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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

EDMUNDO BUSTAMANTE et al.,

Plaintiffs and Appellants,

v.

T.O. IX, LLC et al.,

Defendants and Respondents.

2d Civil No. B237167  
(Super. Ct. No. 56-2008-00317003-  
CU-FR-SIM)  
(Ventura County)

Plaintiffs Edmundo Bustamante and Tiffany Bustamante appeal a judgment in favor of defendants T.O. IX, LLC (T.O. IX); Stephen Bock; D and S Homes, Inc.; D & S Development, LLC; DRD Enterprises, LLC; Darin Davis; Emaron Homes, LLC; Fairland Construction, Inc; Jose F. Leon, trustee of the Leon Family Trust; Jose F. Leon; Regina Leon; Real Estate Spectrum, Inc.; Regina Leon trustee of the Leon Family Trust; Skyphol California, LLC; Skyphol Delaware, LLC; and the Leon Family Trust (sometimes collectively referred to as T.O. IX).

The Bustamantes sued defendants for fraud, negligent misrepresentation and conspiracy to commit fraud relating to their purchase of a home from T.O. IX. They claimed that T.O. IX was a seller and a contractor, that it was required to have a contractor's license, and that it fraudulently concealed the fact that it was not licensed. The referee rejected their claims and found they sustained no damages. We affirm.

## FACTS

In 2003, T.O. IX obtained building permits from the City of Thousand Oaks (City) to build nine homes. This development was called the Whitman Court Project. Some of the documents filed with the City building officials listed Darin Davis, a licensed general contractor, as the building contractor for the project. The construction of these homes was completed in the summer of 2005.

On September 25, 2005, the Bustamantes signed a "Joint Purchase Agreement" with seller T.O. IX to buy a home in Whitman Court. The documents they signed included a "10-year StrucSure Warranty."

The Bustamantes filed an action against T.O. IX, Davis, his partner Stephen Bock and others alleging causes of action for fraud, negligent misrepresentation and conspiracy to commit fraud. The Bustamantes claimed: 1) T.O. IX was not a licensed contractor; 2) it was an alter ego "shell" company that Davis and Bock controlled and used to conduct "their construction business"; 3) Davis and Bock knew T.O. IX was not licensed and they falsely represented to the City that it was licensed to obtain a building permit for the project; 4) Davis and Bock concealed the facts about T.O. IX's non-licensed status from them; and 5) had they known these facts, they "would not have entered into a purchase agreement for the Real Property." They also alleged the defendants conspired to defraud purchasers and create "a web of entities which intermingled their assets and liabilities . . . to make it difficult or impossible to trace responsibility for obligations to their true source." The Bustamantes sought general damages for fraud and punitive damages.

The joint purchase agreement authorized dispute resolution through the judicial reference procedure. (Code Civ. Proc., § 638.) The superior court ordered this case to be tried by a judicial referee.

Edmundo Bustamante testified that he would not have purchased the home if he had known it was built by "an unlicensed contractor." His concern was whether the house was "built correctly." He said he estimated he sustained \$100,000 in damages, although he did not know the market value of the home. He did not know whether the

subcontractors who performed work on his home were licensed. He had no discussions with Bock or Davis before he purchased the property and did not know whether Davis had supervised the construction of his home.

Tiffany Bustamante testified there was a structural warranty on the property. She said if she had known the house "was built by an entity or entities without proper licensing," she would not have bought the house. The home had a list price of \$999,000, but they purchased it for \$960,000.

Ben Tunnell, the Bustamantes' expert, testified there were several negative factors decreasing the value of the house. These included: 1) the lack of a license by a developer, 2) the Contractors' State License Board (CSLB) citation history on Davis and Bock projects, 3) the duty to disclose these matters to future buyers, 4) the lack of a 10-year warranty, and 5) the fact that the sales agent for the seller was Davis's wife. The Bustamantes' damage amounted to 11 percent of the purchase price or 6 percent if there was a valid warranty on the house. The referee asked whether Tunnell conducted a "comparable sales analysis." Tunnell responded, "[W]hen there are adverse situations that are part of the property, . . . they tend to cause the value to go down."

Davis testified that he was a licensed general contractor. He managed "the construction" of the T.O. IX project. T.O. IX required all subcontractors to be licensed. Davis selected the subcontractors for the project, all of whom were licensed, bonded and insured.

The T.O. IX project passed all City inspections and received a "final approval from the City for occupancy," which means "the project is complete and the homeowners can move in." The City and the CSLB had no problems with the licenses of the subcontractors who worked on the project. The T.O. IX employees did not perform any work on the homes.

Davis had established limited liability companies (LLC's), which were "brand new at that time," and there was confusion about the rules relating to licensing. His lawyers advised him to establish separate LLC's for different building projects. Davis believed that because he was a licensed general contractor and the subcontractors

working on a project were licensed, the LLC entities did not need to be licensed if his personal license was used for the project. He believed that the LLC's as owner/builders fell within the owner/builder exception to the licensing laws. But, as he later discovered, that exception applied only to projects that had no more than four homes. The T.O. IX LLC owned the property where the project was located. He believed it fell within the owner/builder exemption and did not have to be licensed. His personal contractor's license was listed as the license for the T.O. IX project.

Davis received a complaint that one of his LLC's, D & S Development, should have obtained a contractor's license. When Davis was informed about the licensing problem with the T.O. IX LLC, he worked with the CSLB to resolve the problem. As "part of a resolution of the licensing issue," T.O. IX entered into a "Construction Management Agreement with Fairland," a corporation for which CSLB issued a contractor's license in May 2005.

David Hueners, a City building official, testified the City gave a final clearance for the T.O. IX homes, which means they were "ready for occupancy." He said there was no evidence of any substandard work on this project. Davis was listed "as the contractor" on City permits. Jay Spurgin, a City engineer and a deputy public works director, testified that "[i]f licensed subcontractors performed the work, we have no issue."

David Gribin, an expert on appraising real estate, was a defense witness. He testified the value of the Bustamante house was \$1 million in 2005. The fact that a developer was not licensed would not diminish that value because the subcontractors were licensed and the house was "permitted, inspected and approved."

The referee ruled in favor of the defendants. He found the agreement the Bustamantes signed with T.O. IX was "a purchase contract, not a contract for construction services," and T.O. IX "was not required to have a contractor's license in order to enter into that contract." T.O. IX's non-licensed status was not material. Their home "was in reality, built by a licensed contractor, Darin Davis," and it met all the building codes. He ruled the Bustamantes did not prove their fraud and negligent

misrepresentation causes of action because: 1) Bock and Davis believed they qualified for an exemption to the licensing law, they acted on advice of counsel and in good faith and "remedied the situation" when notified there was a licensing problem; 2) there was no evidence of "a known falsity"; 3) there was no proof of "an intent to defraud"; 4) the Bustamantes did not prove justifiable reliance; and 5) the Bustamantes' testimony was "lacking in credibility." The referee also found their alter ego liability claims to be without merit and he rejected their claim that they had sustained damages.

## DISCUSSION

### *The Finding that the Bustamantes Entered into a Purchase Agreement*

In reviewing the sufficiency of the evidence for the challenged findings, we do not weigh the evidence or decide the credibility of the witnesses. That is a matter for the trier of fact. (*Fredrics v. Paige* (1994) 29 Cal.App.4th 1642, 1647; *Church of Merciful Saviour v. Volunteers of America, Inc.* (1960) 184 Cal.App.2d 851, 856.) We look to the evidence supporting the findings, and we draw all reasonable inferences to support the judgment. (*Griffith Co. v. San Diego College for Women* (1955) 45 Cal.2d 501, 508.)

The trial court and the judicial referee found that the Bustamantes entered into "a purchase contract, not a contract for construction services."

The Bustamantes' action is based on the claim that they were defrauded when they bought their house. They allege they "entered into a purchase agreement for the Real Property" and they "*purchased the Real Property from*" T.O. IX. (Italics added.) Parties are bound by admissions in their pleadings. (*Valerio v. Andrew Youngquist Construction* (2002) 103 Cal.App.4th 1264, 1271.)

The contract the Bustamantes signed, the "Joint Purchase Agreement and Escrow Instructions," lists them as "buyer(s)" and T.O. IX as the "seller" of the real estate. Point 32 of the agreement provides that T.O. IX "*is not acting as a contractor for Buyer in the construction of said residence.*" (Italics added.) The description of T.O. IX's status and the limitation of its functions in the agreement are factors a trier of fact may consider in making findings.

The trial court and the referee also found that other documents in the record refuted the claim that the purchase agreement was a construction contract. They noted that the Bustamantes received "escrow instruction[s], a title report, [and] agency disclosures," which are documents confirming that they were buying real estate. The referee found they retained a real estate agent to assist them in the purchase of the home. Edmundo Bustamante testified he was buying a completed house; he did not claim that he had entered into any construction contract. The Bustamantes have not shown that the findings are unsupported by the record.

#### *The Contractors State Licensing Statutes*

The trial court and the judicial referee ruled that because T.O. IX was not "acting" as a contractor, it "was not required to have a contractor's license in order to enter into" the real estate purchase agreement. They also found that the contractors state license law (Bus. & Prof. Code, § 7031),<sup>1</sup> which requires contractors to have a license, was not applicable because this was "not a construction contract."

The Bustamantes note that T.O. IX filed a building permit to start the housing project. But that occurred years before they signed the purchase agreement with T.O. IX. Their house was built before the existence of any contractual relationship between these parties, and the only contract with the Bustamantes involved a sale. (*Linda Jones General Builder v. Contractors' State License Board* (1987) 194 Cal.App.3d 1320, 1327 [contractor could not be disciplined for not completing a construction project where the "only contract was one for sale of the property"]; *Davis Co. v. Superior Court* (1969) 1 Cal.App.3d 156, 159-160 [unlicensed contractor could not sue on a construction contract, but could sue on a purchase and sale contract as it was separate from a construction contract].) The Bustamantes may not prevail on the claim the purchase agreement required T.O. IX to build a house that had already been completed. But even if we accept their claim that T.O. IX's pre-contract activities are part of this transaction

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<sup>1</sup> All statutory references are to the Business and Professions Code unless otherwise stated.

and that T.O. IX was a hybrid seller/contractor/ builder, they still have not shown how the result would change.

### *No Void Agreement*

Section 7031 requires contractors to have a license. Under the statute, "the failure to obtain a required contractor's license will bar the contractor from recovering for his work in an action brought by him . . . ." (*S & Q Construction Co. v. Palma Ceia Development Organization* (1960) 179 Cal.App.2d 364, 367.) But "entering into a contract with a contractor who is later shown to be unlicensed at the time of execution of the contract does not automatically render the contract void." (*Templo Calvario Spanish Assembly of God v. Garden Construction Corp.* (2011) 198 Cal.App.4th 509, 519.) The Legislature never intended to "automatically void all contracts entered by unlicensed contractors." (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 440.)

The "common-law rule that illegal contracts will not be enforced" relates to actions brought by unlicensed contractors "'for collection of compensation' for contracting work." (*McCarroll v. Los Angeles County Dist. Council of Carpenters* (1957) 49 Cal.2d 45, 69.) The instant action is not such a case. T.O. IX did not bring an action to collect construction fees. "The courts will not impose penalties on a contractor for noncompliance with the licensing requirements other than that provided by the statute." (*S & Q Construction Co. v. Palma Ceia Development Organization, supra*, 179 Cal.App.2d at p. 367-368.)

Under appropriate circumstances, a buyer may invalidate a contract and obtain a refund of the purchase price because of the absence of a license by a contracting party. But for the reasons discussed below, this is not such a case.

### *Monetary Relief Under the Contractors' State Licensing Laws*

Section 7031, subdivision (b) authorizes a statutory cause of action for plaintiffs to recover contracting fees they paid to an unlicensed contractor who performed construction work. There is also a rescission cause of action for recovery of such fees. (*Lund v. Cooper* (1958) 159 Cal.App.2d 349, 350.)

But the Bustamantes did not include these causes of action for recovery of contracting fees in their complaint. Instead, they brought an action for general damages for fraud and misrepresentation based on the nondisclosure of information relating to the sale. They cite *Ranchwood Communities Limited Partnership v. Jim Beat Construction Co.* (1996) 49 Cal.App.4th 1397. That case involved actions for damages relating to construction defects. But the Bustamantes did not allege a cause of action based on construction defects, and the referee found there were none. They may not seek recovery on causes of action they did not plead. (*Fuentes v. Tucker* (1947) 31 Cal.2d 1, 4 ["One of the functions of pleadings is to limit the issues"].) But even had the Bustamantes pled the relevant causes of action, they have not shown that the result would change.

The Bustamantes claim T.O. IX was the builder of their home and it did not have a contractor's license. But in their complaint, they alleged T.O. IX was "a mere shell" company and the alter ego of Darin Davis, who was actually controlling its operations. T.O. IX claims the evidence shows that Davis built their home, and the referee found that to be the case. If, as the Bustamantes contend, T.O. IX was merely a fictional entity that should be disregarded, and if Davis was the actual builder, then compliance with section 7031 necessarily includes consideration of Davis's status. In their complaint, the Bustamantes describe Davis as a person who merely "*has represented himself to be a licensed general building contractor.*" (Italics added.)

But the referee found that Davis held a general contractor's license "at all times during the course of these events" and he was a T.O. IX official. He made additional findings to show why the construction of their home was not illegal and why they were not entitled to monetary relief. He said: 1) "Neither T.O. IX nor its employees performed any construction work" on the Bustamante home, 2) their home was "built entirely by qualified, licensed, and insured sub-contractors," 3) their home and the project was inspected by the Thousand Oaks City Building Department, 4) a "final clearance for occupancy" issued for all homes in the project including the Bustamante home, 5) "the home had passed all requisite building inspections," 6) it "was built in compliance with all applicable Building Codes," 7) the Bustamantes "do not allege that there are any



construction defects with their home," 8) they sustained no loss in value, and 9) their "*home was, in reality, built by a licensed contractor, Darin Davis.*" (Italics added.)

These findings would undermine a claim for monetary reimbursement had the Bustamantes brought a cause of action for recovery of contracting fees under section 7031, subdivision (b).

The referee also found that officials responsible for compliance with licensing and construction standards determined that T.O. IX's lack of a license did not compromise the quality of the construction work on the Bustamante home. The CSLB was aware of the licensing issue and its officials went to the project site. But they did not require that any work on the project had to be halted. The referee found they did not require that any of the completed work had to be "redone." The City's building standards officials knew of "the licens[ing] issue," but they concluded there was no problem because all work was performed by licensed subcontractors. The referee found they consequently "did not void any of the permits, and did not *and will not revoke* the final clearance of occupancy for the [Bustamantes'] home, or [for] any of the other homes" in the T.O. IX project. (Italics added.) He also found that the Bustamantes were protected because there is a "StrucSure Home" warranty for their home and the license issue would have no negative impact because "the warranty would be honored." Given these facts, the referee concluded the Bustamantes did not show that the license issue was a "material matter." The Bustamantes have not shown the referee erred in making these findings

T.O. IX claims the Bustamantes' suggestion on appeal that they are entitled to a refund of the \$960,000 purchase price is inconsistent with their trial testimony. We agree. They never testified they sought to rescind the contract for illegality, or to offer to return the house and demand return of the \$960,000 purchase price. Instead, they elected to keep the house and testified they sustained damages of \$100,000.

#### *The Fraud and Negligent Misrepresentation Causes of Action*

The Bustamantes contend the referee erred by ruling they did not prove their fraud and negligent misrepresentation causes of action. They claim he did not apply the correct legal standard and the evidence supports a different result. We disagree.

The elements of a fraud cause of action include: false representations, concealment or nondisclosure, knowledge of falsity by the defendant, intent to defraud, justifiable reliance by the plaintiff, and proof of damage. (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 173.) "[T]o establish fraud, the evidence must be clear, satisfactory and convincing." (*Goggin v. Reliance Ins. Co.* (1962) 200 Cal.App.2d 361, 365.)

"Negligent misrepresentation is the assertion of a false statement, honestly made in the belief it is true, but without reasonable ground for such belief." (*Anderson v. Deloitte & Touche, LLP* (1997) 56 Cal.App.4th 1468, 1476.) "The tort requires a 'positive assertion[.]' . . . 'An "implied" assertion or representation is not enough.'" (*Diediker v. Peelle Financial Corp.* (1997) 60 Cal.App.4th 288, 297-298.)

Here the referee ruled there was a failure of proof on the fraud and negligent misrepresentation causes of action. He found the Bustamantes "admitted that the Defendants did not make any representations directly to them." The Bustamantes claim there was "a knowing concealment" or fraudulent suppression of the fact that T.O. IX was not licensed. But the referee rejected that claim and found no evidence showing "a known falsity" and no proof of "an intent to defraud" the Bustamantes.

The Bustamantes suggest there was proof of negligent misrepresentation because of the failure of Davis and Bock to notify them and the City about T.O. IX's unlicensed status. They claim the omission was tantamount to a representation that T.O. IX was properly licensed. They argue had the City known it was not, City would have issued a cease and desist order, and the absence of such an order misled them.

But on a negligent misrepresentation cause of action, "[i]f defendant's belief 'is both honest and reasonable, the misrepresentation is *innocent* and there is no *tort liability*.'" (*Diediker v. Peelle Financial Corp.*, *supra*, 60 Cal.App.4th at p. 297.) The referee found this to be the case. He said Davis and Bock did not conceal information. "[T]he CSLB knew Fairland was acting as a construction manager on T.O. IX's Whitman Court Project." Davis and Bock believed they did not have to inform the City of this change because the CSLB had approved this action and had granted Fairland a license,

and this occurred before the Bustamantes purchased their home. The referee found Davis and Bock cooperated with the CSLB and followed their recommendations. In viewing their credibility, he determined that they had made an honest mistake. He said they "thought they qualified for the owner/builder exception to the licensing law and that was based upon advice of an attorney. . . . As such, they had a reasonable ground to believe that they fit within the exception and that a licensed contractor was not required." The referee said the Bustamantes "have not provided any credible evidence to contradict this testimony." Davis also testified he initially believed T.O. IX did not need a license because he was licensed, the subcontractors were licensed, and his license was used for the project. He said initially there was confusion as to whether LLC's could be licensed. The referee found Davis to be credible. The Bustamantes have not shown the referee erred in applying the applicable law or in making fact findings.

The Bustamantes claim the referee erred by finding they did not prevail on the element of justifiable reliance. We disagree. Reliance by the plaintiff is a necessary element for causes of action based on fraud and negligent misrepresentation. (*Small v. Fritz Companies, Inc.*, *supra*, 30 Cal.4th at p. 184.) The plaintiff has the burden of pleading and proving "actual reliance." (*Mirkin v. Wasserman* (1993) 5 Cal.4th 1082, 1089, fn. 2.) In their complaint, the Bustamantes alleged that had they known about the absence of T.O. IX's contractor's license, they "would not have entered into a purchase agreement." But they had to prove this claim.

The Bustamantes argue that because they "testified they would not have purchased the Home had they known the builders were not licensed," they "established the element of justifiable reliance." They claim they "honestly testified" on this issue. But "a trial judge is not required to accept as true the sworn testimony of a witness, even in the absence of evidence directly contradicting it . . . ." (*Lohman v. Lohman* (1946) 29 Cal.2d 144, 149.) Here the referee found the testimony of "both Mr. and Mrs. Bustamante to be *lacking in credibility*." (Italics added.) He noted that they made factual assertions during their testimony that were impeached by documents they had signed. We do not decide the credibility of witnesses; that is a matter exclusively for the trier of

fact. (*Church of Merciful Saviour v. Volunteers of America, Inc.*, *supra*, 184 Cal.App.2d at p. 856.)

Moreover, here the referee essentially found the license issue was not a material fact that would depress the value because: 1) "defendants obtained all required building permits," 2) only licensed contractors performed the work, 3) the home passed all building inspections, 4) it complied with all building codes, and 5) the City was not concerned with T.O. IX's "name on a permit" given that licensed subcontractors performed the work. Edmundo Bustamante testified his concern was whether the house was "built correctly." The referee found the only "implied promise" the Bustamantes could show from the facts of this case was that "the house was built to code. It was."

#### *Damages*

The referee used the correct standard in determining the Bustamantes suffered no damages.

Civil Code section 3343, subdivision (a) provides, in relevant part, "One defrauded in the purchase, sale or exchange of property is entitled to recover the difference between the actual value of that with which the defrauded person parted and the actual value of that which he received . . . ." This section applies to damages for real estate sales fraud, and the legal standard for calculating damages is "the out-of-pocket-loss rule." (*Garrett v. Perry* (1959) 53 Cal.2d 178, 183.)

The referee found the value of the Bustamante home to be \$1,000,000 when they purchased it. But they paid \$960,000. He found the Bustamantes sustained no damages.

The Bustamantes contend it was error to credit Gribin's testimony because information he utilized to form his opinions was unreliable, he was biased and had a financial connection to the defendants. But the trier of fact decides the competency, the qualifications, and the credibility of the expert witnesses. (*Ventura County Flood Control Dist. v. Security First National Bank* (1971) 15 Cal.App.3d 996, 1003-1004.)

Here the referee found that Gribin "conducted a comparative sales analysis" and that his testimony was consistent with the "out-of-pocket-expense" rule. He found

that he based his conclusions on "objective, recognized criteria," and had relied on a survey that supported his opinion that there were no damages. He found Gribin credible and his opinions well supported.

The Bustamantes argue Tunnell determined the value of their house was diminished by several factors. They claim the referee should have accepted his testimony and awarded the damages they sought.

But the referee did not find Tunnell to be credible. He found his opinions were based on speculation. He said Tunnell's conclusions were "unsupported [and] lacking in accepted methodology." He said Tunnell opined on areas beyond his expertise, and in calculating damages, Tunnell excluded consideration of "any mitigating factors which were known to him," he relied on "misinformation," and he did not "verify" facts he relied on.

On cross-examination, Tunnell said he was unable to determine whether the "license issue" would have "any negative impact" on the Bustamantes' ability to get a loan or insurance. He "didn't have any problem with the permits." He did not know whether a licensed contractor supervised the construction of the home. Tunnell said the "certificate of occupancy" meant the home "passed the inspections" and "it's available for people to live in." The referee asked Tunnell to assume all subcontractors who worked on the house were licensed, the City issued permits that will not be revoked, and there is a valid certificate of occupancy. He asked Tunnell given those facts would there be "any difference in the quality of the house" based on whether the general contractor was licensed or unlicensed. Tunnell responded there would be no difference. The Bustamantes have not shown that the referee abused his discretion in rejecting Tunnell's opinions.

The Bustamantes claim the referee should have relied on *Alexander v. McKnight* (1992) 7 Cal.App.4th 973 and awarded future damages, because their obligation to disclose the license issue to future buyers would reduce the value. But in *Anderson*, the court said, "Whether information has sufficient materiality to affect the value or desirability of residential property is a *fact specific determination*." (*Id.* at

p. 977, italics added.) In many cases a license issue may reduce the value. But each case is decided on its own facts. Here the referee found no sufficient materiality to affect the value given the totality of the evidence.

### *Alter Ego Issues*

The Bustamantes claim the referee erred by rejecting their position that the alter ego doctrine applied to this case. They suggest, among other things, that the evidence shows a relationship and interconnection between the various defendants making T.O. IX and others alter egos of Davis and Bock. They claim they prevailed against these defendants on this theory in another action.

T.O. IX responds that deciding the alter ego issue will not change the result. It notes the referee correctly ruled that the Bustamantes did not prove their causes of action. It claims absent proof of a cause of action, any error on any alter ego issue cannot be reversible error. We agree.

"The purpose behind the alter ego doctrine is to prevent defendants who are the alter egos of a sham corporation from escaping personal liability for its debts." (*Hennessey's Tavern, Inc. v. American Air Filter Co., Inc.* (1988) 204 Cal.App.3d 1351, 1358.) "A claim against a defendant, based on the alter ego theory, is not itself a claim for substantive relief . . . ." (*Id.* at p. 1359.)

The alter ego issues might have been significant had the Bustamantes prevailed on their causes of action. But where a plaintiff cannot prove any cause of action, as here, it does not matter that there may be one or multiple alter egos that might have shared financial liability had the plaintiff prevailed.

### *Admitting Evidence about a Warranty on the House*

The Bustamantes contend the referee erred by "allowing evidence" about the "StrucSure Home Warranty" policy on their home. They claim this policy "was not relevant to any of the issues in this case."

We review claims of error for admitting evidence using an abuse of discretion standard. (*Pannu v. Land Rover North America, Inc.* (2011) 191 Cal.App.4th 1298, 1317.)

Tiffany Bustamante testified on the warranty issue in her direct testimony in the plaintiffs' case. The Bustamantes also concede that Tunnell, their expert, considered this warranty in calculating damages. He concluded there would be a substantial difference in damages based on the existence or absence of a warranty. Moreover, they have not shown how exclusion of this evidence would change the result.

We have reviewed the Bustamantes' remaining contentions and conclude they have not shown error.

The judgment is affirmed. Costs on appeal are awarded in favor of respondents.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Barbara A. Lane, Judge  
Burton S. Katz, Temporary Judge<sup>\*</sup>

Superior Court County of Ventura

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Law Offices of Ray B. Bowen, Jr., Ray B. Bowen, Jr., James A. Howard  
for Plaintiffs and Appellants.

Semper Law Group, LLP, Leonard M. Tavera for Defendants and  
Respondents.

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<sup>\*</sup> (Pursuant to Cal. Const., art. VI, § 21.)