

EXHIBIT A

SUPREME COURT
FILED

Court of Appeal, Second Appellate District, Division Five - No. B275607

APR 11 2018

S247067

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA **Deputy**

En Banc

ANIL SHARMA et al., Plaintiffs and Respondents,

v.

GUL JAISINGHANI, Defendant and Appellant.

The application of David T. Azrin to appear pro hac vice is granted.

The petition for review is denied.

The request for an order directing publication of the opinion is denied.

The request for calendar preference is denied as moot.

CANTIL-SAKAUYE

Chief Justice

FILED

Jan 12, 2018

JOSEPH A. LANE, Clerk

Joshua Dunn Deputy Clerk

Filed 1/12/18

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ANIL SHARMA et al.,

Plaintiffs and Respondents,

v.

GUL JAISINGHANI,

Defendant and Appellant.

B275607

(Los Angeles County
Super. Ct. No. SC123486)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa Hart Cole, Judge. Affirmed.

George M. Halimi; Gallet Dreyer & Berkey and David T. Azrin, for Defendant and Appellant.

GA Law Group, George E. Akwo for Plaintiffs and Respondents.

I. INTRODUCTION

Plaintiffs in this case—a married couple and associated Limited Liability Companies—prevailed after a jury trial on their claim that they had a joint venture with defendant to develop and sell a luxury property in Malibu, splitting the profits. According to plaintiffs, they were to provide the property and construct a home on it, while defendant was to finance the construction. Title was transferred from an LLC to defendant in order for him to obtain financing. After the home was built, defendant claimed there was no such joint venture, and instead the property was being built for his benefit. The jury awarded plaintiffs \$1.1 million on their breach of contract and negligent misrepresentation claims, and the trial court thereafter ruled that defendant will keep the property without further claim by plaintiffs.

Defendant challenges several rulings. We reject all his arguments: the trial court correctly conducted a jury trial on plaintiff's claims, though some issues were equitable; substantial evidence supported the jury's liability findings; the trial court did not err in rejecting defendant's illegality, unclean hands, and statute of frauds defenses; there was no error in excluding a handwriting expert; and the damages for the two claims were not duplicative. We thus affirm the judgment.

II. BACKGROUND

In this action, plaintiffs Anil Sharma, Jill Ann Sharma, Malibu Knoll LLC (Malibu Knoll), and Malibu Knoll Green Development LLC (MKGD) asserted there was a joint venture

agreement with defendant Gul Jaisinghani to build a residence at 23244 Paloma Blanca Drive in Malibu, California (Paloma Blanca) and sell it. Defendant asserted plaintiffs had sold the real property to him outright, and that Anil¹ would be paid as project manager and earn a commission on the sale.

A. Facts

1. The Joint Venture Prior to Defendant's Participation

Adam, the son of Anil and Jill who was 21 at the time of trial, testified that in 2001, at 6 years old, he discovered the undeveloped Paloma Blanca while playing with his sister. Anil is a businessman and real estate developer. Jill is a real estate agent. In 2004, Anil and Jill purchased Paloma Blanca for \$240,000. They later transferred title to Paloma Blanca to a company they controlled, Malibu Knoll.

Paloma Blanca came with a California Coastal Commission violation that cost an additional \$362,000 to remedy in order to receive a coastal permit to build. After considerable effort, Anil and Jill finally received the coastal permit in 2008.

Because Anil and Jill decided to build a home for sale on the property, they entered into a joint venture with Johnny Tehranchi, who was in the mortgage business. The trio formed MKGD to take over the property and agreed that Anil and Jill would be paid for their portion of the land; MKGD would get a loan to develop the land; MKGD would get a building permit and construction loan; the house would be listed for sale within five

¹ Several individuals share the same last name. We will refer to them by their first name for ease of reference.

months of construction for \$5 million; and the Sharmas and Tehranchi would split the profits equally.²

In early 2009, Tehranchi recruited Bagrat Ogannes to join the venture to fund it. In March 2009, Ogannes sought a land loan on behalf of MKGD from California Bank and Trust (CB&T). In order to obtain this loan, title to Paloma Blanca needed to be transferred to Ogannes. Jill testified that Malibu Knoll transferred title to Ogannes for that purpose. Tehranchi testified the title transfer was not a sale to Ogannes. The Sharmas executed a purchase contract of Paloma Blanca with Ogannes for \$2.5 million. The contract price was subsequently re-negotiated to \$1.25 million based on CB&T's appraisal, as CB&T had appraised Paloma Blanca at \$900,000.

CB&T appraised the land, checked Ogannes' creditworthiness, and offered a loan of \$540,000, which was 60 percent of the appraised value. To pay the remainder of the sale price of \$1.25 million, Ogannes offered a seller carry back note and a deed of trust to Malibu Knoll for \$723,500, and then deeded Paloma Blanca to MKGD.

Of the \$540,000 loan amount from CB&T, approximately \$380,000 was used to pay a loan that the Sharmas personally owed to Zamindari Trust. Zamindari Trust was a company run by defendant. The remaining amount was paid in cash to Malibu

² Tehranchi testified that he had drafted a document to register MKGD with the California Secretary of State, but forgot to do so. In September 2009, the members of MKGD realized Tehranchi had failed to register the company in 2008. Anil registered MKGD with the Secretary of State on September 9, 2009. Additionally, an operating agreement was executed and recorded on September 9, 2009. On October 14, 2009, MKGD recorded the deed.

Knoll, which Malibu Knoll then put into MKGD. Tehranchi testified that he put his own money into MKGD and worked every day on the project.

Ogannes' role in the joint venture was to make the CB&T loan payments. Sometime in 2009, Ogannes stopped making the loan payments. Jill e-mailed the MKGD members for a November 2009 meeting to discuss the situation. Ogannes testified that because of financial difficulties he decided to walk away from the venture. MKGD then assumed the CB&T loan. Tehranchi stopped acting as the day-to-day manager for MKGD, and Anil took his place. Tehranchi continued as a member of MKGD.

2. Defendant's Participation in the Joint Venture

The heart of this case involves the parties' conflicting evidence as to their agreement. Anil testified that he approached defendant to replace Ogannes in the joint venture. Anil testified the terms of the joint venture agreement were: MKGD and defendant would each own 50 percent of Paloma Blanca; defendant would provide financing, including paying off the CB&T loan that Ogannes had obtained; Anil would provide the building expertise; they would share in the risk and profit; and the share of profits would be an equal 50-50 split. Anil testified that he and defendant agreed to the joint venture and shook hands. Plaintiffs produced as evidence an e-mail sent to defendant dated May 19, 2010 that purportedly memorialized this agreement. Among other things, that e-mail stated that it would "recap the discussions of the last couple of months," stated

that defendant said that he was “the money man,” and stated that Anil would strive to get defendant paid back.

Defendant, in contrast, testified that he agreed to purchase Paloma Blanca from MKGD by: paying off the remaining \$550,000 debt owed on the CB&T loan, plus \$50,000 in outstanding debts owed for fixing the grading and taxes, for a total purchase price of \$600,000; promising to use Anil as the project manager to develop the property and as the real estate agent to sell it; and paying Anil a discretionary bonus if the property had the framework up for a house and sold for a substantial profit before construction was completed.

On June 1, 2010, defendant wired \$550,000 to pay off the CB&T loan. On June 10, 2010, after receiving the full loan repayment, CB&T reconveyed the deed of trust and thus was no longer a creditor. Defendant received a handwritten deed from Anil dated and recorded November 8, 2010, resulting in defendant holding title to Paloma Blanca.

Defendant and MKGD executed a purchase contract on September 9, 2010 for \$1.2 million. The contract reflected that defendant had paid \$550,000 as a down payment. Defendant and Anil then approached U.S. Bank to obtain a construction loan. In 2011, U.S. Bank approved a construction loan for approximately \$1.88 million.

3. The Completion of House and Defendant Moving Into Paloma Blanca

The building permit for Paloma Blanca was issued in February 2012. Anil and Jill were very involved in the home building. Anil served as project manager from 2012 until the contractor (hired by Anil) was relieved of his duties in 2013. Jill

and Anil pulled permits, obtained entitlements, and designed the house. Anil became the new builder in 2013. The house was fully built and ready for occupancy by July 2014. In the fall of 2014, defendant came to stay at the house purportedly for two weeks. Defendant began asserting that he had discovered a series of defects in the house, so he stayed longer.

B. Procedure

In their first amended complaint, their operative pleading, plaintiffs alleged defendant claimed in late 2014 that he was the sole owner of Paloma Blanca in violation of their joint venture agreement. Plaintiffs alleged claims for quiet title, fraud, breach of contract, specific performance, declaratory relief, promissory estoppel, constructive trust, equitable lien, partitioning, breach of fiduciary duties, common counts, and breach of warranty of good faith and fair dealing. Defendant raised several affirmative defenses in his answer to plaintiffs' first amended complaint, including illegality and unclean hands.

Defendant filed a separate complaint, which later was consolidated into the same action with plaintiffs' complaint. Defendant asserted that Anil told him that he needed defendant's financial help and falsely represented the only lien on the title to Paloma Blanca was the CB&T loan. Based on the representation, defendant claimed, he purchased Paloma Blanca. He alleged claims for quiet title, breach of express and implied covenants, slander of title, tortious interference with economic advantage, breach of fiduciary duty, constructive fraud, and professional malpractice by a real estate agent and accountant.

Jury trial commenced on January 19, 2016. On February 8, 2016, the jury returned its special verdict. The jurors were asked on the verdict form, “Do you find that [MKGD] was in a joint venture with [defendant] to develop and sell the Property, under which they would share both the profits and the losses of the venture?” The jurors responded “yes” by a 9-to-2 vote.³ The jurors found defendant breached the joint venture agreement, his fiduciary duty, and his duty of good faith and fair dealing with MKGD. The jury awarded damages to MKGD in the amount of \$1 million. The jury found the deed of trust given by Ogannes to Malibu Knoll was valid, but awarded nothing to Malibu Knoll for it. The jury found defendant liable for negligent misrepresentation as to Anil, Jill, or MKGD. The jury awarded MKGD \$100,000 in damages for the negligent misrepresentation. The jury then answered a supplemental verdict form on which it was asked whether it intended that MKGD would receive 50 percent of the profits on the sale of Paloma Blanca in addition to the award of \$1 million for the various breaches. The jury responded, “No.”

III. DISCUSSION

A. *Standard of Review*

We review questions of law de novo. (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.) We review a trial court’s discretionary rulings for an abuse of discretion. (*Sargon Enterprises, Inc. v. University of Southern*

³ The parties consented to proceed with the 11-member jury, as long as at least 9 jurors agreed to a verdict.

California (2012) 55 Cal.4th 747, 773.) We review the resolution of factual disputes for substantial evidence. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.)

B. The Trial Court Did Not Err by Conducting a Jury Trial

We first address defendant's contention that the trial court erred by permitting trial by jury.

“[G]enerally, legal claims are tried to a jury, when a jury is properly requested, while equitable claims are tried to a court.” (*Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 621.) ““If the action has to deal with ordinary common-law rights cognizable in courts of law, it is to that extent an action at law. In determining whether the action was one triable by a jury at common law, the court is not bound by the form of the action but rather by the nature of the rights involved and the facts of the particular case—the *gist* of the action. A jury trial must be granted where the *gist* of the action is legal, where the action is in reality cognizable at law.”” [Citation.] On the other hand, if the action is essentially one in equity and the relief sought ‘depends upon the application of equitable doctrines,’ the parties are not entitled to a jury trial.” (*C & K Engineering Contractors v. Amber Steel Co.* (1978) 23 Cal.3d 1, 9.)

Defendant asserts the gist of the action here was actually equitable and thus plaintiffs had no right to a jury trial. We disagree.

The action here was to some extent a hybrid action involving both legal and equitable issues. However, the gist of the action was legal. The entire jury verdict form for the case brought by plaintiffs against defendant consisted of sections that

essentially tracked the elements of causes of action for breach of contract (including closely related claims for breach of fiduciary duty and breach of the covenant of good faith and fair dealing) and negligent misrepresentation (a type of fraud), as well as resulting monetary damages and punitive damages. As an evidentiary matter, the contract claim turned in large part on resolution of the parties' conflicting view on whether or not a joint venture existed, and the negligent misrepresentation claim turned on whether defendant made such a representation to plaintiffs.

These claims were classic legal claims. (E.g., *Fair v. Bakhtiari* (2006) 40 Cal.4th 189, 202 [when existence of contract at issue, it is for trier of fact to determine its existence]; *Raedeke v. Gibraltar Savings & Loan Assn.* (1974) 10 Cal.3d 665, 671 [right to jury trial for breach of contract and fraud]; see CACI 303, 1903.) As well, the monetary damages sought and awarded are a standard remedy at law. (*Feltner v. Columbia Pictures Television, Inc.* (1998) 523 U.S. 340, 352 [as a "general rule," monetary relief is legal].)

Following the jury verdict, plaintiffs dismissed their equitable claims.

Defendant raised some equitable claims and defenses. After the jury trial, the trial court heard argument on defendant's equitable claims and defenses and ruled against defendant on most of them. The trial court gave deference to the factual findings of the jury in doing so. Nevertheless, the court rejected a jury finding and made an equitable ruling in favor of defendant on a critical matter. On the form that reflected the claims in defendant's case, the jury had rejected defendant's claim to quiet title in his favor. Despite that jury finding, the court quieted title

in favor of defendant, on the view that because the jury had awarded damages to plaintiffs based on defendant's violation of the joint venture agreement, defendant held "legal and equitable title to the property . . . free and clear" of any liens, encumbrances, and ownership claims by plaintiffs.

Thus, the court handled all the legal and equitable claims by trying the legal ones first and addressing remaining equitable claims thereafter. In actions involving both legal and equitable issues, the order of trial is at the discretion of the trial court. (Evid. Code, § 320 ["Except as otherwise provided by law, the court in its discretion shall regulate the order of proof"]; *Heppler v. J.M. Peters Co., Inc.* (1999) 73 Cal.App.4th 1265, 1285.) Here, the trial court was within its discretion to proceed with the legal issues first, as it found the action was primarily legal. The court did not err by granting trial by jury.

C. Substantial Evidence Supported the Jury's Findings of Joint Venture and Negligent Misrepresentation

Defendant asserts the trial court erred by denying his motions for new trial and judgment notwithstanding the verdict. Defendant primarily contends there was insufficient evidence to support the jury's finding that a joint venture existed. We review a challenge to the sufficiency of the evidence for substantial evidence. (*Piedra v. Dugan* (2004) 123 Cal.App.4th 1483, 1489.) "When a trial court's factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can

reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. *If such substantial evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.*" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) The substantial evidence standard of review on appeal applies to both jury and nonjury trials. (*Jameson v. Five Feet Restaurant, Inc.* (2003) 107 Cal.App.4th 138, 143.)

"The essential elements of a claim of breach of contract . . . are the contract, plaintiff's performance or excuse for nonperformance, defendant's breach, and the resulting damages to plaintiff." (*San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 439.) The primary dispute here is the existence of the joint venture agreement.

Here, substantial evidence supported the jury's finding that the joint venture existed. Plaintiffs provided a coherent account of how they ended up in a joint venture to develop and sell Paloma Blanca. Anil testified that he bought the property in 2004 with liabilities attached to it and no recourse to the former owner, and then spent years of considerable effort obtaining coastal commission and other permits. Anil and Jill testified that they had a similar joint venture with their earlier financial partner, Ogannes, who also took title to the property to obtain a loan; Ogannes testified to this as well. Defendant entered into the joint venture after Ogannes faced financial difficulties, replacing Ogannes as the financier. Jill testified that the title transfer to defendant was only for construction financing.

Additionally, two witnesses testified that they heard defendant state that he was in a 50/50 partnership with plaintiffs. Oskar Alanis, a worker at Paloma Blanca, testified that he met defendant in August 2013. In October 2014, when defendant moved into Paloma Blanca with his girlfriend, Alanis had many conversations with defendant. Defendant said to Alanis that defendant and Anil were partners in Paloma Blanca and were going to sell the house and share the earnings equally. As well, Adam testified that during a visit to defendant's house after 2011, defendant told Adam that Anil and defendant were in a 50/50 partnership regarding Paloma Blanca.

Plaintiffs also offered other circumstantial proof of the existence of the joint venture. Jill testified that she put ads on Craigslist to sell Paloma Blanca, with defendant's knowledge, and referred to defendant and the Sharmas as owners. Anil's May 19, 2010 e-mail recapped the discussions with defendant and referred to him as "the money man" who was to be paid back. Anil also offered an August 11, 2010, e-mail that he sent to defendant indicating that he would transfer title of Paloma Blanca to defendant when the loan was ready, which evidenced that the transfer was for purposes of the loan and not for defendant's ownership. On his "LinkedIn" Web page, which provided his professional background, defendant stated that he "financed building of a luxury home in Malibu," not that he owned the home.

Further, plaintiffs offered testimony that joint ventures like theirs were not uncommon. Mike Russell, plaintiffs' expert witness on joint ventures, testified that about 20 percent of joint ventures are oral. Russell also testified that joint ventures

involving one member of the joint venture taking title in his or her own name to get financing happens all the time.

Defendant also contends there was insufficient evidence to support the jury's finding that negligent misrepresentation occurred. We disagree. "The elements of fraud, which give rise to the tort action for deceit, are (1) a misrepresentation, (2) with knowledge of its falsity, (3) with the intent to induce another's reliance on the misrepresentation, (4) justifiable reliance, and (5) resulting damage. (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 173.) The tort of negligent misrepresentation, a species of the tort of deceit (*Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 407), does not require intent to defraud but only the assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true. (*Small, supra*, 30 Cal.4th at pp. 173-174.)" (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1255.)

Substantial evidence supported the jury's finding of negligent misrepresentation. In trial court, defendant told the court that his argument was based on the court finding the existence of a joint venture unsupported. On appeal, defendant also argues only that the negligent misrepresentation claim was unsupported because there was insufficient evidence of the joint venture. As discussed above, there was substantial evidence supporting the jury's conclusion that defendant had agreed to a joint venture to split the profits upon sale, which he was found to have breached. With that conclusion supported, there is substantial evidence that, as the joint venture proceeded and as the home was being constructed, defendant made misrepresentations—at least negligently—on which plaintiffs

relied.⁴ These included, among others, that he would possess Paloma Blanca for only two weeks, when he in fact moved into the home and did not move out for much longer; and that he would bring all cash into the joint venture when he ultimately did not. We find no reversible error for insufficiency of evidence.

D. The Trial Court Did Not Err in Rejecting the Illegality Defense

Defendant argues the equitable defense of illegality applied to the breach of contract claim. “If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced.” (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 124; see Civ. Code, § 1598 [“Where a contract has but a single object, and such object is unlawful, whether in whole or in part, . . . the entire contract is void.”].) Defendant asserts the purpose of the joint venture was to transfer Paloma Blanca to defendant solely to obtain a loan without disclosing to the bank the true ownership of the property. Defendant contends such a purpose is illegal under federal law.

Defendant’s argument fails. The jury found that the joint venture between MKGD and defendant existed as plaintiffs testified that it did, finding on the verdict form plaintiffs were in “a joint venture with [defendant] to develop and sell the Property, under which they would share both the profits and the losses of the venture[.]”

Defendant has identified no law by which the joint venture, as found by the jury, is for an illegal purpose. In fact, it is permissible for one person in a joint venture to take title to

⁴ The jury rejected plaintiffs’ claim of intentional misrepresentation.

property that is actually owned by the venture, which under California law is held in trust. “Property purchased with the funds of the joint adventure . . . belongs, unless otherwise agreed, to all the coadventurers in equal proportion. . . . Even though title is permitted to be taken in the name of one of the coadventurers, the right of the others is not impaired thereby, for under such circumstances the one holding title becomes a trustee for all. . . .” (see *Leff v. Gunter* (1983) 33 Cal.3d 508, 514 “[I]n a case where a joint venture was formed to acquire a parcel of land, ‘the parties assumed the status of fiduciaries and neither one would have had a right, while the joint venture existed, to acquire the subject property to the exclusion of the others.’ [Citation.] Indeed, the purchaser is deemed to hold the property as trustee for his coventurer, even if he paid for it with his own funds”].])

Defendant has not satisfactorily demonstrated that the joint venture agreement violates federal law even if it was contemplated that defendant would not disclose the joint venture agreement when defendant obtained the loan, which would have been obtained with defendant’s own credit and guarantee of repayment. In any event, the jury viewed the object of the agreement to develop and sell the property. Defendant was to obtain a loan to finance development of the property, with plaintiffs providing the property and performing the development. Even if in the course of doing so, the parties made a representation to a lender that would be treated as a material misrepresentation under federal law, this does not render their joint venture agreement unenforceable as a whole. A lawful contract will be enforced even when a collateral agreement is illegal. (*South Tahoe Gas Co. v. Hofmann Land Improvement Co.*

(1972) 25 Cal.App.3d 750, 757; *Pitts v. Highland Construction Co.* (1953) 115 Cal.App.2d 206, 212.)

The trial court did not err by denying defendant's equitable defense of illegality.

E. The Trial Court Did Not Err in Denying Defendant's Unclean Hands Defense

Defendant asserts plaintiffs should have had no recovery because they had unclean hands.

“The venerable doctrine of unclean hands arises from the maxim that one who comes to court seeking equity must come with clean hands. [Citation.] ‘The doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim.’ [Citation.]” (*Jay Bharat Developers, Inc. v. Minidis* (2008) 167 Cal.App.4th 437, 445.) “Not every wrongful act constitutes unclean hands. But, the misconduct need not be a crime or an actionable tort. Any conduct that violates conscience, or good faith, or other equitable standards of conduct is sufficient cause to invoke the doctrine.” (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 979.)

“Whether the particular misconduct is a bar to the alleged claim for relief depends on (1) analogous case law, (2) the nature of the misconduct, and (3) the relationship of the misconduct to the claimed injuries. [Citations.]” (*Kendall-Jackson Winery, Ltd. v. Superior Court, supra*, 76 Cal.App.4th at p. 979.) The defense is available in legal and equitable actions. (*Fibreboard Paper Products Corp. v. East Bay Union of Machinist* (1964) 227 Cal.App.2d 675, 728.) Whether the doctrine applies is a question

of fact (*Kendall-Jackson Winery, Ltd. v. Superior Court, supra*, 76 Cal.App.4th at p. 978), which we review for substantial evidence. (*Bowers v. Bernards, supra*, 150 Cal.App.3d at pp. 873-874.)

The trial court instructed the jury on the unclean hands defense, which the jury implicitly rejected, though it was not asked to make a specific finding as to the defense. (*Unilogic, Inc. v. Burroughs Corp., supra*, 10 Cal.App.4th at p. 622 [trial court has discretion as to whether to submit unclean hands defense to jury].) The trial court itself rejected the defense post-verdict.

Defendant here identifies five acts of purported misconduct that he asserts demonstrate plaintiffs' unclean hands: the Ogannes transaction was fraudulent; plaintiffs used an inflated purchase price for the construction loan; plaintiffs made misrepresentations to U.S. Bank that defendant was the owner of Paloma Blanca and that the Malibu Knoll deed of trust had no value; Anil tried to convince defendant to sell Paloma Blanca without disclosing purported defects to the buyer; and the Sharmas' purportedly misappropriated construction loan proceeds from the contractor, and commingled them with their personal expenses.

The trial court expressly addressed two of these five arguments. The trial court found Ogannes "was used as a straw buyer" for MGKD. However, the court also found evidence that "that's a common manner in which joint ventures are done; where one person who has the best credit is able to obtain the loans." Substantial evidence supported the court's finding. Russell, plaintiff's expert on joint ventures, testified that it happens all the time that one member of a joint venture takes title to the property to obtain financings. While the term "straw buyer" is used in other ways—such as when, through identity theft, a

buyer unaware of a transaction is used to buy a property—the trial court did not err in finding that the use of Ogannes here was not wrongful conduct.

The trial court had “concerns” that Anil had misled Lisa Smith, the escrow closing officer for the U.S. Bank loan, during his communications. Smith testified that Anil had told her there would be no payoff of the Malibu Knoll deed of trust because no money was owed, and there would be a reconveyance of it (which would put U.S. Bank’s lien in the senior position). Anil, in contrast, testified he did not discuss with Smith reconveying the Malibu Knoll deed of trust before the closing of escrow. Despite having concerns, the court did not find the evidence “so overwhelming” that it would void the joint venture. This appears to be either a finding that Smith’s testimony was insufficient to determine that Anil was not credible on the matter, or a finding that Anil’s alleged misconduct was not central to the joint venture. ““We have no power to judge of the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inference that may be drawn therefrom.” [Citations.]’ [Citation.]” (*Johnson v. Pratt & Whitney Canada, Inc.* (1994) 28 Cal.App.4th 613, 622-623.) Here, the trial court weighed the evidence and found it did not demonstrate unclean hands applied. Substantial evidence supports the trial court’s ruling.

The trial court did not make express findings as to defendant’s three other arguments for the unclean hands defense. For issues not explicitly addressed by the trial court, we apply the doctrine of implied findings. “Under the doctrine of implied findings, the reviewing court must infer, following a bench trial, that the trial court impliedly made every factual finding

necessary to support its decision.” (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 48.)⁵

Substantial evidence supports the trial court’s implied findings on the unclean hands arguments. As to plaintiffs using a purportedly inflated price for the construction loan, plaintiffs’ expert Russell testified that Paloma Blanca was worth \$1.8 million in late 2009 or 2010. The construction loan document submitted to U.S. Bank indicated a sale price of \$1.2 million, which was not inflated compared to that testimony. As to the alleged defects, Anil testified that such defects were not present. Finally, as to alleged misappropriation of the construction funds for payment of personal expenses, Jill and Anil testified that the Malibu Knoll banking account was used for other purposes unrelated to Paloma Blanca. However, all construction funds received went to building the house. Larry Ganzer, defendant’s accountant, reviewed construction costs for Paloma Blanca from June 1, 2010 through April 25, 2014 per defendant’s specifications. Ganzer testified that he found no accounting errors nor anything unusual about the expenses. As we do not reweigh evidence or assess credibility (*Johnson v. Pratt & Whitney Canada, Inc.*, *supra*, 28 Cal.App.4th at pp. 622-623), we cannot find that the trial court erred by denying defendant’s equitable defense of unclean hands.

F. The Statute of Frauds Was Inapplicable

Defendant contends the joint venture agreement violated the statute of frauds. Defendant cites Civil Code section 1624,

⁵ The parties agreed that the trial court’s oral ruling at the April 13, 2016 hearing was its statement of decision.

subdivision (a)(3), which provides, “The following contracts are invalid, unless they . . . are in writing and subscribed by the party to be charged or by the party’s agent: [¶] . . . [¶] An agreement . . . for the sale of real property, or of an interest therein” The trial court found the statute of frauds did not apply.

This ruling was correct. The joint venture agreement, as the jury found, was for the parties to develop and sell Paloma Blanca as a joint venture, and under the agreement, the parties would share in the profits or losses. The joint venture agreement was not for the sale of real property. Accordingly, it did not have to be in writing.

G. The Trial Court Did Not Err in Excluding a Handwriting Expert’s Testimony

Defendant contends the trial court erred by excluding the testimony of his handwriting expert. During trial, Anil had testified that in relation to a proposed purchase offer for \$7 million, defendant had written an agreement to split the profits 50-50. The next day, defendant requested that the court “appoint a handwriting expert” to examine the writing. In response, the trial court stated that it did not appoint experts in civil cases, but defendant could bring in a handwriting expert.

Plaintiffs later objected to a proposed defense handwriting expert on the ground that defendant had not disclosed such an expert before trial, depriving plaintiffs of their opportunity to do the same. The trial court resolved the issue by ruling that it would strike all references to the note and order the jury to disregard it, and then exclude testimony from the handwriting expert as more time consuming than probative. The trial court in

fact instructed the jury to disregard any testimony or information relating to the handwritten notes. The handwritten note was not admitted into evidence.

A court's exclusion of evidence pursuant to Evidence Code section 352 is reviewed for an abuse of discretion. (*Boeken v. Philip Morris Inc.* (2005) 127 Cal.App.4th 1640, 1685.)

Defendant contends the trial court abused its discretion because the expert testimony would have demonstrated Anil provided false testimony. We find no abuse by the trial court. The trial court instructed the jurors to disregard any mention of the handwritten note. Additionally, splitting of the profits from the sale of Paloma Blanca was raised by other witnesses, as discussed above. Given these circumstances, the trial court could reasonably find the handwriting expert's testimony would be an undue consumption of time that substantially outweighed any probative value.

H. The Damages Were Not Duplicative

Finally, defendant contends the damages for negligent misrepresentation were duplicative of the damages related to breach of the joint venture agreement. “On appeal, we review a special verdict de novo to determine whether its findings are inconsistent.” (*Singh v. Southland Stone, U.S.A., Inc.* (2010) 186 Cal.App.4th 338, 358.) “A special verdict is inconsistent if there is no possibility of reconciling its findings with each other.” (*Id.* at p. 357.) “Regardless of the nature or number of legal theories advanced by the plaintiff, he is not entitled to more than a single recovery for each distinct item of compensable damages supported by the evidence. [Citation.] Double or duplicative

recovery for the same items of damage amounts to overcompensation and is therefore prohibited. [Citation.] [¶] Thus, for example, in a case in which the plaintiff's only item of damage was loss of commissions, two awards of damages identical in amount—one for breach of contract and the other for bad faith denial of the same contract—could not be added together in computing the judgment. Plaintiff was entitled to only *one* of the awards. [Citations]. [¶] In contrast, where separate items of compensable damage are shown by distinct and independent evidence, the plaintiff is entitled to recover the entire amount of his damages, whether that amount is expressed by the jury in a single verdict or multiple verdicts referring to different claims or legal theories. [Citations]." (*Tavaglione v. Billings* (1993) 4 Cal.4th 1150, 1158-1159.)

Here, the damages awarded for negligent misrepresentation were not duplicative of the damages for the joint venture claim. Notably, the amount awarded for the joint venture claim (\$1 million) was different from the amount awarded for the negligent misrepresentation (\$100,000). The jurors were instructed to "consider each question separately." The special verdict required the jury to determine damages for the joint venture claim separately from the negligent misrepresentation claim.

There were reasons for the jury to conclude that separate damage awards should be made for each claim. The joint venture was directed at the parties' splitting profits from the ultimate sale of the home, so an award for the breach would have been to compensate plaintiffs for the increased value of the property with the home constructed on it, which was valued in trial testimony at several million dollars, though the precise amount was

contested. The jury specifically determined that plaintiffs were not to receive any money from the sale of the property, so \$1 million may have been the plaintiffs' share of the increased value. The \$100,000 for negligent misrepresentation may have been for out-of-pocket expenses incurred during construction as a consequence of defendant's false representations in the course of the joint venture. For example, Anil testified that defendant had stated he would bring in all cash into the joint venture, but defendant later complained about expenses. This required the joint venture to go out and obtain a construction loan. Jill testified that she received no payment for her services in building the property, including design work and bringing lunch to the workers almost every day for three years. These expenses constituted damages, apart from profits from the home sale, that did not necessarily result merely from the breach of the joint venture agreement. (See *Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1240 [out-of-pocket damages for misrepresentation]; see also *Brandon & Tibbs v. George Kevorkian Accountancy Corp.* (1990) 226 Cal.App.3d 442, 454 [damages for breach of contract are for injured party to receive the equivalent of the benefit of performance].) We do not find the special verdict inconsistent as to the damages awarded.

IV. DISPOSITION

The judgment is affirmed. Plaintiffs, Anil Sharma, Jill Ann Sharma, Malibu Knoll LLC, and Malibu Knoll Green Development LLC shall recover their appellate costs from defendant Gul Jaisinghani.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

RAPHAEL, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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