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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

MOHSEN KALALEH, Plaintiff and Respondent, v. MANZAR KALALEH, Defendant and Appellant.	B285914 (Los Angeles County Super. Ct. No. MC026240)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert A. McSorley, Commissioner. Affirmed.

Mohsen Kalaleh, in pro. per.; Katherine R. Cohan for Plaintiff and Respondent.

Ferguson Case Orr Paterson and Joshua S. Hopstone for Defendant and Appellant.

INTRODUCTION

Appellant and defendant Manzar Kalaleh and respondent and plaintiff Mohsen Kalaleh are sister and brother. The dispute between the two involves a house in Palmdale to which both contributed purchase money. Manzar bought the house for $192,056.43 in her own name and, without Mohsen's knowledge, added her son, Kiarash Kahrobaei, to the title. Two months later, Kiarash obtained a $153,000 line of credit from Bank of the West, secured by a deed of trust signed by both Kiarash and Manzar that was recorded against the house. Shortly after the purchase, Mohsen moved into the house with Azita Garoosi (Manzar and Mohsen's second cousin) and lived there without paying rent. Kiarash paid property taxes and insurance.

After Kiarash obtained the line of credit, Manzar and Mohsen had a dispute regarding how much each sibling had contributed to the purchase price of the house and for whom the house had been purchased. Manzar filed an unlawful detainer complaint against Mohsen and Azita, and Mohsen filed an unlimited civil complaint against Manzar for breach of contract and fraud. The cases were eventually consolidated, and the court heard Mohsen's claim first. After several days of trial, the court found in favor of Mohsen and ordered Manzar to sign a deed conveying title to the house to Mohsen's designee and to compensate him for the loss of equity resulting from the deed of trust recorded against the house when her son obtained the line of credit. The court specifically declared that Mohsen held title to the house

subject only to "the rights of Bank of The West, which lent money, in good faith and without notice of Plaintiff's rights," and that Manzar and Kiarash "have no possessory rights in and to [t]he [h]ouse." Manzar's motion for a new trial was denied, and she filed this appeal.

On appeal, Manzar argues: (a) there is no substantial evidence to support the court's finding of the amount Mohsen claimed to have contributed to the purchase of the house; (b) the damages the trial court awarded Mohsen are excessive; (c) the trial court erred in imposing a judgment against Manzar that affected the rights and obligations of indispensable parties; and (d) the trial court erred in denying Manzar's motion for a new trial. We affirm.

STATEMENT OF RELEVANT FACTS

A. Manzar Buys the House and Puts Kiarash on Title; Kiarash Opens a $153,000 Line of Credit Secured Against the House

On April 3, 2015, using funds contributed by both Mohsen and Manzar, Manzar purchased real property located in Palmdale, California for $192,056.43, taking title as "Manzar Kalaleh, an Unmarried Woman." Mohsen then moved in. Thereafter, Azita Garoosi, Mohsen's second cousin, moved in with him.

On April 21, 2015, without notice to Mohsen, Manzar recorded a grant deed conveying title to the house to

"Manzar Kalaleh, an Unmarried Woman and Kiarash Kahrobaei, a Single Man as Joint Tenants."

On June 19, 2015, Kiarash entered into a "California Platinum Equity Choice Credit Agreement" with Bank of the West, through which the bank extended him a $153,000 line of credit that matured on June 24, 2045. In connection with this line of credit, both Manzar and Kiarash signed a deed of trust in favor of Bank of the West, which was recorded against the house.

B. Manzar and Mohsen File Complaints

A dispute arose between Manzar and Mohsen over their respective rights to the house and at some point, Kiarash filed an unlawful detainer complaint against Mohsen. Mohsen answered the complaint, alleging, among other matters, that "[t]he original purchase price [of the house] is said to be $190,000 [of] which $110,000 [was] provided by Mohsen Kalaleh . . . and [the] remainder provided by Manzar and son."[1]

On October 22, 2015, Manzar filed a second unlawful detainer complaint against Mohsen and Azita. In the April 11, 2016 form complaint, filed against Manzar in the instant case, Mohsen claimed this unlawful detainer complaint was still pending. Mohsen's complaint contained causes of action for breach of contract and fraud. The gist of his claims was

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[1] Mohsen claims this unlawful detainer complaint was dismissed, and nothing in our examination of the record contradicts his claim.

that he had contributed $170,000 to the purchase of the house in exchange for Manzar putting Mohsen's son's name on title, and permitting Mohsen to live in the house, rent-free. Instead, Manzar put her own son's name on the title, after which she and Kiarash encumbered the house with a deed of trust securing a $153,000 line of credit from Bank of the West. They repeatedly tried to evict him. Mohsen asked that Manzar be ordered to repay the $170,000, and for such "other relief the court deems just and proper."

On November 14, 2016, Manzar filed a third unlawful detainer complaint against Mohsen and Azita.[2] On February 1, 2017, the court granted Mohsen's unopposed ex parte application to consolidate this unlawful detainer case with his civil complaint.

On July 14, 2017, after examining the allegations contained in Mohsen's form complaint, the court concluded the complaint was "either, a complaint seeking the equitable remedies of specific performance, rescission and restitution or imposition of a constructive trust, or all of those remedies." The court also found Manzar's affirmative defenses to be equitable. Accordingly, the court severed Manzar's unlawful detainer case from Mohsen's civil complaint and ordered Mohsen's complaint to be tried first

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[2] The record is silent as to what happened to the second unlawful detainer action, but in light of the unlawful detainer complaint filed November 14, 2016, we presume the previous complaint was dismissed.

"to the court sitting without a jury," because Mohsen sought the equitable remedy of "restitution of real property arising from a breach of trust." If necessary, the court ruled, Manzar's unlawful detainer action could be tried to a jury after the court ruled on Mohsen's complaint.

A court trial was held over five days, from July 14 to 20, 2017. Seven witnesses testified, including Mohsen, Manzar, Kiarash, and Azita, and 38 exhibits were admitted. Mohsen testified that he contributed a total of $170,000 toward the purchase price of the house, with $100,000 provided to Manzar in cash, $60,000 deposited directly into her bank account, and $10,000 in the form of an unrepaid loan to Kiarash. These amounts were supported by documentary evidence: Exhibit 3 was a document signed by both Manzar and Kiarash acknowledging receipt of $100,000 from Mohsen. Exhibit 2 consisted of bank deposit slips showing deposits totaling $60,000 into Manzar's bank account. Exhibit 1 was a document signed by both Manzar and Kiarash acknowledging Kiarash's receipt of $10,000 from Mohsen. In her testimony, Manzar acknowledged the $60,000 deposit into her bank account but contended Mohsen had given her only $40,000 in cash, for a total of $100,000.

C. The Court Finds for Mohsen; Manzar Moves for a New Trial and Appeals

On July 26, 2017, the court issued its Statement of Decision (SOD). In the SOD, the court found Mohsen had transferred $170,000 to Manzar "for the purpose of acquiring

a house for himself or his son, or both." The court additionally found Manzar "liable for the loss of the equity in the house to the extent of $153,000.00 as the direct result of her having alienated [the house] . . . by giving a joint tenancy interest therein to Kiar[a]sh Kahrobaei . . . which alienation was the proximate cause of Kiar[a]sh Kahrobaei's being able to encumber the house to Bank of The West." The court found Manzar was "entitled to an offset of her liability to Plaintiff to the extent of $20,000 which is the amount of consideration for the house voluntarily paid by her . . . ."[3] The court "specifically [found] that the conduct of Defendant in this matter was willful and malicious." Finally, the court ordered Manzar to convey the house to Mohsen's designee.

On August 8, 2017, the court entered a judgment in favor of Mohsen and against Manzar in the amount of $130,954.57. The judgment declared Mohsen to be the holder of all rights to the house, subject only to the rights of Bank of the West, "which lent money, in good faith and without notice of Plaintiff's rights, on the security thereof thereby encumbering [t]he [h]ouse," and declared Manzar

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[3] The "$20,000" amount appears to be an approximation of the $22,056.43 the court found Manzar contributed. Specifically, the court found the cost of the house was $192,056.43 and that Mohsen had contributed $170,000 of that amount, with the balance coming from Manzar. This is also reflected in the monetary portion of the judgment awarding Mohsen $130,954.57, which Manzar recognizes as "representing the $153,000 loan offset by the $22,056 Mohsen concedes is still owed to Manzar."

and Kiarash to have no rights in the house. The court dismissed the previously severed unlawful detainer complaint.

Manzar gave notice of her intent to move for a new trial on August 9, and on August 18, 2017, filed a pleading entitled "Objections to Statement of Decision Announced by the Trial Court on July 26, 2017 and to the Judgment Entered on August 8, 2017. [¶] Objections to Findings of the Court [¶] Motion for New Trial." On September 21, 2017, following a hearing, the court denied the motion for a new trial. On October 19, 2017, Manzar filed a notice of appeal, appealing the August 8, 2017, judgment.

DISCUSSION

A. Substantial Evidence Supports the Court's Finding That Mohsen Contributed $170,000 to the House Purchase

In its SOD, the trial court found that Mohsen "testified credibly that he had transferred money in the total sum of $170,000" to Manzar. Manzar argues "[t]he trial court abused its discretion in believing Mohsen's word over the documentary proof admitted into evidence at trial reflecting the amounts each party contributed." Manzar further contends "there is no evidence at trial -- other than Mohsen's self-serving word -- to support his story that he contributed $170,000 toward the purchase. All of the documents

introduced and admitted into evidence at trial support Manzar's position that Mohsen contributed only $100,000."

Determinations of witness credibility are subject to the substantial evidence standard of review. (*Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1383, 1394; *Kanno v. Marwit Capital Partners II, L.P.* (2017) 18 Cal.App.5th 987, 1007.) "Our substantial evidence standard is extremely deferential. ([*Doe v.*] *Regents* [*of University of California* (2016)] 5 Cal.App.5th [1055, 1073].) "'[W]e do not 'weigh the evidence, consider the credibility of witnesses, or resolve conflicts in the evidence or in the reasonable inferences that may be drawn from it.'" [Citation.] . . . 'We are required to accept all evidence which supports the successful party, disregard the contrary evidence, and draw all reasonable inferences to uphold the verdict. [Citation.] Credibility is an issue of fact for the finder of fact to resolve [citation], and the testimony of a single witness, even that of a party, is sufficient to provide substantial evidence to support a finding of fact.' (*Id.* at pp. 1073-1074.)" (*Doe v. Occidental College* (2019) 37 Cal.App.5th 1003, 1019.)

Mohsen testified that he gave Manzar a total of $170,000, consisting of $100,000 in cash handed to Manzar, $60,000 deposited into Manzar's bank account, and $10,000 in cash to Manzar's son, Kiarash. Contrary to Manzar's assertions, each of these three amounts was supported by documentary evidence. Specifically, Manzar and Kiarash both signed a document acknowledging Manzar's receipt of $100,000 from Mohsen, and this document was admitted as

Exhibit 3. Bank deposit slips corroborated the deposit of a total of $60,000 into Manzar's bank account, and those slips were admitted as Exhibit 2. Additionally, Manzar and Kiarash both signed a document acknowledging Kiarash's receipt of $10,000 from Mohsen; this document was admitted as Exhibit 1. While Manzar testified she had received only $100,000 from her brother -- consisting of the $60,000 in bank deposits, but only $40,000 in cash -- the court was entitled to credit Mohsen's testimony over Manzar's. Substantial evidence thus supports the court's finding that Mohsen gave Manzar $170,000 for the purchase of the house.

B. The Damages Awarded Are Not Excessive

The court's judgment orders Manzar to convey title to the house to Mohsen's designee and to pay Mohsen $130,954.57. As Manzar acknowledges, the $130,954.57 represents "the $153,000 loan [Kiarash took out from Bank of the West] offset by the $22,056 Mohsen concedes is still owed to Manzar [for Manzar's contribution to the purchase price of the house]." The court additionally declared that "Plaintiff Mohsen Kalaleh is the holder of all possessory right, in and to the house, subject only to the rights of Bank of The West, which lent money, in good faith and without notice of Plaintiff's rights, on the security thereof thereby encumbering [t]he [h]ouse."

Manzar argues the judgment constitutes excessive damages because "the trial court conflated ownership with

loan repayment by awarding Mohsen *both* ownership of the house *and* money damages of $130,954, while maintaining that Manzar is still responsible for repaying $153,000 to satisfy the loan to Bank of the West." She contends "[t]he result is tantamount to an award of double damages."

We disagree. Nothing in the judgment renders Manzar responsible for repaying the $153,000 loan. In fact, the California Platinum Equity Choice Credit Agreement admitted as Exhibit 8 shows the borrower on the loan is "Kiar[a]sh Kahrobaei," not Manzar. Manzar neither points to any evidence nor provides any reasoned argument why she would be responsible to Bank of the West for the line of credit extended to Kiarash. The $153,000 awarded to Mohsen -- with an offset for the $22,056.43 Manzar contributed to the purchase of the house -- represents the "loss of the equity" in the house that Manzar caused by surreptitiously giving Kiarash a joint tenancy interest in the house and signing the Bank of the West Deed of Trust. Nowhere does the judgment say Manzar is responsible for repaying the Bank of the West line of credit.

Moreover, even were Manzar liable for the Bank of the West line of credit, we are unpersuaded that the damages awarded are excessive. "We must uphold an award of damages whenever possible [citation] and 'can interfere on the ground that the judgment is excessive only on the ground that the verdict is so large that, at first blush, it shocks the conscience and suggests passion, prejudice or corruption on the part of the [factfinder].' [Citations.]"

(*Westphal v. Wal-Mart Stores, Inc.* (1998) 68 Cal.App.4th 1071, 1078 (*Westphal*).) In assessing a claim of excessive damages, "we do not reassess the credibility of witnesses or reweigh the evidence. To the contrary, we consider the evidence in the light most favorable to the judgment, accepting every reasonable inference and resolving all conflicts in its favor. [Citation.]" (*Id.* at p. 1078.)

Nothing guarantees Kiarash will continue to repay Bank of the West. Should repayment cease, Bank of the West could foreclose on the house, and the bank's damages -- including interest, attorneys' fees, and costs -- would quickly exceed the $153,000 awarded to Mohsen. Furthermore, the Bank of the West line of credit matures in the year 2045, meaning that even if timely payments are made to prevent foreclosure, Mohsen could still have a deed of trust recorded against the house for another 26 years. Until the deed of trust is reconveyed, Mohsen is effectively prevented from refinancing or selling the house, options he would have had if the house were unencumbered. Under these circumstances, an award of $153,000 to compensate Mohsen for the loss of equity in, and encumbrance upon, his house does not strike us as "so large that . . . it shocks the conscience and suggests passion, prejudice or corruption . . . ." (*Westphal*, *supra*, 68 Cal.App.4th at p. 1078.) Manzar fails to demonstrate the damages awarded are excessive.

C. Manzar Fails to Demonstrate the Absence of Indispensable Parties

"'Where the plaintiff seeks some type of affirmative relief which, if granted, would injure or affect the interest of a third person not joined, that third person is an indispensable party.'" (*Save Our Bay, Inc. v. San Diego Unified Port Dist.* (1996) 42 Cal.App.4th 686, 692.) Here, Manzar argues both Kiarash and Bank of the West are indispensable parties. We disagree.

1. Manzar Fails to Show Kiarash Is an Indispensable Party

Manzar's sole basis for arguing that Kiarash is an indispensable party is that $10,000 of the $170,000 "Mohsen prayed for [in his complaint] . . . arose from a loan that Mohsen made to Kiarash . . . ." Therefore, Manzar argues, "the judgment [in this case] should be reduced by $10,000 because Manzar cannot be held liable for Kiarash's alleged failure to repay a $10,000 loan from Mohsen to Kiarash . . . ."

We reject the premise of Manzar's argument. Manzar conflates a request made by Mohsen in his complaint -- for repayment of $170,000 -- with what the court actually awarded Mohsen. Nothing in the judgment holds Manzar liable for the $10,000 Mohsen loaned to Kiarash. The judgment declares Mohsen the owner of the house, subject only to Bank of the West's rights. Additionally, because Manzar's actions permitted the house to be encumbered by a deed of trust securing a $153,000 line of credit, the judgment

also orders Manzar to pay Mohsen $153,000 for the impaired equity resulting from those actions (with credit for the $22,056.43 she admittedly contributed to the purchase price). Nowhere is Manzar held liable for any money owed by Kiarash to Mohsen.[4] Manzar's argument fails to demonstrate Kiarash was an indispensable party.

2. Manzar Fails to Show Bank of the West Is an Indispensable Party

Manzar additionally argues "Bank of the West also is an indispensable party insofar as their security interest is or may be materially affected by the judgment."

"The contention that indispensable parties were not joined may be raised at any time. (See, e.g., *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 214 [137 Cal.Rptr. 118].) Where, as here, the issue is raised for the first time on appeal, 'the only justification for invoking the rule would be that the trial court was unable to

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[4] Manzar also argues Kiarash "paid all property taxes, home insurance, and other expenses relating to the property for two years after its purchase," and "Kiarash was deprived of the opportunity to appear or be heard about his contributions to the property." First, we note Kiarash did appear and testified that he had "paid three years of property taxes and insurance premium payments plus the mortgage payments." Second, because the judgment does not order Kiarash to pay anything, the question whether he should "have received credit for the property taxes, insurance, and other amounts he paid" is academic and does not render him an indispensable party.

render an effective judgment between the parties before it.' (4 Witkin, Cal. Procedure (3d ed. 1985) § 168(c).)" (*County of Alameda v. State Bd. of Control* (1993) 14 Cal.App.4th 1096, 1105, fn. 5.)

Because Manzar raises the issue of indispensable parties for the first time on appeal, she must demonstrate the trial court was unable to render an effective judgment between the parties before it without Bank of the West. She fails to do so. The judgment awards title of the house to Mohsen "subject only to the rights of Bank of The West, which lent money, in good faith and without notice of Plaintiff's rights, on the security thereof thereby encumbering [t]he [h]ouse." In other words, Bank of the West's security interest remains unaffected by the judgment. Manzar thus fails to show Bank of the West was an indispensable party.

D. The Court Did Not Abuse Its Discretion in Denying Manzar's Motion for a New Trial

In August 2017, Manzar moved for a new trial. On September 21, 2017, the court denied the motion. Manzar claims the court erred because: (1) she "established irregularities in the trial proceedings in the form of attorney misconduct"; (2) she "set[] forth ample grounds for granting a new trial on" the basis of newly discovered evidence; (3) "the damages awarded . . . were excessive"; and (4) "there was insufficient evidence to justify the verdict against her."

"It is well settled, of course, that a party challenging a judgment has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574 (*Ballard*).) In *Ballard*, the court observed: "Although plaintiff challenges the court's ruling [denying his motion for new trial] on appeal, he has not provided an adequate record to permit us to determine whether reversal of the judgment on either ground is appropriate. The record on appeal does not contain a transcript of the hearing of the new trial motion; thus, we do not know the basis of the trial court's denial." (*Ibid.*)

Here, Manzar similarly provides no transcript of the hearing on the new trial motion, even though the minute order denying the motion reveals the proceedings were transcribed by a court reporter. Neither does she identify any circumstance that would permit the use of a settled statement under California Rules of Court, rule 8.137(b).[5]

"In numerous situations, appellate courts have refused to reach the merits of an appellant's claims because no reporter's transcript of a pertinent proceeding or a suitable substitute was provided. . . . [¶] The reason for this follows from the cardinal rule of appellate review that a judgment or

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[5] The record does contain Manzar's motion to use a settled statement on appeal, but her request was based on the lack of a court reporter at the trial. Nothing in her motion demonstrated why a settled statement would be appropriate for the hearing on the motion for a new trial, and the submitted settled statement sheds no light on what occurred at that hearing.

order of the trial court is presumed correct and prejudicial error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [86 Cal. Rptr. 65, 468 P.2d 193].) 'In the absence of a contrary showing in the record, all presumptions in favor of the trial court's action will be made by the appellate court. "[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented.'" (*Bennett v. McCall* (1993) 19 Cal.App.4th 122, 127 [23 Cal. Rptr. 2d 268].) This general principle of appellate practice is an aspect of the constitutional doctrine of reversible error. (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610 [109 Cal. Rptr. 2d 256].) "'A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.'" (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416 [122 Cal. Rptr. 2d 167].) 'Consequently, [appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant].' (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502 [93 Cal. Rptr. 2d 97].)" (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186-187.)

Because Manzar failed to provide an adequate record on appeal, we do not know the basis of the trial court's denial, and we may affirm the court's ruling without

considering the substance of her arguments. (*Ballard*, *supra*, 41 Cal.3d at p. 575.) Moreover, as explained below, were we to consider her arguments, we would affirm the court's ruling.

1. Manzar Fails to Demonstrate Irregularity in the Proceedings

After listing numerous ways in which she believes her counsel's conduct was deficient, Manzar argues she is entitled to a new trial for attorney misconduct because "[i]t is reasonably probable that but for the misconduct of Manzar's attorney, the result in the case would have been different." She does not cite -- and we have not found -- authority for the proposition that the incompetence of one's own counsel in a civil suit is grounds for a new trial. In fact, numerous authorities hold the opposite. (*Chevalier v. Dubin* (1980) 104 Cal.App.3d 975, 978 ["In his brief, appellant charges his trial counsel with incompetence, lack of preparation, lack of knowledge of the facts, and ignorance of the law and procedure. We need not assess the validity of these charges, for we are aware of no authority, and counsel has cited us none, which would permit a trial or appellate court to grant a retrial to an unsuccessful litigant in a civil case . . . on the grounds of incompetency of counsel"]; *Le Tourneux v. Gilliss* (1905) 1 Cal.App. 546, 555 ["If, after a case had been submitted and decided, the losing party could have the judgment set aside because he acted upon an erroneous view of the law there would be no end to litigation.

There have been times no doubt in the experience of every lawyer when he would have liked to have been relieved of a situation brought about by his failure to do the proper thing at the proper time. But after judgment it is too late for relief on such ground"]; *In re Marriage of Liu* (1987) 197 Cal.App.3d 143, 155 ["it is now well established that there is 'no provision for a new trial on account of mistake of law of a party or his attorney'"]; *Slemons v. Paterson* (1939) 14 Cal.2d 612, 615 ["Section 657, Code of Civil Procedure, makes no provision for a new trial on account of mistake of law of a party or his attorney"].)

The lone case Manzar cites to support her argument that attorney misconduct warrants a new trial involved the misconduct of opposing counsel, not the moving party's counsel, and thus is inapposite. (*City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 865 [noting the "principal ground" for appellant's motion for new trial was that the conduct of respondent's attorneys at trial "violated the ethical duties of government attorneys in condemnation cases," i.e., that opposing counsel, rather than appellant's own counsel, committed misconduct].) The trial court did not err in denying Manzar's motion for a new trial on the grounds of irregularity in the proceedings.

2. Manzar Did Not Demonstrate Reasonable Diligence in Procuring Her "Newly Discovered Evidence"

"A motion for a new trial on the grounds of newly discovered evidence is generally 'a matter which is committed to the sound discretion of the trial court,' and 'a reviewing court will not interfere unless a clear abuse of discretion is shown. [Citation.]'" (*Aron v. WIB Holdings* (2018) 21 Cal.App.5th 1069, 1078, quoting *Cansdale v. Board of Administration* (1976) 59 Cal.App.3d 656, 667.) "Generally, a party seeking a new trial on this basis must show that '(1) the evidence is newly discovered; (2) he or she exercised reasonable diligence in discovering and producing it; and (3) it is material to the . . . party's case.'" (*Doe v. United Air Lines, Inc.* (2008) 160 Cal.App.4th 1500, 1506.) "Generally, when a party seeking a new trial knew, or should have known, about the pertinent evidence before trial but did not exercise due diligence in producing it, the grant of a new trial is error. [Citation.]" (*Id.* at p. 1509.)

Manzar argues the court erred in denying her motion for a new trial in the face of two pieces of "newly discovered evidence": (1) the testimony of an individual living in Iran (Mrs. Ashrafyan) that would have contradicted testimony given by Mohsen and Azita; and (2) a declaration of Kambiz Garoussi, Azita's ex-husband, claiming Mohsen and Azita defrauded him and stole over $200,000 of his life savings. Assuming, without deciding, this evidence's novelty and

materiality, Manzar fails to show due diligence in discovering and producing it.

Manzar admits she did not try to secure a statement from Mrs. Ashrafyan until after she heard Mohsen's opening statement. Similarly, while Manzar's appellate briefs fail to explain her delay in securing a declaration from Kambiz Garoussi, in her motion for a new trial she also admitted reaching out to Mr. Garoussi "after hearing Mohsen Kalaleh's opening statement that Azita . . . is not his gf [*sic*]. . . ."

Manzar has contended her attorney "never deposed Mohsen or his witnesses." Similarly, in her motion for a new trial, she argued she was "materially affected by [her] attorney's misconduct because [her] attorney did not depose plaintiff or his witnesses to discover what plaintiff's story [was] as to how he acquired the money paid in the underlying matter. Due to [her] attorney's negligence, not enough time existed for defendant to form a reliable defense to plaintiff's false story." In other words, Manzar admits her inability to produce her "newly discovered evidence" at trial was due to a lack of diligence in discovering and producing it.[6] The court did not err in denying Manzar's motion for a new trial on the basis of newly discovered evidence.

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[6] To the extent Manzar seeks to blame her former attorney, "the negligence of the attorney . . . is imputed to his client and may not be offered by the latter as a basis for relief." (*Buckert v. Briggs* (1971) 15 Cal.App.3d 296, 301.)

3. Manzar Fails to Demonstrate Excessive Damages

"[A] motion for new trial predicated on the ground[] of . . . excessive damages is addressed to the sound discretion of the trial judge; his action in refusing a new trial will not be disturbed on appeal unless it is affirmatively shown that he abused his discretion." (*Charles D. Warner & Sons, Inc. v. Seilon, Inc.* (1974) 37 Cal.App.3d 612, 616.)

Manzar argues that the damages awarded to Mohsen were "excessive and tantamount to double damages." As explained above, the damages awarded were neither excessive nor tantamount to double damages. The court did not err in denying Manzar's motion for a new trial based on excessive damages.

4. Sufficient Evidence Justifies the Imposition of a Constructive Trust

"'[A] motion for new trial predicated on the ground[] of the insufficiency of the evidence . . . is addressed to the sound discretion of the trial judge; his action in refusing a new trial will not be disturbed on appeal unless it is affirmatively shown that he abused his discretion. [Citation.]' (*Charles D. Warner & Sons, Inc. v. Seilon, Inc.* [*, supra,*] 37 Cal.App.3d [at p.] 616 [112 Cal. Rptr. 425].) 'The abuse of discretion standard is not a unified standard; the deference it calls for varies according to the aspect of a trial court's ruling under review. The trial court's findings of fact are reviewed for substantial evidence,

its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.' (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711-712 [76 Cal. Rptr. 3d 250, 182 P.3d 579], fns. omitted.)" (*David v. Hernandez* (2014) 226 Cal.App.4th 578, 588-589.)

Manzar contends there is insufficient evidence "to establish fraud or constructive trust on the part of Manzar." Specifically, she argues: (a) the court "improperly disregarded Mohsen's statements in verified pleadings in which he admitted to giving only $110,000 to Manzar, not $170,000 as he claimed at trial"; and (b) "[t]here was no substantial evidence to establish Manzar made a false representation to Mohsen at any time, and thus no basis to support the court's finding of a constructive trust." We disagree.

As to her first point, while Manzar fails to cite to anything relevant, we note Mohsen stated in his answer to Kiarash's unlawful detainer complaint that "[t]he original purchase price [of the house] is said to be $190,000 [i]n which $110,000 [w]as provided by Mohsen Kalaleh . . . and [the] remainder provided by Manzar and son."[7] In

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[7] Manzar cites to her own pleading entitled "Objections to Statement of Decision Announced by the Trial Court on July 26, 2017 and to the Judgment Entered on August 8, 2017; Objections to Findings of the Court; Motion for New Trial" and Mohsen's complaint, neither of which is evidence of Mohsen's statements admitting to giving Manzar only $110,000. While normally "[i]t
(Fn. is continued on the next page.)

contending the court "improperly disregarded" this statement, Manzar essentially argues that Mohsen is judicially estopped from asserting his contribution to the purchase price to be anything other than $110,000. However, "[a]s a general rule, the court should apply the [judicial estoppel] doctrine only when the party stating an inconsistent position succeeded in inducing a court to adopt the earlier position or to accept it as true. If the party did not succeed, then a later inconsistent position poses little risk of inconsistent judicial determinations and consequently introduces "'little threat to judicial integrity.'"" (*ABF Capital Corp.*, *supra*, 130 Cal.App.4th at p. 832.) Here, nothing in the record demonstrates the court ever adopted Mohsen's earlier position or accepted it as true. Additionally, given that Mohsen's answer was admitted as a defense exhibit at trial, Manzar was aware of Mohsen's previous assertion and it was available for use in what the court characterized as her "lengthy, aggressive and skillful cross-examination" of Mohsen. While the scant record before us fails to disclose Mohsen's explanation for why he previously claimed to have

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is an appellant's duty to direct the court to evidence that supports his arguments" (*Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1, 10), "[w]hen the court has denied a motion for a new trial, . . . we must determine whether the court abused its discretion by examining the entire record and making an independent assessment of whether there were grounds for granting the motion" (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 832 (*ABF Capital Corp.*).

contributed only $110,000 to the purchase of the house, the court found Mohsen's testimony that he contributed more to be credible. We are in no position to second-guess the trial court's determination.

Equally unavailing is Manzar's argument that the court's finding of a constructive trust was unsupported because no substantial evidence established she had lied to Mohsen. As Manzar herself notes in her opening brief: "The wrongful act giving rise to a constructive trust does not need to amount to fraud or intentional [mis]representation; all that must be shown is that the acquisition of the property was wrongful and that the keeping of the property by the defendant would constitute unjust enrichment." Here, the court found Mohsen transferred money "for the purpose of acquiring a house for himself or his son, or both." It is undisputed that at the time of judgment, neither Mohsen nor his son appeared on the title of the house purchased with that money -- instead the house was held in the names of Manzar and Kiarash, who had been added without Mohsen's knowledge. It was similarly undisputed that the house was encumbered with a deed of trust securing a $153,000 line of credit obtained without Mohsen's knowledge by Kiarash with Manzar's assistance and complicity. The court also specifically found "that the conduct of Defendant [Manzar] in this matter was willful and malicious." Under these circumstances, substantial evidence supports the court's finding of a wrongful act giving rise to a constructive trust.

The court did not err in denying Manzar's motion for a new trial based on insufficient evidence.[8]

[8] In her reply brief, Manzar notes Mohsen's respondent's brief asserted "he entered into an 'oral agreement' for the purpose of 'purchasing a **shared home** with Manzar Kalaleh.'" Manzar argues this statement undermines the court's finding that Mohsen transferred money to purchase a house benefiting him and/or his son. We are unpersuaded. Nothing in the record suggests Mohsen and Manzar intended to share the house together. In fact, Manzar herself testified that "[t]he house was going to be a rental property and the first tenant was to be Mohsen . . . ." While ambiguous, the term "shared house" could plausibly refer to the fact that Mohsen shared the house with Azita, or that he intended to live in the house while title was held in the name of his son.

DISPOSITION

The judgment is affirmed. Respondent is awarded his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, P. J.

We concur:

WILLHITE, J.

COLLINS, J.