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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

WEN HONG XIA, et al., Plaintiffs and Appellants, v. YUNNAN IMPRESSION, INC., et al., Defendants and Respondents.	B276498 (Los Angeles County Super. Ct. No. BC546162)

APPEAL from a judgment of the Superior Court of Los Angeles County. Victor E. Chavez, Judge. Affirmed.

Law Offices of Ray Hsu & Associates and Ray Hsu for Plaintiffs and Appellants.

Gary Hollingsworth for Defendants and Respondents.

INTRODUCTION

Plaintiffs Wen Hong Xia, Xian Xian Zang, and Chunyan Hou were waitresses at a restaurant in Monterey Park between April 2010 and March 2014. During that time, the restaurant was sold to two different corporations with different owners and was renamed twice. Following their departure from the restaurant, plaintiffs sued the three corporations that owned the restaurant between 2011 and 2014, individuals who owned shares in those corporations, and an individual who worked at the restaurant but never had an ownership interest. Plaintiffs alleged failure to pay overtime, failure to provide meal and rest breaks, and conversion of tips, among other things. The first two corporations that owned the restaurant were dissolved before litigation and plaintiffs obtained default judgment against them. As to the remaining defendants, the trial court granted summary adjudication of two of plaintiffs' 12 causes of action, and the remainder proceeded to a bench trial. At trial, the court granted nonsuit as to one cause of action brought under the Fair Labor Standards Act, found that plaintiffs failed to carry their burden on some causes of action, and awarded plaintiffs some damages against two defendants on other causes of action.

Plaintiffs Xia, Hou, and Zang now appeal the trial court's (1) decision granting summary adjudication of its causes of action for alter ego liability and fraudulent transfer, (2) ruling granting defendant's motion for nonsuit as to their Fair Labor Standards Act cause of action for unpaid overtime, and (3) judgment on several causes of action following the bench trial.[1] We affirm on all grounds.

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[1] Defendants Yunnan Impression, Inc., Donxiao Ou, Shane Xie, Dehua Chen, Fan Chung Chang, Xuan Hau Wang, and Ai

FACTS AND PROCEDURAL BACKGROUND

There are three relevant periods of restaurant ownership: (1) K&H Group, Inc.'s ownership from 2011 to 2012, (2) Green Garden Trading, Inc.'s ownership from 2012 to 2014, and (3) Yunnan Impression, Inc.'s ownership in 2014. We discuss the pertinent facts within those time frames.

1. K&H Group, Inc. Owned and Operated the Restaurant from June 2011 to September 2012

Plaintiffs Xia and Hou both began waitressing at the restaurant prior to defendant K&H Group purchasing it. K&H Group owned and operated the restaurant under the name Yunkun Garden from June 16, 2011 to September 30, 2012. Defendant Yibing Wen was K&H Group's sole shareholder during the period it owned the restaurant. K&H Group was formally dissolved on November 2, 2012. Its sole shareholder (defendant Wen) died in March 2013. Although plaintiffs Xia and Hou worked at the restaurant for the duration of K&H Group's ownership, plaintiff Zang did not work there during this period of time.

2. Green Garden Trading, Inc. Owned and Operated the Restaurant from October 2012 to March 2014

On October 1, 2012, Green Garden purchased the restaurant from K&H Group for $232,990, and began operating it. Green Garden had three shareholders: defendants Fan Chung Chang, Ai Fen Li, and Xuan Hua Wang. Both Chang and Li were waitresses at the restaurant when it was owned by K&H Group, and each owned a 33 percent share of Green Garden. Chang and Li continued to waitress at the restaurant during

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Fen Li are the respondents on appeal. We identify each defendant in our discussion of the facts below.

Green Garden's ownership. Also during this time, the restaurant was renamed Yunnan Restaurant.

On October 1, 2012, the same day Green Garden purchased the restaurant, plaintiff Zang began waitressing there. Plaintiffs Xia and Hou continued waitressing at the restaurant throughout Green Garden's ownership. During this time, defendant Donxiao Ou was both a waiter and manager at the restaurant. Ou provided the employees' time sheets and managed their schedule.

In January 2014, Green Garden agreed to sell the restaurant to Yunnan Impression, Inc. for $216,800. At this time, the three shareholders of Green Garden notified all employees of the sale. Green Garden was formally dissolved on March 21, 2014.

3. In March 2014, Yunnan Impression, Inc. Purchased and Began Operating the Restaurant and Plaintiffs Stopped Working There

Yunnan Impression, Inc., a corporation owned by defendants Ou and Shane Xie, closed escrow on the restaurant and began operating it on March 15, 2014. The restaurant was renamed Yunnan Impression and the employees were offered to continue their jobs there. Plaintiffs continued to work at the restaurant for a short period of time. Plaintiff Xia quit her job at the restaurant on March 24, 2014. Four days later, plaintiff Zang also quit. On March 29, 2014, plaintiff Hou stopped working at the restaurant.

4. Complaint by Xia, Zang, and Hou

On May 20, 2014, plaintiffs Xia, Zang, and Hou filed a wage and hour complaint against defendants Yunnan Impression, Inc., K&H Group, Green Garden, Donxiao Ou (shareholder of Yunnan Impression, Inc.), Shane Xie (shareholder of Yunnan Impression,

Inc.), Yibing Wen (shareholder of K&H Group), Fan Chung Chang (shareholder of Green Garden), Xuan Hua Wang (shareholder of Green Garden), Ai Fen Li (shareholder of Green Garden), and Dehua Chen. The complaint alleged 12 causes of action for: (1) unpaid overtime wages pursuant to the Fair Labor Standards Act, 29 U.S.C. section 207, (2) unpaid overtime wages pursuant to California Labor Code sections 201, 510 and 1194;[2] (3) failure to provide meal and rest breaks under section 226.7; (4) waiting time penalties under section 203; (5) failure to provide accurate paystubs under section 226; (6) retaliation for filing wage claims under section 98.6; (7) wrongful termination in violation of public policy; (8) unfair competition; (9) civil penalties under the Labor Code; (10) alter ego liability; (11) fraudulent transfer; and (12) conversion of tips. Defendants alleged that throughout their employment at the restaurant, defendants never compensated them for overtime hours, denied them meal and rest breaks, converted their tips, and refused to provide plaintiffs with wage statements.

Because they were formally dissolved at the time of litigation, K&H Group and Green Garden defaulted.

5. Defendants' Motion for Summary Judgment

Defendants Yunnan Impression, Inc., Donxiao Ou, Shane Xie, Dehua Chen, Fan Chung Chang, Xuan Hua Wang, and Ai Fen Li moved for summary judgment or alternatively, summary adjudication on May 6, 2015. Plaintiffs opposed the motion. The trial court denied summary judgment and granted summary adjudication of the tenth and eleventh causes of action for alter ego liability and fraudulent transfer respectively.

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[2] All subsequent statutory references are to the California Labor Code unless otherwise indicated.

6. Bench Trial

The trial court held a bench trial on the remaining causes of action against Yunnan Impression, Inc., Donxiao Ou, Shane Xie, Dehua Chen, Fan Chung Chang, Xuan Hua Wang, and Ai Fen Li over the course of seven days in February 2016. Plaintiffs and the individual defendants testified. At the close of plaintiffs' case, defendants moved for and the trial court granted nonsuit on the first cause of action for unpaid overtime wages under the Fair Labor Standards Act. The court denied nonsuit as to the other causes of action.

After the close of evidence, the trial court had counsel argue each cause of action. The court then decided damages on each cause of action alleged against the parties represented by counsel, i.e. Yunnan Impression, Inc., Donxiao Ou, Shane Xie, Dehua Chen, Fan Chung Chang, Xuan Hua Wang, and Ai Fen Li. After the court addressed each cause of action, it asked: "Are we finished now with all the issues that deal with counsel who is present now?" Plaintiffs' counsel responded, "Yes" and told the court he wanted to proceed with the default judgment for the two defunct corporations (defendants K&H Group and Green Garden). On defense counsel's request, the court excused defense counsel.

Later, during his arguments regarding the defaulted defendants, plaintiffs' counsel attempted to seek damages for conversion of tips against defendants Li, Chang, and Wang, after their counsel had been dismissed. The court admonished counsel that it was not going to allow him to take advantage of defense counsel's absence in obtaining a judgment against his clients without him present. The court refused either to continue the

case another day or summon defendants Li, Chang, and Wang and their counsel back to court.

The court ultimately awarded (1) plaintiff Xia $2,056 against Yunnan Impression, Inc., $50 against Ou, $11,701.36 against defendant K&H Group and 31,671.87 against defendant Green Garden; (2) plaintiff Zang $2,062 against Yunnan Impression, Inc., $50 against Ou, and $31,943.30 against Green Garden; and (3) plaintiff Hou $100 against Yunnan Impression, Inc., $50 against Ou, $11,701.36 against defendant K&H Group, and 31,671.87 against defendant Green Garden. The court found judgment in favor of individual defendants Wang, Xie, Chen, Chang, and Li.

DISCUSSION

Plaintiffs raise issues related to the motion for summary adjudication, the motion for nonsuit, and the bench trial judgment. We address each group of issues in that order.

1. Summary Adjudication of the Tenth and Eleventh Causes of Action was Proper

The court granted defendants' motion for summary adjudication on the tenth and eleventh causes of action for alter ego liability and fraudulent transfer.

"A summary adjudication motion is subject to the same rules and procedures as a summary judgment motion. Both are reviewed de novo." (*Lunardi v. Great-West Life Assurance Co.* (1995) 37 Cal.App.4th 807, 819.) "We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party." (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 717.) A party moving for summary judgment "bears the burden of persuasion that there is no triable issue of material fact and that

he is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Ibid.*)

"A defendant bears the burden of persuasion that 'one or more elements of' the 'cause of action' in question 'cannot be established,' or that 'there is a complete defense' thereto. [Citation.]" (*Aguilar, supra,* 25 Cal.4th at p. 850.) "The defendant can satisfy its burden by presenting evidence that negates an element of the cause of action or evidence that the plaintiff does not possess and cannot reasonably expect to obtain evidence needed to establish an essential element. [Citation.] If the defendant meets this burden, the burden shifts to the plaintiff to present evidence creating a triable issue of material fact." (*Veera v. Banana Republic, LLC* (2016) 6 Cal.App.5th 907, 914.)

a. Tenth Cause of Action for Alter Ego Liability

Plaintiffs contend the court erred in granting the motion for summary adjudication as to their tenth cause of action for alter ego liability against the individual defendants. For a plaintiff to establish alter ego liability, it must satisfy the doctrine's two elements. "In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone." (*Sonora Diamond Corp. v.*

Superior Court (2000) 83 Cal.App.4th 523, 538.) Courts consider a number of factors in assessing whether there is a unity of interest. These factors include " 'commingling of funds and other assets of the two entities, the holding out by one entity that it is liable for the debts of the other, identical equitable ownership in the two entities, use of the same offices and employees, and use of one as a mere shell or conduit for the affairs of the other.' [Citations.] Other factors which have been described in the case law include inadequate capitalization, disregard of corporate formalities, lack of segregation of corporate records, and identical directors and officers. [Citations.] No one characteristic governs, but the courts must look at all the circumstances to determine whether the doctrine should be applied." (*Id.* at pp. 538–539.) "Alter ego is an extreme remedy, sparingly used." (*Id.* at p. 539.)

Here, defendants moved for summary adjudication by asserting they had followed all the corporate formalities during the existence of Green Garden and Yunnan Impression, Inc., e.g. the corporations had their own bank accounts and own identities and logos. Plaintiffs also showed that there was no overlap in the ownership of Green Garden or Yunnan Impression, Inc. In their opposition to summary judgment, plaintiffs failed to make any argument or produce any evidence showing a unity of interest between the individual defendants and the corporations.

On appeal, plaintiffs assert that evidence of statements from defendant Wang that he transferred the restaurant to avoid liability created a triable issue of material fact regarding the unity of interest and showed that there was a blatant disregard for corporate formalities. Plaintiffs refer to declarations from plaintiffs Xia and Hou, wherein they both attest that in late 2013, defendant Wang bragged to them that she sold the

restaurant to avoid liability. Plaintiffs also refer to a text message conversation between defendant Wang and plaintiff Xia, where Wang stated, "[i]n order to avoid confrontation with you low-educated people, we even decided to sell the business. . . ."

Yet, plaintiffs provide no evidence that Wang maintained an interest in the restaurant following Green Garden's sale of it to Yunnan Impression. This evidence cited by plaintiffs does not show that defendants failed to maintain corporate formalities, comingled funds, or used Green Garden as a conduit for personal endeavors. Plaintiffs provide no evidence whatsoever showing any of the factors that would demonstrate a unity of interest between any of the individual owners and the corporations. Plaintiffs' cause of action for alter ego failed because plaintiffs did not raise a triable issue of fact as to unity of interest.

b. Eleventh Cause of Action for Fraudulent Transfer

Plaintiffs argue that the court erred in granting defendants' motion for summary adjudication of the eleventh cause of action for fraudulent transfer. Their argument is limited to the sale of the restaurant from Green Garden to Yunnan Impression, Inc. Civil Code section 3439.04, subdivision (a) permits creditors to void fraudulent transfers. Under the following statutory conditions, the transfer must be made:

> "(1) With actual intent to hinder, delay, or defraud any creditor of the debtor.
>
> (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor either:
>
> (A) Was engaged or was about to engage in a business or a transaction for which the remaining

assets of the debtor were unreasonably small in relation to the business or transaction.

(B) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due."

(Civil Code, § 3439.04, subd. (a).)

Here, defendants asserted that plaintiffs could not prove intent to defraud or that the purchaser of the restaurant did not receive reasonably equivalent value. Defendants produced undisputed evidence that Green Garden purchased the restaurant from K&H Group for $232,990 in 2012. They also produced evidence that Green Garden sold the restaurant to Yunnan Impression, Inc. for a generally equivalent value—$216,800 in 2014. Plaintiffs did not dispute the amount of either sale. Plaintiffs failed to respond to this equivalent value argument or provide contrary evidence in their opposition to the motion for summary adjudication.

On appeal, plaintiffs asserted that they created a triable issue of material fact by showing that defendants Chang, Li and Wang had fraudulent intent in selling Green Garden. Specifically, plaintiffs assert that the evidence of statements defendant Wang made in a text message sent to plaintiff Xia, and a declaration from Xia attesting that Wang bragged about transferring assets every two or three years between different corporations to avoid lawsuits showed fraudulent intent.

Even assuming this evidence created a triable issue as to the first prong of the fraudulent transfer (actual intent to defraud), plaintiffs failed to address in their opening brief and produced no evidence in opposing summary judgment to fulfill

the second element, i.e. that defendants sold the restaurant "[w]ithout receiving a reasonably equivalent value in exchange for the transfer or obligation." (Civil Code, § 3439.04, subd. (a)(2).)

In their reply brief on appeal, plaintiffs argue that "the sale of the business for $216,800 was prima facie evidence of suspicious, below-value consideration" because the business "grossed over $500,000 annually" and the restaurant had previously sold for $232,900 in September 2012. Yet, as defendants point out, this is not evidence of below-value consideration. Plaintiffs have not provided any evidence that the worth of the business exceeded the $216,800 purchase price in 2014, which was some $16,000 less than the 2012 price. Their argument is conjecture unsupported by evidence. For example, there was no evidence from a qualified expert that the value of the business was greater than $216,800 in 2014, or any other evidence to support this element of their fraudulent transfer claim. Summary adjudication was appropriate.

2. The Court Properly Granted Nonsuit as to the First Cause of Action for Unpaid Wages Under the Fair Labor Standards Act

In addition to bringing a claim for unpaid overtime wages under state law, plaintiffs also alleged a cause of action for unpaid overtime under the Fair Labor Standards Act (FLSA) in order to impose liability on the individual defendants for the corporation's unpaid overtime wages.[3] Here, at the close of

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[3] In contrast to federal law, California state law does not impose personal liability on corporate agents acting within the scope of their agency for wages owed by a corporate employer. (*Martinez v. Combs* (2010) 49 Cal.4th 35, 66.)

plaintiffs' evidence during trial and upon defendants' nonsuit motion, the court determined that there was no substantial evidence to support plaintiffs' FLSA claim. Plaintiffs argue that the court erred in granting nonsuit because substantial evidence supported their claim.

" 'The granting of a motion for nonsuit is warranted when, disregarding conflicting evidence, giving plaintiff's evidence all the value to which it is legally entitled, and indulging in every legitimate inference that may be drawn from the evidence, the trial court determines that there is no evidence of sufficient substantiality to support a verdict in favor of plaintiff.' [Citations.] [¶] Plaintiff cannot prevail unless he can demonstrate substantial evidence in the record to support each claim asserted." (*Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1580, italics omitted.) We review judgment of nonsuit de novo. (*Hernandez v. Amcord, Inc.* (2013) 215 Cal.App.4th 659, 669.) In reviewing a judgment of nonsuit, the appellate court "must view the evidence in the light most favorable to the appellant, must disregard all inconsistencies and draw only inferences from the evidence which can reasonably be drawn which are favorable to the appellant." (*Van Zyl v. Spiegelberg* (1969) 2 Cal.App.3d 367, 371-372.)

In order to succeed on their FLSA claim overtime wages claim, plaintiffs needed to prove that the FLSA applied to them. The FLSA, which is codified in part in 29 United States Code section 207(a)(1), states that, "no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such

employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed." The FLSA defines commerce as "trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof." (29 U.S.C. § 203.) In sum, the FLSA imposes liability for overtime wages where either the employee or the enterprise is engaged in interstate commerce. (29 U.S.C. § 207(a); *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 563.) We analyze each ground for imposing FLSA liability in turn.

a. No Evidence that Plaintiffs Engaged in Interstate Commerce

To determine whether or not the employee is engaged in interstate commerce, "[t]he test is 'whether the work is so directly and vitally related to the functioning of an instrumentality or facility of interstate commerce as to be, in practical effect, a part of it, rather than isolated local activity.' " (*Mitchell v. Lublin, McGaughy & Associates* (1959) 358 U.S. 207, 212.) The focus of this inquiry is "on the activities of the employees and not on the business of the employer." (*Id.* at p. 211.)

Plaintiffs all testified that they cleaned and set tables, waited on customers, and helped with some food preparation within the restaurant, but never ordered supplies or settled bills for patrons. Plaintiffs' duties were wholly unrelated to interstate commerce. (See *Joseph v. Nichell's Caribbean Cuisine, Inc.* (S.D.Fla.2012) 862 F.Supp.2d 1309, 1313 [FLSA did not apply to waitress who processed credit and debit card transactions, served food prepared from ingredients that crossed state lines, served beverages produced out of state, and served out-of-state

customers].) Plaintiffs therefore produced no evidence to show FLSA liability based on their own activities at work.

b. No Evidence that the Restaurant Engaged in Interstate Commerce

As pertinent here, 20 United States Code section 203(s)(1) defines an enterprise that qualifies for FLSA liability as one that (1) "has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person," and (2) has gross sales of at least $500,000.

On appeal, plaintiffs assert that they proved the restaurant was an enterprise engaged in interstate commerce because (1) there was testimony that defendant Xie brought tour groups to eat at the restaurant, (2) plaintiffs testified that many customers were tourists, and (3) the restaurant made Chinese food and thus had to have imported ingredients from out of state.[4]

Not one of these items shows that the restaurant engaged in interstate commerce. It is clear from testimony this was a local restaurant making food for people who either visited or lived in the vicinity of the restaurant. The restaurant did not ship meals anywhere or move goods into interstate commerce. That tourists visited the restaurant does not show that employees were creating goods for interstate commerce. In sum, there was

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[4] Plaintiffs' last argument regarding the ingredients is made without citation to any evidence that the restaurant's ingredients were in fact obtained out of state. At trial, defendants testified that they purchased their supplies and food from local vendors.

no evidence of sufficient substantiality to support a verdict in favor of plaintiff on the first cause of action.

3. The Trial Court's Judgment Following the Bench Trial is Supported by Substantial Evidence

Plaintiffs argue that the court erred in its judgment on the second, sixth, seventh, ninth, and twelfth causes of action, which was entered following the bench trial. In reviewing a judgment following a bench trial, we review questions of law de novo. (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981.) "We apply a substantial evidence standard of review to the trial court's findings of fact. [Citation.] Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings." (*Ibid.*) "A single witness's testimony may constitute substantial evidence to support a finding. [Citation.] It is not our role as a reviewing court to reweigh the evidence or to assess witness credibility. [Citation.] 'A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.' [Citation.] Specifically, '[u]nder the doctrine of implied findings, the reviewing court must infer, following a bench trial, that the trial court impliedly made every factual finding necessary to support its decision.' " (*Ibid.*) We address each cause of action in turn.

a. Second Cause of Action for Unpaid Overtime Wages Pursuant to the Labor Code

Plaintiffs assert the trial court did not award them sufficient compensation for their unpaid overtime because the court relied on defendants' evidence to assess the amount of

overtime. As plaintiffs admit and as our review of the record indicates, defense evidence the trial court reasonably could have found persuasive supports the court's assessment of how much overtime plaintiffs worked. That there was contrary evidence is of no consequence because on appeal, we must construe all evidence in the light most favorable to the trial court's ruling and give the ruling the benefit of every reasonable evidentiary inference. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630.) We do not reweigh the evidence and are bound by the trial court's credibility determinations. (*Estate of Young* (2008) 160 Cal.App.4th 62, 76.) We therefore affirm the court's damages award on the second cause of action for unpaid overtime.

b. Sixth Cause of Action for Retaliation and Seventh Cause of Action for Wrongful Termination

Plaintiff Hou alone claims she presented undisputed evidence that defendants fired her from Yunnan Impression in retaliation for retaining an attorney and pursuing legal action against them. Plaintiffs assert that defendants provided no evidence on these issues and thus judgment should have been entered for plaintiff Hou on the sixth and seventh causes of action.

Plaintiffs misrepresent the record and ignore evidence that supports the court's ruling. (*In re S.C.* (2006) 138 Cal.App.4th 396, 402 ["An appellant must fairly set forth all the significant facts, not just those beneficial to the appellant."].) Defendant Ou, the co-owner and manager of Yunnan Impression, testified that each of the plaintiffs were not fired, but quit. Likewise defendant Xie, the co-owner of Yunnan Impression, testified that plaintiffs quit. Both co-owners testified that plaintiffs never complained

during their employment about not being paid overtime wages or receiving tip income.

Plaintiff Hou admitted she knew the restaurant was sold by Green Garden to Yunnan Impression "several months" before she left on March 29, 2014. She also testified that she became a certified massage therapist less than six months after leaving the restaurant, and that her certification required 500 hours of classroom training and instruction. The individuals that Hou alleges fired her (defendants Li and Wang) were no longer owners of the restaurant and lacked the power to terminate her when Hou left the restaurant in late March 2014.

This substantial evidence supported the court's conclusion that plaintiff Hou quit to pursue a different career and was not in fact fired by defendants Ou or Xie for her legal claims.

c. Ninth Cause of Action for Civil Penalties for Labor Code Violations

Plaintiffs assert that the trial court erred in refusing to enter judgment for their ninth cause of action against individual defendants Ou, Chang, Wang, and Li for section 558 violations. Section 558 states that "Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty" and sets forth a list of penalties. In their opening brief, plaintiffs argue that because the court entered judgment for overtime wages, they are entitled to judgment against individual defendants Ou, Chang, Wang, and Li for these penalties.

First, contrary to plaintiffs' contentions, plaintiffs received all the recovery they requested for this cause of action. When

arguing damages under section 558 to the court, plaintiffs' counsel first asserted that he wanted penalties against all individual defendants, and then conceded that plaintiffs were only seeking the section 558 penalties "just against defendant Ou, O-U because . . . he's the owner [of] Yunnan Impression, Inc." Based on this discussion with counsel, the trial court awarded each plaintiff a judgment of $50 against defendant Ou pursuant to section 558. The court did not analyze damages under section 558 for any of the other individual defendants because plaintiffs specifically conceded they were not seeking damages as to those individuals.

Second, in their opening brief, plaintiffs do not explain why defendants Chang, Wang, and Li would be liable for damages under section 558. In fact, plaintiffs provided no argument or citation to the record in their opening brief showing how these defendants individually acted in a manner that would warrant a penalty under section 558. An appellant's failure to properly brief an issue with citation to the record in his or her opening brief results in the issue being deemed abandoned or waived. (*Supervalu, Inc. v. Wexford Underwriting Managers, Inc.* (2009) 175 Cal.App.4th 64, 84, fn. 5; Cal. Rules of Court, rule 8.204.)

We observe that plaintiffs respond in their reply brief with some citations to the record to connect these individuals to the labor code violations. Yet, "[p]oints raised for the first time in the reply brief are generally not considered, out of fairness to the respondent." (*Crowley Maritime Corp. v. Boston Old Colony Ins. Co.* (2008) 158 Cal.App.4th 1061, 1072.) Based on plaintiffs' concessions at trial and on their insufficient briefing, we affirm the court's judgment on the ninth cause of action.

d. *Twelfth Cause of Action for Conversion of Tips*

Plaintiffs assert that the court's judgment on the twelfth cause of action for conversion of tips was not supported by substantial evidence and that the court should have imposed liability against defendants Li, Chang, Ou, and Wang.

We observe that plaintiff sought damages for conversion of tips only from defendants Ou and Xie. When arguing conversion of tips, plaintiffs' counsel limited his arguments to Ou and the brief time Yunnan Impression, Inc. employed plaintiffs. After the court found that plaintiffs had failed to carry their burden of proving conversion by Ou and Xie, the court asked plaintiffs' counsel, "Are we finished now with all the issues that deal with counsel who is present now?" Plaintiffs' counsel responded, "Yes" and told the court he wanted to proceed with the default judgment for the two defunct corporations (defendants K&H Group and Green Garden.) The court subsequently excused defense counsel.

Later, during his arguments regarding the defaulted defendants, plaintiffs' counsel attempted to reverse course by arguing for an award of damages based on conversion of tips by Li, Chang, and Wang. The court admonished counsel that it was not going to allow him to take advantage of defense counsel's excused absence given the representation plaintiffs' counsel had earlier made.

To the extent that plaintiffs argue the court failed to award damages for conversion of tips against Li, Chang, and Wang, plaintiffs invited any "error" by informing the court they no longer had claims against the represented defendants. "The ' "doctrine of invited error" is an "application of the estoppel principle": "Where a party by his conduct induces the

commission of error, he is estopped from asserting it as a ground for reversal" on appeal.' " (*Saxena v. Goffney* (2008) 159 Cal.App.4th 316, 328–329.)

As to defendant Ou, the trial court found that plaintiffs did not meet their burden of proof that Ou converted their tips. On appeal, plaintiffs assert that they produced testimony that Ou was a manager and officer of Yunnan Impression, Inc., and that he admitted to sharing tips with plaintiffs. Plaintiffs ignore defense evidence that Ou also waited tables and was entitled to tips as a waiter. Plaintiffs' dispute goes to the weight of the evidence produced by the parties. As we have stated above, "[w]e may not reweigh the evidence and are bound by the trial court's credibility determinations." (*Estate of Young, supra,* 160 Cal.App.4th at p. 76.)

In addition, plaintiffs produced no competent evidence as to how much tip money was claimed to have been converted by defendant Ou, or any of the defendants for that matter. Thus, plaintiffs failed to prove damages, an essential element of conversion. (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066 [listing elements of conversion].) Plaintiffs argue that they identified their estimate of damages in their complaint and that they provided the court with a specific calculation of the sum owed to them based on trial testimony. Yet, neither of these items are evidence. Plaintiffs' alleged calculation sheet was never received into evidence and an allegation in the complaint is not evidence. Plaintiffs also do not provide any citations to the specific testimony supporting a damages estimate. In sum, plaintiffs failed to prove their conversion claim.

4. The Trial Court Did Not Exhibit Bias

Lastly, plaintiffs argue that they should be given a new trial because the trial court was biased in favor of defendants. (See Code Civ. Proc., § 170.1, subd. (c).) Plaintiffs rely heavily on their invited error—causing the defense counsel to be excused from the case before asking the court for conversion of tips damages against his clients— and several instances where the court admonished defense counsel for not objecting to plaintiffs' counsel's improper questions.

Our review of the record reveals no bias. As we analyzed above, plaintiffs invited error when they informed the court that it had addressed all of its damages claims against the represented defendants. Even if plaintiffs had not invited the alleged error, a single adverse ruling rarely, if ever, can be the basis for a claim of bias, and we find none. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1112, disapproved on other grounds by *People v. Rundle* (2008) 43 Cal.4th 76, 151.)

The court's rulings were not one-sided. The court sua sponte objected during defense counsel's examination of witnesses and on its own struck favorable testimony elicited by defense counsel. The court also solicited objections from plaintiffs' counsel when defense counsel engaged in improper questioning. The court on its own limited defense counsel's opening statement because counsel became argumentative.

Nor do we find any error in the manner that the trial court controlled the proceedings. "A trial court has the inherent authority and responsibility to fairly and efficiently administer the judicial proceedings before it. [Citation.] This authority includes the power to supervise proceedings for the orderly conduct of the court's business and to guard against inept

procedures and unnecessary indulgences that tend to delay the conduct of its proceedings. [Citation.] In this vein, the court has the power to expedite proceedings which, in the court's view, are dragging on too long without significantly aiding the trier of fact." (*California Crane School, Inc. v. National Com. for Certification of Crane Operators* (2014) 226 Cal.App.4th 12, 22.) We find the trial court was even handed and plaintiffs' request for a new trial was properly denied.

DISPOSITION

We affirm the judgment. Defendants and respondents Yunnan Impression, Inc., Donxiao Ou, Shane Xie, Dehua Chen, Fan Chung Chang, Xuan Hau Wang, and Ai Fen Li are awarded costs on appeal.

RUBIN, J.

WE CONCUR:

BIGELOW, P.J.

SORTINO, J.*

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