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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SHASHIKANT JOGANI,

Plaintiff, Appellant and Respondent,

v.

HARESH JOGANI et al.,

Defendants, Respondents and
Appellants.

B222561, consol. w/B228875

(Los Angeles County
Super. Ct. No. BC290553)

ORDER MODIFYING OPINION

[change in the judgment]

THE COURT:

It is ordered that the opinion filed herein on December 5, 2012, be modified as follows:

1. On page 11, the first sentence of the first paragraph, reading, “By special verdict, the jury found Haresh, Gilu Investments Limited, and Mooreport Holdings Limited were not liable in quantum meruit because Jogani provided no services for their benefit,” is modified to read, “By special verdict, the jury found Haresh, Gilu Investments Limited, and Mooreport Holdings Limited were not liable in quantum meruit because Jogani was not asked to provide services for their benefit.”

2. On page 21, the following sentence is added at the end of footnote 2:
“Jogani may still seek imposition of a constructive trust as a remedy.”

3. On page 26, the following paragraph is added at the end of section II A:

“Given this ruling, the judgments obtained after trial in favor of Haresh, Mooreport Holdings Limited and Gilu Investments Limited on Jogani’s claim for quantum meruit must also be reversed. To establish quantum meruit, Jogani was required to prove he rendered services at Haresh’s request for the benefit of Haresh, Mooreport Holdings Limited and Gilu Investments Limited. (*Earhart v. William Low Co.* (1979) 25 Cal.3d 503, 518.) But the trial court prevented Jogani from presenting evidence of a partnership agreement between himself and Haresh, on the ostensible ground that its summary adjudication rulings established no such agreement existed. In light of our holding that summary adjudication was improper, it follows that the pretrial rulings based thereon were erroneous. And there is little question the error was prejudicial. (See *Clifton v. Ulis* (1976) 17 Cal.3d 99, 105-106 [erroneous exclusion of evidence permits reversal when it is reasonably probable the error was prejudicial].) The alleged partnership agreement contained Haresh’s request that Jogani perform services for the partnership, including Haresh and the holding companies. The jury’s finding that Jogani was not asked to provide services for these defendants can be directly attributed to the court’s exclusion of the agreement.”

4. On page 28, the second paragraph, beginning “As noted above, in addition to” is deleted in its entirety and is replaced with the following two paragraphs:

“As noted above, in addition to their motion for new trial, which the trial court granted, J.K. Properties, H.K. Realty, Hansa and Commonwealth moved for judgment notwithstanding the verdict, seeking an order that Jogani receive no more than \$3,325,000 on his quantum meruit claim, less the \$2.4 million already disbursed. The trial court denied this motion. On appeal, defendants argue that because Jogani’s damages evidence was incompetent, it failed to support a judgment on his behalf in any amount. However, they argue, their own expert’s testimony supported a judgment for Jogani in the amount of \$3,908,331. Subtracting the \$2.4 million found by the jury to

have already been paid to Jogani, defendants contend the trial court should be directed to enter judgment in favor of Jogani in the amount of \$1,508,331.

We disagree. When a plaintiff's only damages evidence is held to have been erroneously admitted, the remedy is not to grant judgment notwithstanding the verdict in an amount supported by the defendant's evidence, but to grant a new trial. (*Teitel v. First L.A. Bank* (1991) 231 Cal.App.3d 1593, 1604-1605 [new trial is the exclusive remedy where some damages are properly awarded but the amount is excessive]; *Donahue v. Ziv Television Programs, Inc.* (1966) 245 Cal.App.2d 593, 609-610 [a plaintiff has the right to rely on the trial court's admission of damages evidence, and to receive a new trial if admission of that evidence was erroneous].) Pursuant to the discussion in part (II)(B), *ante*, the parties shall have a new trial."

5. On pages 28 to 29, the Disposition is deleted in its entirety and replaced with the following:

"The order granting defendants' motion for new trial and denying their motion for judgment notwithstanding the verdict is affirmed. The order granting summary adjudication of plaintiff's cause of action for constructive trust is affirmed. Summary adjudication in favor of Haresh Jogani is otherwise reversed. Summary adjudication as to Pinkal Jogani is affirmed. The judgments for Haresh Jogani, Mooreport Holdings Limited and Gilu Investments Limited are reversed. All parties shall bear their own costs."

These modifications change the judgment.

The petitions for rehearing are denied.

MALLANO, P. J.

CHANEY, J.

JOHNSON, J.