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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

HYUN SOOK KIM, aka WENDY
H. KIM,

Plaintiff and Respondent,

v.

MYUNGJA KIM,

Defendant and Appellant.

B263487

(Los Angeles County
Super. Ct. No. BC454629)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joseph R. Kalin, Judge. Affirmed in part and reversed in part.

David L. Prince and Miles L. Prince for Defendant and Appellant.

Moon & Dorsett, Dana M. Dorsett, Jennifer Y. Lee, Jeffrey Dorsett and Jeremy Cook for Plaintiff and Respondent.

Hyun Sook Kim, aka Wendy H. Kim (Wendy), sued Myungja Kim (Myungja)¹ for equitable relief in connection with loans totaling \$500,000 that Wendy's father made to Myungja in 2006 and 2007. Wendy alleged that Myungja agreed to repay the loans from the proceeds of the sale of property she owns, but that she never sold that property and never repaid the loans. Following a bench trial, the trial court entered judgment for Wendy (as her father's assignee) on claims for foreclosure under equitable mortgage, unjust enrichment, and the imposition of a constructive trust. The amount of the judgment was \$500,000, plus prejudgment interest at 10 percent per annum accruing from October 2008. Because it found that Myungja's sale of her property was a condition precedent to her repayment obligation, the court stated that the judgment is not payable until the property is sold. To protect Wendy's stake in the sale proceeds, however, the court established in her favor an equitable lien on Myungja's property in the amount of the judgment. The court also established a constructive trust for Wendy's benefit in that same amount.

On appeal, Myungja challenges the factual and legal bases for the trial court's establishment of the equitable lien and constructive trust. We find no error regarding the equitable lien. There is substantial evidence of inequitable conduct on the part of Myungja, manifested in broken promises she made related to the repayment of the loans through the proceeds from the sale of her property. This evidence further indicates that Wendy relied to her detriment on Myungja's promises and that Myungja

¹ Because the parties share the same last name, we refer to them by their first names.

unjustly enriched herself at Wendy's expense. The establishment of an equitable lien on Myungja's property was an appropriate remedy under these circumstances. As to the constructive trust, however, we do find error. As a matter of law, the amount of the judgment does not qualify as an identifiable res, which is a necessary element for the creation of a constructive trust. Accordingly, we affirm the judgment with respect to the equitable lien only.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Loans to Myungja

In 2006 and 2007, Wendy's father, Man Choon Lee (Lee), made loans to Myungja totaling \$500,000. At the time the loans were made, Wendy and Lee had known Myungja for over a decade.

Lee made the first loan to Myungja on October 13, 2006; it was for \$200,000. Myungja used the money to purchase the Chadron Apartments in the City of Hawthorne on November 15, 2006. To document the loan, Myungja made out a personal check to Lee in the amount of \$200,000, dated November 8, 2006, with the notation "Chadron Loan." Lee did not cash the check.

Lee loaned Myungja an additional \$20,000 on September 10, 2007 and \$280,000 more on September 19, 2007, bringing the total amount of Myungja's indebtedness to Lee to \$500,000. To document the September 2007 loans, Myungja gave Lee a signed, undated personal check for \$300,000. Again, Lee did not cash the check.

There was no written agreement between Lee and Myungja regarding repayment of the \$500,000. However, Lee and

Myungja orally agreed that when Lee asked for the money back, Myungja would repay him. Lee had loaned Myungja money in the past with no formal loan documentation, and Myungja always had paid him back. It is uncertain whether Myungja was to repay the loans with interest, and, if so, at what rate.

In 2008, Lee asked Myungja for repayment of the \$500,000. In response, Myungja stated that she could not repay him at that time. Lee and Myungja orally agreed that Myungja instead would sell property she owned at 18 Covered Wagon Lane in Rolling Hills Estates by the end of 2008 and that she would repay Lee through the proceeds of the sale. As part of this agreement, Wendy, a real estate agent, served as the listing agent for Myungja's property. Wendy listed the property for sale in July 2008. Wendy obtained an offer to purchase the property for \$1.5 million, with a \$1 million down payment. In Wendy's opinion, this offer was "very reasonable." Myungja refused the offer, however, and made a counteroffer of \$1.7 million. The potential buyer did not accept the counteroffer. The listing of the property expired in October 2008.

Lee was hospitalized for cancer in July 2009. Myungja visited him twice at the hospital during that month. On Myungja's first visit, Wendy was present; she asked Myungja about the possibility of signing a secured note for the \$500,000 debt. Myungja stated that she would talk to Lee about this. On her second visit, Myungja told Lee that, "No note is needed. I'll pay you back." She said she had enough equity in her properties, so she would pay him back, "as soon as I [have] sold my house at 18 Covered Wagon [Lane], Rolling Hills in California. And you know I'm trying to sell the house." Subsequently, Wendy again asked Myungja about executing a secured note. Myungja got

upset and said, “You’re calling me a thief. I’m a good Christian. As soon as I sell my house, I’ll pay you back. And you know I do have enough equity in my old property.”

Lee was discharged from the hospital in mid- to late July 2009. Lee returned to the hospital in December 2009, however, and was placed in the intensive care unit. Wendy saw Myungja at the hospital in January 2010. Myungja told Lee at that time not to worry about the repayment of the money. She stated to him, “I will pay you back. Just take care of yourself and get well.” Myungja also sought to reassure Wendy at that time that she would repay the money. Specifically, Myungja stated that she had relisted the 18 Covered Wagon Lane property for sale and would make the repayment once the property was sold. Wendy again requested that the repayment agreement be put in writing through a secured note, but Myungja refused, stating, “Why do you need the note because I will pay you back in short time.” As an alternative, Wendy suggested that Myungja sell the Chadron Apartments and pay back the loan through the proceeds of that sale. Myungja said she did not want to sell the Chadron Apartments because she was receiving rental income from that property. Myungja added that the Chadron Apartments had not increased in value, and if she sold that property, she would not receive enough to repay the \$500,000. Myungja reiterated that she would sell the 18 Covered Wagon Lane property and would have more than enough to repay the \$500,000 from the proceeds of that sale.

Lee was discharged from the hospital on or around January 10, 2010. On January 18, 2010, he assigned to Wendy his rights to the \$500,000 Myungja owed him. Lee died on January 24, 2010.

Myungja never sold the 18 Covered Wagon Lane property. The last time it was on the market was July 2010. Myungja still owned the property as of the date of the second trial (October 20, 2014).

B. *Wendy's Lawsuit Against Myungja*

1. *Wendy's Initial Complaint*

As Lee's assignee, Wendy filed a complaint for damages against Myungja and Myungja's husband Thomas Kim on February 7, 2011. The complaint asserted causes of action for breach of contract and common counts. The case was heard in a bench trial on February 8, 2012. Wendy was the only witness who testified at the trial. Myungja and her husband did not put on a defense case.

At the close of Wendy's case, the court granted the defendants' motion for judgment of nonsuit pursuant to Code of Civil Procedure section 631.8. In a subsequent minute order, the court explained that it granted the defendants' motion because "a condition precedent to repayment of the loans is the sale of the real property [at 18 Covered Wagon Lane]. Since the sale has not taken place, [Wendy] is not entitled to judgment at this time since her causes of action are for breach of contract and common counts."² In dismissing Wendy's complaint on the ground that the condition precedent necessary for the recovery of damages had yet to occur, the court indicated that a suit for equitable relief could proceed, notwithstanding that condition. Accordingly,

² Wendy testified that Myungja still owned the 18 Covered Wagon Lane property as of early 2012.

the court continued the case “to allow [Wendy] to file an amended complaint for equitable relief.”

2. *Wendy’s Amended Complaint*

Taking the trial court’s cue, on March 29, 2012, Wendy filed a first amended complaint for equitable relief against Myungja.³ In the amended complaint, Wendy asserted causes of action for foreclosure under equitable mortgage, unjust enrichment, and imposition of a constructive trust. The case again was heard in a bench trial on October 20, 2014, and again, Wendy was the only witness.⁴ At the close of Wendy’s case, the court denied Myungja’s motion for nonsuit. Myungja, again, did not put on a defense case.

3. *The Trial Court’s Tentative Ruling*

On December 1, 2014, the trial court issued a tentative ruling for Wendy. The court found that Lee loaned Myungja \$500,000, as evidenced by the uncashed checks she wrote to him. The court also found that “[t]he parties entered into an oral agreement that the loans evidenced by the checks would be satisfied when the Covered Wagon real property was sold,” and that “[t]he parties intended that the real property on Covered Wagon [Lane] would be security for the \$500,000 owed by” Myungja to Wendy. Additionally, the court found that Myungja listed the 18 Covered Wagon Lane property for sale, received an

³ Unlike in the initial complaint, Wendy did not name Myungja’s husband as a defendant in the amended complaint.

⁴ The same judge presided over both trials; the judge indicated during the second trial that he would consider evidence that had been presented at the first trial.

offer “which was within the range of the fair market value of the property,” declined the offer, and thereafter did not sell or attempt to sell the property.

The court further found that Myungja breached the agreement by “fail[ing] to complete the sale of the property when it was first listed for sale.” The court stated that Wendy, as assignee of the debt, thus was entitled to judgment in the amount of \$500,000, plus “prejudgment interest at 10% from the date of expiration of the listing of the property.”

With respect to the remedy, the court stated that “the amount of [the] judgment is not due until the sale of the [18 Covered Wagon Lane] property, its transfer of ownership, or further attempt to encumber the property.” The court did, however, establish in Wendy’s favor “an equitable lien on the Covered Wagon property in the amount of \$500,000 and accrued interest due an[d] payable upon sale, transfer of the property or attempt to further encumber the property.”

C. The Trial Court’s Judgment

On January 30, 2015, the trial court entered judgment for Wendy on all three of her claims (foreclosure under equitable mortgage, unjust enrichment, and imposition of a constructive trust). The judgment contained the following express finding: “The agreement between [Lee] and [Myungja] under which [Lee] loaned [Myungja] \$500,000.00 . . . was breached when [Myungja] failed to complete the sale of the property commonly known as 18 Covered Wagon Lane in Rolling Hills Estate[s] when it was first listed for sale.” The judgment stated that Wendy, as Lee’s assignee, “is entitled to judgment in the amount of \$500,000.00

plus 10% pre-judgment interest from the date of expiration of the listing of the property.”

Because Wendy’s amended complaint sought only equitable relief, the court did not order Myungja to pay the amount of the judgment as money damages. Instead, the judgment provides that the 18 Covered Wagon Lane property “shall be subject to an equitable lien in favor of [Wendy]” in the amount of the judgment: “\$500,000 and 10% per annum interest . . . accrued from October 9, 2008 (the date the first listing expired) to the date of entry of judgment due and payable upon sale, transfer of the property, or attempt to further encumber the property.” As an additional remedy, the judgment established a constructive trust, specifying that Myungja is to “hold[] \$500,000.00 and 10% per annum interest on the sum of \$500,000.00 accrued from October 9, 2008 to the date of entry of judgment as constructive trustee for the benefit of [Wendy].”⁵

Myungja moved to set aside the judgment. The trial court denied that motion. Myungja timely appealed.

DISCUSSION

A. *Standard of Review*

⁵ The judgment stated that Myungja would take nothing on a cross-complaint she filed, which challenged as usurious the 10 percent interest rate that Wendy alleged in the amended complaint. Lee and Myungja had orally agreed to in making the loan arrangements. Wendy testified that she was unaware of any agreement with respect to interest on the loans. The judgment indicates that the 10 percent interest rate the court awarded was the statutory prejudgment interest rate, not an agreed-upon rate.

Myungja contends that the trial court erred both factually and legally in establishing an equitable lien and a constructive trust. Our review of Myungja's factual challenge to the judgment is limited. So long as the trial court's findings underlying the judgment are supported by substantial evidence, we will not disturb them on appeal, even if we would have evaluated the evidence differently and reached a contrary result had we presided over the proceedings below. (*Driscoll v. Graniterock Co.* (2016) 6 Cal.App.5th 215, 221.) In determining whether the findings are supported by substantial evidence, we view the record in the light most favorable to the prevailing party, and give that party the benefit of reasonable inferences from the evidence. Additionally, we neither weigh the evidence ourselves nor make credibility determinations because those functions are the province of the trial court. (*Barickman v. Mercury Casualty Co.* (2016) 2 Cal.App.5th 508, 516.) Under the doctrine of implied findings, we "infer the trial court made all factual findings necessary to support the judgment," and we will uphold the judgment if the implied findings are supported by substantial evidence. (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58, 59, 60.)

We review Myungja's claims of legal error de novo. (*ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1266.)

Applying these standards here, we conclude that the trial court's establishment of an equitable lien was supported by substantial evidence and consistent with governing law. We conclude, however, that the court's establishment of a constructive trust constituted legal error.

B. *Equitable Lien*

“An equitable lien is a right to subject property not in the possession of the lienor to the payment of a debt as a charge against that property. [Citation.] It may arise from a contract which reveals an intent to charge particular property with a debt or ‘out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings.’ [Citation.]” (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 453; see also *County of Los Angeles v. Construction Laborers Trust Funds for Southern California Admin. Co.* (2006) 137 Cal.App.4th 410, 416, fn. omitted [“While . . . a contractual relationship may play a role in the imposition of an equitable lien, such a lien is not created by contract, express or implied”].) At bottom, an equitable lien is imposed “to do justice and prevent unfair results” under the circumstances of a particular case. (*Estate of Henshaw* (1945) 68 Cal.App.2d 627, 636; see also *JP Morgan Chase Bank, N.A. v. Banc of America Practice Solutions, Inc.* (2012) 209 Cal.App.4th 855, 861; *Grappo v. Coventry Financial Corp.* (1991) 235 Cal.App.3d 496, 509.)

The facts here are undisputed. They are drawn from Wendy’s uncontroverted testimony and supporting documentation. Lee made loans to Myungja totaling \$500,000, which funded Myungja’s purchase of the Chadron Apartments. Myungja orally agreed that when Lee asked for the \$500,000 back, she would repay him. In 2008, however, Myungja broke that promise: Lee requested to be repaid, but Myungja told him she could not repay the debt. Lee and Myungja then orally agreed that Myungja would sell her property at 18 Covered Wagon Lane by the end of 2008 and repay Lee from the proceeds of that sale. But Myungja declined a reasonable offer that

Wendy, as the listing agent for the property, solicited from a prospective buyer in 2008. This was another broken promise.

In 2009, Myungja made new promises. She told Lee and Wendy on multiple occasions that she would sell the 18 Covered Wagon Lane property and repay the loans from Lee through the sale proceeds. She also told Lee and Wendy on multiple occasions that there was no need formally to securitize the debt in writing because her word was her bond. But Myungja never sold the property—indeed, she took the property off the market in July 2010—and thus broke yet another set of promises. And, most fundamentally, she never repaid the loans.

On these facts, the trial court had a sufficient basis to find that Myungja's unfilled promises to sell the 18 Covered Wagon Lane property to pay back the loans, culminating in her delisting of the property in 2010, constituted inequitable conduct. In light of that finding, the court had a sufficient basis to establish an equitable lien on the property in Wendy's favor to protect her interest in the disposition of the property and remedy Myungja's wrongs.⁶

⁶ The trial court's finding that Myungja breached the 2008 oral agreement with Lee by failing to follow through on her promise to sell the 18 Covered Wagon Lane property by the end of the year is inconsistent with evidence that Lee and Myungja entered a new oral agreement in 2009 that apparently substituted for the 2008 agreement and thus constituted a novation. (Civ. Code, § 1530.) We need not resolve this inconsistency because Myungja did not raise it on appeal. In any event, even if it technically was not a breach due to the subsequent novation, Myungja's failure to carry out her promise to sell the 18 Covered Wagon Lane property by the end of 2008 is part of a pattern of inequitable conduct that supports the

Myungja's counter arguments are unavailing. First, Myungja contends that she never formally agreed in writing to provide the 18 Covered Wagon Lane property as collateral for the loans she received from Lee, and thus, as a matter of law, Lee (and Wendy, as Lee's assignee) did not have a security interest in the property. This contention overlooks that courts may impose an equitable lien in the absence of a formal security interest. (See *County of Los Angeles v. Construction Laborers Trust Funds for Southern California Admin. Co.*, *supra*, 137 Cal.App.4th at p. 416.) Indeed, the very point of an equitable lien in such cases is to substitute for a security interest when equity so warrants. (See 4 Witkin, Summary of Cal. Law (10th ed. 2005) Secured Transactions in Real Property, § 18, at p. 808 ["In some cases, the [equitable] lien is created as a desirable remedy though the parties did not in fact intend to make the property security for an obligation, e.g., where the object is to prevent unjust enrichment"]; 5 Miller & Starr, Cal. Real Estate (4th ed. 2016)

establishment of an equitable lien on the property to remedy her wrongs.

The trial court's breach finding also arguably is inconsistent with its grant of Myungja's motion for judgment of nonsuit on Wendy's initial complaint. The premise of that decision was there could not be any breach of the loan repayment agreement until the occurrence of the condition precedent of the sale of the 18 Covered Wagon Lane property. And the upshot of that decision was the court's directive to Wendy to dispense with her request for damages and file an amended complaint seeking equitable relief only. Normally, the remedy for a breach finding is an award of money damages—the very remedy to which Wendy was told she was not entitled. We need not resolve this inconsistency because Wendy did not raise it on appeal.

§ 13:34 [“A court may create an equitable security interest in real property in virtually any situation involving a debt or liability where the court determines that the creation of an equitable lien is required by fairness and justice or to prevent an unjust enrichment”].)⁷

Second, relying on the tenet that “[a] promise to pay a debt out of a particular fund, without more, will not create an equitable lien on that fund” (*Farmers Ins. Exchange v. Zerlin*, *supra*, 53 Cal.App.4th at p. 454), Myungja contends there was no factual or legal basis for the imposition of an equitable lien because she promised to repay Lee out of a particular fund, i.e., the proceeds of the sale of 18 Covered Wagon Lane. The problem for Myungja is that “even a mere promise to pay from a specific fund may suffice to create an equitable lien if considerations of detrimental reliance or unjust enrichment are implicated.” (*Id.* at p. 455.) And here, there is sufficient evidence of detrimental reliance and unjust enrichment to justify the imposition of an equitable lien in the 18 Covered Wagon Lane property.

⁷ An equitable mortgage in real property also may be imposed in the absence of a formal security interest. (5 Miller & Starr, *supra*, § 13:32.) The trial court stated in its December 1, 2014 tentative ruling that it was going to “place[] an equitable lien on the real property[,] not a[n] equitable mortgage.” Contrary to this ruling, the trial court subsequently entered judgment for Wendy on her claim for foreclosure under equitable mortgage. Whether this means that Wendy actually now can foreclose on the 18 Covered Wagon Lane property is uncertain. We need not resolve this question, however, because Myungja failed to challenge the entry of judgment on Wendy’s claim for foreclosure under equitable mortgage.

Detrimental reliance occurs when a party justifiably takes, or refrains from taking, certain actions based on the representations of another party. (See *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 794-795; *Farmers Ins. Exchange v. Zerin*, *supra*, 53 Cal.App.4th at p. 456.) Here, based on Myungja's repeated representations in 2008 and 2009 that she would sell the 18 Covered Wagon Lane property and repay the \$500,000 that she borrowed through the proceeds of that sale, Lee and Wendy refrained from formally securitizing Myungja's debt and demanding that the property serve as collateral for the loans. Furthermore, it appears from the record that, based on those representations, Wendy also refrained from suing Myungja until 2011. The trial court had a sufficient basis to conclude that Wendy's decision to forego her rights and remedies based on Myungja's promises was justifiable given that Myungja previously had honored her financial commitments and repaid money she borrowed from Lee.

Unjust enrichment occurs when one party unfairly retains a benefit at the expense of another party. (*Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1593.) Here, Myungja purchased the Chadron Apartments with the money she borrowed from Lee and never repaid. She reaped the benefits of the loans by collecting rent on that property. Meanwhile, all along and at every turn, she broke promises to sell the 18 Covered Wagon Lane property and repay the loans from the sale proceeds. Under these circumstances, the trial court had a sufficient basis to conclude that Myungja had been unjustly enriched as a result of her failure to repay the loans, and that therefore an equitable lien was necessary to redress this inequity.

All told, we find no legal or factual error in the trial court's establishment of an equitable lien in Wendy's favor in the 18 Covered Wagon Lane property in the amount of the loans, plus prejudgment interest at 10 percent per annum accruing from October 2008.⁸

C. *Constructive Trust*

“A constructive trust is an involuntary equitable trust created by operation of law as a remedy to compel the transfer of property from the person wrongfully holding it to the rightful owner. [Citations.] The essence of the theory of constructive trust is to prevent unjust enrichment and to prevent a person from taking advantage of his or her own wrongdoing. [Citation.][⁹] [¶] ‘The principal circumstances where constructive trusts are imposed are set forth in Civil Code sections 2223 and

⁸ The trial court's award of prejudgment interest at 10 percent per annum dating back to October 2008 does give us pause. The court selected October 2008 as the accrual date on the ground that Wendy's initial listing of the 18 Covered Wagon Lane property expired that month. The record indicates, however, that Myungja relisted the property for nearly two additional years beyond that date, until July 2010. Furthermore, even with a July 2010 accrual date, an award of prejudgment interest is in tension with the condition precedent that renders the judgment nonpayable until the 18 Covered Wagon Lane property is sold. And to top it off, Wendy did not even ask for the prejudgment award to be calculated at 10 percent per annum: she requested just 7 percent on the ground that her claims were “noncontractual” and 7 percent is the rate for such claims. All of this is academic, however, because Myungja did not challenge the award of prejudgment interest in any respect. Therefore, we do not decide the propriety of the award.

2224. Section 2223 provides that “[o]ne who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.” Section 2224 states that “[o]ne who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he or she has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.” Under these statutes and the case law applying them, a constructive trust may only be imposed where the following three conditions are satisfied: (1) the existence of a *res* (property or some interest in property); (2) the *right* of a complaining party to that *res*; and (3) some *wrongful* acquisition or detention of the *res* by another party who is not entitled to it. [Citations.]’ [Citation.]” (*Campbell v. Superior Court* (2005) 132 Cal.App.4th 904, 920.)

Myungja contends that the trial court erred in imposing a constructive trust, because “[t]here was *zero* evidence of any wrongful acquisition or detention of *any* property.” According to Myungja, because she was not required to repay the loans until she sold the 18 Covered Wagon Lane property, and because she had not yet sold the property, she was not wrongfully detaining the money she borrowed from Lee.

There is substantial evidence to support the proposition that Myungja acted wrongfully. The parties agreed in 2008 that Myungja would immediately list the 18 Covered Wagon Lane property, sell it by the end of 2008, and repay the loans with the sale proceeds. That did not happen. Although Myungja initially listed the property as promised, she refused a reasonable offer on the property and never sold it. All the while, she owned another property that was purchased through the loans, the Chadron

Apartments, and was earning rental income from that property. And most importantly, she did not repay the loans. In short, the evidence indicates that Myungja was in the wrong.

This does not, however, make the constructive trust established by the trial court the right remedy for that wrong. In our view, it was not. The problem is that the constructive trust was placed over the amount of the judgment: “\$500,000 and 10% per annum interest on the sum of \$500,000 accrued from October 9, 2008 . . . to the date of entry of judgment” As a matter of law, the amount of the judgment does not qualify as an identifiable res. To be sure, a constructive trust may be imposed over funds in a bank account; the funds are the res. (*Heckmann v. Ahmanson* (1985) 168 Cal.App.3d 119, 134.) But in such instances, the res is identifiable: it is a discrete, particularized set of funds in the defendant’s possession. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1150.) Here, however, the constructive trust is over an undifferentiated sum of money that “cannot be traced to any particular funds in [Myungja’s] possession and therefore is not the proper subject of a constructive trust.” (*Ibid.*) Accordingly, we reverse the judgment with respect to the constructive trust.

DISPOSITION

The judgment is reversed as to the establishment of a constructive trust. In all other respects, the judgment is affirmed. Wendy is to recover costs on appeal.

SMALL, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

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