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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FIVE

GARY GUSEINOV, Plaintiff and Appellant, v. JOHN HABASHY, Defendant and Appellant; ERIC MORRIS et al., Defendants and Respondents.	B264339 (Los Angeles County Super. Ct. No. GC49017)

APPEAL from a judgment of the Superior Court of Los Angeles County, Laura A. Matz, Judge. Affirmed.

Layfield & Barrett, Philip J. Layfield, Christopher M. Blanchard, for Plaintiff and Appellant Gary Guseinov.

Lewis, Brisbois, Bisgaard & Smith, Roy G. Weatherup, Bartley L. Becker, and Allison A. Arabian; Habashy Law Firm, John Habashy, for Defendant and Appellant John Habashy.

Southern California Lawyers Group, Eric Morris, for Defendants and Respondents Eric Morris and Southern California Lawyers Group.

Plaintiff and appellant Gary Guseinov appeals from a judgment notwithstanding the verdict in favor of defendants and respondents attorney Eric Morris, his law firm Southern California Lawyers Group, PC (SCLG), and attorney John Habashy in this legal malpractice action. Guseinov contends there was substantial evidence to support the jury's findings on the following issues: 1) the attorneys' actions caused Guseinov's damages; 2) the amount of damages; 3) intentional misrepresentation and concealment; and 4) the attorneys acted with malice, oppression, or fraud. We agree with the trial court that there is no evidence to support the finding that the attorneys caused Guseinov's damages, and therefore affirm.

FACTS AND PROCEDURAL BACKGROUND

Business Failure and Unlawful Detainer Proceedings

In February 2005, Guseinov and his friend Carlos Mario Jaramillo entered into a five-year lease with Paseo Colorado Holdings, LLC, for commercial space in the Paseo Colorado Shopping Center. They agreed to joint and several liability for the lease obligations, including rent payments of approximately $7,000 per month.

Guseinov, Jaramillo, and other investors opened a cigar lounge known as Ceniza, Incorporated, in the space. Guseinov invested approximately $200,000 in the venture in total. Ceniza fell behind on rent payments by 2007.

Guseinov wanted to sell his shares of the business at the end of August 2009. He had not realized any profit from Ceniza, and he had a significant tax liability in connection with other investments. On September 24, 2009, Jaramillo wrote an e-mail to Guseinov and another investor asking them to each contribute $350 per week to Ceniza to maintain sufficient inventory. The investors were going to allow a new manager 90 to 120 days to turn Ceniza's finances around. If not successful, Jaramillo recommended the partners close the business and not renew the lease in February.

Guseinov replied that he was not in a position to contribute more money. He had been discussing selling his shares to an investor named Mark Russakow for $165,000.

Jaramillo responded that Russakow's partner Christopher Johnson said Guseinov's price was too high, because Ceniza would need an immediate capital contribution to avoid closing its doors.

Guseinov asked whether they were ready to declare bankruptcy if the business could not be turned around. Jaramillo suggested selling the business at a steep discount and asking Paseo to forgive the rent arrears. Guseinov acknowledged that Ceniza needed a considerable capital investment or it would fail. Guseinov offered to accept $55,000 for his shares, if Ceniza and Paseo indemnified him for all debts and liabilities, and Ceniza gave him a discount on cigar and liquor merchandise for five years.

On September 26, 2009, Jaramillo wrote to Guseinov and another investor. He stated that Russakow was offering $25,000 for Guseinov's shares. Jaramillo asked Guseinov to consider the offer seriously, because the business was on the verge of going under and needed help from investors. Guseinov responded that if he did not sell his shares and the company declared bankruptcy, he could write off the whole investment as a loss and take the net operating loss against other earnings, which he needed very much.

On September 28, 2009, Guseinov wrote again. He noted that $25,000 was a very low offer, considering that if he did nothing and the company declared bankruptcy, his share of the liquidation of the assets would net much more than $25,000. Recognizing that the other partners did not want to declare bankruptcy, he offered to accept $40,000 for

his shares with the understanding that within 15 days of signing a separation agreement, Ceniza would remove him from all company obligations, bank accounts, liquor license, and other activities.

Jaramillo noted it was Ceniza that would indemnify Guseinov, not Johnson. He could remove Guseinov from accounts and obligations, but had no control over whether third parties would agree to release him. For example, Paseo might not agree to release Guseinov until the renewal date for the lease. Guseinov responded that he understood and wanted to move forward.

Guseinov had two choices. If he did not sell his interest, the business would continue without further contribution from him and potentially go under. His brother, his friends, and his wife would lose their investments in Ceniza. Or he could accept a discount on his investment, relieve himself of liabilities including the lease, and allow a new investor to contribute capital to maintain the company. He ultimately agreed to accept $20,000 for his interest in the business.

Guseinov's attorney, Doug Houme, drafted an exit agreement, which was executed between Guseinov and Ceniza on November 10, 2009. Jaramillo signed the agreement on behalf of Ceniza. Ceniza agreed to indemnify Guseinov: "[Ceniza] agrees to indemnify [Guseinov] following the date hereof for any and all acts by [Guseinov] while affiliated with [Ceniza] and as it pertains to [Ceniza] only. This also includes any and all known and unknown

claims by any third party against [Guseinov or Ceniza] during such time as it pertains to [Ceniza]. [Ceniza] acknowledges that [Guseinov] will have no responsibility or liability for acts or omissions of [Ceniza] which occur from and after the date of [Guseinov's] resignation."

In addition, the agreement provided, "Within a reasonable time following the date of this Agreement depending on the involvement of third parties (but in no event later than 90 days from the date of this Agreement), [Ceniza] shall make all efforts necessary (and as allowed within the terms of the agreements with third parties) to remove GUSEINOV from all [Ceniza] contracts, property leases, liabilities and statements, bank account(s), merchant account(s), corporate documents, and any other contracts bearing GUSEINOV's name. Notwithstanding the foregoing, [Ceniza] agrees that any renewals of such agreement shall not have GUSEINOV named in the agreement."

Guseinov does not recall ever visiting the store again after he signed the exit agreement. Ceniza continued to operate on the premises after the initial lease term expired. On June 22, 2010, Paseo sent a five-day notice to pay rent or quit to Guseinov and Jaramillo, doing business as Ceniza. The notice stated the amount of unpaid rent for the period of July 1, 2009, through the present, was $115,495.09. This amount was a portion of the larger delinquency of $193,895.24, including charges from October 1, 2007, through the date of the notice.

On July 15, 2010, Paseo filed an unlawful detainer action against Guseinov and Jaramillo, doing business as Ceniza. Attorney Morris agreed to represent Jaramillo in the unlawful detainer action without charge. Morris had met attorney Habashy the previous year and attempted to develop a niche practice by working together on a few Chapter 13 bankruptcy cases. Habashy and Jaramillo were listed on SCLG's website as special counsel to the firm for a period of time in order to bolster SCLG's image.

Guseinov was served with a copy of the unlawful detainer action. Morris wrote an e-mail to Guseinov on August 2, 2010, that stated: "Mr. Jaramillo has retained our firm to defend the aforementioned Unlawful Detainer on his behalf. We have been authorized to represent your interests as well. [¶] Depending on when you were or were not served with the complaint, a responsive pleading may be due shortly. We are prepared to file a responsive pleading / Demurrer on your behalf today. If you authorize us to do so, please kindly indicate your consent via email response. Mr. Jaramillo has offered to pay for your defense in the aforementioned instant suit. [¶] Please let us know if you have any questions or concerns."

Guseinov sent his approval and asked to review the response. Morris sent the proposed pleading. Guseinov responded that he had no comments, but noted that he had not yet had the advice of his attorney. Reserving his rights, he authorized Morris to proceed in order to protect Guseinov's and Ceniza's interests. He promised his attorney

would contact Morris soon concerning Guseinov's personal liabilities.

The cover page of the demurrer filed on August 3, 2010, listed Morris, followed by Habashy and SCLG with an address in Rancho Cucamonga and Morris's e-mail address. Under this block, it stated, "Attorney for the Defendants."

On September 17, 2010, Guseinov's attorney Ghassan Bridi wrote to advise Morris that Bridi represented Guseinov and his wife "on a host of issues surrounding the Ceniza cigar shop." He had reviewed the unlawful detainer action and the demurrer filed on Guseinov's behalf. He stated, "My big concern is that there is talk about a declaratory relief action in the [demurrer], and I fear there may be a potential conflict of interest between Ceniza and Mr. Guseinov if the issue of Mr. Guseinov's indemnity agreement (as outlined in the 'Exit Agreement') with the company isn't resolved. The agreement required Ceniza not only to indemnify Mr. Guseinov, but to withdraw his name from any contracts associated with Ceniza and third parties. [¶] By virtue of the existence of this lawsuit, it would appear that Ceniza failed to comply with the terms of the exit agreement. Any declaratory relief action ***must*** address the issue of indemnity vis-à-vis Mr. Guseinov and Ceniza." He asked Morris to contact him to discuss the issues.

Morris filed a notice of removal of the unlawful detainer action to federal court. The notice listed himself and Habashy as the attorneys of record for the defendants. The case was eventually returned to state court.

A hearing in the unlawful detainer case was scheduled for the middle of December. A few days before the hearing date, Morris and Jaramillo discussed having Ceniza file for bankruptcy protection in order to delay the legal proceedings. Ceniza had problems with the State Board of Equalization as well. Morris referred Jaramillo to Habashy to prepare the bankruptcy filing. Paseo filed a writ of attachment on December 16, 2010.

On December 23, 2010, Habashy filed a Chapter 11 bankruptcy petition on behalf of Ceniza. The bankruptcy court clerk served notice of Ceniza's bankruptcy on Guseinov on December 29, 2010, advising him of his rights as a creditor, but Guseinov does not recall seeing the notice. On December 30, 2010, the trial court granted Paseo's writ of attachment. Habashy learned that the Ceniza corporation was not a party to the unlawful detainer action, and therefore, Ceniza's bankruptcy filing did not create an automatic stay of the unlawful detainer proceedings.

On January 3, 2011, Jaramillo hired Habashy to file for bankruptcy protection as an individual. Morris learned of Jaramillo's intent to file bankruptcy that day. On January 4, 2011, Habashy filed a Chapter 7 bankruptcy petition on Jaramillo's behalf. The bankruptcy court's docket reflected that Jaramillo was represented in the bankruptcy proceeding by Habashy, Habashy's law firm, Morris, and SCLG. Jaramillo listed debts totaling more than one million dollars. His bankruptcy schedules listed Paseo as an unsecured creditor, Guseinov as a co-debtor on

the lease, and legal fees of $1,495 owed to Habashy. Guseinov does not recall receiving notice of Jaramillo's bankruptcy petition.

On January 5, 2011, Paseo requested the defendants' default in the unlawful detainer action, which the trial court granted. On January 12, 2011, the trial court issued a writ of possession. Habashy sent a settlement proposal to Paseo's counsel on January 18, 2011. Morris was not involved in drafting the settlement letter. Habashy stated, "I am counsel of record in the above [referenced case]," referring to the unlawful detainer action by name and case number. Habashy stated, "below are some options that my clients' would like to extend as a proposed settlement of this dispute." He explained that Jaramillo and Ceniza had filed for bankruptcy, and he noted Paseo's actions in the unlawful detainer proceedings violated the automatic stay imposed by the bankruptcy actions. He added, "We're unsure about [Guseinov's] financial status, and he may obtain his own counsel, which will just keep the battle going on different fronts." He proposed several options, including renegotiation of the lease to reflect an accurate market value and payment plan, providing the keys in exchange for a dismissal, a stay of legal proceedings while the business was sold, or Paseo could line up in bankruptcy with other creditors. Jaramillo and Morris were copied on the letter, but not Guseinov.

On February 9, 2011, Paseo filed a motion for relief from the automatic stay in the bankruptcy actions. On February 15, 2011, Morris sent an email to Guseinov

summarizing the substantive actions in the unlawful detainer case and the bankruptcy filings. He stated that Paseo's attorney had stipulated on January 25, 2011, to: 1) set aside the writ of possession as to both defendants; 2) set aside the default and judgment as to Jaramillo; 3) not post bond or obtain a writ of attachment if the defendants filed a motion to set aside the attachment order; and 4) "set aside the default as to Mr. Guseinov only if he concurrently files an answer to the complaint."

Morris added that he needed to withdraw from representing Guseinov "due to an insurmountable conflict," and he recommended that Guseinov retain new counsel. He said time was of the essence to protect Guseinov's personal liability, and the next court date was March 2, 2011.

Ceniza closed its business in February 2011. On March 14, 2011, Ceniza's bankruptcy petition was converted to a petition under Chapter 7. Paseo obtained relief from the automatic stay to proceed with the unlawful detainer action against Jaramillo on April 11, 2011.

On April 27, 2011, Paseo filed a request to dismiss the complaint as against Jaramillo only. On May 2, 2011, Paseo filed an amended complaint solely against Guseinov. That same day, Morris wrote an email to Guseinov explaining that Paseo had been granted relief from the bankruptcy stay, the trial court had approved the dismissal of Jaramillo and Ceniza from the unlawful detainer action "due to the bankruptcy," Paseo had filed an amended complaint, and Guseinov needed to respond to the complaint by June 2,

2011. He reiterated that he needed to withdraw due to an "insurmountable conflict" and asked Guseinov to retain new counsel.

Guseinov substituted Bridi in place of Morris on June 17, 2011. It turned out that Bridi was not able to work on the case, so he substituted another attorney on June 29, 2011.

The bankruptcy trustee assigned to Ceniza's bankruptcy proceeding concluded that no value would be derived from a sale of the liquor license because of the costs of the sale, and because the license was expired and subject to a hold imposed by the State Board of Equalization. The trustee also concluded there was no realizable value in Ceniza's furniture, fixtures and equipment, including an expensive air filtration system, because they were leasehold improvements that could not be administered and were subject to liens by three secured creditors.

Jaramillo received a discharge in bankruptcy on July 1, 2011, and the bankruptcy case was closed on July 6, 2011. Ceniza's bankruptcy case was also closed in July 2011.

After the bankruptcies were discharged, the liquor license was sold. The miscellaneous tax paid from the sale to the State Board of Equalization was $30,000. The total amount realized from the sale of Ceniza's liquor license after the tax payment was $4,149.

On October 28, 2011, Guseinov filed emergency motions to reopen the bankruptcies. Habashy filed

oppositions on behalf of Jaramillo and Ceniza. The motions were denied.

A trial was held in the unlawful detainer action. On January 6, 2012, the trial court found that the initial lease term expired May 31, 2010, and Jaramillo did not have the authority to bind Guseinov to the extended term. The court awarded damages of $185,144.08, prejudgment interest of $13,187.20, and costs of $20,708.67 to Paseo. The total amount of the judgment entered against Guseinov was $219,039.95.

Legal Malpractice Action

On March 15, 2012, Guseinov filed the instant action for legal malpractice and other claims. In April 2012, Paseo filed a lien in the legal malpractice action to assert a judgment creditor's lien on any proceeds. On September 25, 2012, Guseinov filed the operative second amended complaint against Morris, SCLG, Habashy, Johnson, Jaramillo, and several individuals associated with Ceniza. The complaint alleged causes of action against the attorney defendants for legal malpractice, breach of fiduciary duty, and fraud.

In September 2012, Guseinov entered into a settlement agreement with Paseo. Guseinov agreed to make a partial payment of the judgment in the unlawful detainer action of $120,000, in the form of a lump sum and monthly payments. The balance of the judgment would be paid from proceeds of

the legal malpractice action, which Guseinov agreed to prosecute diligently. Guseinov dismissed the action as against the investor defendants, including the dismissal of Johnson and Jaramillo as part of a confidential settlement.

A five day jury trial commenced in the instant action with opening statements on January 28, 2015. Guseinov testified that if he had known that Ceniza intended to file for bankruptcy, he could have made a capital infusion to prevent the necessity of filing bankruptcy; there could have been renegotiation of the lease; there could have been a sale of the company or someone could have taken over the lease; or there could have been a sale of the assets, including the liquor license and the goodwill of the business, to raise enough money to pay the unpaid lease balance.

Guseinov acknowledged all of the actions that he proposed, from a buyout of Ceniza's assets to the negotiation of Ceniza's debts, could have taken place within the bankruptcy proceedings, and a buyout within the bankruptcy court proceedings can be advantageous for investors. He testified that at the time of the bankruptcy filing, however, the business was shut down and its goodwill lost, with various liabilities, but no assets left. At the time of the bankruptcy filing, Ceniza owned no assets of substantial value. Guseinov could not estimate the value of Ceniza's assets at the time that the bankruptcy petition was filed, and he has no evidence of the value of any of Ceniza's assets at the time the store closed.

In connection with Guseinov's motions to reopen the bankruptcy proceedings, he filed his own declaration that the value of Ceniza's inventory at the time it closed in February 2011, was a minimum of $150,000, the value of the fixtures was a minimum of $100,000, and the value of the liquor license was a minimum of $75,000. At trial however, Guseinov admitted that he knew what he had invested in Ceniza, but did not have any evidence to prove that any asset of Ceniza at the time of closing had any specific value.

Christopher Rolin testified as Guseinov's expert on the standard of care. Rolin opined that Morris should have advised Guseinov that he was not being paid for his representation of the defendants in the unlawful detainer action. The attorney defendants had an irreconcilable conflict of interest when Ceniza and Jaramillo filed for bankruptcy. Before the bankruptcy filings, there were three entities liable for the lease payments. When the attorneys became aware that Ceniza or Jaramillo was contemplating filing for bankruptcy, they should have disclosed that information to Guseinov. They were also required to advise Guseinov before they sent the settlement proposal letter in January 2011, and to keep him advised of settlement discussions.

If Guseinov had been advised that Ceniza or Jaramillo were considering filing for bankruptcy, he could have gotten his own counsel to fight for his interests. Once an attorney became aware of the potential for Ceniza's bankruptcy, he or she would have an obligation to strategize with Guseinov to

protect his interests. Although they could not have prevented Ceniza from declaring bankruptcy, they could have gotten Ceniza out of the lease as fast as possible and sold the assets of the business. He needed to have his own counsel to protect his interests.

If Guseinov had known of the pending bankruptcies, although he could not have prevented Ceniza from declaring bankruptcy, he could have taken a number of actions. He could have invested additional money in the company to pay the obligations on the lease. Rolin admitted Guseinov could have still invested additional money after the Chapter 11 bankruptcy petition was filed and probably obtained assets at a discounted rate.

Guseinov could have demanded that Ceniza make a capital call on all investors to raise additional capital from shareholders to pay down existing debts and avoid bankruptcy. There is no evidence, however, that a call for additional capital investment could have been met.

Guseinov could have gotten Ceniza out of the lease as fast as possible. He could have demanded that the company immediately terminate the lease and vacate the premises to minimize the rent liability and avoid incurring further debt. Rolin refused to speculate as to what action Guseinov's attorney could have taken to get Ceniza out of the lease, considering Paseo was already trying to evict the business through the unlawful detainer proceeding.

Guseinov needed to get the business closed down as quickly as possible. In December 2010, when information

arose that Ceniza was contemplating bankruptcy, Guseinov could have demanded that Ceniza begin liquidating assets, including the inventory and the conditional use permit, to pay down existing debt and minimize liability. However, Rolin did not fix any values to the furnishings. He relied on Guseinov's testimony for the value of the liquor license, inventory, and furnishings at the time of the bankruptcy filings. Rolin had no reason to disagree with the bankruptcy trustee's evaluation that Ceniza's assets had no value and were not worth pursuing in the context of the bankruptcy. The assets were abandoned to the debtor, who received them back and still has them, including couches, fixtures, and any remaining inventory. Guseinov could have filed a lawsuit against Ceniza at any time to recover the assets and sell them, but the trustee's documents said the assets were not worth selling.

If Guseinov had become aware of the pending bankruptcies before they were filed, he could have contacted Paseo and tried to negotiate his own settlement before the other defendants declared bankruptcy. Rolin admitted that it was speculative whether Guseinov would have negotiated a better settlement with Paseo before the other defendants declared bankruptcy or if he had his own attorney from the beginning.

If Guseinov had been advised that a settlement letter would be sent, he would have gotten his own counsel. Guseinov could have negotiated with Paseo earlier, rather than after a year of litigation. In Rolin's experience, an

individual with effective counsel advocating his position fares better than an individual who has an attorney representing multiple parties. He could have saved interest and attorney fees by negotiating a settlement earlier. Questions in cross-examination noted that Guseinov incurred attorney fees as a result of taking the case through trial. If he had negotiated a settlement when he learned of the bankruptcies, he would have avoided the interest and attorney fees from April through December 2011.

In Rolin's opinion, if Habashy and Morris helped other defendants file for bankruptcy against Guseinov's interests, it caused Guseinov to incur the judgment in the unlawful detainer case. If Guseinov had his own attorney, he would have had remedies which would have caused the judgment in the unlawful detainer action to have been avoided or reduced. Another attorney could have filed claims for declaratory relief, indemnity, and fraud in the unlawful detainer action or a separate action. A different attorney could have advised him about the threat of bankruptcy, which could have resulted in filing a different lawsuit against Jaramillo. When Jaramillo, Ceniza and the attorneys worked on pending bankruptcies without Guseinov's knowledge, it gave Guseinov a potential viable claim in a separate action for fraud. Rolin admitted the instant legal malpractice action was the type of lawsuit that he was suggesting.

Rolin acknowledged that the amount of damages in the unlawful detainer action resulted from rent arrearages

accrued by May 31, 2010. In fact, the majority of the arrears accumulated before Guseinov sold his share of the investment to Johnson. A separate attorney would not have been able to stop Jaramillo from filing for bankruptcy.

The jury found the defendants owed a fiduciary duty to Guseinov, which they breached. The breach was a substantial factor in causing harm to Guseinov. The defendants also committed legal malpractice, which was a substantial factor in causing harm to Guseinov. Guseinov was not negligent, but Jaramillo was negligent. Jaramillo's negligence was a substantial factor in causing harm to Guseinov. Johnson, on the other hand, was not negligent. Guseinov had no reason to have discovered the wrongful acts or omissions before March 1, 2011, and therefore, his claim was not barred by the statute of limitations. The attorneys made a false representation of an important fact, knowingly or with reckless disregard of the truth. Guseinov reasonably relied on the representation, which was a substantial factor in causing him harm. The defendants intentionally failed to disclose an important fact to Guseinov, and they disclosed some facts but intentionally failed to disclose another important fact, making the disclosure deceptive. They intended to deceive Guseinov. Guseinov reasonably relied on their deception, and the concealment was a substantial factor in causing Guseinov harm. Guseinov's compensatory damages were $244,039.95. In addition, the jury found punitive damages against Morris of $150,000, against Habashy of $150,000, and against SCLG of $75,000. In

assessing responsibility for negligence, the jury found the attorneys were 90 percent responsible for the harm to Guseinov, while Jaramillo was 10 percent responsible for the harm to Guseinov. The trial court entered judgment based on the jury verdict on February 5, 2015.

Habashy filed a motion for judgment notwithstanding the verdict or a new trial, based on the lack of evidence of causation, among other issues. Morris and SCLG filed a substantially similar motion.

A hearing was held on March 20, 2015. The trial court found, after resolving all evidentiary conflicts and drawing all inferences in favor of Guseinov, there was no substantial evidence that the attorney defendants' conflict of interest caused him harm. Rolin offered nothing but theoretical, conjectural, and speculative possibilities that were not grounded in the evidence. Guseinov was required to present evidence that something the defendants did or did not do as a result of the conflict of interest was a substantial factor in causing the judgment in the unlawful detainer case, and that but for the conflict in representation, Guseinov would have obtained a more favorable result in the unlawful detainer trial. There was no evidence that Guseinov would have escaped his clear liability had another lawyer managed the case.

Instead, Rolin testified that the conflict in filing Jaramillo's bankruptcy during the pendency of the unlawful detainer action harmed Guseinov because he had judgment entered solely against him. However, even if another

attorney had represented Guseinov and judgment been awarded against both Guseinov and Jaramillo, there would have been joint and several liability. There was no evidence that Jaramillo could have paid any portion of the judgment. The uncontroverted evidence was that his financial condition was so precarious that he filed for bankruptcy and received a discharge. Rolin admitted there was nothing that could have been done to prevent Jaramillo from filing bankruptcy. There is no evidence that supports any inference Guseinov would not have ended up solely responsible to the landlord for the entire amount of the judgment, regardless of who his trial counsel was and even if Jaramillo had been a co-judgment debtor, in light of Jaramillo's insolvency.

Rolin also opined Guseinov was harmed when the attorney defendants failed to inform him that Jaramillo and Ceniza were going to file bankruptcy because he could have 1) contributed capital to Ceniza, 2) sold the company to someone who would have taken over the lease and arrearages, 3) sold Ceniza's assets to pay the rent arrearages, or 4) convinced Ceniza's shareholders not to file for bankruptcy.

There was no evidence, however, that Guseinov was willing or able to contribute sufficient capital to pay the back rent or make Ceniza profitable enough to pay it. Ceniza had failed to show a profit in all but a few months of its five year existence. When Guseinov contacted the shareholders in late 2009, he asked if Ceniza was ready to file for bankruptcy. He did not infuse cash into the business;

instead he said he really needed cash. With bankruptcy looming, he showed no interest or ability to put in additional money. There was no evidence that Guseinov's finances had changed a matter of months later such that he could have or even would have saved Ceniza by contributing cash.

There was no evidence that anyone else was willing or able to infuse sufficient capital into Ceniza to permit the company to pay back rent or avoid bankruptcy. Guseinov anticipated bankruptcy in late 2009, and there was no evidence that anyone came forward with enough capital to save the business and pay back rent in 2009 or 2010, nor was anyone obligated to do so.

Similarly, there was no evidence anyone was willing or able to purchase Ceniza or its assets, or that a sale of assets would have resulted in funds sufficient to pay the back rent, or in any available funds at all. Rolin opined Guseinov could have saved the business by forcing the sale of its assets, but undermined his opinion by testifying that he was not assigned to value Ceniza's assets. The only evidence concerning valuation of Ceniza's assets was the bankruptcy trustee's determination that the assets had only minimal value insufficient for the trustee to liquidate them in bankruptcy. The only asset discussed at trial was the liquor license which netted less than $4,500 in a post-bankruptcy sale after liens against the sale proceeds were paid, proving the bankruptcy trustee was correct. This evidence does not give rise to an inference that a forced sale of assets would

have saved Ceniza from bankruptcy or placed it in a position to pay the back rent.

Rolin opined that separate counsel could have filed a declaratory relief claim or pursued remedies which would have resulted in reducing or avoiding the unlawful detainer judgment, or could have advocated Guseinov's position to the shareholders to convince them not to file bankruptcy. Rolin failed to specify what declaratory relief could have been sought or obtained in a summary unlawful detainer action, and there is no right to file a cross-complaint in an unlawful detainer action. He failed to specify or explain how other remedies would have relieved Guseinov of his undisputed contractual obligation or reduced Guseinov's liability.

Rolin suggested another attorney could have cancelled the lease to reduce Guseinov's exposure, but there is no evidence the landlord would have agreed to early termination or any legal grounds which would have allowed Guseinov to cancel the lease without liability.

Another suggestion was that separate counsel could have somehow negotiated a better settlement of the unlawful detainer obligation than was ultimately obtained by speculating that the landlord would have agreed to better terms if the settlement had been negotiated earlier in the litigation. No fact in the record supports this speculation.

The trial court further granted the motions with respect to punitive damages on the ground that Guseinov failed to introduce evidence of the defendants' financial condition sufficient to support a punitive damages award.

The trial court denied the motions for new trial as to damages, finding substantial evidence supported the amount of compensatory damages.

On March 26, 2015, the trial court vacated the February 5, 2015 judgment and ordered a new judgment entered in favor of Morris, SCLG, and Habashy. Guseinov filed a timely notice of appeal from the March 26, 2015 judgment.

DISCUSSION

Standard of Review

"A motion for judgment notwithstanding the verdict may be granted only if it appears from the evidence, viewed in the light most favorable to the party securing the verdict, that there is no substantial evidence in support. (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 110.)" (*Sweatman v. Department of Veterans Affairs* (2001) 25 Cal.4th 62, 68.) "As in the trial court, the standard of review is whether any substantial evidence—contradicted or uncontradicted—supports the jury's conclusion. [Citations.]" (*Ibid.*)

Causation

Guseinov contends there was substantial evidence that the attorney defendants' actions caused him harm, namely, the judgment in the unlawful detainer action and the

inability to seek indemnity or satisfy the judgment from Ceniza's assets. He argues that if not for the attorneys' actions, he would not have been held liable in the unlawful detainer action or would have been indemnified by other parties.

"California has definitively adopted the substantial factor test of the Restatement Second of Torts for cause-in-fact determinations." (*Rutherford v. Owens–Illinois, Inc.* (1997) 16 Cal.4th 953, 968.) The plaintiff must "establish causation by showing either (1) *but for* the negligence, the harm would not have occurred, or (2) the negligence was a concurrent independent cause of the harm." (*Viner v. Sweet* (2003) 30 Cal.4th 1232, 1241 (*Viner*).) "The text of Restatement section 432 demonstrates how the 'substantial factor' test subsumes the traditional 'but for' test of causation. Subsection (1) of section 432 provides: 'Except as stated in Subsection (2), the actor's negligent conduct is *not a substantial factor* in bringing about harm to another *if the harm would have been sustained even if the actor had not been negligent.*' (Italics added.) Subsection (2) states that if 'two forces are actively operating . . . and each of itself is sufficient to bring about harm to another, the actor's negligence may be found to be a substantial factor in bringing it about.'" (*Viner*, *supra*, 30 Cal.4th at p. 1240.)

"'*It must be shown that the loss suffered was in fact caused by the alleged attorney malpractice.* It is far too easy to make the legal advisor a scapegoat for a variety of business misjudgments unless the courts pay close attention

to the cause in fact element, and deny recovery where the unfavorable outcome was likely to occur anyway, the client already knew the problems with the deal, or where the client's own misconduct or misjudgment caused the problems. It is the failure of the client to establish the causal link that explains decisions where the loss is termed remote or speculative. Courts are properly cautious about making attorneys guarantors of their clients' faulty business judgment.' [Citation.]" (*Viner*, *supra*, 30 Cal.4th at p. 1241.)

"In a litigation malpractice action, the plaintiff must establish that *but for* the alleged negligence of the defendant attorney, the plaintiff would have obtained a more favorable judgment or settlement in the action in which the malpractice allegedly occurred. The purpose of this requirement, which has been in use for more than 120 years, is to safeguard against speculative and conjectural claims. (*Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 832–834.) It serves the essential purpose of ensuring that damages awarded for the attorney's malpractice actually have been caused by the malpractice. (*Id.* at p. 834.)" (*Viner*, *supra*, 30 Cal.4th at p. 1241.)

In this case, there was no evidence that Guseinov would not have been found responsible for the unlawful detainer judgment or would have been indemnified but for the attorneys' actions. Guseinov did not have any defenses to the unlawful detainer action that were not asserted. There is no evidence that Ceniza or Jaramillo had any assets at the time that bankruptcy was contemplated, and there is

no evidence any action against Ceniza or Jaramillo would have provided any relief for Guseinov. Guseinov's expert's testimony that another attorney could have negotiated a better settlement earlier, or other investors could have been found to inject capital into a company that had never turned a profit, were simply too speculative to constitute substantial evidence. The trial court properly granted the motions for judgment notwithstanding the verdict and entered judgment in favor of the attorney defendants. Habashy filed a protective cross-appeal, which is moot in light of our opinion affirming the judgment, and therefore, must be dismissed.

DISPOSITION

The judgment is affirmed. The cross-appeal filed by John Habashy is dismissed as moot. Respondents Eric Morris, Southern California Lawyers Group, PC, and John Habashy are awarded their costs on appeal.

KRIEGLER, J.

We concur:

TURNER, P.J. BAKER, J.