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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

DANIEL POWELL, et al., Plaintiffs and Respondents, v. LILI GU, Defendant and Appellant.	B292948 (Los Angeles County Super. Ct. No. BC625467)

APPEAL from an order of the Los Angeles County Superior Court, Robert B. Broadbelt III, Judge. Affirmed.

A. George Glasco and Donald S. Burris, for Appellant and Defendant.

Daniel P. Powell, in pro. per., and for Respondent Lupe Powell.

Respondents Daniel and Lupe Powell reside in Rancho Palos Verdes approximately 100 feet from the house owned by appellant Lili Gu. In the summer of 2016, the Powells lived in their house while Gu offered her house for short-term uses through Airbnb, an online marketplace for arranging and offering lodging. The Powells sued Gu for nuisance, alleging her house became a "party house" on the weekends and she failed to control loud parties held by her short-term renters. After a one-day trial, the trial court entered judgment against Gu and awarded the Powells $3,000 each in damages, for a total of $6,000. On appeal, Gu contends she is a "landlord" not liable for the actions of her "tenants," substantial evidence does not support the finding of nuisance, and the Powells failed to prove substantial, non-speculative damages. Because Gu's contentions are without merit, we affirm.

FACTUAL AND PROCEDURAL SUMMARY

The Powells' home is located approximately 100 feet from Gu's house in a quiet residential neighborhood. In February 2016, Gu moved out of her house and began offering it for short-term uses through Airbnb.

According to Gu's Airbnb listing, her house accommodates 10 people. Gu advertised the house as being "[g]reat for events and gathering [sic]" with "plenty [of] parking on [its] own driveway for 6-8 cars . . . ." Gu admonished guests to "[p]lease do not disturb the neighbors" and to "[o]bserve quiet time outdoor [sic] after 10pm." Gu required that "any party or events need to be approved prior to booking. [N]o surprises!"

Gu pre-approved one party to be hosted at her house, a medical and dental school graduation reception, on June 4, 2016. On June 5, Daniel complained to Gu about the noise level by

sending her a message through the Airbnb website.[1] Daniel and Gu exchanged four messages. Daniel explained that Gu's house is located at the bottom of a "natural amphitheater" and that sound from her house projects into the neighborhood. Gu responded to the message the same day, apologizing for the noise and thanking Daniel for letting her know about the situation. She stated she would "check to see what more [sic] can do to limit this." Gu contacted the guest, who informed her the police stopped by the event three times, including at 7:00 p.m. and 10:00 p.m. According to Gu, the police agreed the party was "a very normal gathering" and a complaint was not necessary. Gu also followed up with Airbnb with the same report when the company reached out to her about Daniel's complaint.

On June 11, 2016, Gu received a second complaint from Daniel about a wedding and reception being hosted at her house. Gu was aware the guest's family from Brazil would be staying at the house, but was unaware that there would be a wedding and reception until she viewed live-feed footage from video cameras installed around the house, which showed the guest setting up for a party. Gu called the guest, but ultimately allowed the party to go forward. According to Daniel, there were at least 30 guests, and many neighbors called the police that night because of the noise. After Lupe called the police at 4:30 a.m., they stopped the party.

Other neighbors did not complain, although Allen Rizi, who lived two houses from the Powells, testified at trial that Gu's

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[1] Because the Powells share a surname, we will use their first names when referring to them individually in this opinion.

house was the location of loud parties almost every weekend from early May through August 2016.[2]

Lupe testified that, in May and June, she was recovering from two eye surgeries, for which she had to be in "total rest." She was "ready to lose my eye" and was "supposed to be resting not stressing out whatsoever and this was a completely [*sic*] nightmare wanting to rest and at the same time hearing all of this [*sic*] loud noises in the middle of the night." The Powells' deck has a direct view of Gu's house and during one of the parties, Daniel observed "a whole bunch of girls in bikinis and a film crew." "Very rowdy people" from the parties would "see up to our deck and [ ] mak[e] some ugly physical signs showing up the middle finger . . . ." The amplified music from Gu's house was directed at the Powells' bedroom. Lupe attempted, unsuccessfully, to reason with the guests on at least two occasions. The situation was "very stressful" for the Powells, and they suffered emotional distress as well as loss of enjoyment of their property.

According to Airbnb records, following the Powells' initial complaint on June 5, Gu allowed the use of her home on June 10, 11, 17, 18, 24 and 25. Gu testified that she asked each guest staying after June 5 to abide by her house rules. The Powells filed their complaint on June 30, 2016.[3]

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[2] Prior to receiving Daniel's complaint on June 4, Gu allowed use of her house on the weekends of May 20-21, and 27-28.

[3] Gu also rented out her house on several dates after the Powells filed their complaint on June 30, 2016. The trial court ruled that because the claim was one of a continuing nuisance,

In their verified complaint, the Powells alleged one cause of action for nuisance. They sought an injunction prohibiting Gu from renting out her house to "short term tenants to conduct loud, obnoxious and boisterous parties," damages, and diminution of value of their real property. At trial, the Powells advised the trial court they were only seeking to recover damages because the nuisance had been abated after they filed their complaint.

The case was tried to the court in one day. The parties and Rizi testified. Neither party requested a statement of decision. On August 27, 2018, the trial court entered judgment against Gu and awarded the Powells $6,000 in damages.

Gu filed a timely notice of appeal.

DISCUSSION

A. The Standard of Review

We review disputed factual determinations for substantial evidence. Under this standard, our power "'begins and ends with the determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the finding of fact. [Citations.] [¶] When two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court.' [Citation.]" (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912.)

We review questions of law de novo. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.)

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damages were available only for disturbances prior to the filing of the complaint. The Powells do not appeal this ruling.

Where, as here, no party requests a statement of decision,[4] the parties waive any objection to the trial court's failure to make all findings necessary to support its decision. (See *Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 970.) In addition, we apply the doctrine of implied findings and presume the trial court made all necessary findings supported by substantial evidence. (*Ibid*.) This doctrine "is a natural and logical corollary to three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error." (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 58.)

B. Substantial Evidence Supports The Trial Court's Determination That The Parties Held At Gu's House Constituted A Nuisance.

Gu contends the Powells failed to present any "objective evidence," such as sound recordings or movies, to prove nuisance. Gu's argument lacks merit.

1. *Private Nuisance Cause of Action*

Civil Code section 3479 defines a nuisance as "[a]nything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property . . . is a nuisance."

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[4] (Code Civ. Proc., §§ 632, 634; Cal. Rules of Court, rule 3.1590(d), (n).)

A nuisance may be continuing or permanent. "[A] nuisance is continuing if the defendant is not privileged to continue the nuisance and can abate it, while it is permanent if it appears improbable as a practical matter that the nuisance can or will be abated." (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1219.)

A private nuisance cause of action is one for "a nontrespassory interference with the private use and enjoyment of land." (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 937 (*Covalt*); see Civ. Code, §§ 3480, 3481.) It requires proof of three elements.

First, the plaintiff must prove an "interference with the plaintiff's use and enjoyment of that property." (*Covalt*, *supra*, 13 Cal.4th at p. 937.)

Second, the plaintiff must prove "that the invasion of the plaintiff's interest in the use and enjoyment of the land was substantial, i.e., that it caused the plaintiff to suffer 'substantial actual damage.' [Citations.] … The degree of harm is to be judged by an objective standard, i.e., what effect would the invasion have on persons of normal health and sensibilities living in the same community? [Citation.] 'If normal persons in that locality would not be substantially annoyed or disturbed by the situation, then the invasion is not a significant one, even though the idiosyncrasies of the particular plaintiff may make it unendurable to him.' [Citation.] This is, of course, a question of fact that turns on the circumstances of each case." (*Covalt*, *supra*, 13 Cal.4th at p. 938.)

Third, "'[t]he interference with the protected interest must not only be substantial, but it must also be unreasonable' [citation], i.e., it must be 'of such a nature, duration or amount as

to constitute unreasonable interference with the use and enjoyment of the land.' [Citations.] The primary test for determining whether the invasion is unreasonable is whether the gravity of the harm outweighs the social utility of the defendant's conduct, taking a number of factors into account. Again the standard is objective: the question is not whether the particular plaintiff found the invasion unreasonable, but 'whether reasonable persons generally, looking at the whole situation impartially and objectively, would consider it unreasonable.' [Citation.] And again this is a question of fact: 'Fundamentally, the unreasonableness of intentional invasions is a problem of relative values to be determined by the trier of fact in each case in the light of all the circumstances of that case.' [Citations.]" (*Covalt*, *supra*, 13 Cal.4th at pp. 938–939.)

The last two elements of a private nuisance "flow[] from the law's recognition that 'Life in organized society and especially in populous communities involves an unavoidable clash of individual interests. Practically all human activities unless carried on in a wilderness interfere to some extent with others or involve some risk of interference, and these interferences range from mere trifling annoyances to serious harms. It is an obvious truth that each individual in a community must put up with a certain amount of annoyance, inconvenience and interference and must take a certain amount of risk in order that all may get on together. The very existence of organized society depends upon the principle of "give and take, live and let live," and therefore the law of torts does not attempt to impose liability or shift the loss in every case in which one person's conduct has some detrimental effect on another. Liability for damages is imposed in those cases in which the harm or risk to one is greater than he

ought to be required to bear under the circumstances, at least without compensation.' [Citation.]" (*Covalt*, *supra*, 13 Cal.4th at pp. 937–938.)

"Although the central idea of nuisance is the unreasonable invasion of [the plaintiff's] interest and not the particular conduct subjecting the actor to liability, liability nevertheless depends on some sort of conduct that either directly and unreasonably interferes with [the plaintiff's interest] or creates a condition that does so. [Citations.]" (*Lussier v. San Lorenzo Valley Water Dist.* (1988) 206 Cal.App.3d 92, 100, [253 Cal. Rptr. 470].) A nuisance may be predicated on either negligent or intentional conduct. (See *Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 920.) Conduct giving rise to liability may be an affirmative act or the failure to act. (See *Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540, 1552 ["'The fact that the defendants' alleged misconduct consists of omission rather than affirmative actions does not preclude nuisance liability." [Citation.]"].)

2. *Substantial Evidence Supports The Trial Court's Finding Of A Private Nuisance.*

The record establishes that loud parties occurred the last two weekends in May and every weekend in June at Gu's house, creating disruptions that would disturb an ordinary person who lived in the otherwise quiet, residential neighborhood. The music and voices from the parties were amplified by the fact that Gu's house is situated at the bottom of a "natural amphitheater" that channeled noise in the direction of her neighbors, including the Powells' bedroom. The Powells' deck has a direct view of Gu's house, and during one of the parties, Daniel observed "a whole bunch of girls in bikinis and a film crew." The partygoers also directed rude gestures towards the Powells' deck. The police

were called on multiple occasions, and the parties occurred late into the night. The Powells were unable to enjoy their house on the weekends, including getting a good night's sleep. (See, e.g., *People v. Mason* (1981) 124 Cal.App.3d 348, 353 [late-night amplified music, foot stomping, and hand clapping at a restaurant adjacent to a residential area found to be a nuisance]; *Wilms v. Hand* (1951) 101 Cal.App.2d 811, 812 [intermittent barking, howling, yelping and whining by dogs in a dog hospital adjacent to a motel found to be a nuisance]; *Willson v. Edwards* (1927) 82 Cal.App. 564, 569 ["smells, odors, and noises" found to be a nuisance].)

By allowing short-term usage of her property, Gu participated in creating the circumstances under which the parties occurred. Although Gu included party restrictions and noise curfews in her Airbnb listing, she also advertised her home as being "great for events and gathering [sic]" and allowed for weekend rentals—days on which parties are more likely to occur. Once she became aware of the parties, Gu failed to take steps to abate the nuisance or prevent the parties from occurring. Thus, Gu created a nuisance both by action and inaction.

C. The Rule That Landlords Are Not Liable For A Nuisance Created By Their Tenants Does Not Apply In This Case.

Gu contends the judgment against her must be reversed because she is not liable for a nuisance created by her "tenants," "particularly where the tenants did not respect the terms of the lease." Gu's argument is not supported on the facts of this case.

Gu relies on *Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360, 1373, which declined to impose liability on a landlord for an attack by a tenant's dog when the

landlord had no knowledge that the dog was dangerous. *Chee* stands for the general proposition that "[t]he general duty of care owed by a landowner in the management of his or her property is attenuated when the premises are let because the landlord is not in possession, and usually lacks the right to control the tenant and the tenant's use of the property." (*Id.* at p. 1369.)

However, the record in this case demonstrates that Gu's Airbnb users were not tenants, i.e., individuals with exclusive possession of the property, as opposed to mere licensees or lodgers with a nonpossessory right to use the property. (See *Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1040 [key characteristic that distinguishes "tenancy from a mere license is the right to exclusive possession as against the whole world, including the landowner"].) In a landlord-tenant relationship, a landlord's liability is limited because she has relinquished possession of the property. "For landlords, reasonable care ordinarily involves making sure the property is safe at the beginning of the tenancy, and repairing any hazards the landlord learns about later." (*Stone v. Center Trust Retail Properties, Inc.* (2008) 163 Cal.App.4th 608, 612.) In contrast, landowners who maintain at least concurrent possession of their property must remain vigilant and take measures to protect third parties from harm. (See *Salinas v. Martin* (2008) 166 Cal.App.4th 404, 413 [property owner was "not an absentee landlord with limited access to the property" when "he continued to control the premises at least intermittently while the construction project proceeded"].)

The record contains no evidence that the legal relationship between Gu and her short-term guests amounted to a landlord-tenant relationship. To the contrary, the evidence in the record

demonstrates the absence of that relationship. Although Gu did not live at the house, she was able to monitor—and, on occasion, did monitor—what was happening at the house through live-stream video cameras. She also maintained possession over certain portions of the house, including the wine cellar and utility closets, which were not accessible to the guests. The garage, which Gu used for storage, could be accessed but not used by the guests. Thus, the evidence established that Gu is not a landlord entitled to avoid liability for the use of her property.

The record demonstrates, moreover, that the Powells' lawsuit focused on the fact that Gu's house had become a "party house" on the weekends and that Gu's "use and maintenance of the property . . . constitute[d] a nuisance . . . ." Thus, the central issue is Gu's failure to exercise due care in repeatedly allowing her house to be used for party-throwing short-term guests. The only person who had the ability and responsibility to control the use of the house was Gu. Accordingly, Gu cannot shield herself from liability by claiming she is a landlord or because she was unaware of a specific party. Gu had actual knowledge of the nuisance created (or that could be created) by her short-term users' loud parties once she received Daniel's June 5, 2016 complaint. Gu had the ability to prevent the nuisance after receiving those messages, but did not do so.

D. Substantial Evidence Supports The Court's Damages Award

Gu contends the trial court erred in awarding damages because the Powells failed to prove substantial, non-speculative damages; she asserts they suffered no loss of income, did not take any medication, did not receive any medical treatment and did

not suffer substantial emotional distress as a result of the nuisance. Gu's argument is without merit.

Because there is no statement of decision, we presume the trial court made all necessary findings to support the award. (See *Acquire II, Ltd.*, *supra*, 213 Cal.App.4th at p. 959.) Gu also failed to move for a new trial on damages, a prerequisite to reviewing a damages award that turns on factual questions, whether the case was tried by a jury or by the court. (See *Jamison v. Jamison* (2008) 164 Cal.App.4th 714, 719; accord *Schroeder v. Auto Driveaway Co.* (1974) 11 Cal.3d 908, 918–919, & fn. 6.)

Even if considered on the merits, Gu's contention would fail. Gu cites no authority to support her argument that awarding damages for a nuisance claim requires proving loss of income, the taking of medication, the receipt of medical treatment, or the suffering of substantial emotional distress. "Our high court and lower courts have long held that once a cause of action for trespass or nuisance is established, a landowner may recover for annoyance and discomfort, including emotional distress or mental anguish, proximately caused by the trespass or nuisance." (*Hensley v. San Diego Gas & Electric Co.* (2017) 7 Cal.App.5th 1337, 1348-1349, citing *Acadia, California, Limited v. Herbert* (1960) 54 Cal.2d 328, 337.) The compensation a plaintiff should receive in a nuisance case for personal discomfort and annoyance is a matter for the trial court to determine. (See *Griffin v. Northridge* (1948) 67 Cal.App.2d 69, 73 [a homeowner is "entitled to just compensation for annoyance, discomfort and inconvenience caused by a nuisance on the adjoining property"].)

Gu's reliance on *Schild v. Rubin* (1991) 232 Cal.App.3d 755, 763 is misplaced. In *Schild*, the plaintiffs attempted to secure a

temporary restraining order to prohibit harassment under Code of Civil Procedure section 527.6, which requires the person suffering from harassment to establish "substantial emotional distress." The court concluded that the noise from Schild's basketball playing "offended 'the senses'" of the Rubins and "generally interfered with their 'comfortable enjoyment of life and property'" but that the Rubins failed to establish "'substantial emotional distress'" in the absence of any medical or psychological evidence. (*Ibid.*) In this case, in contrast, the Powells did not seek to stop harassment and did not need to meet the "substantial emotional distress" standard urged by Gu.

Substantial evidence supports the implied finding that the Powells suffered "annoyance and discomfort" as a result of parties held at Gu's house every weekend in June of 2016. The Powells testified to their emotional distress. Lupe described the situation as a "nightmare" that was "very stressful" for herself and Daniel. The loud parties impeded Lupe's ability to rest as she underwent and recovered from two eye surgeries. Daniel testified that it was "just awful" to work hard and be unable to enjoy the property.

Accordingly, Gu has failed to establish any basis to disturb the award of damages.

DISPOSITION

The judgment is affirmed. The plaintiffs are to recover their costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.