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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JING CHEIN JIANG,

Plaintiff and Respondent,

v.

JOSHUA CHANG et al.,

Defendants and Appellants.

B246112

(Los Angeles County  
Super. Ct. No. BC438188)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Ralph W. Dau, Judge. Reversed.

Greenberg Glusker Fields Claman & Machtinger, Fred A. Fenster and Dan D.  
Nabel for Defendants and Appellants.

The Eroen Law Firm and Robert C. Eroen for Plaintiff and Respondent.

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Defendants Joshua Chang and W-Coline Management Co. appeal the judgment following a bench trial in favor of plaintiff and trustee Jing Chein Jiang on plaintiff's claim under California's Unfair Competition Law, Business and Professions Code section 17200 et seq. (the UCL).<sup>1</sup> Because plaintiff lacked standing to pursue his UCL claim,<sup>2</sup> we reverse and remand for the trial court to consider the other claims plaintiff pursued at trial but the trial court did not adjudicate.

### **BACKGROUND**

As trustee of the Sunlight Trust dated September 27, 2001 (the Sunlight Trust), plaintiff filed this lawsuit to recover \$870,000 in rents collected by defendants on several real properties in San Gabriel, California. He claimed the Sunlight Trust had an ownership interest in the properties since August 31, 2005, and defendants had wrongfully withheld rents contrary to the Sunlight Trust's ownership interest. On this basis, plaintiff alleged several claims against defendants: breach of fiduciary duty, violation of the UCL, intentional interference with contract, conversion, constructive trust, and an accounting.<sup>3</sup> For his UCL claim, plaintiff alleged defendants violated the UCL because they "performed brokerage activities without the required real estate brokerage license," and that "[a]s a result of [d]efendants' conduct, [p]laintiff has lost money" in the form of "rents collected by [d]efendants which [d]efendants have failed to pay to [p]laintiff . . . ."

During discovery, plaintiff propounded requests for admissions, and when defendants failed to respond, plaintiff moved to have the requests deemed admitted. Defendants failed to oppose the motions and the trial court granted them.

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<sup>1</sup> All further undesignated statutory citations are to the Business and Professions Code unless otherwise noted.

<sup>2</sup> We requested and received supplemental briefing on the issue of standing, which we have reviewed.

<sup>3</sup> Plaintiff listed the breach of fiduciary duty claim in the caption of the complaint, but did not allege that claim in the body. In any event, the trial court indicated this claim proceeded to trial.

(Code Civ. Proc., § 2033.410.) As relevant here, defendants were deemed to have admitted they collected rents on the properties at issue after August 31, 2005, and failed to pay those rents to plaintiff; they instructed tenants not to pay rents to plaintiff; they used the rents collected “for their own use”; and they were not licensed by the California Department of Real Estate as real estate brokers.

Plaintiff proceeded to a bench trial on his UCL, intentional interference with contract, conversion, constructive trust, and breach of fiduciary duty claims. The trial court found in plaintiff’s favor on his UCL claim, and did not address any of plaintiff’s other claims. The court found defendants’ acts with respect to the properties at issue required a real estate broker license under sections 10130 and 10131, and because performance of those acts without a license was an unlawful practice under the UCL, plaintiff was entitled “to recover monies acquired by this unlawful business practice on the part of defendants Joshua Chang and WCMC (see § 17203) . . . .” The court awarded \$620,835.68 in withheld rents. Most of that amount constituted rents defendants had collected and withheld from plaintiff, but \$40,800 was awarded as the fair market rent for a unit Joshua Chang’s company J.C. Core Corp. occupied for one year without paying rent. Citing rule 3.1590(c) of the California Rules of Court, the court notified the parties they had 10 days from the date of service of the tentative decision to raise any points not included in the tentative decision. Neither party responded, so the court adopted the tentative ruling as its statement of decision and entered judgment accordingly.

### **DISCUSSION**

Defendants failed to raise the issue of standing in the trial court and raised it for the first time on appeal in their reply brief, which would normally result in forfeiture. (*Greenwich S.F., LLC v. Wong* (2010) 190 Cal.App.4th 739, 767; *Scott v. CIBA Vision Corp.* (1995) 38 Cal.App.4th 307, 322.)<sup>4</sup> However, “[a] litigant’s standing to sue is a threshold issue to be resolved before the matter can be reached on the merits.

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<sup>4</sup> We reject defendants’ contention they sufficiently raised the issue of standing in the trial court based on the brief passage they cited from their trial brief.

[Citation.]” (*Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1345 (*Troyk*).) ““Because standing goes to the existence of a cause of action, lack of standing may be raised by demurrer or at any time in the proceeding, including at trial or in an appeal. [Citations.]’ [Citation.]” (*Ibid.*)

The UCL prohibits “any unlawful, unfair or fraudulent business act or practice,” and the remedies available for a violation are limited to “(1) *injunctive relief*, ‘the primary form of relief available under the UCL,’ or (2) *restitution*, “as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.” [Citation.]” (*Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 520, citing *In re Tobacco II Cases* (2009) 46 Cal.4th 298, 319 (*Tobacco II*).) Since the passage of Proposition 64, a private individual must have standing to pursue a UCL claim, which means he or she must be “a person who has *suffered injury in fact* and has *lost money or property* as a *result* of the unfair competition.” (*Id.* at p. 521; see § 17204.) “To satisfy the narrower standing requirements imposed by Proposition 64, a party must now (1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e., *economic injury*, and (2) show that that economic injury was the result of, i.e., *caused by*, the unfair business practice or false advertising that is the gravamen of the claim.” (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 322 (*Kwikset*).)

Defendants’ failure to have real estate broker licenses violated sections 10130 and 10131<sup>5</sup> and constituted an “unlawful” business practice in violation of the UCL. (See *Jenkins, supra*, 216 Cal.App.4th at p. 520.) Based on this unlawful business practice, the

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<sup>5</sup> As relevant here, section 10130 makes it “unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson within this state without first obtaining a real estate license from the department . . . .” Section 10131, subdivision (b) defines “real estate broker” as someone who “[l]eases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.”

trial court awarded restitution in two forms: rents actually received by defendants and withheld from plaintiff, and the fair market value of the rent-free occupancy of one unit occupied by Joshua Chang's company J.C. Core Corp. Unfortunately, there was no "causal connection between the harm suffered and the unlawful business activity," so plaintiff lacked standing to pursue this recovery under the UCL. (*Daro v. Superior Court* (2007) 151 Cal.App.4th 1079, 1099 (*Daro*); see *Jenkins, supra*, 216 Cal.App.4th at p. 522; *Troyk, supra*, 171 Cal.App.4th at p. 1349.)

For the portion of the restitution award based on the fair market value of the unit occupied by J.C. Core Corp. rent-free, there is no question the required causal link is missing. Section 10131 does not require a license for an entity to simply occupy a rental unit, so defendants' unlicensed status could not possibly have harmed plaintiff in the form of fair market rent not paid for the occupied unit.

For the remainder of the restitution award based on rents collected and withheld from plaintiff, the causal connection between the unfair business practice and the harm alleged was broken because plaintiff "would suffer the same harm whether or not [] defendant[s] complied with the law." (*Daro, supra*, 151 Cal.App.4th at p. 1099; see also *Jenkins, supra*, 216 Cal.App.4th at p. 522.) The crux of plaintiff's claim was that defendants, who were not licensed, wrongfully withheld rents they had collected even though it was plaintiff who had the ownership interest in them. Therefore, the wrongful act giving rise to plaintiff's harm in the form of lost rents was defendants' withholding of those rents in light of plaintiff's ownership interest, not defendants' failure to be licensed. Had defendants been properly licensed, we have no doubt plaintiff would have vigorously pursued an almost identical lawsuit on an identical theory: damages in the form of rents rightfully belonging to plaintiff and wrongfully withheld by defendants. In fact, that was the theory underlying plaintiff's other claims. Because plaintiff would have suffered the identical economic harm from defendants' withholding of rents, whether or not defendants were properly licensed, the required causal link was missing.

Plaintiff cites *Kwikset* and *Tobacco II*, but in both cases the Supreme Court addressed the UCL's causation requirement for a fraud theory of reliance in class actions

involving false advertising and misrepresentations to consumers, taking care to note both cases were limited to those types of claims. (*Tobacco II, supra*, 46 Cal.4th at p. 325, fn. 17; see *Kwikset, supra*, 51 Cal.4th at p. 326, fn. 9.) We also reject plaintiff’s complicated argument that he relied on implied misrepresentations based on a property management agreement between defendants and plaintiff in his individual capacity, given that the trial court found the agreement had “no bearing on any issues in this case.”

Because the trial court did not adjudicate the other claims plaintiff pursued at trial, remand is appropriate for the trial court to consider those claims. Under the unique circumstances of this case, we reject defendants’ argument plaintiff forfeited his right to have his other claims decided by not requesting the trial court address them in the tentative decision. (Code Civ. Proc., § 634; Cal. Rules of Court, rule 3.1590(c).) But we also reject plaintiff’s argument we can affirm the judgment by addressing his claim for conversion. The trial court awarded restitution under the UCL, which was the only form of monetary recovery available. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1144.) But for his conversion claim, plaintiff sought only damages, not restitution. Thus, if the trial court were inclined to find defendants converted the rents belonging to plaintiff, the resulting judgment awarding damages would fundamentally differ from the judgment awarding restitution under the UCL.

### **DISPOSITION**

The judgment is reversed. The case is remanded for the trial court to consider plaintiff’s remaining causes of action. Each party shall bear their own costs on appeal.

FLIER, J.

I CONCUR:

GRIMES, J.

I concur in the judgment.

RUBIN, ACTING P. J.