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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

DARK HALL PRODUCTIONS, LLC et al.,

Plaintiffs and Respondents,

v.

SUN JEE YOO et al.,

Defendants and Appellants.

B223362

(Los Angeles County
Super. Ct. No. BC378697)

APPEAL from a judgment and orders of the Superior Court of Los Angeles County. Kevin C. Brazile, Judge. Affirmed.

Fredman Knupfer Liberman, Marc A Liberman and Alan W. Forsley for Defendants and Appellants.

The Law Office of Jason B. Cruz and Jason B. Cruz for Plaintiffs and Respondents.

Defendant and appellant Sun Jee Yoo (Yoo) appeals from the judgment entered in favor of plaintiff and respondent Dark Hall Productions, LLC (Dark Hall) after a jury awarded Dark Hall \$3.7 million in compensatory damages and \$60,000 in punitive damages on its claims against Yoo for breach of contract, intentional misrepresentation and concealment, false promise, and conversion. Yoo and defendant and appellant Dragon Noon, Inc. (Dragon Noon)¹ appeal from the trial court's postjudgment order releasing to Dark Hall \$1,945,000 from a Dragon Noon bank account that had been the subject of a preliminary injunction imposed at the outset of the case. Yoo and Dragon Noon also appeal the denial of their motions for judgment notwithstanding the verdict (JNOV) and a new trial. We affirm the judgment, the order for release of funds, and the order denying the motions for JNOV and a new trial.

BACKGROUND

Dark Hall is a California limited liability company owned and controlled by Matthew Arnold (Arnold), a screenwriter, film director, and producer. In 2007, Arnold taught a film directing class at the New York Film Academy, where he met Yoo, a student in his class. Yoo asked Arnold if she could interview him for a Korean magazine, and Arnold agreed. During the interview, Arnold discussed a specific film project entitled "The Door" on which he was working and for which he wished to obtain financing. Yoo expressed interest in raising money for "The Door" and she and Arnold orally agreed that she would do so and that Arnold would direct and produce the movie. Arnold and Yoo reduced their agreement to writing in a memorandum of understanding signed by both of them in February 2007. The memorandum of understanding states that Yoo would use her best efforts to raise \$4.5 million in funding for "The Door" by June 1, 2007.

In March 2007, Arnold and Yoo traveled to Korea to meet with Yoo's father, Chul Yun Yoo, and other potential investors for "The Door." As a result of these meetings,

¹ Yoo and Dragon Noon are referred to collectively as appellants.

several investors agreed to provide Dark Hall with approximately \$3.7 million to make “The Door.”

In mid to late April 2007, Arnold and Yoo traveled to Japan to raise the final \$800,000 of the \$4.5 million budgeted for “The Door.” Yoo was successful in obtaining an additional \$1 million, which she deposited by wire transfer to her personal bank account. Although Yoo acknowledged that the \$1 million was part of the committed investment for “The Door,” and she told Arnold she that she intended to transfer those funds to Dark Hall, she never did so.

After Dark Hall received the \$3.7 million in investor funds, Yoo’s attorney, Harris Tulchin, contacted Arnold and requested a meeting, which was held on July 25, 2007. At that meeting, which was attended by Yoo, Tulchin, Arnold, and Arnold’s attorney, Tulchin told Arnold that he had three options: (1) he could continue to control the making of his movie, in which case Yoo’s father would sue him; (2) he could turn over all of the investor funds to Yoo; or (3) he could give Yoo some control over the funding of “The Door.”

A week later, Yoo’s attorney requested another meeting, which took place on July 31, 2007. At this second meeting, which was attended by Tulchin, Yoo, and her father, Yoo’s attorney told Arnold that the investors wanted \$1.7 million of their money returned to them. Arnold was told he could go forward with “The Door” on a reduced budget so long as any disbursements were approved by Yoo. Immediately after the meeting, Arnold and Yoo drove to the bank and withdrew from Dark Hall’s account two cashier’s checks, one in the amount of \$1.7 million payable to Yoo for the purpose of returning to the investors, and one in the amount of \$1,945,000, which was deposited into a joint bank account that required both Yoo’s and Arnold’s signatures for any withdrawals. Yoo did not return the \$1.7 million to Dark Hall’s Korean investors but instead deposited the cashier’s check into her personal account and subsequently transferred those funds to Dragon Noon.

Arnold thereafter attempted to contact Yoo by telephone and email to secure her approval for expenditures related to “The Door,” but Yoo did not return the emails or

calls. On August 22, 2007, without notice to Arnold, Yoo withdrew the entire \$1,945,000 balance from their joint bank account and transferred the funds to an account owned by Dragon Noon.

Dark Hall filed the instant action against Yoo, her father, and Dragon Noon, asserting causes of action for fraud, conversion, and breach of oral and written contracts.² At the outset of the case, Dark Hall also filed an application for a preliminary injunction to freeze approximately \$4.6 million held in various bank accounts owned by Yoo and/or Dragon Noon. The trial court granted Dark Hall a preliminary injunction as to \$1,945,000 in a Dragon Noon bank account.

A jury trial commenced in October 2009. On October 8, 2009, the trial court dismissed Dark Hall's cause of action for unjust enrichment and orally granted Dragon Noon's motion for nonsuit as to all of the remaining causes of action asserted against it.³ On October 30, 2009, the trial court on its own motion dismissed Yoo's father from the action without prejudice. At the conclusion of the trial, the jury awarded Dark Hall a total of \$3.7 million in damages on its claims against Yoo, including \$1,945,000 on its claim for conversion. The jury further found that Yoo acted with malice, oppression, or fraud, and awarded punitive damages in the amount of \$60,000. On November 10, 2009, judgment was entered against Yoo and in favor of Dark Hall in the amount of \$3,700,000 in compensatory damages and \$60,000 in punitive damages.

² The trial court sustained, without leave to amend, the defendants' demurrers to causes of action asserted by Dark Hall for intentional interference with contract, intentional interference with prospective relations, promissory estoppel, breach of the covenant of good faith and fair dealing, and unjust enrichment. Yoo filed a cross-complaint against Dark Hall and Arnold, on which she did not prevail. She does not appeal the judgment entered against her on her cross-complaint.

³ Although the judgment entered on January 5, 2010, states that the trial court granted Dragon Noon's motion for nonsuit on October 8, 2009, the record on appeal contains no order granting nonsuit that was entered in the minutes of the trial court on that date.

On November 16, 2009, Dark Hall filed an ex parte application seeking release of the \$1,945,000 in funds that were the subject of the preliminary injunction granted at the outset of the case, and the trial court granted the ex parte application.

On November 19, 2009, Yoo notified the trial court that her trial attorney had been disbarred and on November 25, 2009, filed an ex parte application for an order appointing new attorneys as her counsel of record in the case and vacating all proceedings after November 3, 2009 -- the date on which her prior counsel had resigned from the practice of law. The trial court granted Yoo's ex parte application and vacated the judgment entered on November 10, 2009, as well as its order granting Dark Hall's ex parte application for release of the \$1,945,000.

On January 5, 2010, a new judgment was entered in favor of Dark Hall against Yoo awarding Dark Hall \$3.7 million in compensatory damages and \$60,000 in punitive damages. Judgment was entered against Dark Hall on its claims against Dragon Noon. The judgment states that Dark Hall "shall take nothing from its complaint against Defendant Dragon Noon Production, Inc."

On January 22, 2010, Dark Hall filed a noticed motion for release of the \$1,945,000 in Dragon Noon's account that had been the subject of the preliminary injunction issued at the outset of the case. In its motion, Dark Hall argued that the funds in Dragon Noon's account were subject to a constructive trust as the result of Yoo's conversion and transfer of those funds to Dragon Noon. Yoo and Dragon Noon opposed that motion and filed their own motions for a new trial and for JNOV. Following a February 11, 2010 hearing on all three motions, the trial court denied the motions for a new trial and for JNOV and granted Dark Hall's motion to release the \$1,945,000 in Dragon Noon's account. This appeal followed.

CONTENTIONS ON APPEAL

Yoo contends the judgment must be reversed because there was insufficient evidence that she breached any contract or made any misrepresentation or that she acted as the agent of anyone who committed such breach or misrepresentation. Yoo further contends the trial court committed reversible error by not instructing the jury on the law

of agency and on the measure of damages for fraud, and that the punitive damages award must be reversed because no meaningful evidence of her financial condition was presented. Yoo and Dragon Noon claim the trial court erred by granting Dark Hall's motion for release of funds and by denying their motions for JNOV and a new trial.

DISCUSSION

I. Breach of contract

Of the elements necessary to establish a breach of contract, Yoo challenges only the evidence of her breach. She contends her agreement with Dark Hall was simply to raise money for "The Door," and that she fully performed her obligation to do so.

Substantial evidence supports the jury's determination that Yoo breached oral and written agreements she entered into with Dark Hall. There was evidence that Yoo agreed to raise \$4.5 million for "The Door," but then appropriated for her own use nearly the entire amount she had agreed to obtain for Dark Hall. After raising \$3.7 million from Korean investors, Yoo appropriated for her own use \$800,000 of the \$4.5 million committed investment for "The Door." She then misappropriated an additional \$1.7 million of Dark Hall's funds, after telling Arnold that the Korean investors had demanded return of this sum. Finally, Yoo transferred, without Arnold's knowledge or consent, the entire remaining balance of \$1,945,000 from Dark Hall's bank account to an account held by Dragon Noon.

There was also evidence that Yoo breached subsequent oral agreements with Dark Hall as to how the funds invested in "The Door" were to be expended. After Dark Hall obtained the \$3.7 million in investment funds, Yoo insisted, and Arnold agreed, that she be given concurrent control over how those funds were to be spent. The parties agreed that expenditures for the film would require both Yoo's and Arnold's authorizations and that checks drawn on Dark Hall's bank account would require both their signatures. There was evidence that Yoo breached this agreement by withdrawing the entire balance from Dark Hall's bank account without Arnold's knowledge or consent and by transferring those funds to Dragon Noon.

Substantial evidence supports the jury's finding that Yoo breached agreements she made with Dark Hall regarding the investment, management, and expenditure of funds for "The Door."⁴

II. Misrepresentation

A. Sufficiency of the evidence

Yoo contends there is no evidence that she made any misrepresentations to Dark Hall. There is substantial contrary evidence in the record.⁵ There was evidence that Yoo made misrepresentations regarding the final \$800,00 needed to meet the \$4.5 million budget for "The Door." After Dark Hall obtained \$3.7 million in investment funds from Korea, Yoo represented to Arnold that she had procured the final \$800,000 in funding for "The Door" and that the money would be sent from Japan. Although Yoo admitted that the \$1 million she obtained in Japan was part of the committed investment for "The Door," she deposited the entire sum into a personal bank account and never transferred any of the funds to Dark Hall.

There was also evidence that Yoo misrepresented to Arnold that Dark Hall's Korean investors had demanded that \$1.7 million of their initial \$3.7 million investment be returned to them. At a meeting convened and attended by Yoo, her attorney threatened Arnold with legal action unless Dark Hall returned \$1.7 million to the Korean investors. Dark Hall thereafter provided Yoo with a cashier's check in the amount of \$1.7 million for the purpose of returning those funds to the investors. Instead of returning the \$1.7 million to the investors, Yoo deposited those funds into her personal bank account and subsequently transferred them to Dragon Noon. Yoo argues that she

⁴ Because there is substantial evidence that Yoo breached oral and written agreements she made with Dark Hall, we need not address Yoo's argument that there was no evidence that she was an agent for anyone who breached such agreements or her argument that the jury should have been instructed on the law of agency.

⁵ Given that substantial evidence supports the jury's determination that Yoo made misrepresentations to Dark Hall, we do not address Yoo's arguments concerning the absence of evidence that she was an agent for anyone who made such misrepresentations or the failure to instruct the jury on agency law.

cannot be held liable for misrepresentations made by another, in this case, her own attorney; however, “[t]he law has always recognized that communication by indirection may be just as effective when direct. . . . [A] fraudulent misrepresentation is no less actionable because made to a third person who is intended to and does relay the information to the person who relies.” (*Odell v. Frueh* (1956) 146 Cal.App.2d 504, 508.) Yoo was present at the meeting at which her own attorney threatened Arnold with legal action unless Dark Hall returned \$1.7 million of the funds committed by the Korean investors for “The Door.” She cannot now disclaim responsibility for those statements.

B. Alleged instructional error

Yoo contends the trial court committed prejudicial error by failing to instruct the jury on the measure of damages for fraud. When reviewing the instructions given at trial, an appellate court must consider all of the instructions as a whole to determine whether any error was committed. (*Godfrey v. Steinpress* (1982) 128 Cal.App.3d 154, 177.) Even when an instructional error has occurred, an appellate court cannot reverse the judgment on that basis unless it appears reasonably probable that absent the error, the jury would have rendered a verdict more favorable to the appellant. (*Ibid.*)

The jury instructions as a whole, together with the special verdict forms, gave the jury sufficient guidance for calculating its \$3.7 million compensatory damages award. The instructions on misrepresentation and concealment made specific reference to the sum of \$1,761,141 Yoo appropriated for her own use after telling Arnold that those funds would be returned to the investors. The jury instructions also referred to the \$1,945,000 Yoo withdrew from the joint bank account she shared with Arnold for the purpose of funding “The Door.” The record discloses no reversible error.

III. Punitive damages

Yoo contends the \$60,000 punitive damages award should be reversed because there was no meaningful evidence of her financial condition. A punitive damages award requires “meaningful evidence” of the defendant’s financial condition or ability to pay. (*Adams v. Murakami* (1991) 54 Cal.3d 105, 109.) “[T]here should be some evidence of the defendant’s actual wealth. Normally, evidence of liabilities should accompany

evidence of assets, and evidence of expenses should accompany evidence of income.” (*Baxter v. Peterson* (2007) 150 Cal.App.4th 673, 679-680.) An award of punitive damages is reviewed for substantial evidence. (*Ibid.*)

The record contains sufficient meaningful evidence of Yoo’s financial condition. There was evidence that Yoo owned a condominium she purchased in 2007 after obtaining a \$600,000 loan in order to do so. There was also evidence that Yoo had an interest in certain real property in Carlsbad, California that was worth \$50,000, and that she received \$1 million from a company in Japan in 2007. Substantial evidence supports the punitive damages award.

IV. Motion for release of funds

Appellants contend the trial court erred by granting Dark Hall’s motion to release funds held in a Dragon Noon bank account because (1) the trial court lacked authority to impose a constructive trust based on a judgment entered only against Yoo, and not Dragon Noon; (2) the only cause of action in which Dark Hall requested a constructive trust was its claim for unjust enrichment, which was dismissed as to all parties; and (3) the judgment entered in Dragon Noon’s favor extinguished any contractual rights Dark Hall may have had to the funds held in Dragon Noon’s account.

The trial court’s order that the \$1,945,000 held in Dragon Noon’s bank account be released to Dark Hall was premised on Dark Hall’s request that a constructive trust be imposed on those funds. “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.] . . .” (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1069.) It arises when one either wrongfully acquires or wrongfully detains property belonging to another. (Civ. Code, §§ 2223, 2224.) “One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.” (Civ. Code, § 2223.)

A constructive trust may be imposed when the following three conditions are satisfied: (1) the existence of a trust res; (2) the right of a complaining party to that res; and (3) wrongful acquisition of the res by another party who is not entitled to it.

(*Burlesci v. Petersen, supra*, 68 Cal.App.4th at p. 1069.) Although constructive trust is not an independent cause of action, it may be sought as a remedy on other underlying claims. (*Ibid.*) The propriety of imposing a constructive trust as an equitable remedy in a particular case is generally reviewed under the abuse of discretion standard. (*Tri-Growth Centre City, Ltd. v. Silldorf, Burdman, Duignan & Eisenberg* (1989) 216 Cal.App.3d 1139, 1154.)

A constructive trust is a proper remedy for conversion. (*Burlesci v. Petersen, supra*, 68 Cal.App.4th at p. 1069.) The jury in the instant case found in Dark Hall's favor on its conversion claim against Yoo. A constructive trust was thus properly imposed on the \$1,945,000 Yoo misappropriated from Dark Hall and subsequently deposited in a bank account owned by Dragon Noon. That the trust res is now in a bank account owned by Dragon Noon, rather than Yoo, does invalidate the trust. Dragon Noon need not have acquired the funds directly from Dark Hall in order to be deemed an involuntary trustee of the misappropriated funds. (*GHK Associates v. Mayer Group, Inc.* (1990) 224 Cal.App.3d 856, 879.)

That the judgment was entered only against Yoo, and not Dragon Noon, does not alter the result. It was Yoo's wrongdoing that gave rise to the constructive trust imposed on the misappropriated funds. When Yoo transferred the misappropriated funds to Dragon Noon, it became an involuntary trustee of those funds for Dark Hall's benefit. (Civ. Code, § 2223.)

Appellants' argument that the judgment extinguished Dark Hall's contractual rights does not negate imposition of the constructive trust, which was premised on Yoo's conversion of \$1.9 million from Dark Hall's funds, and not on the enforcement of any contractual rights.

V. Motions for JNOV and a new trial

Appellants contend the trial court erred by denying their motions for JNOV and a new trial because substantial evidence does not support the jury's verdicts. We review the trial court's denial of the motion for JNOV under the substantial evidence standard. (*Clemmer v. Hartford Ins. Co.* (1978) 22 Cal.3d 865, 878.) We review the trial court's

ruling on the motion for a new trial for abuse of discretion. (*Hata v. Los Angeles County Harbor/UCLA Medical Center* (1995) 31 Cal.App.4th 1791, 1800.)

As discussed above, substantial evidence supports the jury's verdicts and the record discloses no abuse of discretion by the trial court.

DISPOSITION

The judgment is affirmed, as are the orders requiring the release of funds and denying the motions for JNOV and a new trial. Dark Hall is awarded its costs on appeal.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.*
FERNS

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