominiums, a General Partnership, whose primary asset is a 100% interest in real property located at 1730 Armacost Avenue, Los Angeles" is "property passing to" Fereshteh Nosratian, his surviving spouse. However, after the probate court issued its December 2012 order, Fereshteh did not sign a new deed transferring her interest in the Armacost partnership or the Armacost property to Mahshid.

Fereshteh testified at trial that when she and Mahshid agreed to exchange interests in the properties, she believed that the exchange would result in Mahshid's 100 percent ownership of Armacost. When she learned that she had not transferred clear

title, she told a family member, " 'Whatever I promise, I'm going to do it. What kind of signature she need – Mahshid needs from me, I'm going to do it. [¶] I told [Mahshid's] ex-husband, 'Bring me any papers she need[s]. I'm going to sign it.' [¶] . . . [¶] . . . And I tell every one of [Mahshid's] family, 'When I promise, I'm going to sign it. Please tell her, bring the – what I have to sign. Please tell her to bring the paper. I'm going to sign it for her.' "

II.
The Present Litigation

A. Complaint

Mahshid filed the present action against Fereshteh in April 2014. As relevant to the present appeal, the first cause of action, for breach of contract, alleged that Mahshid and Fereshteh entered into an agreement to exchange their interests in the Armacost and Keystone properties, but that Fereshteh failed to validly transfer her interest in the Armacost property to Mahshid. Mahshid sought a determination that the parties' agreement had been rescinded, as well as an order of restitution, an accounting, consequential damages, and "such other and further relief as the Court deems proper."[3]

B. Pretrial Briefing and Settlement Proceedings

1. Fereshteh's Trial Brief

Fereshteh stated in her trial brief that she was "agreeable to unwinding the underlying transactions and restoring

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[3] A second cause of action, for partition, alleged that the relationship between Mahshid and Fereshteh "has deteriorated to the point that they can no longer work together and/or cooperate in the management of the Keystone and/or Armacost properties." Mahshid therefore sought an order that "the Property" be sold and the net proceeds divided between Mahshid and Fereshteh "in accordance with their respective ownership interests," and "for such other and further relief as the Court deems proper."

ownership of Armacost and Keystone as it was in January 2012—[Mahshid] and [Fereshteh] each owning 50% of Keystone and 75% for [Mahshid] and 25% for [Fereshteh] of Armacost. While [Fereshteh] denies [Mahshid's] allegations that she has not been paid her rightful share of Keystone's profits since January 2012, [Fereshteh] is agreeable to retroactively paying [Mahshid] an additional 25% in rental profits derived from the Keystone property, so Plaintiff will have received 50% of the proceeds as if she were a 50% owner since January 2012. . . . [¶] As an alternative, [Fereshteh] would be agreeable to maintaining the January 31, 2012 agreement, and will execute any documents provided by plaintiff that would clear up the Armacost title and confirm [Mahshid's] 100% ownership to [Mahshid's] satisfaction. Ownership of Keystone would remain 75%/25%."

2. The May 2015 Settlement Agreement

In May 2015, the parties reached a settlement agreement pursuant to which the parties would sell the Armacost and Keystone properties, Mahshid would be granted complete control of the Armacost property, and Fereshteh would pay Mahshid $50,000. The settlement agreement was signed on May 13, 2015. Concurrently with the execution of the settlement agreement, Fereshteh executed an assignment whereby she transferred to Mahshid "all of her right, title, and interest" to the Armacost partnership.

The settlement apparently fell through, and on June 3, 2015, the court held a hearing regarding the parties' failure to file a dismissal of the action. Following the hearing, the court dissolved the settlement and ordered Mahshid to return the settlement funds she had received.

On June 18, 2015, Mahshid elected to forgo rescission and pursue breach of contract remedies.[4]

III.
Trial and Motion For Directed Verdict

Mahshid represented herself at a bench trial in June 2015. At the conclusion of Mahshid's case, Fereshteh moved for a directed verdict on the ground that Mahshid had not presented any evidence of damages. The court responded that "there's enough evidence here to deny the motion for directed verdict on the basis that there was no breach," but that it was troubled by the issue of damages: "[L]et me ask you [Mahshid] this: It is the burden of the plaintiff to prove the amount of damages to compensate you, and so let me put it this way: How much money have you proven to me that she owes you as a result of this breach? . . .

Mahshid responded that "[t]he value . . . was determined to have been $150,000. We agreed upon that. We paid taxes upon that. It's in Nicole's emails. It's in my emails, and that was the value of the 25 percent purchase. . . . [¶] . . . [¶] And I want to bring it back, Your Honor, to one more point. . . . [T]he burden of delivering title all along has been on the defendant's shoulders. . . . I, to this day, Your Honor, do not have a [quiet] title from [Fereshteh]. I still, as I stand before you, Your Honor, unless God willing you order her to give me the deeds, she has not [quieted] title to the property."

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[4] In ruling that plaintiff could seek breach of contract remedies, the court said: "[T]he complaint is ambiguous at best. It does say breach of contract and in some paragraphs it asks for breach of contract damages. But then again, it asks specifically for rescission and rescission damages. It's a hybrid, if you will. I don't think it's as clear as the defendants would like, that it's rescission only."

The court stated that it did not recall any testimony "that . . . the portion of Armacost delivered was, actually, worth $150,000. I heard testimony from Nicole Nosratian that she estimated that because she didn't want to say zero, and it was just her — I don't know how she came up with it, but her best guesstimate [was that it] was worth $150,000[,] . . . but I don't remember any testimony from anyone that would be qualified to tell the court how much it was really worth"

Fereshteh's counsel responded that Nicole had not been qualified as an expert and was not qualified to give the value of the property especially in 2012. Further, "[Mahshid] has presented no evidence that she accepts that value or she doesn't accept that value. So the court has got no evidence in front of it in terms of what that property was worth."

The court then made the following findings: "I believe plaintiff has proven, at least for purposes of directed verdict at this stage of the proceedings or without having heard the defense yet because this is not a verdict . . . I think she's proven the elements that there was a contract and . . . that there was a breach of contract in a failure to provide . . . the title, and I believe that she has shown that she has suffered some consequence, but she has not proven yet the specificity of that consequence; that is, I have no dollar figure. . . .

"On the other hand, what I'm struggling with is this theory of nominal damages. . . . [W]here does this case fall? And in a nominal damages sort of case, that's where I feel this case falls. Is this a case where there was a wrong done? Was there a breach of the agreement? Was something not delivered that the parties had agreed to be delivered? I think so. But have the damages been proven? No, they haven't been proven. At least a compensable amount is required by law to meet the . . . elements of a breach of contract. So, to me, this falls within the nominal

damages category. . . . [But] I can't grant nominal damages at this stage because it's [Fereshteh's] motion for directed defense verdict. . . ."

"For breach of contract, there are multiple elements, that there was a contract, enforceable contract, that there was a breach, that there were damages, and that those damages were caused by the breach. . . . The court finds that . . . there is sufficient evidence to deny the defendant's motion with respect to whether or not there was a contract or whether or not there was a breach of contract. The issue really that the court has been struggling with and questioning the parties on is this issue of damages. . . .

"I think the evidence is sufficient to show that the contract was, albeit, an oral contract, was made in February 2012 for the simultaneous exchange of the 25 percent ownerships of the two properties. . . . And the plaintiff has testified that she lost certain things as a result of that . . . that arose because she could not sell Armacost. . . . [¶] And the court finds that that is sufficient to prove that there was some damage as a . . . result. However, it is incumbent on the plaintiff, under Civil Code section 3300 . . . and under 3301, that those damages must be certain. . . . The difficulty here for the plaintiff is that, although conceptually, the court can see there were some damages, the fact is the court is unable to calculate with certainty what that amount is. . . . [¶] . . . [¶]

"For those reasons, the court finds that the plaintiff has simply failed to prove in her case in chief these essential elements of damages and to the extent that they are to be proven in a certain fashion pursuant to Civil Code section 3301."

Mahshid then asked the court to order Fereshteh to provide her with a deed to the Armacost property:

"[Mahshid]: . . . Respectfully, Your Honor, you agreed that I have proven breach of contract. You have agreed that the elements show that it's – it's undeniable that it's been three years. And by the way, Your Honor, you never ordered them to provide the deeds to Armacost to my knowledge. Is that something that the court could address, Your Honor?

"The Court: I don't believe I have the power to do so. And . . . here is why: . . . The action brought is a breach of contract action, and you failed to prove your case. . . . [¶] . . . [¶]

"[Mahshid]: Your Honor, I'm still kind of confused because at first you agreed that there was a breach of contract, and you are telling me that, although there was a breach of contract, I am not entitled to any even minimal [damages] . . . . So on one hand, you are agreeing there was a breach of contract, and [on] the other hand . . . you are not even ordering them to provide the deeds . . . . Your Honor, what other avenue, besides filing [a] lawsuit, could I have had?

"The Court: I don't understand your question. [¶] . . . [¶] . . . You brought a suit, and you lost. What else can I tell you? I mean, you had your chance.

"[Mahshid]: Your Honor, you even said it on the record I lost on damages, but there is a breach of contract, and the breach of contract is that she has not delivered, Your Honor, the deeds.

"The Court: I understand that, but unfortunately, under the law, you got to prove damages, and if you don't prove damages, you can't win the suit for breach of contract. . . . Again, let me be clear, the court does not find that there was a contract and a breach of contract. This [is in the] context procedurally of a motion for directed verdict, meaning that the defendant is saying, even taking into consideration all the allegations of the plaintiff, the plaintiff has not proven an essential element of the offense. We haven't even gotten to the defense case yet. So the court is

not rendering a verdict. The court is also not finding that there was, actually, a contract and a breach. What the court did find was that there was sufficient evidence presented in the plaintiff's case in chief to support that there was a contract, to support that there was a breach, and to support that, perhaps, there were some damages, but the court also found that what was fatal to your case was that you were unable to prove with specificity the certainty of the damages that you suffered, which means you lose . . . with respect to that cause of action. . . . [¶]

"[Mahshid] . . . [T]he biggest dilemma here is that you are telling me that you — the court . . . is aware that the deed that is necessary for me to take ownership to my property has not been delivered . . . .

"The Court: I understand that. And you may certainly consult an attorney, which I suggested you do all along to explain to you the procedural niceties of what has happened and what your remedies may be if they fail to provide to you the — if they still fail to provide you the court order that clears title for Armacost. I cannot advise you on that, but neither can the court order them to do so because the only jurisdiction the court would have to . . . order them to provide that would be had you won your suit, and you didn't."

IV.

Post-trial Matters

A. Mahshid's Request for Statement of Decision

Mahshid timely filed a request for a statement of decision on July 2, 2015. On July 15, 2015, the trial court denied the request "because the Judgment was rendered via a motion for directed verdict and not this Court's determination of disputed facts or law."

B. Post-trial Hearing

The court held a further hearing on April 28, 2016, at which time Mahshid again asked the court to order Fereshteh to deed the Armacost property to her.

The court denied Mahshid's request. It said that while it was not unsympathetic to Mahshid's plight, "what you sue for is very important. And had you sued for specific performance or sued for a clear title action, you might have won and gotten that. And that would have given the Court the power to order [Fereshteh] to provide you clear title or the Court would simply give you an order clearing title saying that 100 percent of Armacost belongs to [Mahshid], and you could record that. . . . [¶] But you didn't do that. You sued for breach of contract. You sued for monetary damages."

Mahshid urged that her right to clear title had been established prior to trial: "You accept[ed] it. You accept[ed] it prior to trial, Your Honor. I accept[ed] it. They accept[ed] it. We went to trial as [Mahshid] 100 percent owner of Armacost. [¶] . . . [¶] Then why can't you order them or why can't the Court provide me with an order that shows that, yes, [Mahshid] entered the trial, exited the trial, as 100 percent owner, as accepted, confirmed by the Court, by them?"

The court responded: "Because the Court can only issue orders to enforce a judgment. You did not win the judgment. [¶] Had you – for example, had you sued for declaratory relief, for example, to declare that you are 100 percent owner or had you sued for clear title and sought those things, you could have gotten that. I mean, I don't know, because obviously they would have had a defense, but had you won that, then the Court would have the authority to provide you the remedy you seek. [¶] But what you are seeking is really an enforcement remedy to back up a judgment. You did not win a judgment. [¶] Now, granted they

have not contested that you are entitled to 100 percent ownership of Armacost, [but] the Court did not find, because it didn't need to find, one way or another."

C. Judgment and Appeal

The court entered a written order granting defendant's motion for directed verdict on July 28, 2015, and entered judgment on September 1, 2015. Mahshid timely appealed from the judgment.

CONTENTIONS

Mahshid contends the trial court erred in granting a directed verdict on the breach of contract claim because (1) she made a prima facie showing that she suffered damages of $150,000 as a result of the breach of contract, and (2) in the alternative, the trial court should have ordered specific performance by requiring Fereshteh to convey to Mahshid a 25 percent interest in the Armacost property.

Fereshteh contends that the appeal is moot because Mahshid has already received everything she seeks in this appeal. Alternatively, Fereshteh urges: (1) Mahshid's claims to a damages judgment of $150,000 or, in the alternative, to specific performance were not made at trial and therefore, are waived; (2) Mahshid failed to present a prima facie case of breach of contract; (3) Mahshid failed to prove damages in any discrete sum.

DISCUSSION

I.

The Appeal Is Not Moot

Fereshteh contends preliminarily that this appeal should be dismissed as moot because even if she had no interest in the Armacost property when she executed a deed to Mahshid in February 2012, "[Fereshteh's] interest in the Armacost Property automatically passed to [Mahshid]" when the probate court

issued its December 2012 order vesting sole title in Fereshteh. Fereshteh thus contends that this court cannot provide Mahshid any meaningful relief.

We are not persuaded that this appeal is moot. As Fereshteh notes, Civil Code section 1106 provides: "Where a person purports by proper instrument to grant real property in fee simple, and subsequently acquires any title, or claim of title thereto, the same passes by operation of law to the grantee, or his successors." The complication in the present case is that while Fereshteh purported in February 2012 to deed to Mahshid her share in the Armacost *property*, what passed to Fereshteh pursuant to the probate court's December 2012 order was her deceased husband's interest in the Armacost *partnership*. Thus, the record does not support the conclusion that Mahshid holds title to the whole of the Armacost property by operation of law, and the appeal is not moot.

II.
Standard of Review

Mahshid urges that because the trial court granted a directed verdict, this court's review is de novo. Fereshteh disagrees: She contends that while the trial court stated that it was granting a directed verdict pursuant to Code of Civil Procedure[5] section 630, the court *in fact* granted a motion for judgment pursuant to section 631.8. Fereshteh thus urges that our review is limited to determining whether there was substantial evidence to support the judgment. For the reasons that follow, our review is de novo.

At the conclusion of Mahshid's presentation of evidence, Fereshteh moved for, and the trial court purported to grant, a

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[5] All subsequent undesignated statutory references are to the Code of Civil Procedure.

directed verdict. A motion for a directed verdict "is in the nature of a demurrer to the evidence." (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 629–630 (*Howard*).) Thus, in granting or denying a directed verdict, a trial court may not weigh the evidence or judge the credibility of witnesses. Instead, if the party resisting a motion for directed verdict produces sufficient evidence to support a jury verdict in his or her favor, the motion must be denied. (*Howard*, *supra*, 72 Cal.App.4th at pp. 629–630.) Because the trial court does not act as a factfinder in granting a directed verdict, the standard of review on appeal is de novo. (*Davis v. Farmers Ins. Exchange* (2016) 245 Cal.App.4th 1302, 1331, fn. 19.)

The problem with the trial court's grant of judgment is that a directed verdict is only available *in a jury trial*. It thus was not an appropriate vehicle for resolving this matter, which was tried *to the court*. (§ 630, subd. (a) ["after all parties have completed the presentation of all of their evidence *in a trial by jury*, any party may, without waiving his or her right to trial by jury in the event the motion is not granted, move for an order directing entry of a verdict in its favor"], italics added.)

Recognizing the error, Fereshteh contends that although the trial court purported to grant a motion for a directed verdict pursuant to section 630, it *in effect* granted a motion for judgment pursuant to section 631.8.[6] Not so. Section 631.8 permits the

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[6] Section 631.8, subdivision (a) provides: "After a party has completed his presentation of evidence in a trial by the court, the other party, without waiving his right to offer evidence in support of his defense or in rebuttal in the event the motion is not granted, may move for a judgment. The court as trier of the facts shall weigh the evidence and may render a judgment in favor of the moving party, in which case the court shall make a statement of decision as provided in Sections 632 and 634, or may decline to render any judgment until the close of all the evidence."

court to "weigh the evidence" (§ 631.8, subd. (a)), "exercis[ing] the prerogatives of a fact trier by refusing to believe witnesses and by drawing conclusions at odds with expert opinion" (*Ford v. Miller Meat Co.*, *supra*, 28 Cal.App.4th at p. 1200). If the section 631.8 motion is granted, the court's findings thus "are entitled to the same respect on appeal as any other findings and are not reversible if supported by substantial evidence." (*Ford v. Miller Meat Co.*, *supra*, at p. 1200.) In the present case, however, the trial court expressly stated in granting Fereshteh's motion that it was *not* weighing evidence or making factual findings. Indeed, in response to Mahshid's inquiry, the court said, "This [is in the] context procedurally of a motion for directed verdict . . . . We haven't even gotten to the defense case yet. So the court is not rendering a verdict." Subsequently, when the court denied Mahshid's request for a statement of decision, it explained that it was doing so "because the Judgment was rendered via a motion for directed verdict *and not this Court's determination of disputed facts or law*." (Italics added.)

Because the record thus clearly reflects that the trial court granted judgment for Fereshteh as a matter of law, we shall review the evidence de novo. (E.g., *Certain Underwriters at Lloyds, London v. Arch Specialty Ins. Co.* (2016) 246 Cal.App.4th 418, 429 [because the trial court expressly stated it decided the matter as a question of law, appellate court's review is de novo]; *Vardanyan v. AMCO Ins. Co.* (2015) 243 Cal.App.4th 779, 785 [directed verdict reviewed de novo].)

III.
The Trial Court Erred in Granting Judgment as a Matter of Law

A. Mahshid Has Not Waived Her Appellate Arguments

Fereshteh contends that Mahshid's appellate contentions—that the trial court should have entered judgment in the amount

of $150,000 or, alternatively, should have ordered specific performance of Fereshteh's agreement to transfer her interest in Armacost to Mahshid—are "new arguments" that Mahshid "failed to raise . . . at trial." She thus urges that the contentions are waived.

We do not agree that Mahshid's claim to money damages or to specific performance are newly raised on appeal. To the contrary, in response to Fereshteh's motion for a directed verdict, Mahshid repeatedly urged that she had established the value of the exchange was $150,000 and, further, asked the court to order Fereshteh to deed her interest in Armacost to Mahshid. These issues were raised below, and therefore the contentions are not waived.

B. Mahshid Made a Prima Facie Showing of Breach

" 'The standard elements of a claim for breach of contract are: "(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) damage to plaintiff therefrom. [Citation.]" [Citation.]' [Citation.]" (*Darbun Enterprises, Inc. v. San Fernando Community Hospital* (2015) 239 Cal.App.4th 399, 409.) "The elements of a breach of oral contract claim are the same as those for a breach of written contract: a contract; its performance or excuse for nonperformance; breach; and damages." (*Stockton Mortgage, Inc. v. Tope* (2014) 233 Cal.App.4th 437, 453.)[7]

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[7] We note that while an oral agreement to transfer real property generally is unenforceable because it fails to comply with the statute of frauds, " '[f]ull performance takes a contract out of the statute of frauds . . . where performance consisted of conveying property, rendering personal services, or doing something other than payment of money.' [Citation.]" (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1176.) Here, there is no dispute that Mahshid fully performed her obligation to transfer a 25 percent interest in Keystone to

Fereshteh contends, contrary to the trial court, that Mahshid did not make a prima facie showing of breach of contract. Fereshteh urges that while she promised to execute a grant deed in Mahshid's favor, she never warranted she had "good title" to the property subject to the deed. Thus, because Fereshteh executed the deed to Armacost in February 2012, Mahshid "has received everything to which she is legally entitled."

Fereshteh's contention is without merit. Mahshid produced evidence at trial that Fereshteh agreed to "a transfer of [Fereshteh's] 25% interest in Armacost for [Mahshid's] 25% interest in Keystone." Consistent with that agreement, the parties exchanged deeds that purported to effectuate the transfer; they subsequently learned, however, that Mahshid had not received clear title to a 25 percent interest in Armacost. Mahshid thus made a prima facie showing that Fereshteh breached the agreement.

C. Mahshid Made a Prima Facie Showing of Damages

The trial court found that Mahshid did not introduce sufficient evidence of the amount of her damages to support an award of damages in her favor. As we now discuss, this was error.

1. Mahshid's Evidence of Breach of Contract Damages

Generally, a plaintiff who suffers harm as a result of a breach of contract is entitled to the benefit of the contractual bargain and to be put " 'in as good a position as he or she would have occupied' if the defendant had not breached the contract.' " (*Lewis Jorge Construction Management, Inc. v. Pomona Unified*

Fereshteh. Therefore, even if the agreement between the parties was oral, the statute of frauds would not bar its enforcement.

School Dist. (2004) 34 Cal.4th 960, 967.) " 'Where the *fact* of damages is certain, the amount of damages need not be calculated with absolute certainty. [Citations.] The law requires only that some reasonable basis of computation of damages be used, and the damages may be computed even if the result reached is an approximation. [Citation.]" (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 774–775; *Meister v. Mensinger* (2014) 230 Cal.App.4th 381, 397.)

Evidence Code section 813, subdivision (a)(2), provides that the value of property may be established by the opinion of "[t]he owner or the spouse of the owner of the property." "It is well settled that the owner of property, whether generally familiar with value or not, is competent to testify as to the value of his property (*Harold v. Pugh* [(1959)] 174 Cal.App.2d 603, 609; *Kahn v. Lischner* [(1954)] 128 Cal.App.2d 480, 487; *Hagen v. Sherman* [(1956)] 147 Cal.App.2d 28). This rule applies to personal as well as real property (*Locatelli v. Haskell* [(1957)] 152 Cal.App.2d 206; *Pfingsten v. Westenhaver* [(1952)] 39 Cal.2d 12, 20–21)." (*Holt v. Ravani* (1963) 221 Cal.App.2d 213, 215.) Thus, for example, in *Holt v. Ravani*, *supra*, at pp. 215–216, the court held that the owner's testimony regarding the value of her husband's car provided "ample support" for the trial court's finding of value. (See also *Wade v. Lake County Title Co*. (1970) 6 Cal.App.3d 824, 829 [owner's testimony regarding the value of his land was sufficient to support damages award].)

In the present case, Fereshteh testified that in connection with the agreement to exchange interests in the Armacost and Keystone properties, she and Mahshid agreed that "the value of the 25 percent of each property" was $150,000. As a part owner of both the Keystone and Armacost properties, Fereshteh was competent pursuant to Evidence Code section 813, subdivision (a)(2), to testify regarding the properties' values, and thus her

testimony was sufficient to support a judgment for Mahshid in this case.

Nicole's testimony about the property's value was consistent with the testimony of her mother, on whose behalf she negotiated the exchange. At trial, Nicole testified "[a]t that time both of these properties had about the same value. *So the 25 percent was worth $150,000*." (Italics added.) Nicole further testified that she asked to have the transfer deeds reflect the value of each property as $150,000 "*because that was what the property was worth*." (Italics added.)

The grant deeds, executed February 23, 2012, are also consistent with Fereshteh's testimony. The deeds show documentary transfer taxes of $165 and city taxes of $675. The County of Los Angeles assesses a documentary transfer tax on the value of the interest or real property conveyed at the rate of $.55 per $500 (i.e., $1.10 per $1,000), and the City of Los Angeles assesses a city tax on the value of the interest or real property conveyed at the rate of $4.50 per $1,000. (Los Angeles County Code, § 4.060.030; Los Angeles Municipal Code, § 21.92.) Thus, a County transfer tax of $165 and a City tax of $675 is consistent with a transfer of property (or an interest in property) valued at $150,000. ($150,000 ÷ $1,000 x $1.10 = $165; $150,000 ÷ $1,000 x $4.50 = $675.)

2. Fereshteh's Contentions Are Without Merit

Fereshteh urges that neither her own testimony, Nicole's testimony, nor the grant deeds were competent to establish the value of a 25 percent interest in the properties. Her contentions are without merit.

First, Fereshteh contends that Nicole's testimony was "not admissible for purposes of establishing the value of the properties or a 25% interest therein" because Nicole "is not an owner of either property, and is not a party to the dispute." However,

Fereshteh cites no authority for the proposition that an individual must be a property owner or litigant to offer an admissible opinion about the value of real property—and, indeed, Evidence Code section 813 suggests to the contrary. That section provides that the value of property may be shown by the opinion of "[w]itnesses qualified to express such opinions." (Evid. Code, § 813, subd. (a)(1).) An individual need not be an expert in the field to provide an admissible opinion under this section; instead, " '[a]ll that is necessary to be shown to entitle a witness to give an opinion is to show 'that he has some peculiar means of forming an intelligent and correct judgment as to the value of the property in question . . . beyond what is presumed to be possessed by men generally.' " (*Spring Valley Water Works v. Drinkhouse* (1891) 92 Cal. 528, 534, overruled on other grounds in *Los Angeles County v. Faus* (1957) 48 Cal.2d 672. 680.) Nicole, an attorney whose parents had owned the subject properties for many years, and who negotiated the exchange on her mother's behalf, was such a person.

Second, Fereshteh urges that Nicole's valuation opinion was without evidentiary value because at trial, Mahshid "never questioned Nicole regarding the basis for that opinion." The court rejected a similar contention in *In re Marriage of Hargrave* (1985) 163 Cal.App.3d 346, 351–352, where the wife urged that her former husband's testimony regarding the value of the marital home was not substantial evidence to support the trial court's findings. The appellate court disagreed: "Noting that the opinion testimony of any witness must be based upon matter perceived by or personally known to the witness and that such matter must be of a nature that can be reasonably relied upon by an expert in forming an opinion (Evid. Code, § 814), wife argues that, because husband gave no reasons for his opinion, the court was compelled to reject his testimony. The argument is

disingenuous. Wife neither cross-examined husband concerning his reasons nor did she object to his testimony. She failed to urge the court to exercise its discretion to require the witness to state the basis of his opinion prior to stating that opinion. (Evid. Code, § 802.) Having refrained from testing the credibility of husband's opinion in the trial court, wife is foreclosed from challenging the admissibility thereof in this court." (*Id.* at p. 352.) The present case is analogous: Fereshteh's attorney neither objected to Nicole's valuation testimony nor examined Nicole on the basis for that opinion, and thus Fereshteh is foreclosed from urging on appeal that Nicole's opinion was inadmissible.

Third, Fereshteh contends that her own testimony is not a reliable basis for establishing the value of the subject properties because she "did not generate any valuation for either property," but instead "relied on Nicole to value the interests being exchanged to avoid tax problems." In fact, Fereshteh's testimony was that she, Mahshid, and Nicole *agreed* that the interests being exchanged were worth $150,000 each, and that such valuation should be reflected on the grant deeds because "I don't want to play with [the] IRS."

Finally, Fereshteh contends that any "admission" that the interests in the properties were worth $150,000 "is directly contradicted by the face of the grant deeds which . . . do not include a '$150,000' valuation." We do not agree that there is any contradiction between Fereshteh's testimony and the grant deeds. While the grant deeds do not contain an express valuation of the interests being granted, they do identify the "documentary transfer tax" and the "city tax"—which, as we have said, were calculated based on a transfer value of $150,000.

For all of these reasons, we conclude that Mahshid made a prima facie showing of damages.

D. Alternatively, Mahshid Made a Prima Facie Showing of an Entitlement to Specific Performance

Mahshid contends that even if the trial court properly found she had not made a prima facie showing of damages, it nonetheless erred in granting judgment for Fereshteh because she made a prima facie showing of an entitlement to specific performance of the agreement to exchange interests in the Armacost and Keystone properties. We agree.

Specific performance and damages are alternative remedies for breach of contract. (*Rogers v. Davis* (1994) 28 Cal.App.4th 1215, 1218, citing 5 Witkin, Cal. Procedure (3d ed. 1985) Pleading, § 732, at pp. 180–181.) Thus, following a seller's refusal to convey property, the nondefaulting buyer may elect either specific performance or damages as a remedy for breach of contract. (*Al-Husry v. Nilsen Farms Mini-Market, Inc.* (1994) 25 Cal.App.4th 641, 650–651; *Abrams v. Motter* (1970) 3 Cal.App.3d 828, 847 ["When a material breach of . . . a contract [to purchase land] occurs, the innocent party has his election between an action at law for damages, an equitable action for specific performance, and an action for rescission of the contract."].)

To obtain specific performance after a breach of contract, a plaintiff must generally prove, among other things, the inadequacy of his legal remedy. (*Real Estate Analytics, LLC v. Vallas* (2008) 160 Cal.App.4th 463, 472.) With regard to a contract for sale of land, however, a *presumption* exists pursuant to Civil Code section 3387 that a remedy at law is inadequate. (Civ. Code, § 3387 ["It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation. In the case of a single-family dwelling which the party seeking performance intends to occupy, this presumption is conclusive. In all other cases, this

presumption is a presumption affecting the burden of proof."]; *Ellison v. Ventura Port District* (1978) 80 Cal.App.3d 574, 579–580 ["A presumption exists that the remedy at law is inadequate when the contract is for the sale of land."].)

In the present case, the oral contract between Mahshid and Fereshteh was for the exchange of real property. Accordingly, the remedy of specific performance was presumptively available on Mahshid's showing of breach of contract. The trial court erred in concluding otherwise.

The trial court ruled that it lacked jurisdiction to order specific performance because Mahshid "failed to prove [her] case." But the only element the court found that Mahshid had not adequately established was the amount of damage.[8] In other words, the court appeared to say that Mahshid was not entitled to specific performance because she could not prove her damages with specificity. But the law is clear that "[p]laintiff's right to a decree of specific performance does not depend upon her ability to show that she has suffered monetary damage by reason of the breach of the agreement." (*Remmers v. Ciciliot* (1943) 59 Cal.App.2d 113, 119.) Indeed, as we have said, "[t]he law is that it is presumed that the breach of an agreement to convey real property *cannot* be compensated by the allowance of damages, and that one who contracts to acquire real property has not an adequate remedy at law in the event of a breach of the contract by the seller." (*Ibid*., italics added.) Thus, the court erred in ruling that proof of the amount of breach of contract damages was a prerequisite to an award of specific performance.

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[8] According to the trial court, Mahshid "has proven that she has suffered some consequence, but she has not proven yet the specificity of that consequence; that is, I have no dollar figure."

DISPOSITION

The judgment is reversed, and the case is remanded for a new trial. Mahshid is awarded her appellate costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

LAVIN, J.

JOHNSON (MICHAEL), J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.