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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

GILL LONGMIRE, Plaintiff and Respondent, v. 1022 10TH STREET, INC., Defendant and Appellant.	B288063 (Los Angeles County Super. Ct. No. SC122961)

APPEAL from a judgment of the Los Angeles County Superior Court, Mitchell L. Beckloff, Judge. Affirmed.

Adams Stirling, Cang N. Le and Ronald M. St. Marie for Defendant and Appellant.

Smith | Hall | Strongin and Eric B. Strongin for Plaintiff and Respondent.

INTRODUCTION

After Gill Longmire's condominium unit suffered water intrusion-related damage from leaks originating in the common area, she sued her homeowners' association, 1022 10th Street, Inc. (HOA). As part of an August 2012 settlement agreement, HOA agreed to make repairs to the common areas, and Longmire released any claims against HOA predating the agreement. More than two years later, HOA still had not made the promised repairs. Longmire sued HOA again, this time for breach of the settlement agreement, negligence, and breach of fiduciary duty. A jury awarded her $308,150 in damages.

HOA now appeals. It does not contest the breach of its contractual, fiduciary, and duty of care obligations to Longmire. Instead, it argues Longmire introduced no evidence HOA's post-August 2012 conduct caused her damage. In particular, HOA posits all the damages incurred by Longmire preexisted the 2012 settlement agreement, and therefore were subject to the general release in that agreement. As substantial evidence supports the jury's finding that post-August 2012 breaches caused Longmire damage, we reject HOA's argument and affirm.

BACKGROUND

A. Leaks and Associated Damage to the Interior of Plaintiff's Unit

Longmire owned a condominium in a five-unit complex in Santa Monica. She first noticed water leaking into her condominium in 2007. She reported those leaks to the HOA's property manager in December 2007 and took photographs of the water damage. Associations like HOA are responsible for

maintenance of a condominium development's common areas. (See *Ritter & Ritter, Inc. Pension & Profit Plan v. The Churchill Condominium Assn.* (2008) 166 Cal.App.4th 103, 118.) HOA retained an environmental consultant, who found mold in Longmire's unit.

Longmire sued HOA in 2011 for damages related to the water intrusion. The matter settled in August 2012. The settlement agreement provided Longmire would receive $85,000 for damage to the interior of her unit, and HOA would retain a qualified, licensed contractor to perform common area repairs as specified in a contractor's proposal appended to the settlement agreement. Longmire waived Civil Code section 1542 in writing and provided a general release of claims known and unknown as of the time of the settlement agreement.

After the settlement agreement, HOA delayed repairs. HOA claims this delay resulted from pursuing a construction defect case against third parties involved in the development and construction of the complex. Longmire, in turn, delayed repairs to the interior of her unit until the common areas were fixed, because until repaired the leaks would continue and would re-damage anything she repaired.

While the common area remained unrepaired, additional water intruded into Longmire's unit from the common area. Longmire testified there was a "big leak" in January 2013. Water also entered from the outside into the unit's walk-in closet in September 2014, and through sliding glass windows and under the front door at some unspecified point after August 2012. Using photographs of the unit's interior, Longmire was able to identify the areas damaged by these post-August 2012 leaks.

B. Damages Issues

Longmire filed suit against HOA in August 2014 asserting breach of the settlement agreement, negligence, and breach of fiduciary duty. After this second lawsuit was filed, HOA finally made the common area repairs in October or November 2014. In October 2014, Longmire paid a contractor $167,589.12 to remediate the damage to the interior of her unit.

In addition to the damage to her unit, Longmire testified she suffered physical injury to her person after August 2012 from the leaks. Her symptoms included recurring sore throats, respiratory infections, migraines and chronic fatigue. While she had some symptoms before August 2012, her health got much worse after August 2012. In September 2014, after finding water damage in her walk-in closet, Longmire hired a contractor to perform mold testing in her unit. The results of that September 2014 test led Longmire to see a physician specializing in mold.

That physician testified at trial. He opined with reasonable medical certainty the wet condition of Longmire's condominium after August 2012 caused her to get sick. Certain molds, including penicillium/aspergillus, produce metabolic waste products called mycotoxins that act on humans in ways akin to Sarin nerve gas. The doctor reviewed the September 2014 mold inspection report and found penicillium/aspergillus levels dozens of times higher than any outdoor numbers he had ever seen. Longmire's symptoms were consistent with mycotoxin-related mold exposure. Water causes mold to grow, so water intrusions after August 2012 would increase the growth of any mold already present. Longmire's symptoms got worse over time, corresponding to increased mold growth from continuing leaks.

The doctor advised Longmire to move out of her condominium and testified she had only a 50 percent chance of making a full recovery from her exposure. Longmire also called another expert, a certified microbial and indoor environmental consultant, who testified Longmire was likely exposed to mycotoxins after 2012 while living in her unit.

C. The Jury's Verdict

The jury found HOA liable for breach of contract, negligence, and breach of fiduciary duty and awarded $308,150 in damages. The jury found Longmire was contributorily negligent, but her negligence was not a substantial factor in the harm caused to her. The award consisted of $113,150 in economic damages (property damage, moving expenses, temporary housing, and past as well as future medical expenses), and $195,000 in non-economic loss.

After judgment was entered, HOA filed a timely notice of appeal.

DISCUSSION

A. Standard of Review

"[W]hen the 'findings of fact are challenged in a civil appeal, we are bound by the familiar principle that "the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted," to support the findings below. [Citation.]' [Citation.] 'In applying this standard of review, we "view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor . . . ." [Citation.]' [Citation.]

' "Substantial evidence" is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value.' [Citation.] We do not reweigh evidence or reassess the credibility of witnesses. [Citation.] We are 'not a second trier of fact.' [Citation.] A party 'raising a claim of insufficiency of the evidence assumes a "daunting burden." [Citation.]' [Citation.]" (*Pope v. Babick* (2014) 229 Cal.App.4th 1238, 1245—1246.)

B. There Was Substantial Evidence to Support the Jury's Finding of Causation

We discuss causation only as to the tort claims, because those claims encompass all of the damages awarded and are dispositive of the challenge HOA raises. "Causation is established for purposes of California tort law if the defendant's conduct is a 'substantial factor' in bringing about the plaintiff's injury." (*Liberty Surplus Ins. Corp. v. Ledesma & Meyer Construction Co., Inc.* (2018) 5 Cal.5th 216, 223.) " 'The substantial factor standard is a relatively broad one, requiring only that the contribution of the individual cause be more than negligible or theoretical.' [Citation.] Thus, 'a force which plays only an "infinitesimal" or "theoretical" part in bringing about injury, damage, or loss is not a substantial factor' [citation], but a very minor force that does cause harm is a substantial factor.' " (*Bockrath v. Aldrich Chemical Co., Inc.* (1999) 21 Cal.4th 71, 79; see also Judicial Council of Cal., Civ. Jury Instns. (2018) CACI No. 430.)

Substantial evidence supports the jury's causation finding. It is undisputed repairs were not made to the common area for over two years after the August 2012 settlement. There was evidence it rained in those two years, and the unit suffered

further water intrusion. Longmire produced evidence regarding additional damage to the interior of her condominium from those leaks. While pre-August 2012 mold had not been remediated, the water intrusion after August 2012 caused additional mold to grow. There was evidence—including testimony from Longmire, her physician, and the certified microbial and indoor environmental consultant—that the additional water and mold damage were a substantial factor in harm to Longmire after August 2012. The jury further found Longmire's negligence in not repairing the interior of her unit sooner was not a substantial cause of the harm she suffered. This finding was supported by evidence the common area leaks were not repaired, additional water intrusion occurred, and this water intrusion would have undone any repairs she made. While HOA points to contrary evidence or the lack of certain evidence offered at trial, and other inferences one could draw from the record, our role is not to reweigh the facts but instead to view the evidence in the light most favorable to the prevailing party. (*Pope v. Babick*, *supra*, 229 Cal.App.4th at pp. 1245–1246.)

In addition to challenging causation as to any damage, HOA challenges the evidence supporting particular categories of damage. HOA's failure to move for a new trial precludes this argument. " 'A failure to timely move for a new trial ordinarily precludes a party from complaining on appeal that the damages awarded were . . . excessive . . . .' " (*Greenwich S.F., LLC v. Wong* (2010) 190 Cal.App.4th 739, 759.) While the failure to move for a new trial did not waive HOA's argument that the evidence did not support damages in any amount, it did waive any claim there was insufficient evidence as to any particular category of the damages awarded. (*Ibid.* ["if ascertainment of the amount of

damages turns on . . . conflicting evidence, or other factual questions, the award may not be challenged for . . . excessiveness for the first time on appeal."].)

DISPOSITION

The judgment is affirmed. Respondent is awarded her costs on appeal.

WEINGART, J.*

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.

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