

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))



Only the Westlaw citation is currently available.  
 California Rules of Court, rule 8.1115, restricts citation  
 of unpublished opinions in California courts.

Court of Appeal, Second District, Division 4, California.

Marvin HUR et al., Plaintiffs and Respondents,  
 v.  
 BYOUNG WOO LEE et al., Defendants and  
 Appellants.  
 No. B210502.

(Los Angeles County Super. Ct. Nos. BC352132,  
 BC361921).  
 Sept. 9, 2009.

APPEAL from a judgment of the Superior Court of Los  
 Angeles County, [John P. Shook](#), Judge. Reversed in part,  
 affirmed in part.

[Terran T. Steinhart](#); Law Offices of John Y. Song and  
[John Y. Song](#) for Defendant and Appellant Byoung Woo  
 Lee.

SoCal Law Group, PC, and [James Mortensen](#), for  
 Defendants and Appellants Joy Investment & Realty, Inc.  
 and Ted Yoon.

No appearance for Plaintiffs and Respondents.

[MANELLA](#), J.

\*1 This case involves the sale of a sushi restaurant to  
 respondents Marvin and Connie Hur. Claiming that they  
 had been provided untruthful information concerning the  
 restaurant's profitability, including falsified financial  
 statements, the Hurs obtained a judgment for fraud against  
 the seller, appellant Byoung Woo Lee, and for fraud,  
 breach of fiduciary duty and constructive fraud against the

real estate agent, appellant Ted Yoon, and his broker,  
 appellant Joy Investment and Realty, Inc. (Joy Realty).<sup>[FN1](#)</sup>  
 On appeal, appellants contend that the Hurs' claims were  
 not supported by the evidence and that the damages  
 awarded, both compensatory and punitive, were excessive.  
 Separately, Lee contends that the Hurs' contractual  
 attorney fees, awarded against him alone, should have  
 been apportioned. Yoon and Joy Realty contend that the  
 trial court erred in permitting the Hurs to amend their  
 complaint to add claims for fraud, breach of fiduciary duty  
 and constructive fraud against them. These appellants also  
 contend that they owed no agent/broker duty to the Hurs  
 when the sale closed because they had agreed to step down  
 and forego their commission and that provisions in the  
 parties' agreements stating that the buyers did not rely on  
 representations of the broker precluded the Hurs' recovery.  
 Joy Realty separately contends that the Hurs failed to  
 establish a basis for the award of punitive damages as to  
 it. We conclude that the compensatory damage award  
 contained duplicative damages and that the evidence and  
 findings established no basis for an award of punitive  
 damages as to Joy Realty. We otherwise affirm.

<sup>[FN1](#)</sup>. The Hurs did not file a respondents' brief.

#### FACTUAL AND PROCEDURAL BACKGROUND<sup>[FN2](#)</sup>

<sup>[FN2](#)</sup>. Except where indicated, the facts are taken  
 from the court's statement of decision.

#### A. *The Hurs' Purchase of the Wilshire Restaurant*

Asakuma U.S.A., Inc. (Asakuma) was the owner of  
 four restaurants operating under the Asakuma name: a  
 dine-in restaurant located on Wilshire Boulevard (the  
 Wilshire restaurant) and three takeout restaurants located  
 in Santa Monica (the Santa Monica store), Beverly Hills  
 (the Beverly Hills store) and Marina del Rey (the Marina  
 del Rey store).<sup>[FN3](#)</sup> In October 2005, Eiichi Kondo, the sole  
 shareholder of Asakuma, entered into an agreement to sell

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

all four restaurants to appellant Lee for \$850,000.<sup>FN4</sup>

<sup>FN3</sup>. The three delivery restaurants are collectively referred to as the “delivery stores.”

<sup>FN4</sup>. Kondo, who was a resident of Japan, had for many years placed the day-to-day operation and management of the four restaurants in the hands of Yoshiaki Watanabe.

Sometime before January 19, 2006, Lee met with Yoon, a licensed real estate agent employed by broker Joy Realty. After this meeting, “Yoon placed intentionally ... false advertising on behalf of Lee, and for Yoon's benefit, for the sale of the Delivery Stores,” which included “false net income figures for the Delivery Stores.”<sup>FN5</sup> On January 19, 2006, a Korean-American newspaper ran the advertisement written by Yoon.<sup>FN6</sup> The Hurs saw the advertisement and, induced by the information it contained, met with Yoon to discuss purchasing the delivery stores. The couple, who had ten years of experience in the restaurant industry, were in the market for sushi delivery restaurants which they believed could be profitably combined with their existing Chinese food delivery business.

<sup>FN5</sup>. One issue at trial was the origin of the income figures in the advertisement. As is discussed in greater detail, *infra*, after making an offer for the Asakuma restaurants, the Hurs were given documents showing that each restaurant was earning a net profit. The documents purported to be Asakuma financial statements but had been prepared at Lee's behest by his accountant. Because “the false net income figures in Yoon's advertising very closely approximate[d] the false figures in Lee's false financials,” the court concluded that “Lee gave these false figures to Yoon, for the purpose of duping a prospective buyer with false financial information.” The court further found that “Lee told Yoon, and thus Yoon knew at all relevant times herein, that the Restaurants were losing money, and that thus, the advertising and

misrepresentations by both Yoon and Lee were false and fraudulent.” The court found that, in any event, Yoon's act of including false information in the advertisement should be imputed to Lee because Yoon was his agent, acting on his behalf to sell the restaurants.

<sup>FN6</sup>. The advertisement-like many of the exhibits introduced at trial-is not included in the record provided by the appellants. With respect to the Beverly Hills store, the statement of decision said that Yoon's advertisement indicated it had net income of \$7,000 per month, but that if a married couple operated it, it could produce net income of \$10,000 per month. The court found that the Beverly Hills store was losing approximately \$2,500 per month. The court also found that the Marina del Rey store was losing \$2,500 per month, but did not discuss the contents of the advertisement as it pertained to the Marina del Rey store. The court made no findings with respect to the Santa Monica store. At trial, Watanabe testified the Santa Monica store was making a small profit, but that the remaining restaurants had been losing money since September 11, 2001.

\*2 At the Hurs' meeting with Yoon, “Yoon verified all the information which had appeared in the advertising.” Yoon represented that he had “ ‘extensive experience and knowledge’ of these types of restaurant transactions.” Yoon explained that Lee was in the process of purchasing the four restaurants from Kondo, but falsely stated that Lee had agreed to pay \$1.1 million. In addition, Yoon informed the Hurs about the possibility of purchasing the Wilshire restaurant, which had not been mentioned in the advertisement. Yoon said that the Wilshire restaurant was earning net income of approximately \$20,000 per month, and that the potential for profit would be much higher if the restaurant were owned and operated by a couple rather than professionally managed. Although not initially interested in a dine-in restaurant, the Hurs decided to make an offer that included the Wilshire restaurant,

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

concerned that if they did not do so and allowed another party to purchase and operate it, the market reputation of the name Asakuma might suffer. The Hurs requested financial documents, but were informed that such documents would be released only after they made an offer and deposited earnest money.

After their meeting with Yoon, the Hurs executed a written offer to purchase all four Asakuma restaurants for \$1.45 million.<sup>FN7</sup> The offer, prepared on a Joy Realty form and stating that Joy Realty was the agent for both the buyer and the seller, was accepted by Lee on January 27, 2006. Lee, whom the Hurs met approximately two weeks after the offer was accepted, orally confirmed the statements Yoon made about the profitability of the Wilshire restaurant. The Hurs were advised by Yoon and Lee not to speak to Kondo, Watanabe or any other restaurant employee or to any agent for the Wilshire restaurant's landlord because "because it would result in derailment of the Asakuma/Lee Purchase, due to Mr. Kondo learning that he had sold the Restaurants at a bargain price."

<sup>FN7</sup>. The court specifically found that the Hurs were induced to make this offer by "the False Advertising, and the verification of the false net income numbers stated by Yoon during their meeting, relating to both the Wilshire [restaurant] and the [delivery stores] ."

The parties' agreement stated that the Hurs' purchase was subject to certain conditions, including "approval of [the] existing lease."<sup>FN8</sup> Lee agreed to "provide Buyer's representative with Seller's original books, business records, and sales information." The agreement also included the following provision: "Buyer acknowledges and agrees that Broker has made no and makes no representation or warranties, either express or implied, about the accuracy or truthfulness of any representation or warranty made by Seller or regarding the Business.... Buyer agrees to rely solely on its own due diligence with respect to this purchase of the Business." The escrow instructions, executed by the parties on January 27, 2006,

stated: "No representation made by broker and a recommendation hereby given to Seller and Buyer to proceed independent investigation and consultation [sic] with appropriate professional and legal counsel in regard to: ... The profitability of Business or its suitability for Buyer's needs...."

<sup>FN8</sup>. The agreement and escrow instructions are not quoted in the statement of decision. We rely for their contents on the exhibits supplied by the parties.

\*3 In mid-February 2006, Yoon gave the Hurs a set of documents representing them to be Asakuma financial statements for the period July 1, 2002 to June 30, 2005, showing annual net income and expenses. In fact, the documents were prepared by Lee's accountant and allegedly contained "projections" based on proposals for lowering the restaurants' actual costs in various areas. These false financial statements showed net income of approximately \$60,000 to \$70,000 per year for each of the delivery stores and over \$200,000 per year for the Wilshire restaurant.<sup>FN9</sup> Yoon told the Hurs that the documents were Asakuma's financial statements. In April 2006, the Hurs were given Asakuma's tax returns for the years 2002 through 2004. When the Hurs observed that the tax returns showed a loss, Yoon told them that the returns deliberately understated the restaurants' income, that this was a common practice in the restaurant industry, and that the documents produced earlier reflected the true financial condition of Asakuma and the restaurants.<sup>FN10</sup>

<sup>FN9</sup>. The court found "no credible evidence" that the four restaurants were collectively profitable. The court determined that the most credible evidence concerning the restaurants' profitability was found in the true Asakuma financial statements offered into evidence. As the testimony of Watanabe confirmed, the actual financial statements showed the four restaurants incurred a loss of \$111,272 in fiscal 2004.

The court also found that Lee and Yoon

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

provided Hanmi Bank with the false financial statements sometime in January or February 2006, in order to procure the loan needed to effectuate the transfer of the restaurants from Kondo to Lee, and that Yoon provided false financial information to the Hurs' lender.

[FN10](#). The statement of decision highlighted Yoon's contradictory trial testimony, at one point testifying "he told [Mr.] Hur about the true finances of the Restaurants [and] that the False Financials were only projections"; while at another point, claiming "he did not know that the False Financials were false." The court specifically found that Yoon was "fraudulent in [performing] his duties as a real estate licensee."

On April 21, 2006, the Hurs closed escrow on the Wilshire restaurant. During the weeks preceding the closing, the parties executed a new sales agreement and multiple new escrow instructions.<sup>[FN11](#)</sup> Four sets of new escrow instructions dated April 4, 2006 allowed the purchase of each restaurant to close separately based on when the landlord for each of the premises agreed to a lease assignment. The April 4 instructions set forth a purchase price for the Wilshire restaurant of \$1 million and purchase prices of \$150,000 for each of the three delivery stores (total, \$1.45 million). The April 4 instructions contained no reference to a broker or agent. On April 13, the parties executed a supplement to the escrow instructions. In the supplement, the price for the Wilshire restaurant was reduced to \$705,000, and the price for each of the delivery stores increased to \$200,000 (decreasing the total to \$1.305 million).<sup>[FN12](#)</sup> On April 20, the parties executed a purchase agreement, whereby the Hurs agreed to purchase the stock of Soobi, Inc., the corporation through which Lee apparently intended to purchase the four restaurants from Kondo. On April 24, Yoon signed a document entitled "Escrow Amendment/Supplement" which stated that cancellation of the January escrow instructions cancelled the obligation to pay an agent's commission and further stated: "There were no assigned broker/agent [sic] representing [the] four new

escrows. No commission instructions were drafted or requested. Hence, [the four escrows] are free from any representation of a broker and an agent."

[FN11](#). The statement of decision does not fully explain the events that transpired in the weeks preceding closing. Although the record clearly reflects that the parties executed new escrow instructions and a new sales agreement, the statement of decision discusses these documents only in terms of why they did not provide a defense to Yoon and Joy Realty: "The Court ... finds that ... Yoon and [Joy Realty's] defenses concerning the transformation of the transaction into a stock transaction are entirely without merit. First, it was Yoon who proposed the stock transaction from Day 1. Second, Yoon admitted that he remained the agent in the transaction after it was formalized that the stock transaction would be the method of transfer. Third, Lee and Hur sought to buy and sell restaurant businesses; the use of the stock transfer was merely a method to effect this transaction. [¶] Fourth, and most importantly, nothing about the change to a stock transaction would vitiate any claim against Yoon or [Joy Realty]. Yoon and [Joy Realty's] duties arise out of statute and case law; their status as real estate licensees created special duties visited upon them. Thus, no contractual defense would save them from liability, except perhaps for a specific release from the [Hurs] (and such would have required a knowing and intelligent waiver to be effective)." As the statement of decision contains no specific findings concerning the content of these documents, we rely on the exhibits included in the record and the testimony of the witnesses to amplify the court's findings.

[FN12](#). The statement of decision does not discuss the decrease in price. It appears from the record that at some point during the negotiations, the Hurs were informed by Lee and Yoon that they would not experience any difficulty if they

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

wished to extend the lease on the Wilshire restaurant, which had approximately nine more years to run. However, the Hurs learned from Watanabe at an April 8 meeting that the landlord had indicated he might choose to develop the property rather than extend any of the tenants' leases. The Hurs confronted Yoon with this information and threatened to cancel the deal. Yoon told the Hurs that if they cancelled, Lee would sue and they would lose their deposit. Yoon subsequently agreed to forego his commission, lowering the purchase price for the four restaurants by \$145,000. Yoon also obtained a lower interest rate for the Hurs' loan.

In early May 2006, shortly after the close of escrow on the Wilshire restaurant, the Hurs learned from Watanabe that the four restaurants in general and the Wilshire restaurant in particular were not profitable, and that the financial documents they had been given purporting to describe the financial state of the restaurants were not the true Asakuma financial statements. As a result, the Hurs did not go forward with the purchase of the delivery stores.

#### B. *The Hurs' Complaint*

\*4 The Hurs filed suit against Lee, Yoon and Joy Realty. The second amended complaint (SAC), the operative complaint prior to trial, included claims for breach of contract and fraud against Lee, and negligent misrepresentation against Yoon and Joy Realty. The SAC included the allegations that Yoon falsely represented to the Hurs that Lee was in escrow to purchase the four Asakuma restaurants from Kondo for \$1.1 million, that there would be no problem securing renewal of the Wilshire restaurant lease and that Lee would provide financial statements "reflecting the robust financial health of the restaurants [and] reflecting net income in excess of \$20,000 per month." The SAC further alleged that Yoon and Lee provided false financial statements, and that in reliance on the representations and information in the financial statements, the Hurs entered into an agreement to

purchase the four restaurants from Lee for \$1.45 million. The SAC specifically acknowledged that prior to the close of escrow, Mr. Hur learned that the lease for the Wilshire location would not be renewed and that Lee was aware of this fact. As a result, the purchase price was reduced to \$1.305 million.

The allegations against Yoon and Joy Realty stated that these defendants knew the financial statements were important to the Hurs and provided them to the Hurs "without verification and without qualification," stating that they were part of the loan application Lee had submitted to his lender. The Hurs relied on Yoon's representation "as indication that the financial documents given to them were actual financial statements for the Asakuma restaurants."

#### C. *The Hurs' Experience in Operating the Wilshire Restaurant*

At trial, the Hurs claimed as damages the amount they paid for the Wilshire restaurant in excess of what they would have paid had they known its true financial state.<sup>FN13</sup> In addition, they claimed entitlement to reimbursement for out-of-pocket losses they allegedly incurred in operating the restaurant from April 2006 to the time of trial in March and April 2008. In support of the latter claim, they presented information concerning the income and expenses for the Wilshire restaurant, introducing financial statements prepared by their accountant which showed net income of \$67,550 in 2006 (from the close of escrow in April through year's end) and a net loss of \$74,347 in calendar year 2007. These figures were derived by subtracting operating expenses, including sums paid to corporate "officers" (Mrs. Hur) and legal fees paid to the attorneys who represented the Hurs in the underlying litigation, from the restaurant's gross revenue. The Hurs agreed that the attorney fees should not be included as expenses for purposes of their damage claim. They contended, however, that their out-of-pocket losses should be determined by including as expenses the sums paid to Mrs. Hur and two additional items—the interest paid on the loan used to purchase the restaurant (\$47,503 in 2006, \$65,437 in 2007) and the approximately \$800 per

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

year paid for state income taxes. Based on these additional deductions and excluding the attorney fees from expenses, the Hurs calculated that the restaurant earned income of \$24,186.40 in 2006 and incurred a loss of \$112,605.28 in 2007. Mrs. Hur testified that in 2008, as of the date of the trial, the restaurant had incurred a loss of approximately \$82,000.<sup>FN14</sup>

<sup>FN13</sup>. As will be discussed in greater detail below, Mr. Hur testified that the Wilshire restaurant was worth \$200,000 in April 2006.

<sup>FN14</sup>. The document introduced to provide a more precise figure for 2008 is not in our record. Combining these three numbers ( \$24,186.40, -\$112,605.28, -\$82,000) yields a figure of \$170,418.88, approximately the amount the court ultimately awarded for out-of-pocket losses (\$170,545.88).

#### E. Culpability and Damages

\*5 The case was tried without a jury. After making the factual findings summarized above, the court found that the misrepresentations of Yoon and Lee concerning “the ... financial statements, the profitability of the Restaurants, and that the Asakuma tax returns,” were intended to induce and did induce the Hurs to purchase the Wilshire restaurant and that the Hurs sustained damages based on “the exaggerated value of [the Wilshire restaurant], and the cash flow losses sustained since [they] undertook operation of [the Wilshire restaurant].” The court found “clear and convincing evidence” that Lee, Yoon and Joy Realty were liable to the Hurs for fraud and that Yoon and Joy Realty were also liable for breach of fiduciary duty and constructive fraud. The court found that Yoon was a “dual agent for Lee and the Hurs,” both with respect to the original sales agreement and “regarding the stock transaction involving Soobi, Inc.” It further found that Joy Realty “did not supervise Yoon, did not review documents or the facts of this transaction as it progressed, and generally conducted its duties in a manner which fell not just below the standard of care, but also in derogation of its duties as a fiduciary to [the Hurs].”

With respect to the disclaimers or exculpatory clauses in the parties' sales agreement and escrow instructions, the court found that “in light of the fraudulent inducement to [the Hurs] to execute the documents in this transaction, there will be no effect given to the exculpatory clauses.” The court additionally found that “there was no credible evidence that these self-serving protections to the broker were requested by the parties” or “reviewed with [the Hurs].” The court stated that the exculpatory clauses in the escrow instructions “were merely boilerplate inserted by the escrow.” Given that the Hurs “received no review of the import and impact of these provisions, and given [their] limited English proficiency,” the court concluded “it would be unconscionable to enforce these provision against [the Hurs].”

With respect to damages, the court found that the value of the Wilshire restaurant at the time of the purchase was \$200,000. The court awarded damages of \$505,000, representing the difference between the purchase price (\$705,000) and the actual value (\$200,000) to reimburse the Hurs for their overpayment of the purchase price. In addition, the court awarded \$170,545.88 for out-of-pocket losses from the operation of the restaurant following the close of escrow. The court added to the award prejudgment interest from the date of filing. At the trial's punitive damage phase, the court awarded punitive damages, jointly and severally, in the amount of \$100,000. After judgment was entered, the court awarded attorney fees to the Hurs in the amount of \$206,025. This award was based on an attorney fee provision in the agreement between the Hurs and Lee and was to be paid solely by Lee. Lee, Yoon and Joy Realty appealed.

#### DISCUSSION

\*6 The Hurs' judgment against appellants rested primarily on fraud. The elements of fraud are “(a) a misrepresentation (false representation, concealment, or nondisclosure); (b) scienter or knowledge of its falsity; (c) intent to induce reliance; (d) justifiable reliance; and (e) resulting damage.” (*Hinesley v. Oakshade Town Center* (2005) 135 Cal.App.4th 289, 294.) Lee argues there was

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

insufficient evidence to support certain elements of fraud, contending first, that the element of justifiable reliance was negated by the evidence that the Hurs had an opportunity to uncover the truth when they met with Watanabe prior to the close of escrow and second, that the element of resulting damage was negated because the Wilshire restaurant was, in fact, profitable after the sale. Lee further contends that the compensatory award was excessive because (1) the restaurant's value was based on the monthly losses reported by Asakuma, but if the financial statements are interpreted in the way Lee believes appropriate, the Hurs did not experience any such losses; (2) the court's valuation was based in part on the relatively short term remaining on the lease, despite the Hurs having been fully aware of this matter prior to closing escrow; and (3) the Hurs' claim of out-of-pocket operating losses was not supported by substantial evidence. Lee also asserts that if any part of the compensatory award is reduced or eliminated, punitive damages must be re-tried. Finally, Lee contends the attorney fee award was excessive because the court failed to apportion between the fees relating to the Hurs' claim against Lee and those relating solely to their claims against Yoon and Joy Realty.

Yoon and Joy Realty similarly contend that the Hurs' opportunity to meet with Watanabe and their access to the Asakuma tax returns and other financial records precluded any claim of justifiable reliance. They further assert that the Hurs suffered no resulting damage in view of the evidence that allegedly indicated the Hurs' operation of the Wilshire restaurant was profitable, and contend this evidence negates the element of falsity and establishes that Yoon's belief in the profitability of the Wilshire restaurant was reasonable as well. Finally, like Lee, Yoon and Joy Realty contend the court's award for claimed out-of-pocket losses was inappropriate. Specifically, they contend the \$170,545 awarded for this category of damages was duplicative of the \$505,000 awarded for payment of the excessive purchase price.

In addition, Yoon and Joy Realty raise distinct defenses based on their status as agent and broker and on trial court rulings applicable only to them. They contend

(1) the decision to convey title through a stock purchase and to execute new escrow instruction which no longer referenced Yoon or Joy Realty terminated the relationship between them and the Hurs; (2) the exculpatory clauses in the purchase agreement and the escrow instructions preclude broker/agent liability; and (3) the court erred in allowing the Hurs to amend their complaint to add new causes of action and a claim for punitive damages after trial. Finally, Joy Realty contends that it should not have been found liable for punitive damages as its culpability was vicarious, based on the actions of Yoon, and there was no evidence to support personal participation, ratification, authorization or knowledge of Yoon's unfitness.

\*7 We conclude that the trial court erred in awarding damages based on the Hurs' alleged out-of-pocket losses in operating the restaurant. Such damages were duplicative of the amount awarded to compensate the Hurs for paying an excessive amount for the restaurant, which took into account that the restaurant was losing money. We further conclude that there was no evidence or findings to support an award of punitive damages against Joy Realty. In all other respects, we affirm.

#### *A. Joint Contentions*

##### *1. Justifiable Reliance*

###### *a. Evidentiary Background*

The testimony of Mr. Hur and Yoshiaki Watanabe, the general manager for Asakuma prior to the sale, established that despite being advised not to contact Asakuma employees, the Hurs met with Watanabe on April 8. The purpose of the meeting was to sign documents necessary for a smooth transition of restaurant operations from Asakuma to the Hurs, such as vendor agreements. At that meeting, Mr. Hur mentioned their plans for the Wilshire restaurant, which included extensive remodeling. Watanabe informed the Hurs of the possibility the landlord would not extend the lease. As a result, the Hurs went back to the bargaining table and threatened to terminate the deal, ultimately obtaining a lower purchase

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

price and better loan. The topic of the restaurants' overall profitability or financial status was not discussed at the April 8 meeting between Mr. Hur and Watanabe.

Appellants contend the evidence concerning the April 8 meeting proves the Hurs had access to all necessary information and negates as a matter of law the element of justifiable reliance, particularly in light of the accurate financial documents they had been given to review.

b. *Analysis*

Appellants are correct that “[a] plaintiff asserting fraud by misrepresentation is obliged to plead and prove actual reliance, that is, to ‘ ‘establish a complete causal relationship’ between the alleged misrepresentations and the harm claimed to have resulted therefrom.’ “ ( [OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.](#) (2007) 157 Cal.App.4th 835, 864 (OCM), quoting [Mirkin v. Wasserman](#) (1993) 5 Cal.4th 1082, 1092.) “ ‘Besides actual reliance, [a] plaintiff must also show “justifiable” reliance, i.e., circumstances were such to make it reasonable for [the] plaintiff to accept [the] defendant's statements without an independent inquiry or investigation.’ “ (OCM, *supra*, at p. 864, quoting [Wilhelm v. Pray, Price, Williams & Russell](#) (1986) 186 Cal.App.3d 1324, 1332.) This means that “[a] plaintiff who has access to the necessary information and actually makes an independent investigation that the defendant does not hinder will be charged with knowledge of the facts that reasonable diligence would have disclosed and cannot claim reliance on the representations.” (5 Witkin, Summary of Cal. Law (10th 2005) Torts, § 809, pp. 1165-1167.)

Appellants are incorrect that the evidence concerning the April 8 meeting was conclusive proof that the Hurs failed to establish justifiable reliance. “Under California law, ... whether reliance was reasonable is a question of *fact* for the [trier of fact], and may be decided as a matter of law only if the facts permit reasonable minds to come to just one conclusion.” ( [Boeken v. Philip Morris, Inc.](#) (2005) 127 Cal.App.4th 1640, 1667 [holding that smoker's reliance on misrepresentations of tobacco company rather

than warnings of Surgeon General may have represented “wishful thinking or naivete,” but that his reliance was not unjustifiable as a matter of law].) Moreover, in analyzing justifiable reliance, the trier of fact does not measure the plaintiff's actions and beliefs against “ ‘a hypothetical reasonable man.’ “ ( *Ibid.*) Instead, “[t]he reasonableness of the plaintiff's reliance is judged by reference to the plaintiff's knowledge and experience. [Citation.]” ( [OCM, supra](#), 157 Cal.App.4th at p. 864.) Under this standard, “ ‘[a] plaintiff will be denied recovery only if his conduct is manifestly unreasonable in light of his own intelligence or information. It must appear that he put faith in representations that were “preposterous” or “shown by facts within his observation to be so patently and obviously false that he must have closed his eyes to avoid discovery of the truth.” [Citation.] Even in case of a mere negligent misrepresentation, a plaintiff is not barred unless his conduct, in the light of his own information and intelligence, is preposterous and irrational. [Citation.]’ “ ( *Id.* at p. 865, quoting [Hartong v. Partake, Inc.](#) (1968) 266 Cal.App.2d 942, 965.)

\*8 The April 8 meeting between Mr. Hur and Watanabe on which appellants primarily rely to support their position was not arranged to allow the Hurs an opportunity to discuss the financial condition of the Asakuma restaurants. It was set to accomplish a particular goal—signing documents necessary to ensure the uninterrupted operation of the restaurant after the transition. The evidence does not indicate that Watanabe—whose employer, Kondo, had no dealings with the Hurs—was given instructions to cooperate fully with Mr. Hur or to answer questions concerning confidential financial matters.<sup>FN15</sup> Mr. Hur himself had been warned by Lee and Yoon to avoid discussing the details of the transaction with Kondo or his employees. The problem relating to the lease came up during a casual conversation. It may be that a hypothetical reasonable person would have come to the conclusion that Lee and Yoon, having misrepresented the intentions of the landlord, were being less than truthful about other matters. However, the court, acting as trier of fact, was not obliged to reach that conclusion. The court was free to conclude, based on all

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

the evidence relating to the Hurs' knowledge and experience and their perception of Yoon's knowledge and experience, that the Hurs' continued reliance on the false financial statements and the representations of Yoon and Lee concerning the restaurants' profitability was reasonable.

FN15. Watanabe testified that it was unlikely he would have shown financial records to a potential buyer, as Asakuma's accountant was responsible for turning financial documents over to Lee and the Hurs.

Yoon and Joy Realty's contention concerning the other financial documents the Hurs were given or had access to does not alter our conclusion. Preliminarily, we note that appellants failed to include these documents in the record provided to us. Accordingly, there is no basis to conclude these documents fully informed the Hurs concerning the restaurants' financial state. (See Ketchum v. Moses (2001) 24 Cal.4th 1122, 1141-1142 [burden is on party challenging judgment or order to provide adequate record to assess error]; In re Marriage of Wilcox (2004) 124 Cal.App.4th 492, 498-499 [Court of Appeal has no responsibility to "independently acquire the records of the trial court"].) Moreover, the trial court found that Yoon told the Hurs after they received Asakuma's tax returns that the income had been underreported and that the false financial statements presented a more accurate picture. On this record, whether the Hurs were justified in relying on the representations and false financial documents rather than the tax returns and any other records given to them was one of fact. The court's finding in favor of the Hurs is supported by substantial evidence.

## 2. Falsity/Resulting Damage

### a. Evidentiary Background

The Hurs introduced financial statements prepared by their accountant for the Wilshire restaurant for 2006 (partial year) and 2007. The financial statements showed net income of \$67,550 in 2006 and a net loss of \$74,347

in 2007. Mrs. Hur testified that, properly adjusted (including as expenses the interest paid on the loan used to purchase the restaurant and the income taxes paid, but excluding attorney fees), the financial statements established income of \$24,186 in 2006, a loss of \$112,605 in 2007, and a loss of \$82,000 in 2008. On cross-examination, Mrs. Hur conceded that the revenue summarized on the financial statements did not include approximately \$1,000 per week derived from Saturday lunch sales, which was put into petty cash, and that the expenses summarized included sums paid to her as an officer (\$30,000 in 2006, \$37,000 in 2007). She further testified that in 2007, the Wilshire restaurant's landlord began charging customers for parking, causing an immediate drop in business, that the minimum wage increased, that the cost of all the food products used by the restaurant had gone up significantly since the Hurs began operating it, and that in 2008, the profit from all their restaurants had dropped due to the economy.

\*9 Noting that the false financial statements given to the Hurs prior to the close of escrow showed net income of \$215,746 in 2003, \$208,980 in 2004, and \$207,922 in 2005, appellants contend that the Hurs' experience operating the Wilshire restaurant was in line with the representations made. Accordingly, the representations should not have been deemed false or, in the alternative, the court should have found there was no injury from the representations made or that Yoon's belief in their truth was reasonable.

### b. Analysis

Yoon and Joy Realty's argument is based on the Hurs' 2006 financial statement, which covered the period from April 21 to December 31, 2006. They contend that if (1) the \$30,000 paid to Mrs. Hur and the \$5,000 paid for attorney fees is excluded from expenses; (2) the approximately \$1,000 per week for Saturday lunches is included in revenue; (3) interest and income taxes paid are ignored; and (4) the resulting number is annualized (divided by the number of months the Hurs operated the Wilshire restaurant and multiplied by 12), the resulting

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

number for net income-\$201,759-is in line with the net income the Hurs were told to expect.

Lee focuses on the Hurs' 2007 financial statement and the fact that the false financial statements show a declining trend for net income. He asserts that the sums paid to Mrs. Hur and for attorney fees should be excluded from expenses, but also contends that the 2007 financial statements should be adjusted to exclude expenses that arose as the result of circumstances not under any party's knowledge or control-the increase in the minimum wage, the landlord's imposition of a parking fee, etc. If such adjustments are made, Lee calculates that the Hurs would have earned net income of \$203,833 in 2007, substantially what they were promised.

We note preliminarily that appellants do not challenge the trial court's finding that the true Asakuma financial statements showed that the Asakuma restaurants incurred net losses prior to the sale. Nor did appellants, in compiling the record, provide the exhibits on which the court relied to make this finding. "It is the appellant's affirmative duty to show error by an adequate record." ([Osgood v. Landon \(2005\) 127 Cal.App.4th 425, 435.](#)) "A necessary corollary to this rule [is] that a record is inadequate, and the appellant defaults, if the appellant predicates error only on the part of the record he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed." (*Ibid.*, quoting [Uniroyal Chemical Co. v. American Vanguard Corp. \(1988\) 203 Cal.App.3d 285, 302.](#))

Moreover, appellants' position presupposes that a direct comparison between the false financial statements and those produced by the Hurs is possible. We are not persuaded.<sup>FN16</sup> Lee's argument further assumes that this court would find his own adjustment for "unforeseen events" to be accurate when the trial court made no such finding. We decline to do so. (See [In re Zeth S. \(2003\) 31 Cal.4th 396, 405.](#), quoting [Tupman v. Haberkern \(1929\) 208 Cal. 256, 262-263](#) ["[I]t is the province of the trial court to decide questions of fact and of the appellate court

to decide questions of law..."].) This court has no power "to weigh the evidence, consider the credibility of witnesses, or resolve conflicts in the evidence or the reasonable inferences that may be drawn from the evidence." ([Navarro v. Perron \(2004\) 122 Cal.App.4th 797, 803.](#))

**FN16.** For example, the documents contain different items in the operating expense category: the false financial statements include amortization and depreciation as operating expenses and use them to calculate net income, whereas the Hurs' financial statements put those items in a separate category, because, as Mrs. Hur explained, they are not true out-of-pocket expenses. In addition, the false financial statements have only two category for taxes-"Payroll tax" and "Taxes-Other"-both of which are used to calculate net income. The Hurs' financial statement includes separate categories for payroll, property, sales and income tax, and, as we have said, does not include one of these categories-income tax-under operating expenses for purposes of calculating net income.

\*10 Finally, even had the Hurs' operation of the Wilshire restaurant resulted in approximately the same net income as described in the false financial statements, this would not negate a finding of injury arising from appellants' misrepresentations. The primary measure of damages for fraudulent inducement to purchase property is "the difference in actual value at the time of transaction between what the plaintiff gave and what he received." ("([OCM, supra, 157 Cal.App.4th at p. 870.](#), quoting [Alliance Mortgage Co. v. Rothwell \(1995\) 10 Cal.4th 1226, 1240-1241.](#)) "In determining the difference between the actual value of that which a defrauded person received and that with which he parted as the result of a fraudulent sale, the value of property received should be determined as of the date of the sale." ([McCue v. Bruce Enterprises, Inc. \(1964\) 228 Cal.App.2d 21, 31-32.](#) italics added.)

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

The trial court found that during the relevant time period—the time of sale—the Hurs were induced to believe that the Asakuma restaurants were earning net income when, in fact, they were incurring net losses, which true and accurate financial statements would have revealed. The Hurs' agreement to pay \$1.305 million for all four restaurants, including \$705,000 for the Wilshire restaurant, was based on the misrepresentations made to them by Yoon and Lee, including the misinformation contained in the false financial statements. The court found that if the misrepresentations had not been made, the Hurs would have negotiated and paid a significantly lower purchase price. For purposes of the fraud claim, the injury occurred when escrow closed in April 2006 and the Hurs paid more than the restaurant was worth.<sup>FN17</sup> (See e.g., [Fragale v. Faulkner \(2003\) 110 Cal.App.4th 229, 236](#) [out-of-pocket measure of damages restores plaintiff to financial position enjoyed immediately prior to the fraudulent transaction, “awarding the difference in actual value between what the plaintiff gave and what he received”]; [Saunders v. Taylor \(1996\) 42 Cal.App.4th 1538, 1543](#) [same]; see [Morgan Stanley & Co. v. Coleman \(Parent\) Holdings, Inc. \(Fla.App.2007\) 955 So.2d 1124, 1131](#), quoting [Totale, Inc. v. Smith \(Fla.App.2004\) 877 So.2d 813, 815](#) [“ [T]he crucial time for the measurement [of fraud damages] is the time of the fraudulent representation. Later appreciation or depreciation of the property that is [the] subject of the false representation generally does not alter the fraud damage computation .’ “].)

<sup>FN17</sup>. We note that the Hurs' purchase price was substantially higher than Lee's, who was fully aware of the true financial picture.

The fact that the Hurs were able, after the close of escrow, to improve the Wilshire restaurant's financial picture is irrelevant to the determination whether appellants' fraud resulted in damages. The evidence supported that under Kondo's ownership, the restaurants were incurring management expenses which would have been unnecessary for an owner-manager. As the court found, appellants themselves informed the Hurs that the

Asakuma restaurants, including the Wilshire restaurant, would substantially increase their purported net income if the restaurants were managed by a family or husband and wife team. The court could reasonably conclude that any improvement in the restaurant's financial picture was attributable to the Hurs' superior management, and was not reflective of its value at the time the Hurs purchased it.

### 3. Damages-Operational Losses <sup>FN18</sup>

<sup>FN18</sup>. The evidentiary background for the trial court's finding of operational losses is set forth in part A(2)(a) above.

\*11 Yoon and Joy Realty contend the \$170,545 awarded the Hurs to compensate for out-of-pocket operational losses was duplicative of the award for overpayment of the purchase price. Lee contends this component of damages was not supported by substantial evidence. Because we agree the damages were duplicative, we do not consider Lee's substantial evidence argument.

“ ‘In tort actions damages are normally awarded for the purpose of *compensating* the plaintiff for injury suffered, i.e., restoring him as nearly as possible to his former position, or giving him some pecuniary equivalent. [Citations.]’ “ ( [Hanif v. Housing Authority \(1988\) 200 Cal.App.3d 635, 640](#), quoting 4 Witkin, Summary of Cal. Law (8th ed. 1974) Torts, § 842, p. 3137.) “A plaintiff in a tort action is not, in being awarded damages, to be placed in a better position than he would have been had the wrong not been done.” ( [Valdez v. Taylor Automobile Co. \(1954\) 129 Cal.App.2d 810, 821-822.](#)) “The primary object of an award of damages in a civil action, and the fundamental principle on which it is based, are just compensation or indemnity for the loss or injury sustained by the complainant, and no more.” ( [Mozzetti v. City of Brisbane \(1977\) 67 Cal.App.3d 565, 576](#), italics omitted [in action based on injury to real property, judgment reversed where it appeared jury award included both damages for cost of restoring property to its original condition and damages based on diminution in value of property].)

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

Once apprised of the Wilshire restaurant's true financial condition, Mr. Hur testified that in April 2006, it was worth \$200,000. The court awarded the Hurs the excess amount paid for the property (\$505,000), plus prejudgment interest on that amount. Accordingly, the Hurs were fully compensated for the misrepresentations made concerning the financial state of the Wilshire restaurant. We do not doubt that they experienced some out-of-pocket losses after taking over restaurant operations, as Mrs. Hur testified.<sup>FN19</sup> However, future financial losses were taken into account in arriving at the April 2006 valuation of the restaurant. Reimbursing the Hurs for out-of-pocket losses as well as permitting them to retain possession of the restaurant for \$200,000 would result in a windfall to them. This portion of the compensatory damages awarded for out-of-pocket operational expenses must, therefore, be reversed. (*Mozzetti v. City of Brisbane, supra*, 67 Cal.App.3d at p. 576.)

<sup>FN19</sup>. We do not agree, however, that the out-of-pocket operational losses were as high as the Hurs claimed. The court-ordered reimbursement of \$505,000 paid for the restaurant *plus prejudgment interest on that amount*. The bulk of the Hurs' claimed operational losses was based on the interest paid on the loan used to purchase the restaurant (\$47,503 in 2006, \$65,437 in 2007). Assuming they borrowed the entire \$705,000, the court's award of prejudgment interest on \$505,000 effectively compensated them for the majority of their claimed interest expenses. Moreover, the sums paid out of restaurant revenues to Mrs. Hur (\$30,000 in 2006, \$37,000 in 2007) cannot reasonably be considered out-of-pocket losses.

## B. Lee's Contentions

### 1. Damages-Valuation

#### a. Evidentiary Background

During trial, Watanabe testified that after the close of escrow on the Wilshire restaurant, the parties did not complete the transfers of the delivery stores. Watanabe subsequently purchased all three delivery stores from Kondo in exchange for forgiveness of a \$100,000 debt Kondo owed to Watanabe.<sup>FN20</sup>

<sup>FN20</sup>. Thus, the delivery stores were ultimately sold for one-sixth the amount Lee had negotiated with the Hurs.

Mr. Hur was asked by his counsel to express his opinion concerning the value of the Wilshire restaurant in April 2006 "now that you know that [the Wilshire restaurant] had actually lost about \$88,000 on the true Asakuma books." After initially stating that he would not have bought the restaurant at all, Mr. Hur responded: "The way I saw it, because there was still some sales volume, even though the restaurant was minus and there was a problem with the lease, if somebody had purchased it with a different idea to invest more money or something and make a change over it and to somebody else, my opinion probably is the value of the inventory and the fixtures for somebody else to pay some costs, the most is probably \$200,000."

\*12 In cross-examining Mr. Hur, counsel for Lee asked whether the Hurs were suing for misrepresentations related to the Wilshire restaurant lease. Counsel for the Hurs interjected that the complaint did not seek damages for any such representation and appellant's counsel did not pursue the matter further.

In its statement of decision, the court said with respect to damages: "[The Hurs], as experienced restaurant owners, are credible experts regarding the value of [the Wilshire restaurant] when sold. [Mr.] Hur had about ten years of experience buying, selling, owning and operating restaurants; he had purchased seven restaurants over his career. [Mr.] Hur estimated the value of the Wilshire [restaurant] to be \$200,000 at the time of his purchase. This figure appears to be credible when tak[ing] into

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

account that [Watanabe] subsequently purchased the three Delivery Stores for \$100,000, and the Delivery Stores were clearly more profitable than the Wilshire [restaurant].”

b. *Analysis*

As we have said, damages recoverable for fraudulent inducement to purchase property include the difference in actual value at the time of the transaction between what the plaintiff gave and what he received. ( [OCM, supra, 157 Cal.App.4th at p. 870](#); [McCue v. Bruce Enterprises, Inc., supra, 228 Cal.App.2d at pp. 31-32.](#)) Following this rule, the court evaluated the Wilshire restaurant as of the time of the sale and awarded the Hurs the difference between the price paid in April 2006 (\$705,000) and the true value of the restaurant at that time (\$200,000).

Lee contends the court erred in accepting Mr. Hur's valuation of the Wilshire restaurant because Mr. Hur appeared to base his opinion not only on the restaurant's financial condition, but on the fact that the lease was not likely to be renewed. Lee points out that the lease renewal problem was known to the Hurs prior to the closing, when they agreed to pay \$705,000 for the restaurant, and that it should not, therefore, have been a factor in determining valuation or damages.

We do not agree with Lee's assessment of Mr. Hur's testimony. Fairly read, Mr. Hur stated that in view of all the restaurant's problems, including the lease situation and the lack of profitability, its only value in April 2006 was in the value of its inventory and fixtures. The court could reasonably accept the \$200,000 figure in making its finding on valuation. Moreover, the trial court did not base its finding entirely on Mr. Hur's testimony. Watanabe testified that he purchased the remaining Asakuma restaurants-the three delivery stores-for the equivalent of \$100,000, and the court observed that “the Delivery Stores were clearly more profitable than the Wilshire [restaurant].” Thus, the court's conclusion was also supported by comparatively evaluating the Wilshire restaurant against the known sale price of the remaining stores.

Lee contends that the price he paid Kondo for the Wilshire restaurant-\$550,000-represented the restaurant's fair market value, “the purchase price paid as between a willing seller and willing buyer.” We disagree that Lee's purchase price was conclusive proof of the restaurant's value on the open market. Lee offered to pay Kondo \$850,000 for all four restaurants, but he completed the purchase of only one-the Wilshire restaurant-and only after he was assured a profit from an immediate re-sale to the Hurs for \$705,000. He backed out of purchasing of the delivery stores once it became clear that a similar profit was not forthcoming. This was sufficient to undercut his contention that the price he agreed to pay represented the fair market value. Lee further contends that Mr. Hur's opinion was refuted by expert testimony that a restaurant, even an unprofitable one, is customarily valued at a multiple of its monthly gross income. The trier of fact need not rely on an expert's opinion, but is free to accept any competent opinion concerning valuation. As an experienced restaurateur and the owner of the Wilshire restaurant, Mr. Hur's opinion was competent evidence. (See [City of Pleasant Hill v. First Baptist Church \(1969\) 1 Cal.App.3d 384, 411](#) [“Under the law of this state[,] the owner of the property or property interest being valued may testify as to his opinion of the value in issue.”].)

2. *Punitive Damages*

a. *Evidentiary Background*

\*13 After trial of the substantive issues, Lee, Yoon and Joy Realty were ordered to produce records relating to their financial status. Lee produced tax returns, but the court found that his true income was greater than stated in the tax returns based on his ownership of five golf course restaurants, his profit from the sale of the Wilshire restaurant to the Hurs and the equity in his home. Yoon produced a financial statement showing a negative net worth, which the court did not credit, but instead considered his relative youth and ability to continue earning income. Joy Realty refused to produce any documentation as its owner, Dae Sig Jang, believed the

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

court's determination of liability was unjust. Based on this record, the court awarded \$100,000 in punitive damages, "jointly and severally."

Lee contends that if the compensatory damages were miscalculated, punitive damages should also be reversed.

#### b. *Analysis*

"In assessing a punitive damage award, the appellate court considers the nature of the defendant's acts, the amount of compensatory damages awarded, and the wealth of the defendant." (*McGee v. Tucoemas Federal Credit Union* (2007) 153 Cal.App.4th 1351, 1361.) "[A] reduction in compensatory damages does not mandate a corresponding reduction in punitive damages. There is no requirement that the original ratio between compensatory and punitive damages as measured by the jury remain." (*Id.* at p. 1362.)

In this case, the court awarded a relatively modest amount of punitive damages in relation to the amount of the compensatory damages-nearly \$700,000-and the egregious nature of the appellants' acts. Our reduction of the compensatory damages by \$170,545 does not create disproportionality between punitive and compensatory damages or require reconsideration of the punitive damages awarded.

### 3. *Attorney Fees*

#### a. *Evidentiary Background*

The original purchase agreement contained an attorney fee provision which stated: "In the event of a dispute arising out of [or] relating to this agreement that leads to litigation or other dispute resolution procedure in any tribunal or forum whatsoever, the prevailing party shall be entitled to an award of attorney's fees and costs incurred in connection with such proceeding, whether or not pursued to final judgment." <sup>FN21</sup> The original and amended escrow instructions contained a provision that stated: "In any action, proceeding or arbitration arising out of this agreement, the prevailing party shall be entitled to

reasonable attorney's fees and costs."

<sup>FN21</sup>. The stock purchase agreement did not contain an attorney fee provision.

In a posttrial motion, the Hurs moved for an award of attorney fees under their agreement with Lee. The Hurs sought \$211,130, essentially all the fees incurred in prosecuting the action from its inception. Lee contended that the issues pertaining to Yoon and Joy Realty were distinct and divisible, and that the fees should be apportioned between issues pertaining to the Hurs' claims against him and those pertaining to their claims against the other defendants. The court ordered Lee to pay fees in the amount of \$206,025-\$5,105 less than the amount sought by the Hurs-under his contract with the Hurs.

#### b. *Analysis*

\*14 Because Yoon and Joy Realty had no written contract with the Hurs containing an attorney fee provision, the Hurs could not recover attorney fees from those parties. The general rule is that "the joinder of a noncontractual cause of action to a contractual cause of action entitles the prevailing party to no more than the fees incurred on the contract cause of action" and that "in such a situation the trial court should apportion the fees." (*Shadoan v. World Savings & Loan Assn.* (1990) 219 Cal.App.3d 97, 108; accord, *Abdallah v. United Savings Bank* (1996) 43 Cal.App.4th 1101, 1111 (*Abdallah* ).) However, "[a]ttorney's fees need not be apportioned when incurred for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed." (*Id.* at p. 1111, quoting *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129-130.) "For example, the holder of a note which provides for payment of fees incurred to collect the balance due is entitled to fees incurred in defending itself against 'interrelated' allegations of fraud." (*Abdallah, supra*, at p. 1111, citing *Wagner v. Benson* (1980) 101 Cal.App.3d 27, 37.) In addition, the trial court need not apportion when the various claims are " 'inextricably intertwined' " [citation], making it 'impracticable, if not

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

impossible, to separate the multitude of conjoined activities into compensable or noncompensable time units.’ “ (*Abdallah, supra*, at p. 1111, quoting [Fed-Mart Corp. v. Pell Enterprises, Inc. \(1980\) 111 Cal.App.3d 215, 227.](#))

Whether to apportion fees between those incurred in litigating a cause of action for which fees are awardable under a contractual provision and those incurred in litigating other causes of action is within the trial court's discretion. ( *Abdallah, supra*, 43 Cal.App.4th at p. 1111.) “A trial court's exercise of discretion is abused only when its ruling ‘ “exceeds the bounds of reason, all of the circumstances before it being considered.” ’ [Citation.]” ( *Gonzales v. Personal Storage, Inc. (1997) 56 Cal.App.4th 464, 479.*, quoting *Denham v. Superior Court (1970) 2 Cal.3d 557, 566.*)

Although barely alluded to in Lee's brief and not included in the record on appeal, Lee filed a cross-complaint against the Hurs for breach of contract that was litigated through trial. By proving that they were fraudulently induced to enter into the sales agreement, the Hurs not only established a right to recover damages for fraud, they also established a complete defense to Lee's contract claim. Thus, the Hurs' contract and tort claims as they related to Lee were “inextricably intertwined.” The same is true with respect to the Hurs' tort claims against Yoon and Joy Realty. The bulk of the Hurs' dealings were with Yoon, not Lee. In order to establish fraud and defend against Lee's contract claim, the Hurs were compelled to prove that Yoon, acting as Lee's agent, made misrepresentations that induced them to enter into the purchase agreement. Lee contends generally that a portion of the attorney fees awarded were attributable to issues pertaining solely to Yoon and Joy Realty, but neither here nor below does he identify any specific fee amount fitting that characterization. On this record, we find no abuse of discretion by the trial court in awarding the Hurs their attorney fees under their agreement with Lee.

### C. Contentions of Yoon and Joy Realty

#### 1. Modification of Agreement

#### a. Evidentiary Background

\*15 The original sales agreement—the written offer made by the Hurs and accepted by Lee in January 2006—stated that Joy Realty was the agent for both buyer and seller and that the seller agreed to pay a broker commission. The original escrow instructions, also executed in January 2006, required the escrow agent to pay a broker commission. In April, after the Hurs learned of a potential problem extending the Wilshire lease, Lee and the Hurs executed new escrow instructions. They also entered into a new purchase agreement under which transfer of the restaurants would be accomplished by the Hurs' purchase of the stock of Lee's Soobi corporation. The stock purchase agreement contained no reference to a commission or broker. The new escrow instructions contained no reference to a commission or broker, and the supplement signed by Yoon specifically stated there was no agent or broker representation in connection with the new escrow instructions, and that the cancellation of the original instructions cancelled the obligation to pay a commission.

Yoon and Joy Realty contend the replacement of the original sales agreement and escrow instructions with the stock purchase agreement and the April escrow instructions terminated any duty Yoon and Joy Realty owed to the Hurs.

#### b. Analysis

Assuming arguendo that the new sales agreement and the April escrow instructions terminated Yoon's and Joy Realty's duties as agent and broker to the Hurs, it would not result in reversal of the judgment against these appellants. First, the evidence is clear that Yoon and Joy Realty were acting as the Hurs' agent and broker in January and February 2006, when the primary misrepresentations concerning the restaurants' financial state were made and the false financial statements were conveyed. Yoon and Joy Realty offer no authority for the proposition that termination of a party's agent or broker

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

status *after* a breach of duty has occurred can result in exoneration.

Second, the judgment against Yoon and Joy Realty was based on the court's finding of culpability under three legal theories: fraud, breach of fiduciary duty and constructive fraud. The Hurs' claims for breach of fiduciary duty and constructive fraud may have required the existence of an agent or broker relationship between them and Yoon and Joy Realty. (See [Warren v. Merrill \(2006\) 143 Cal.App.4th 96, 109](#) [California law imposes on real estate agent same obligation of undivided service and loyalty imposed on trustee]; [Tyler v. Children's Home Society \(1994\) 29 Cal.App.4th 511, 548](#) [claim for constructive fraud arises from "breach of duty by one in a confidential or fiduciary relationship to another which induces justifiable reliance by the latter to his prejudice"], italics omitted.) The claim for fraud, however, did not. A fraud claim, whose elements we have outlined above, can be asserted against any party whose deliberate misrepresentations induced the plaintiff's reliance and resulted in injury. Accordingly, the culpability of Yoon and Lee for fraud was unaffected by later contractual dealings between Lee and the Hurs. Thus, regardless of whether Yoon and Joy Realty occupied the position of agent and/or broker when the sale of the Wilshire restaurant closed, their actions in inducing the Hurs through misrepresentation to purchase the restaurant and close the escrow justified the court's imposition of liability.

## 2. Exculpatory Clauses

### a. Evidentiary Background

\*16 The original sales agreement executed in January 2006 contained a provision in which the buyer "acknowledge[d] and agree[d]" that the broker "ha [d] made no and makes no, representations ... regarding the business." <sup>FN22</sup> The original escrow instructions, also executed in January, contained a provision stating that "[n]o representation [had been] made by [the] broker ... in regard [ ] to ... The profitability of [the] Business or its suitability for Buyer's needs." The stock purchase

agreement, executed in April, contained a provision stating: "Purchaser (i) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of Purchaser's prospective investment in the Securities; (ii) has the ability to bear the economic risks of Purchaser's prospective investment; (iii) has had all questions which have been asked by Purchaser satisfactorily answered by seller; and (iv) has not been offered the Securities by any form of advertisement...."

<sup>FN22</sup>. The court, noting that the reverse side of the sales agreement on which the exculpatory provision appeared was omitted from escrow and never produced at trial, found that "Yoon never produced the reverse of the Purchase Agreement to [the Hurs] or escrow...."

Yoon and Joy Realty suggest the above disclaimers or exculpatory clauses preclude recovery against them.

### b. Analysis

Preliminarily, it should be noted that the section of Yoon and Joy Realty's brief raising the exculpatory clause issue consists of little more than a cryptic heading and a recitation of various provisions in the parties' agreements and escrow instructions in which the buyers acknowledged their responsibility to conduct their own investigation and disclaimed representations on the part of any third parties. There is no analysis of these provisions or of any of the relevant authorities. Accordingly, appellants have forfeited the argument that the exculpatory clauses precluded the Hurs' recovery for fraud. (See [Said v. Jegan \(2007\) 146 Cal.App.4th 1375, 1384-1385](#) [issue waived for failure to cite or analyze relevant legal authority]; [Dabney v. Dabney \(2002\) 104 Cal.App.4th 379, 384](#) ["We need not consider an argument for which no authority is furnished."]; [Badie v. Bank of America \(1998\) 67 Cal.App.4th 779, 784-785](#) [failure to support contention with reasoned argument and citations to authority results in waiver].)

Moreover, were we to address the merits, we would agree with the result reached by the trial court. The trial

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

court concluded that “in light of the fraudulent inducement to [the Hurs] to execute the documents in this transaction,” there would be no effect given to the exculpatory clauses. The court was correct. In California, contractual disclaimers and exculpatory clauses are rarely enforceable in an action for fraud in the inducement. (See [1 Witkin, Summary of Cal. Law, \(10th ed. 2005\) Contracts, § 304, p. 330](#) [“A party to a contract who has been guilty of fraud in its inducement cannot absolve himself or herself from the effects of his or her fraud by any stipulation in the contract, either that no representations have been made, or that any right that might be grounded upon them is waived. Such a stipulation or waiver will be ignored, and parol evidence of misrepresentations will be admitted, for the reason that fraud renders the whole agreement voidable, *including the waiver provision.*”].) In [Manderville v. PCG & S Group, Inc. \(2007\) 146 Cal.App.4th 1486](#), the court held that standardized forms used in the purchase and sale of real estate did not bar a claim for fraud brought by the buyers alleging that the broker intentionally misrepresented that the property could be subdivided, concluding that [Civil Code section 1668](#) precludes a party from contracting away culpability for fraud or deceit.<sup>FN23</sup> ( [146 Cal.App.4th at p. 1500.](#)) The court stated: “[T]he fact that Brokers were not parties to the agreement between Buyers and Sellers does not preclude application of [section 1668](#) in this case in which Buyers allege Brokers induced them to enter into the agreement by means of intentional misrepresentations. The plain language of [section 1668](#) ... shows that its provision apply to ‘[a]ll contracts’ the object of which is to directly or indirectly exempt ‘anyone’ from responsibility for his or her ‘own fraud.’” ([Id. at p. 1501.](#))

[FN23. Civil Code section 1668](#) provides: “All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.”

\*17 Further, the exculpatory clauses cited by Yoon

and Lee pre-dated many of the representations supporting the Hurs' fraud claim. The original agreement and escrow instructions were executed in January 2006. Weeks after that date, Yoon provided the Hurs with false financial statements and assured them that these documents were Asakuma financial statements representing an accurate picture of the restaurants' finances. Appellants do not argue that the false statements made by Yoon during the period when the Hurs were attempting to conduct due diligence and obtain an accurate picture of the Asakuma restaurants' financial state were covered under any subsequently executed disclaimer or exculpatory clause. Accordingly, these representations supported the fraud judgment against Yoon and Joy Realty without regard to any disclaimers purportedly governing earlier representations.

### 3. *Amendment of Complaint*

#### a. *Procedural Background*

The SAC, the operative complaint prior to trial, had alleged only a claim of negligent misrepresentation against Yoon and Joy Realty. On the first day of trial, the Hurs informed the court that they believed the evidence would establish actual fraud and that they intended to seek an amendment to conform to proof.

After trial concluded, the Hurs moved to amend their complaint to conform to proof to assert claims for fraud, breach of fiduciary duty and constructive fraud against Yoon and Joy Realty. The moving papers noted that Yoon had testified at trial that the figures in his advertisement represented estimates based on a family running the business and that he had been provided this information by Lee. Because the figures in the advertisement and the figures in the inaccurate financial statements were substantially similar, the Hurs maintained that this established that Yoon and Lee “met and conspired to defraud a prospective buyer by promoting the false financial information to induce a buyer into purchasing the unprofitable Asakuma delivery stores.” The Hurs further contended that evidence presented at trial, including

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

Yoon's "equivocal, evasive, and simply not credible" testimony and the testimony of an officer for Hanmi Bank that Yoon stated the false financial statements were accurate, confirmed that Yoon's representations were deliberately, rather than negligently, false. The court granted the motion over Yoon and Joy Realty's objection.

b. *Analysis*

It has long been the law that "courts are bound to apply a policy of great liberality in permitting amendments to the complaint at any stage of the proceedings, up to and including trial" as long as the opposing party is not prejudiced. (*Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 487.) "Code of Civil Procedure section 473 gives trial courts discretion to allow a party to amend his or her pleadings 'in furtherance of justice,' while section 576 states that such leave to amend may be granted even after the commencement of trial. Section 469 specifically governs motions to amend at trial to conform to proof... [A]mendments at trial to conform to proof, 'if not prejudicial, are favored since their purpose is to do justice and avoid further useless litigation.'" (*Garcia v. Roberts* (2009) 173 Cal.App.4th 900, 909, fn. omitted, quoting *Union Bank v. Wendland* (1976) 54 Cal.App.3d 393, 400.)

\*18 In determining whether to grant a motion for leave to amend " 'trial courts should be guided by two general principles: (1) whether facts or legal theories are being changed and (2) whether the opposing party will be prejudiced by the proposed amendment. Frequently, each principle represents a different side of the same coin: If new facts are being alleged, prejudice may easily result because of the inability of the other party to investigate the validity of the factual allegations while engaged in trial or to call rebuttal witnesses. If the same set of facts supports merely a different theory ... no prejudice can result.' " (*Garcia v. Roberts, supra*, 173 Cal.App.4th at p. 910, quoting *City of Stanton v. Cox* (1989) 207 Cal.App.3d 1557, 1563; accord, *Union Bank v. Wendland, supra*, 54 Cal.App.3d at pp. 400-401 ["The basic rule applicable to amendments to conform to proof is that the amended pleading must be based upon the same general set of facts

as those upon which the cause of action or defense as originally pleaded was grounded."].) " '[I]t is irrelevant that new legal theories are introduced as long as the proposed amendments "relate to the same general set of facts." [Citation.]' " (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761, quoting *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048; see, e.g., *Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 636-637 [trial court did not err in allowing amendment to conform to proof adding claim of intentional infliction of emotional distress where claim was "based on the same fact situation that led to [the plaintiff's] other causes of action and did not raise a new and substantially different issue"].)

Yoon and Joy Realty contend the court's decision to allow the Hurs to amend their complaint to add claims for fraud, constructive fraud and breach of fiduciary duty against Yoon and Joy Realty was "extremely prejudicial" but do not describe any prejudice suffered. The Hurs' second amended complaint set forth the essential misrepresentations on which they relied, including that Lee had agreed to pay \$1.1 million for the property and that the restaurants were profitable as set forth in the false financial statements. The facts as alleged required the Hurs to establish the misrepresentations made by Lee and Yoon from the inception of the parties' dealings and required Yoon and Joy Realty to establish an innocent explanation for Yoon's statements to the Hurs concerning the restaurants' profitability and Lee's purchase price. The amendment did not require the assertion of new facts other than those pertaining to Yoon's state of mind. Yoon's state of mind became clear only after his own contradictory testimony and the testimony of other witnesses at trial. By the close of trial, the evidence established to the court's satisfaction that Yoon had not been merely negligent in passing on misinformation from Lee, but had been actively and knowingly involved with Lee in misleading the Hurs concerning the restaurants' financial state. The court did not abuse its discretion in permitting the amendment supported by the facts pled and proven, despite the assertion of new claims.<sup>FN24</sup>

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

FN24. Yoon and Joy Realty also contend the Hurs should have been required to file a formal amended complaint and that they were deprived of due process and notice rights when the court heard the motion to amend on the same day it was made. “It is not necessary to serve an amendment to conform to proof.” (5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 1212, p. 645.) A further hearing is required only if new issues are raised on which the defendant has not been heard. (*Id.* at p. 646.)

#### 4. Joy Realty's Liability for Punitive Damages

\*19 Joy Realty contends the evidence does not support the award of punitive damages as to it. We agree.

“Under the doctrine of respondeat superior, ‘an employer is vicariously liable for the torts of its employees committed within the scope of the employment.’” ( Inter Mountain Mortgage, Inc. v. Sulimen (2000) 78 Cal.App.4th 1434, 1440, quoting Lisa M. v. Henry Mayo Newhall Memorial Hospital (1995) 12 Cal.4th 291, 296.) “An employee's actions need not benefit the employer [citations]. And ‘an employee's willful, malicious and even criminal torts may fall within the scope of his or her employment for purposes of respondeat superior, even though the employer has not authorized the employee to commit crimes or intentional torts.’” ( Inter Mountain Mortgage, Inc. v. Sulimen, supra, at p. 1440, quoting Lisa M. v. Henry Mayo Newhall Memorial Hospital, supra, at pp. 296-297, italics omitted.) “‘The employer is liable not because the employer has control over the employee or is in some way at fault, but because the employer's enterprise creates inevitable risks as a part of doing business. [Citations.] Under this theory, an employer is liable for “the risks inherent in or created by the enterprise.”’” ( Inter Mountain Mortgage, Inc. v. Sulimen, supra, at p. 1440, quoting Bailey v. Filco, Inc. (1996) 48 Cal.App.4th 1552, 1559, italics omitted.)

The existence of an agent/broker relationship between Yoon and Joy Realty establishes Joy Realty's responsibility for the Hurs' compensatory damages under

a theory of respondeat superior. (See Bus. & Prof.Code, § 10159.2; Grubb & Ellis Co. v. Spengler (1983) 143 Cal.App.3d 890, 895 [“For purposes of establishing tort liability, the California courts have held that a broker is liable under the doctrine of respondeat superior for the tortious acts of his salespeople during the course and scope of business because a salesperson is the agent of the broker.”]; Gipson v. Davis Realty Co. (1963) 215 Cal.App.2d 190, 206[“[T]he Legislature has, by virtue of statutory enactment, made such [a real estate] salesman an agent of the broker as a matter of law.”].)

An employer is not, however, automatically liable for punitive damages arising from the intentional torts of its employee where respondeat superior liability for compensatory damages has been established. An employer is liable for exemplary damages based on the acts of an employee only if “the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice.” (Civ.Code, § 3294, subd. (b); see College Hospital, Inc. v. Superior Court (1994) 8 Cal.4th 704, 723 [noting that “even before section 3294, subdivision (b) was added to the Civil Code in 1980, the courts required evidence that the employer authorized or ratified a malicious act, personally committed such an act, or wrongfully hired or retained an unfit employee”].) Liability for compensatory damages is imposed on even “‘innocent’ employers as a foreseeable and insurable cost of doing business.” ( College Hospital, Inc. v. Superior Court, supra, 8 Cal.4th at p. 724, fn. 11.) “[H]owever, punitive damages are not assessed against employers on a pure respondeat superior basis. Some evidence of fault by the employer itself is also required.” (*Ibid.*; accord, Flores v. AutoZone West, Inc. (2008) 161 Cal.App.4th 373, 387.)

\*20 The court found that Joy Realty employed Yoon as an agent and failed to supervise him. This was sufficient to establish respondeat superior liability for purposes of awarding compensatory damages. However, there were no findings or evidence that any officer or managing agent for

Not Reported in Cal.Rptr.3d, 2009 WL 2872692 (Cal.App. 2 Dist.)  
Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

(Cite as: 2009 WL 2872692 (Cal.App. 2 Dist.))

Joy Realty personally participated in the fraud, that Joy Realty authorized or ratified the fraud, or that Joy Realty employed Yoon with knowledge of his unfitness. Accordingly, the punitive damage award must be reversed as to Joy Realty.

#### **DISPOSITION**

The award of \$170,545.88 to the Hurs to compensate for out-of-pocket operating losses is reversed. The award of \$100,000 to the Hurs for punitive damages is reversed as to Joy Realty only. In all other respects, the judgment is affirmed. Each party is to bear his, her or its own costs on appeal.

We concur: [EPSTEIN](#), P.J., and [WILLHITE](#), J.

Cal.App. 2 Dist., 2009.

Hur v. Byoung Woo Lee

Not Reported in Cal.Rptr.3d, 2009 WL 2872692  
(Cal.App. 2 Dist.)

END OF DOCUMENT

**Westlaw Delivery Summary Report for STEINHART,TERRAN**

Date/Time of Request:	Monday, May 9, 2011 17:44 Pacific
Client Identifier:	OFC ADM
Database:	KEYCITE-HIST
Citation Text:	2009 WL 2872692
Service:	KeyCite
Lines:	135
Documents:	1
Images:	0

The material accompanying this summary is subject to copyright. Usage is governed by contract with Thomson Reuters, West and their affiliates.

**KEYCITE**

▶ [Hur v. Byoung Woo Lee](#), 2009 WL 2872692 (Cal.App. 2 Dist., Sep 09, 2009) (NO. B210502)

**History**

**Direct History**

▶ [1](#) Hur v. Lee, 2008 WL 7727333 (Trial Order) (Cal.Superior Jun 27, 2008) (NO. BC352132, BC361921)

*Affirmed in Part, Reversed in Part by*

=> [2](#) **Hur v. Byoung Woo Lee**, 2009 WL 2872692 (Cal.App. 2 Dist. Sep 09, 2009) (NO. B210502), unpublished/noncitable (Sep 09, 2009), rehearing denied (Sep 22, 2009), rehearing denied (Sep 23, 2009), review denied (Nov 10, 2009)

**Related References**

**H** [3](#) Hur v. Lee, 2008 WL 6928111 (Trial Order) (Cal.Superior Aug 19, 2008) (NO. BC352132, BC361921)

**Court Documents**

**Verdict and Settlement Summaries (U.S.A.)**

**Cal.Superior**

[4](#) Hur vs. Lee, 2008 WL 7898467, 25 Trials Digest 13th 9 (Verdict and Settlement Summary) (Cal.Superior Jun. 27, 2008) (NO. BC352132)

**Appellate Court Documents (U.S.A.)**

**Cal.App. 2 Dist. Appellate Petitions, Motions and Filings**

- [5](#) JOY INVESTMENT & REALTY, INC., and Ted Yoon, Defendants and Appellants, v. Marvin HUR and Connie Hur, Plaintiffs and Respondents., 2009 WL 3160671 (Appellate Petition, Motion and Filing) (Cal.App. 2 Dist. Sep. 10, 2009) **Petition for Rehearing from Appellants Joy Investment and Realty, Inc. and Ted Yoon** (NO. B210502)
- [6](#) Marvin HUR and Connie Hur, Plaintiffs and Respondents, v. Byoung Woo LEE, Defendant and Appellant., 2009 WL 3398092 (Appellate Petition, Motion and Filing) (Cal.App. 2 Dist. Sep. 21, 2009) **Appellant Lee's Petition for Rehearing** (NO. B210502)
- [7](#) Marvin HUR and Connie Hur, Plaintiffs and Respondents, v. Byoung Woo LEE, Defendant and Appellant., 2009 WL 3794524 (Appellate Petition, Motion and Filing) (Cal.App. 2 Dist. Sep. 21, 2009) **Appellant Lee's Petition for Rehearing** (NO. B210502)

#### **Cal.App. 2 Dist. Appellate Briefs**

- [8](#) Marvin HUR and Connie Hur, Plaintiffs and Respondents, v. Byoung Woo LEE, Defendant and Appellant., 2009 WL 1033985 (Appellate Brief) (Cal.App. 2 Dist. Mar. 12, 2009) **Appellant Lee's Opening Brief** (NO. B210502)
- [9](#) JOY INVESTMENT & REALTY, INC., and Ted Yoon, Defendants and Appellants, v. Marvin HUR and Connie Hur, Plaintiffs and Respondents., 2009 WL 907684 (Appellate Brief) (Cal.App. 2 Dist. Mar. 12, 2009) **Opening Brief of Appellants Joy Investment and Realty, Inc. and Ted Yoon** (NO. B210502)

#### **Cal.App. 2 Dist. Oral Arguments**

- [10](#) Byoung Woo Lee et al., Defendants and Appellants, v. Marvin Hur et al., Plaintiffs and Respondents., 2009 WL 3672153 (Oral Argument) (Cal.App. 2 Dist. Aug. 14, 2009) **Oral Argument** (NO. B210502)

#### **Trial Court Documents (U.S.A.)**

#### **Cal.Superior Trial Pleadings**

- [11](#) Marvin HUR and Connie Hur, Plaintiff, v. Byoung Woo LEE, Soobi, Inc.; and Does 1 through 10, Defendant. Byoung Woo LEE, an individual; Soobi, Inc., a California Corporation, Cross-Complainants, v. Marvin Chul HUR, an individual; Connie Shunji Hur; and Does 1 through 30, Inclusive, Cross-Cross-Defend, 2007 WL 6914686 (Trial Pleading) (Cal.Superior Jun. 6, 2007) **Second Amended Cross-Complaint for: (1) Breach of Contract; (2) Breach of Promissory Note; (3) Breach of the Covenant of Good Faith and Fair Dealing; (4) Intentional Misrepresentation; (5) Negligent M** (NO. BC352132)

[12](#) Marvin HUR, an individual, and Connie Hur, an individual, Plaintiffs, v. Byoung Woo LEE, an individual; Soobi Inc., a California Corporation; Ted Yoon, an individual; Joy Investment & Realty, Inc., a California Corporation; and Does 3 through 10, inclusive, Defendants., 2007 WL 6914685 (Trial Pleading) (Cal.Superior Sep. 2007) **Plaintiffs' Second Amended Complaint for Equitable Relief and Damages for: 1. Breach of Contract; 2. Fraud; 3. Cancellation of Shares; 4. Negligent Misrepresentation; 5. Temporary Restraining Order an** (NO. BC352132)

[13](#) Marvin HUR, an individual, and Connie Hur, an individual, Plaintiffs, v. Byoung Woo LEE, an individual; Soobi Inc., a California Corporation; Ted Yoon, an individual; Joy Investment & Realty, Inc., a California Corporation; and Does 3 through 10, inclusive, Defendants., 2008 WL 7727879 (Trial Pleading) (Cal.Superior Jan. 23, 2008) **Plaintiffs' Third Amended Complaint for Equitable Relief and Damages for: 1. Breach of Contract; 2. Fraud; 3. Cancellation of Shares; 4. Negligent Misrepresentation; 5. Temporary Restraining Order and** (NO. BC352132)

#### **Cal.Superior Trial Motions, Memoranda And Affidavits**

[14](#) Marvin HUR and Connie Hur, Plaintiff, v. BYOUNG WOO LEE; SOOBI, INC.; and Does 1 through 10, Defendants; Byoung Woo Lee, an individual; Soobi, Inc., a California Corporation, Cross-complainant, v. Marvin Chul Hur, an individual; Connie Shunji Hur; and Does 1 through 30, Inclusive, Cross-Defendants., 2008 WL 7727881 (Trial Motion, Memorandum and Affidavit) (Cal.Superior Mar. 20, 2008) **Defendants/Cross-Complainant Byoung Woo Lee's Trial Brief** (NO. BC352132)

[15](#) Marvin HUR, an individual, and Connie Hur, an individual, Plaintiffs, v. Byoung Woo LEE, an individual, Soobi, Inc., a California corporation, Ted Yoon, an individual, Joy Investment & Realty, Inc., a California corporation, and Doe 3-20, inclusive, Defendants., 2008 WL 7727880 (Trial Motion, Memorandum and Affidavit) (Cal.Superior May 25, 2008) **Plaintiffs Marvin Hur and Connie Hur's Trial Brief** (NO. BC352132, BC361921)

#### **Cal.Superior Exhibits**

[16](#) Marvin HUR, et al., v. Byoung Woo LEE, et al., 2007 WL 7004315 (Exhibit) (Cal.Superior Jun. 6, 2007) **Escrow Amendment/Supplement dated April 19, 2008** (NO. BC352132)

#### **Cal.Superior Trial Filings**

[17](#) Marvin HUR and Connie Hur, Plaintiff, v. Byoung Woo LEE, Soobi, Inc., Defendants., 2008 WL 7727882 (Trial Filing) (Cal.Superior Mar. 20, 2008) **Joint List of Witnesses** (NO. BC352132)

#### **Dockets (U.S.A.)**

**Cal.App. 2 Dist.**

[18](#) HUR ET AL. v. LEE ET AL., NO. B210502 (Docket) (Cal.App. 2 Dist. Aug. 27, 2008)

**Cal.Superior**

[19](#) MARVIN HUR ET AL v. BYOUNG WOO LEE ET AL, NO. BC352132 (Docket) (Cal.Superior May 9, 2006)

[20](#) BYOUNG WOO LEE ET AL v. MARVIN CHUL HUR ET AL, NO. BC361921 (Docket) (Cal.Superior Nov. 14, 2006)

**Westlaw Delivery Summary Report for STEINHART,TERRAN**

Date/Time of Request: Monday, May 9, 2011 17:44 Pacific

Client Identifier: OFC ADM

Database: KEYCITE-HIST-IMG

Citation Text: 2009 WL 2872692

Service: KeyCite

Lines: 1

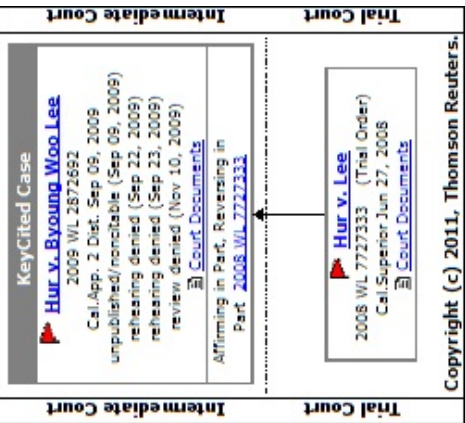
Documents: 1

Images: 1

The material accompanying this summary is subject to copyright. Usage is governed by contract with Thomson Reuters, West and their affiliates.

KEYCITE

▶ [Hur v. Byoung Woo Lee](#), 2009 WL 2872692 (Cal.App. 2 Dist., Sep 09, 2009) (NO. B210502)



**Westlaw Delivery Summary Report for STEINHART,TERRAN**

Date/Time of Request:	Monday, May 9, 2011 17:45 Pacific
Client Identifier:	OFC ADM
Database:	KEYCITE-REFS
Citation Text:	2009 WL 2872692
Service:	KeyCite
Lines:	0
Documents:	1
Images:	0

The material accompanying this summary is subject to copyright. Usage is governed by contract with Thomson Reuters, West and their affiliates.

**KEYCITE**

▶ [Hur v. Byoung Woo Lee](#), 2009 WL 2872692 (Cal.App. 2 Dist. Sep 09, 2009) (NO. B210502)

No references were found within the scope of KeyCite's citing case coverage.