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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

QUANTUM COOKING CONCEPTS, INC., et al., Plaintiffs and Respondents, v. LV ASSOCIATES, INC., et al., Defendants and Appellants.	B228606 (Los Angeles County Super. Ct. No. BC379011)

APPEAL from a judgment and post-trial orders of the Los Angeles Superior Court. Rolf M. Treu, Judge. Affirmed.

Law Offices of Jack L. Chegwidden and Howard J. Fox for Defendants and Appellants.

ALVARADOSMITH, William M. Hensley and Claire M. Schmidt for Plaintiffs and Respondents.

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* Pursuant to California Rules of Court, rules 8.1100 and 8.1110, this opinion is certified for publication with the exception of parts I and III.

Appellants LV Associates, Inc., Royal Range Of California, Inc., and Laxminarasimhan Vasan (collectively LV Associates), appeal from a judgment awarding $1 million damages to Quantum Cooking Concepts, Inc. and Philip Gonzales (sometimes collectively Quantum), and from orders denying motions for a new trial and for judgment notwithstanding the verdict. We affirm.

Background

Quantum's operative pleading alleged causes of action seeking damages from LV Associates based on breach of contract, fraud, and a dozen other theories of contract and tort liability. Quantum's theory of the case was that while working at Royal Range of California, Inc. (a company that he had helped to found with his ex-wife's husband), Gonzales had designed and developed a new type of barbeque grill and a commercial vertical broiler.[1] He planned to leave the company, which was then struggling for survival, in order to start his own business and to obtain certification for his products, all with the cooperation of the company's then-owner, Mr. Robert Spenuzza.

When LV Associates, Inc. took over Royal Range of California, Inc. in 2003, its new owner, Mr. Vasan, acknowledged Gonzales's rights with respect to these products. Although Gonzales had planned to leave Royal Range's employ, Vasan induced Gonzales to stay on and help the ailing company recover. In exchange, LV Associates

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[1] In stating the relevant facts we are largely unaided by appellants' opening brief, which identifies primarily the facts and events that support its own contentions. Consistent with the applicable burdens on appeal, we recite the evidence that is most favorable to respondent. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1233 [appellate court draws all conflicting inferences in respondent's favor].) Because the issues on appeal do not require close identification or differentiation of the cookware products that were the hotly contested subject of the parties' disputes in the trial court, we do not identify them in detail.

promised to help Gonzales to set up his own company, to manufacture the products, and to obtain the certifications required in order to market them for his own benefit.[2]

Gonzales did stay on with Royal Range, successfully generating substantial additional sales for the company, and earning (but not receiving) substantial commissions. In the meantime, LV Associates helped Gonzales set up and operate his own company, Quantum. Vasan became an officer and director of Quantum, LV Associates' accountant handled all Quantum's financial accounting and transactions, and LV Associates acted as Quantum's agent with respect to licensing and certification. Vasan also provided Gonzales with documents indicating the transfer of certifications for Gonzales's vertical broiler from LV Associates to Quantum, and showing Quantum's ownership of the product design.

After having performed his part of the bargain for a few years, and after leaving Royal Range, however, Gonzales was told that the products' certifications had not been transferred to Quantum, and that they belonged to Royal Range, not Gonzales. And LV Associates did not heed Gonzales's requests for return of all of Quantum's books and records. It turned out that LV Associates had obtained the certifications in its own name, and was secretly selling the products (perhaps under changed model numbers) as its own.

During the six-day trial LV Associates denied and sought to impeach most of Quantum's evidence. At the trial's conclusion, the jury returned a general verdict in Quantum's favor on the complaint, awarding Quantum $1 million in damages and rejecting LV Associates' cross complaint.[3] Judgment was entered on July 14, 2010, and notice of its entry was filed and served August 9, 2010. On August 24, 2010, LV Associates filed its notice of intention to move for a new trial, and its motion for judgment notwithstanding the verdict. After denial of the post-trial motions on

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[2] According to Gonzales, cookware products must obtain a certificate of compliance from an independent certifying agency in order to establish their compliance with certain industry standards and to be sold under those standards.

[3] LV Associates' cross-complaint had sought $552,500 from Gonzales for Quantum's sale of Royal Range's products without its permission.

October 5, 2010, LV Associates filed its timely notice of appeal from the judgment and denial of its motion for judgment notwithstanding the verdict on November 3, 2010.[4]

LV Associations makes three contentions on appeal:

(1) that the trial court erred by excluding evidence that Mr. Gonzales had suffered a felony conviction;

(2) that the trial court erred by denying LV Associates' post-trial motions for new trial and judgment notwithstanding the verdict due to their noncompliance with rule 3.113(b) of the California Rules of Court; and

(3) that the trial court erred by precluding LV Associates from impeaching Gonzales at trial with answers he had provided during discovery to a form interrogatory.

LV Associates has failed to demonstrate that the trial court erred with respect to these issues, or that if it did err, the error resulted in prejudice requiring reversal. We therefore affirm the judgment and the rulings denying the post-trial motions.

Discussion

I. LV Associates Has Failed To Demonstrate Prejudice With Respect To The Exclusion Of Evidence Of A Felony Conviction.

Quantum sought a sidebar ruling at the close of Quantum's presentation of Gonzales's testimony on direct examination, seeking to preclude LV Associates from questioning Gonzales about a 20-year-old gun-possession conviction on grounds of relevance and Evidence Code section 352. The trial court sustained the objection after the following exchange:

"THE COURT: Evidence Code section please.

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[4] LV Associates' notice of appeal purports to include an appeal also from the order denying the new trial motion, however, that denial is not itself appealable; rather, the new trial denial is reviewable on appeal from the underlying judgment. (*Walker v. Los Angeles County Metropolitan Transp. Authority* (2005) 35 Cal.4th 15, 18-19; Code Civ. Proc., § 904.1, subd. (a)(2).)

Was he convicted?

"MR. FOX: [counsel for LV Associates] Yes, your honor.

. . . . . .

"THE COURT: It's the court's understanding of the law that the conviction must be related to the crime of moral turpitude which would give the jury a better idea of indicating the lack of believability and credibility of the witness based upon such conviction. The possession of a gun – is that what the felony was?

"MR. PHAN: Yes, sir.

"THE COURT: -- is not a crime of moral turpitude as opposed to conviction of embezzlement or theft or things of that nature. So Mr. --

"MR. FOX: No, your honor.

"THE COURT: All right. Thank you. Objection is sustained."[5]

Beyond the conviction's mere existence and the fact that Gonzales's credibility was at issue, LV Associates suggested no circumstance indicating that the conviction had particular relevance in this case.

LV Associates correctly identifies abuse of discretion as the standard that guides our review of this issue. (*Zhou v. Unisource Worldwide, Inc.* (2007) 157 Cal.App.4th 1471, 1476.) It contends that the preclusion of its inquiry about Gonzales's gun-possession conviction abused the trial court's discretion, because the court applied the wrong legal standard and because the objection should have been raised in a pretrial motion in limine rather than as a mid-trial sidebar objection. Its claim of prejudice is confined to a one-sentence conclusion: "In a case that turned on credibility, the jury was entitled to hear such evidence and Appellants were clearly prejudiced by this erroneous ruling."

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[5] LV Associates also sought to question another witness about a supposed arrest, but it does not appeal from the order cutting off the inquiry.

We first reject the contention that the judgment should be reversed because of the motion's timing. Control over the mode of interrogation during trial is a matter of broad trial court discretion (see Evid. Code, § 765, subd. (a)), as is the exclusion of evidence. (Evid. Code, § 352.) Objections to evidence may be raised during trial, as well as by formal pretrial motions in limine. Moreover, LV Associates has offered nothing beyond its own conclusion suggesting how it was prejudiced by the motion's timing (as opposed to the ruling's merits). Without resulting prejudice, such an error could not lead to the judgment's reversal. (Evid. Code, § 354 ["A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous exclusion of evidence unless . . . the error or errors complained of resulted in a miscarriage of justice . . . ."].)

Nor did the trial court abuse its discretion by finding that the gun-possession conviction "is not a crime of moral turpitude as opposed to conviction of embezzlement or theft or things of that nature" – a conclusion with which counsel for LV Associates expressly agreed at trial, responding "No, your honor." Counsel's agreement with that conclusion did not concede that exclusion of the evidence was justified, but it did clearly express LV Associates' acquiesce in the determination that the conviction demonstrated no moral turpitude.[6]

LV Associates is correct that the absence of moral turpitude does not require the conviction's exclusion, and that an evaluation under Evidence Code section 352 is required. (See *Robbins v. Wong* (1994) 27 Cal.App.4th 261, 274.) That case held that the rules that govern admissibility of evidence of felony convictions for impeachment in criminal trials do not bind courts in civil proceedings. While evidence of felony

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6 The cases on which LV Associates' appeal relies to argue that possession of a firearm has occasionally been considered to be a crime of moral turpitude involve convictions of a different sort than is involved here—convictions for possession of a firearm *by a felon*, and for *conspiracy* to possess an *unregistered* firearm. (See *People v. Williams* (2009) 170 Cal.App.4th 587, 608 [prior conviction for possession of firearm by felon]; *People v. Garrett* (1987) 195 Cal.App.3d 795, 799-800 [conviction for conspiracy to possess illegal weapon].)

convictions involving moral turpitude are prima facie admissible in criminal cases under *People v. Castro* (1985) 38 Cal.3d 301, 312-313, and in civil cases under Evidence Code section 788, in civil cases the trial court must determine admissibility by balancing the probative value of the evidence against its potential prejudicial effect under Evidence Code section 352. (*Robbins v. Wong*, *supra*, 27 Cal.App.4th at pp. 263-264, 274.) However, nothing in the record establishes that the trial court failed to evaluate the objection under Evidence Code section 352, as Quantum's objection requested, and we do not presume any such error.

But even if the trial court failed to undertake the required evaluation, the record provides no basis on which to conclude that without that error its ruling would have changed. While LV Associates argues that Gonzales's credibility was a key issue at trial, it has provided no citation or discussion of the evidence that corroborates Gonzales's testimony about his development and sales of the cookware, and no analysis showing why the jury's knowledge of the decades-old gun-possession conviction would be expected to lead to the jury's rejection of that testimony, or to enhance his adversaries' credibility. (Cal. Const., art. VI, § 13 [no reversal for error in procedure unless error has resulted in miscarriage of justice]; Evid. Code, § 354 [no reversal for erroneous exclusion of evidence unless error resulted in miscarriage of justice]; Code Civ. Proc., § 475 [no reversal for error unless record demonstrates probability of different result in error's absence].) Thus even if the trial court erred by excluding evidence of the conviction, no prejudice has been shown, and no reversal is justified.

II. The Trial Court Did Not Abuse Its Discretion By Denying LV Associates' Post-Trial Motions.

LV Associates filed post-trial motions for new trial and judgment notwithstanding the verdict. Both motions rested primarily on a contention that the credible evidence was insufficient to support the verdict with respect to both liability and damages. Denying the motions, the trial court found that their one-page supporting memoranda lacked any discussion relating the facts of the case or to the cited law. The court identified as grounds for the denial the motions' failure to comply with rule 3.1113 of the California

Rules of Court ("Rule 3.1113"), concluding that it would not "go through the paperwork backwards and forwards to try to figure out how the law applies to the facts." That rule requires motions to be supported by memoranda containing "a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced," and provides that a motion's failure to provide such a memorandum can be construed "as an admission that the motion . . . is not meritorious . . . ." (Rule 3.1113(b) & (a).)

Although the post-trial motions' central contention was the insufficiency of the evidence to support the verdict, LV Associates' appeal does not raise that supposed deficiency. It argues instead that we should find that Rule 3.1113 does not apply to post-trial motions; that the trial court was wrong in ruling that its motions did not comply with Rule 3.1113; and that the court's denial of the motions without considering their merits deprived LV Associates of its right to have the trial court evaluate the sufficiency of credible evidence to support the verdict. In opposition, Quantum urges us to find that the appellate record before the court is not sufficient to support the requested review, because LV Associates designated only its own motion papers and omitted Quantum's opposition.[7]

LV Associates urges us to set aside the trial court's denial of the post-trial motions, and to remand the motions for redetermination on their merits. We instead find that the trial court was justified in invoking Rule 3.1113 to deny the post-trial motions,

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[7] The clerk's transcript in this appeal, as originally filed, contained the documents filed by LV Associates in support of only its motion for judgment notwithstanding the verdict. Apart from a short "Notice Of Intention To Move For New Trial," it did not include the documents supporting the new trial motion. LV Associates corrected this defect by obtaining this court's leave (in the absence of opposition) to augment the record to include the memorandum of points and authorities and declaration filed in support of the new trial motion.

As augmented, the clerk's transcript now contains the memoranda and papers supporting LV Associates' new trial motion, as well as its motion for judgment notwithstanding the verdict. Not designated for inclusion in the record on appeal and still missing from the record, however, are any papers filed in opposition to the post-trial motions.

and even if it were not, LV Associates has not established that it was prejudiced by the denials.

A. The trial court was justified in invoking Rule 3.1113 to deny the post-trial motions.

The court's tentative ruling noted that the points and authorities supporting each of the post-trial motions was just one page long, and "fail[s] entirely to comply with the requirements of 3.1113(b)." At the very brief hearing on the motions, LV Associates' counsel did not respond to the court's and Quantum's counsel's concern about the deficiencies in its motion papers, and did not argue the motions' merits. The trial court adopted the tentative ruling as its order, denying the post-trial motions for their failure to comply with Rule 3.1113.

LV Associates correctly identifies the de novo standard of review as governing whether the requirements of Rule 3.1113 can be applied to the motions for new trial and judgment notwithstanding the verdict. (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 81 [appellate courts independently review interpretations of California Rules of Court].) If Rule 3.1113 does apply to post-trial motions (as we hold it does), however, we review under the abuse of discretion standard whether the trial court was justified in invoking that rule. (*Robbins v. Alibrandi* (2005) 127 Cal.App.4th 438, 452 [abuse of discretion standard measures whether court's action "'falls within the permissible range of options set by the legal criteria'"].)

We conclude that post-trial motions come within the plain meaning of Rule 3.1113's reference to "motions." Although Rule 3.1113 does not expressly identify *post-trial* motions as motions that come within its meaning, there are strong indications that they do, even apart from the plain meaning of the words used. For example, motions that are not intended to come within Rule 3.1113's requirements are expressly identified in subdivision (a) of that rule—and post-trial motions are not among the motions identified as exempt. And until its revision as of January 1, 2004, the predecessor to Rule 3.1113 had expressly identified a notice of motion of new trial as exempt from its requirements—an exemption that was omitted from the revised rule. (See Historical

Notes, 23B pt. 1 West's Ann. Codes, Court Rules (2006 ed.) foll. rule 3.1113, p. 11.) Moreover, another rule of court, rule 3.1600, expressly provides that a new trial motion may be denied if a "memorandum in support of the motion" is not timely filed—a reference that suggests that the contents of the required "memorandum in support of the motion" is governed by Rule 3.1113(b). Rules 3.1113 and 3.1600 both appear in Division 11 of the Civil Rules of the California Rules of Court, entitled "Law And Motion," thereby indicating an intention that both new trial motions and other motions come within the same category.

LV Associates' memoranda of points and authorities—each about one-half page of text—merely quote the statutory provisions requiring entry of judgment notwithstanding the verdict when a directed verdict would have been justified, and permitting a new trial order for excessive damages or insufficiency of the evidence. Apart from these cursory citations, they contain none of the elements that Rule 3.1113(b) requires to be included in supporting memoranda. They offer no statement of the facts of the case that support the verdict, and no identification of the specific evidence or arguments on which their challenges to the sufficiency of the evidence rely. And although counsel's declaration contends Quantum's evidence should not have been believed, and that the jury should have rejected the computation by Quantum's expert of lost revenues (matters of credibility that are distinctively within the jury's province to evaluate), it does not identify specifically how the record shows that the damage award is necessarily excessive under all of the legal theories available to the jury.[8] As LV Associates itself recognizes, its post-trial challenges rest in large part "on credibility of witnesses." They do not even

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[8] The jury was instructed on a broad range of contract and tort theories of liability and damages, including breach of contract and interference with contract, negligent and intentional misrepresentation, conversion of business records, and misappropriation of confidential information and trade secrets by a fiduciary—any of which theories might form the basis for the jury's general verdict. (*Posz v. Burchell* (1962) 209 Cal.App.2d 324, 335-336 [general verdict may be supported by a single valid claim, even if error might have infected other claims]; *Henderson v. Harnischfeger Corp.* (1974) 12 Cal.3d 663, 673 [approving *Posz*].)

mention the instructions (and the extensive evidence that justified them) that permitted the jury to rest its general verdict on factual and legal theories that were not limited to Quantum's technical "ownership" of certain products, or to profits from sales of those products.

In the face of these omissions, the trial court had no obligation to undertake its own search of the record "backwards and forwards to try to figure out how the law applies to the facts" of the case. (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409 [reviewing court is not obligated to undertake independent examination of record when appellant "has shirked his responsibility in this respect"]; see *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52 [where appellant's motion was supported by deficient memorandum, trial court was justified in denying the motion on procedural grounds].) Rule 3.1113 rests on a policy-based allocation of resources, preventing the trial court from being cast as a tacit advocate for the moving party's theories by freeing it from any obligation to comb the record and the law for factual and legal support that a party has failed to identify or provide. On the record in this case, the trial court was justified in declining to look beyond that failure.

B. LV Associates Has Shown No Prejudice From The Post-Trial Motions' Denial.

While the trial court identified the motions' technical noncompliance with Rule 3.1113 as the grounds for its ruling, the briefs and abbreviated appellate record have provided this court with no basis on which to determine that LV Associates would have been entitled to the relief the motions requested. LV Associates has not established that it was entitled to a judgment notwithstanding the verdict. (*Begnal v. Canfield & Assocs., Inc.* (2000) 78 Cal.App.4th 66, 77-78 ["When reviewing an order granting a judgment notwithstanding the verdict our role is not to weigh the evidence, but rather to determine whether any substantial evidence supported the jury verdict"].) Nor has it established that the new trial motion might reasonably have led to a favorable result. (Code Civ. Proc., § 475 [there is "no presumption that error is prejudicial"; no order may be reversed for error unless record demonstrates that without the error a "different result would have

been probable"]; *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800 [prejudicial miscarriage of justice will be found only when examination of entire record establishes reasonable probability of result favorable to appellant in absence of error].) The trial court's denial of the post-trial motions therefore must be affirmed.

III. No Abuse Of Discretion Or Prejudice Resulted From The Trial Court's Exclusion Of Evidence Of Gonzales's Answer To A Form Interrogatory.

According to its appeal, LV Associates had planned to impeach Gonzales at trial with his answer to a form interrogatory, but the trial court improperly prevented it from doing so because LV Associates was unable to produce the original form interrogatory that it had served on Gonzales. LV Associates argues that the ruling abused the trial court's discretion and should result in reversal of the judgment, for two reasons: first, because it should have been permitted to use a copy of the Judicial Council form interrogatory that was available from multiple authoritative sources; and second, no authority requires that a party must produce the originally served form interrogatory in order to be entitled to use the interrogatory's answer.

However the record reflects no such ruling: The trial court did not rule that LV Associates could not use a copy of the form interrogatory obtained from an authoritative source, nor did LV Associates make any effort or request to do so. The issue is nonexistent.

The transcript shows instead that when counsel for LV Associates sought to have Gonzales identify an answer he had provided during discovery to a form interrogatory (without objection by Quantum), the trial court interrupted, noting that just the answer to the interrogatory was being presented, without the corresponding question: "Just a moment because it doesn't make sense without asking the interrogatory. The interrogatory and the response form the evidence."

Counsel then identified the subject interrogatory as form interrogatory number 50.1 ("which has to do with agreement"), arguing that the answer to the interrogatory is clear because "the question is incorporated into each answer." The court disagreed: "But all you've got there is a reference to a form interrogatory and interrogatory [*sic*] and an

answer that makes no sense to anyone as to what the question is and how it corresponds to the answer."

Counsel then renewed his suggestion that he might be able to produce the interrogatory after the lunch break. But LV Associates failed to produce either the original or a copy of the interrogatory obtained from an authoritative source. And it failed even to mention the subject of the interrogatory or its answer again.

LV Associates did not make a record in the trial court of the text of the form interrogatory, or of the answer about which it sought to question Gonzales. Nor does the record on appeal include that critical information—without which we cannot determine whether the evidence might have been admissible, or whether LV Associates could have been prejudiced by its exclusion (even if it had been excluded). For all the record shows, the trial court was correct in its ruling that the answer could not be understood without the interrogatory's text.

The transcript contains no mention of a requirement that any *original* document must be provided, and the courtroom exchange makes clear than no such requirement was intended or understood by anyone. The record reveals no error, and no prejudice, with respect to the trial court's exclusion of the form interrogatory's answer.

Disposition

The judgment and rulings on post-trial orders are affirmed.

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CHANEY, J.

We concur:

ROTHSCHILD, Acting P. J.

JOHNSON, J.