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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

BURLINGAME INVESTMENT CORPORATION et al. Plaintiffs and Respondents, v. HERMAN KWAI et al., Defendants and Appellants.	A144944 (San Francisco City and County Super. Ct. No. CGC-08-477107)

Defendants and appellants Chinin Tana and Jeffrey Chang (collectively, defendants) appeal from the trial court's judgment, following a bifurcated court trial, in favor of plaintiffs and respondents Burlingame Investment (Barbados), Inc. (BIB); Burlingame Investment Corporation (BIC); BIC Properties, Inc. (BIC Properties); NDC, Inc. (NDC); Vintage Associates (Vintage); and Burlingame Limen Corporation (Burlingame Limen) (collectively, plaintiff entities), together with individuals Jackie Lam and Lai Ming Chan Meyer (collectively, with plaintiff entities, plaintiffs), in this action arising from the attempted takeover of plaintiff entities by defendants Herman Kwai, Chinin Tana, Jeffery Chang, Rafael Pacquing, and Michael Choy.[1]

On appeal, defendants contend the trial court erred in finding in favor of plaintiffs on their publication of injurious falsehood and slander of title causes of action, and

[1] In this opinion, the term "defendants" will refer to Tana and Chang when discussing issues related to this appeal, but will refer to all defendants when discussing historical facts.

further contend the court erred in awarding plaintiffs' attorney fees as compensatory damages and finding Tana liable for punitive damages. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND[2]

In the late 1980s, Chan Dang, and a group of 11 other investors in Hong Kong (the investors) formed several different companies for the purpose of investing in various real estate projects in California. Among those companies were BIC, a California corporation; BIB, the 90 percent owner of BIC; and NDC, a wholly owned subsidiary of BIC. BIB is a corporation organized and existing under the law of Barbados. BIC, BIC Properties, NDC, and Burlingame Limen are California corporations with their principal place of business in Oakland, California. Vintage is a California general partnership made up of NDC and Burlingame Limen, with its principal place of business also in Oakland, California. In May 1992, the 12 Hong Kong investors made additional investments in BIC that were structured as corporate debt for tax purposes, with BIC issuing promissory notes to the 12 investors in amounts equal to their ownership share, in the total amount of $2.6 million.

During the years relevant to this litigation, the BIC companies (NDC, Burlingame Limen, BIC Properties, and Vintage) invested in Quail Lake, a 375-acre, 707-home planned lake community near Fresno.[3] The owner of the project was Quail Lake Properties, LLC, of which BIC's subsidiaries owned a 64 percent share.

Dang, who is now deceased, was the largest shareholder in BIB. He had a share of approximately 30 percent. In 1990, Meyer, the daughter of Dang, became a director of BIC and NDC. In 1993, she became the president of BIC, NDC, Burlingame Limen, and

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[2] Many of the facts regarding events occurring through the filing of defendants' prior appeal in 2009 are taken from the nonpublished opinion in which we affirmed the court's denial of their motion filed pursuant to the provisions of California's anti-strategic lawsuit against public participation (anti-SLAPP) statute (Code Civ. Proc., § 425.16). (See *Burlingame Investment Corp. v. Kwai* (Aug. 19, 2010, A125059) [nonpub.].)

[3] During the years relevant to this litigation, Quail Lake was the BIC companies' sole remaining investment.

Burlingame Properties. Lam is a shareholder in BIB, and a director of each plaintiff entity except Vintage.

In 1996, seven of the original 12 investors formed a new British Virgin Islands corporation named Starble International, Ltd. (Starble). The seven investors transferred their equity shares in BIB to Starble and Starble held a combined 50 percent interest in BIB. The seven Starble shareholders received a loan of $5 million from Dang and executed a $5 million promissory note in favor of Dang and a concurrent loan and pledge agreement in which Starble pledged its 50 percent of BIB shares to Dang. Starble and the four remaining BIB shareholders, other than Dang, agreed in shareholder minutes to direct BIC to use all revenue it received to first repay the Dang loan. Starble retained the right to vote its BIB shares as long as it was not in default of the loan. The loan was not paid when due in 1999, and went into default, at which point Starble lost its right to vote its shares under the loan and pledge agreement.

Defendant Kwai was a resident of Hong Kong and had a company named Global Reach Investment Corporation (Global Reach), a Panama Corporation.[4] Defendant Choy lived in Marin County. The other defendants lived in San Francisco. Beginning in 1996, Global Reach began lending money to SK Tang, one of the original investors in BIB and a Starble shareholder, up to a total of $11 million. In 1998, Tang defaulted on the loan, which then had a balance of approximately $8 million. In an effort to collect on the loan, Kwai obtained from Tang two documents—a letter of undertaking and a power of attorney—dated March 13, 1998, in which Tang purported to grant Kwai interests in both BIB and BIC.

The letter of undertaking stated that, on behalf of 8 of the 12 original investors, Tang pledged to Global Reach their promissory notes from 1992, which were then worth approximately $2.9 million and, on behalf of Starble, Tang pledged "the second mortgage for the shares of [BIB], a company belong[ing] to [Starble]." The letter of undertaking also stated the pledge to Dang would remain in first position until Starble

[4] In later litigation, Global Reach was found to be the alter ego of Kwai.

repaid Dang's $5 million loan. In the power of attorney, Tang appointed Global Reach to have authority over, inter alia, certain shares "and other securities or investments mentioned and described in the Schedule . . . ."[5]

From 1998 through 2001, Kwai made inquiries to BIC about collecting on the SK Tang loans from BIC and its investment in the Quail Lake projects and other developments. In a November 7, 2001 letter to Meyer, Kwai's attorney demanded payment on the eight promissory notes.

The parties entered into a tolling agreement that lasted until December 31, 2005, when Kwai's company, Global Reach, represented by Tana, sued BIC in Alameda County Superior Court, seeking a money judgment on the eight promissory notes.

BIC responded that Kwai obtained the notes by fraud. BIC asked the court to require Global Reach to post a $1 million bond for costs and attorney fees, and the court granted this request in April 2007. Global Reach failed to post a bond and the court dismissed its action in June 2007. BIC, as the prevailing party, obtained a judgment of $810,000 in attorney fees.[6] Shortly before the action's dismissal, Kwai formed a new California company, Global Reach Collections, Inc., which was 99.65 percent owned by Kwai, with Tana and Choy owning the remaining shares in equal parts, to pursue collection of the same promissory notes. In June 2007, Global Reach Collections filed a new action against BIC in Alameda County Superior Court, raising the same claims alleged in the dismissed Global Reach action.

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[5] In its statement of decision, the court stated that this undertaking and power of attorney were "insufficient to establish Kwai's authority to collect the promissory notes or to act for Starble, and there is evidence that at least four of the P-Note [promissory note] holders claimed that Kwai obtained assignment of their notes by fraud. In addition, no copy of the Schedule referred to in the Letter of Undertaking was offered in evidence and without the Appointers' 'terms and conditions' set forth in the missing Schedule the Power of Attorney is incomplete and not fully comprehensible." The court further stated that although "Tana testified that he believed he had a complete Power of Attorney at one time, he was unable to produce one after years of litigation and a year and a half of trial."

[6] Global Reach appealed the attorney fees award and in February 2008, a panel of this Division dismissed the appeal on the ground that the notice of appeal was untimely.

In March 2007, Kwai wrote to Meyer on behalf of Starble, describing himself as "present representative director" of Starble and demanding that a BIB shareholders meeting be convened. In September 2007, because Kwai and Global Reach had failed to provide adequate evidence of authority to act for Starble, Meyer declined Kwai's demand that a BIB shareholders' meeting be convened.

On February 29, 2008, Kwai, purporting to act as director of Starble, issued notice of a BIB special shareholders' meeting to be convened in Barbados on March 25, 2008, and appointed Tana as his proxy to act for Starble at the meeting.

On March 25, 2008, counsel for BIB filed an "Originating Summons and Certificate of Urgency in the Barbados High Court of Justice." On March 25, BIB secured a temporary injunction from the Barbados court to bar the shareholder meeting pending resolution of the underlying issues of authority and ownership (Barbados temporary injunction action). The Barbados court set a hearing on the injunction request for July 7. Tana nevertheless convened the March 25 meeting but, lacking a quorum, he adjourned the meeting to April 8.

Tana did not hold a meeting on April 8, 2008, but, claiming that the Barbados counsel for Starble had reported that the restraining order was no longer in effect, Tana as putative proxy for Kwai and Starble, and as the only shareholder present, reconvened the shareholder meeting on June 18, without notice to BIB's shareholders.[7] At the meeting and over the following two days, Tana, Kwai, Choy, and another person were elected to replace BIB's existing directors. They also revoked the prior BIB resolution, which had established a priority in the distribution of any assets of BIB or its affiliated companies to repay Dang's loan. The new directors, along with Chang and Pacquing, elected Tana as BIB's president and Pacquing as secretary and treasurer. The directors then resolved to dismiss BIB's pending action in Barbados against Kwai; to fire BIB's Barbados counsel

[7] Barbados law required that the meeting be held where noticed in Barbados. Tana therefore "opened a telephone line to the conference room there but conducted the meeting from his office in San Francisco."

in that litigation; to reorganize the boards of directors, officers, and management of BIB's California affiliate entities; and to relocate BIB's headquarters to Chang and Tana's San Francisco office. These acts were published in corporate minutes.

Additionally, the minutes and written consent forms indicated that defendants undertook other actions. Tana, as the president of BIB, executed a written consent of BIC to replace its existing directors with Choy and Chang. Chang, purporting to act as president of BIC, elected himself sole director of BIC Properties, Burlingame Limen, and NDC. Chang also replaced Meyer with himself as manager and bank account signatory, and directed the acquisition of books and records from predecessor officers.

On June 20, 2008, Tana prepared, signed, and filed a notice with the Barbados Registrar of Companies, stating that, on June 19, 2008, Kwai, Choy, and a relative of Kwai had become the new directors of BIB. On this same date of June 20, Pacquing signed statements of information on behalf of BIC, BIC Properties, NDC, and Burlingame Limen, which Tana filed with the California Secretary of State, certifying that Chang, Choy, and Tana were the officers and directors of the California-based plaintiff entities, and that Chang was the agent for service of process.

On June 23 and 24, 2008, defendants contacted Dirk Schenkkan at the law firm Howard Rice Nemerovski Canady Falk & Rabkin (Howard Rice), which was representing BIB and BIC in California. Tana wrote a letter attempting to terminate Howard Rice's authority to represent BIB in the Barbados temporary injunction action. He also instructed Schenkkan to forward copies of all communications between BIB and its Barbados counsel and to cease communicating with BIB and Barbados counsel. Chang also wrote to Schenkkan and directed him to withdraw BIC's pending motion for additional attorney fees against Global Reach in the Alameda County litigation, to give up BIC's judgment against Global Reach in exchange for mutual releases, to forward all of Meyer's communications with counsel, and to cease communication with anyone but Chang.

On June 24, 2008, Tana wrote to BIB's attorneys in Barbados, identifying himself as a director and as president and instructing them to dismiss BIB's ongoing—and thus

far successful—action there against Kwai without seeking any costs. Tana also wrote to Meyer, briefly informing her that he was the new president of BIB. He also sent her copies of the various minutes, consents, and filings that had installed Tana, Chang, Pacquing, and Choy in control of the plaintiff entities.

On June 26, 2008, Schenkkan, as California counsel for BIB and BIC, wrote to Chang and Pacquing, explaining that the BIB shareholders meeting at which Kwai, Choy, and Tana took over the corporation was conducted without lawful notice and in violation of the Barbados restraining order. Schenkkan informed them that, therefore, their appointment as officers and directors of BIC and the other plaintiff entities was equally invalid. Defendants supplied notices, minutes, and written consents relating to their meetings and stated that they would treat any act by counsel that was inconsistent with their prior directives as a breach of the fiduciary duties that counsel owed them.

On June 28, 2008, Barbados counsel applied for further immediate relief on behalf of Meyer, Lam, and Chan Dang Investment Co. Ltd. (Barbados litigation). The court issued an injunction against Kwai, Tana, Choy, and Pacquing that, among other things, restrained them from acting or holding themselves out as directors or officers of BIB or any affiliated entities, and from otherwise intermeddling in the business or management of the affairs of BIB or its related entities. Defendants, however, refused to agree not to interfere in the affairs of the plaintiff entities in California during the pendency of the Barbados litigation.

On July 7, 2008, plaintiffs filed the original complaint for declaratory and injunctive relief against defendants in this action. In the first cause of action for declaratory relief, plaintiffs sought a judicial declaration "that (1) at no relevant time has Kwai had authority to act on behalf of Starble; (2) at no relevant time has Starble been entitled to vote or otherwise exercise the rights of a shareholder with respect to BIB; (3) the actions taken by defendants and their agents, servants or associates . . . with respect to BIB and any other actions then or thereafter by them with respect to any of the plaintiff entities were null and void and of no force or effect; and (4) the defendants are not now

and never have been directors, officers or managers of any [of] the entities they have claimed to be."

On July 8, 2008, the trial court issued a temporary restraining order that required Tana, Chang, Pacquing, and Choy to comply with the Barbados High Court's June 28 injunction.

On July 17, 2008, Pacquing resigned from all of his secretary and treasurer positions in the plaintiff entities.

On August 5 2008, plaintiffs filed a first amended complaint. In addition to the first and second causes of action for declaratory and injunctive relief, plaintiffs alleged a third cause of action for publication of injurious falsehood, a fourth cause of action for slander of title, a fifth cause of action for breach of fiduciary duty, a sixth cause of action for interference with contract, and a seventh cause of action for interference with prospective economic advantage. Plaintiffs summarized their lawsuit as seeking damages to prevent defendants "from consummating in California an unlawful conspiracy to take ostensible control of the interrelated plaintiff entities . . . in violation of the governing documents of those entities, the governing laws of Barbados . . . and California . . . , and restraining Orders duly issued by the High Court of Barbados."

On August 8, 2008, the trial court granted the plaintiffs' request for a preliminary injunction and reissued the temporary restraining order.

On September 18, 2008, defendants filed a cross-complaint on behalf of themselves and the plaintiff entities against Meyer, her sister Evelyn Dang, and the estate of their father Chan Dang, for breach of fiduciary duty, conversion, waste of corporate assets, conspiracy, and an accounting. On April 29, 2009, the trial court granted plaintiffs' motion to strike the cross-complaint on the ground that it violated the court's August 8, 2008 injunction, without prejudice to its being re-filed should that injunction be lifted.

On April 9, 2009, the trial court denied defendants' special motion to strike the third through seventh causes of action, pursuant to the anti-SLAPP statute (Code Civ. Proc., § 425.16). On August 19, 2010, a panel of this Division affirmed the trial court's

denial of defendants' anti-SLAPP motion. (*Burlingame Investment Corp. v. Kwai, supra*, A125059.)

On January 26, 2010, following defendants' unsuccessful appeals, the Alameda County Superior Court entered judgment in the Alameda County action between BIC and Global Reach. The court consolidated several attorney fees and costs awards against Global Reach in the total amount of $1,254,050.26, which included interest on the awards.

On February 22, 2010, Tana filed for Chapter 11 bankruptcy on behalf of Global Reach in federal court. In the filing, Tana asserted that Global Reach owned all of Starble's shares, which was, in effect, an assertion that Starble owned 500 shares of BIB, Starble's only asset. Then on June 22, 2010, just before a court ordered auction of Global Reach's shares of Global Reach Collections to satisfy the Alameda County judgment, Tana filed for Chapter 7 bankruptcy on behalf of Global Reach, again listing 100 percent ownership of Starble as one of its assets. Tana also filed an objection to the Starble sale, asserting that he, Kwai, Chang, and Choy were interested parties because they were the elected or appointed directors or managers of the plaintiff business entities. The auction nonetheless proceeded and BIC acquired a controlling interest in Global Reach Collections.

In February 2011, the bankruptcy trustee agreed to a quitclaim sale of any interest Global Reach owned in Starble to BIC for $20,000. On March 1, 2011, Tana filed an objection to the sale on behalf of himself, Chang, Pacquing and Choy, on the ground that they were interested parties as the elected or appointed directors of plaintiff entities. The bankruptcy court eventually approved the sale of Starble to BIC.

On May 10, 2011, in light of Tana's assertion in the bankruptcy proceedings that defendants controlled the plaintiff entities, plaintiffs initiated contempt proceedings against defendants, and the trial court ordered defendants to show cause why they should not be held in contempt for violating the two Barbados injunctions and the 2008 San Francisco injunction. After the court tentatively ruled in favor of plaintiffs, defendants

demanded a full evidentiary hearing, and the court consolidated the contempt claim with the other claims set for trial.

The case proceeded to a bifurcated bench trial, with the declaratory relief phase taking place in March 2013. In its statement of decision filed on July 2, the court concluded that Global Reach and Kwai lacked authority to act on behalf of Starble, including voting its BIB shares, and that the all of defendants' actions taken at or after the June 18, 2008 shareholder's meeting were invalid.

In the second phase of the trial, which took place over a number of days in June and August 2014, the court dealt with plaintiffs' remaining claims, including the claims for injunctive relief, publication of injurious falsehood, slander of title, breach of fiduciary duty, and intentional interference with contract, and also addressed the contempt issue.[8]

In its January 23, 2015 statement of decision, the court found, generally, that all of defendants' actions in this matter were "intended to disrupt plaintiffs' business, run up plaintiffs' attorney's fees and force payment of Kwai's loan to SK Tang." With respect to the remaining causes of action, the court found that plaintiffs had proved all elements of the causes of action for publication of injurious falsehood and slander of title. The court further found that because defendants had held themselves out as directors and officers of the plaintiff entities, they had assumed the fiduciary duties accompanying those offices and had breached those duties. The court found, however, that attorney fees were not recoverable as damages for breach of fiduciary duty. As to the intentional interference with contract claim, the court found Kwai, Tana, and Chang interfered with the contract between the Howard Rice firm and BIC and BIB, and awarded plaintiffs the $11,000 they paid the firm "for the time it took the firm to sort out who it represented and satisfy itself that defendants' instructions and threats could prudently be disregarded."

[8] In 2012, the court had granted defendants' motion for summary adjudication of the cause of action for intentional interference with prospective economic advantage.

Discussing Kwai and Tana's culpability, the court summarized: "The decision by Kwai and Tana to take over BIB and its affiliates was a strategy not designed to vindicate a right but rather one designed to wage a war of attorney's fees that would force plaintiffs to bargain. The false statements they published were aimed at disrupting the ability of plaintiff business entities to conduct the business of managing a real estate development. Kwai and Tana had no interest in managing a real estate development, they wanted to collect $8 million. By the time they commenced the BIB take over, they had forced BIC to spend at least $810,000 in attorney's fees in the [promissory] note case. Their intention was to avoid paying the Global Reach judgment while provoking a war over corporate control that would generate another big legal bill for BIB and BIC."

As to Chang, who at trial had claimed an "almost complete failure of memory about his participation in the takeover," the court found that he knew of Kwai's dispute with the plaintiff entities, he knew and cooperated in the strategy to take over BIB and its affiliates, and he intended that his acts assist in collecting the SK Tang debt. The court further found that Chang was extremely reckless in verifying Tana and Kwai's authority to conduct the BIB shareholder meeting and appoint him to the board of BIC, and concluded Chang "published false statements because he recklessly disregarded the truth or falsity of the legitimacy of his election as president of BIC and the other plaintiff business entities."

Finally, as to Choy, the court found a lack of "sufficient evidence that Choy knew or recklessly disregarded the truth about Tana's and Kwai's authority to vote the Starble shares and appoint him as director of BIB and BIC." The court found that without that evidence, Choy was not vicariously liable for acts committed by Tana and Chang.[9]

With respect to damages, the court found that because plaintiffs' expenditure of attorney fees and costs was necessary to cure the harm caused by defendants' publication of injurious falsehoods and slander of title as to the plaintiff entities, plaintiffs were entitled to fees and costs as damages for legal services rendered by Howard Rice and

[9] Plaintiffs had dismissed Pacquing as a defendant earlier in the litigation.

Barbados counsel between June 23, 2008 and May 6, 2011, in the amount of $784,285.78.[10]

The court also discharged the order to show cause re contempt after finding that defendants' assertions in the bankruptcy court pleadings that they were directors and officers of the plaintiff entities were protected by the litigation privilege and could not serve as the basis for a finding of contempt.

The third phase of trial, to assess punitive damages, took place in January 2015. The court found that Kwai and Tana "acted with malice and oppression and fraud" when they "knowingly embarked on an illegal scheme to takeover [*sic*] plaintiff entities to force payment of the SK Tang loan" and that they "acted with willful disregard of the rights of the shareholders of BIB and BIC." The court awarded plaintiffs $1.00 in exemplary damages from Kwai and $784,285.78—the equivalent of the compensatory damages award—in exemplary damages from Tana.

The trial court entered judgment on February 19, 2015. On April 17, the court denied Kwai and Chang's motion for new trial and Tana's motion for new trial.

On April 7, 2015, Tana, Chang, and Kwai filed a notice of appeal.[11]

DISCUSSION

I. *Standard of Review*

" ' "In general, in reviewing a judgment based upon a statement of decision following a bench trial, 'any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision. [Citations.]' [Citation.] In a substantial evidence challenge to a judgment, the appellate court will 'consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of

[10] The fees awarded did not include fees incurred in much of the period before and during trial. At that point, plaintiffs were represented by their current counsel on a contingency basis.

[11] Although he was named in the notice of appeal, Kwai has not otherwise participated in the appeal in this court.

the [findings]. [Citations.]' [Citation.] We may not reweigh the evidence and are bound by the trial court's credibility determinations. [Citations.] Moreover, findings of fact are liberally construed to support the judgment. [Citation.]" ' " (*Axis Surplus Insurance Co. v. Reinoso* (2012) 208 Cal.App.4th 181, 189.) "In both jury and nonjury trials, factual findings made by the trier of fact are generally reviewed for substantial evidence. [Citations.]" (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 500–501 (*Ermoian*).) "When the decisive facts are undisputed, we are confronted with a question of law and are not bound by the findings of the trial court." (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.)

Here, the parties agree that, with limited exceptions, all issues raised on appeal present pure questions of law based on undisputed facts or on facts taken in the light most favorable to the judgment. (See *Ghirardo v. Antonioli*, *supra*, 8 Cal.4th at p. 799.)[12]

II. *Slander of Title Cause of Action*

Defendants contend the trial court erred when it found in favor of plaintiffs on their slander of title cause of action. As shall be discussed in detail, *post*, we conclude the corporate statements defendants filed in California and Barbados, inserting themselves as directors and officers of the plaintiff entities, satisfied the elements required to prove slander of title.

Defendants acknowledge that California has adopted the definition of slander of title set forth in sections 623A, 624, and 633 of the Restatement Second of Torts (Restatement). (*Seeley v. Seymour* (1987) 190 Cal.App.3d 844, 857 (*Seeley*); see also *Sumner Hill Homeowners' Association, Inc. v. Rio Mesa Holdings, LLC* (2012) 205 Cal.App.4th 999, 1030 (*Sumner Hill*); *Truck Ins. Exchange v. Bennett* (1997) 53 Cal.App.4th 75, 84 (*Truck Ins. Exchange*); *Appel v. Burman* (1984) 159 Cal.App.3d 1209, 1214.)

[12] The issues to which the substantial evidence standard of review is applicable will be noted in the discussion, to the extent those issues are relevant to our analysis. (See pt. IV., *post*; see *Ermoian*, *supra*, 152 Cal.App.4th at pp. 500-501.)

Section 623A of the Restatement describes the general principle for liability for publication of injurious falsehood:

"One who publishes a false statement harmful to the interests of another is subject to liability for pecuniary loss resulting to the other if

"(a) he intends for the publication of the statement to result in harm to interests of the other having a pecuniary value, or either recognizes or should recognize that it is likely to do so, and

"(b) he knows that the statement is false or acts in reckless disregard of its truth or falsity."

Comment a to this section explains that the general principle stated therein "is applied chiefly in cases of the disparagement of property in land, chattels or intangible things or of their quality. These cases are covered by the specific applications of the principle stated in §§ 624 and 626. The rule is not, however, limited to them. It is equally applicable to other publications of false statements that do harm to interests of another having pecuniary value and so result in pecuniary loss." (Rest.2d, Torts, § 623A, com. a.)

Section 624 of the Restatement describes disparagement of property, specifically slander of title:

"The rules on liability for the publication of an injurious falsehood stated in § 623A apply to the publication of a false statement disparaging another's property rights in land, chattels or intangible things, that the publisher should recognize as likely to result in pecuniary harm to the other through the conduct of third persons in respect to the other's interests in the property."

Comment c to the Restatement, section 624 provides that "[a]ny kind of legally protected interest in land, chattels or intangible things may be disparaged if the interest is transferable and therefore salable or otherwise capable of profitable disposal. It may be real or personal, corporeal or incorporeal**,** in possession or reversion." The legally protected interest may be, inter alia, either tangible property or "intangible property, whether represented and embodied in a document, negotiable or otherwise, or consisting

of a simple debt or other cause of action." (*Ibid.*) The list set forth in comment c "does not purport to be a complete catalogue of legally protected interests in land, chattels and intangible things capable of disparagement. There may be other interests recognized by the law of property that are salable or otherwise capable of profitable disposal and to which the rule stated in this Section is therefore applicable." (*Ibid.*)

Section 629 of the Restatement defines the term "disparagement":

"A statement is disparaging if it is understood to cast doubt upon the quality of another's land, chattels or intangible things, or upon the existence or extent of his property in them, and

"(a) the publisher intends the statement to cast the doubt, or

"(b) the recipient's understanding of it as casting doubt was reasonable."

Comment a to this section provides that the definition of disparagement includes, inter alia, "statements by words or other conduct, or both, that expressly or by implication deny the existence or extent of another's legally protected interest in land, chattels and intangible things . . . ." (Rest.2d Torts, § 629, com. a.) Comment c to the Restatement, section 629 further provides that "[a] common form of disparagement of another's property in land or other things is by the express denial of the other's title. Another common form is the indirect denial of another's title by the assertion of an inconsistent title in one's self or a third person." Finally, comment d to this section provides: "In order that a statement may be disparaging to another's property in land or other things, it is not necessary for it to deny the other's ownership. The statement is disparaging if it casts doubt upon the extent of the other's ownership, as by the assertion of an easement over land or a lien against it. So, too, it is enough that the matter stated impairs the vendibility of the land or other thing by denying or throwing doubt upon the other's power to make an effective sale or other disposal of it."[13]

[13] In part III., *post*, we will discuss the provisions related to pecuniary loss set forth in the Restatement, section 633.

The elements of the tort of slander of title thus include "(1) publication, (2) absence of justification, (3) falsity and (4) direct pecuniary loss." (*Seeley, supra,* 190 Cal.App.3d at p. 858, citing Rest.2d Torts, § 623A; accord, *Sumner Hill*, *supra*, 205 Cal.App.4th at p. 1030; *Truck Ins. Exchange*, *supra*, 53 Cal.App.4th at p. 84**;** cf. Judicial Council of Cal., Civil Jury Instruction 1730 [Slander of Title—Essential Factual Elements].) "The main thrust of the cause of action is protection from injury to the salability of property [citations], which is ordinarily indicated by the loss of a particular sale, impaired marketability or depreciation in value." (*Sumner Hill,* at p. 1030.)

In the present case, the trial court set forth, inter alia, the following false and unprivileged communications plaintiffs had alleged in support of both the slander of title cause of action and the cause of action for publication of injurious falsehood: (1) "Tana filed a false Statement of Information in California for BIC, BIC Properties, NDC, and Burlingame Limen (¶ 25)," (2) "Tana filed a false Notice of Change of Directors in Barbados on behalf of BIB stating that Kwai, Choy and Tana were directors and that Lam and Meyer were no longer directors (¶ 26). . . ."

The court first found that the falsity of defendants' statements had been established in the first phase of the trial. The court then found, as to both the injurious falsehood and slander of title causes of action, that, inter alia, defendants had "published false and unprivileged statements that" (1) "the directors of BIB and BIC and all other plaintiff business entities had been replaced and the individual plaintiffs excluded," (2) "that all officers and managers of plaintiff business entities had been replaced and [Meyer] excluded" and (3) "the corporate addresses were changed . . . ."

The court concluded that "Kwai, acting with and through Tana, knowingly and wrongfully cast doubt on the ownership of BIB shares by falsely purporting to exercise rights associated with ownership of BIB shares. Both Tana and Kwai knew that the shares had been transferred to Chan Dang in 1996 and that the voting rights that Starble retained had been suspended since August 1, 1999. Filing false statements of the change of directors and officers with the California Secretary of State and the government of Barbados spread the disparagement to the world." The court rejected defendants'

argument that if they published any false assertions of ownership or control, the assertions concerned shares in Starble and plaintiffs lacked standing to assert control of Starble's director and officers positions since they lacked any market value. The court found that this "argument is meritless and falsely circumscribes the scope of defendants' activities. Kwai and Tana knowingly and wrongfully slandered the title of BIB stock, and Kwai, Tana and Chang knowingly and wrongfully cast doubt on who owned or controlled BIC and consequently who owned each of the other plaintiff business entities.[14] All of this was intended to disrupt plaintiffs' business, run up plaintiffs' attorney's fees and force payment of Kwai's loan to SK Tang."

On appeal, defendants' primary challenge to the court's determination that the corporate filings—"Statements of Information in California filed for BIC, BIC Properties, NDC, and Burlingame Limen and the Notice of Change of Directors filed in Barbados on behalf of BIB"—slandered plaintiffs' title is to the finding that defendants' actions disparaged plaintiffs' *ownership* interest in those entities. Specifically, defendants contend the corporate filings did not concern the ownership of marketable, titled property, and that plaintiffs therefore did not satisfy the property ownership element in their slander of title cause of action.

Although slander of title actions often involve ownership of and title to land, the Restatement explicitly defines the required property interest much more broadly, as "[a]ny kind of legally protected interest in land, chattels or intangible things [that] may be disparaged if the interest is transferable and therefore salable or otherwise capable of

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[14] The trial court observed during argument on this issue that the statements in the corporate filings were related to ownership in part because the change of directors and officers implied that there had been a change in the ownership of corporate shares that would permit such a complete transformation in corporate management. In fact, Kwai claimed a 50 percent ownership share in BIB, which was a 90 percent owner of BIC. Defendants' then attorney acknowledged to the court that defendants had "claimed ownership of the stock of BIB sufficient to—change the management. Okay. They were wrong." Counsel nonetheless argued that it had not been established that the publications related "to a challenge to ownership or title to vendible property."

profitable disposal." (Rest.2d Torts, § 624, com. c; accord, *Truck Ins., supra*, 53 Cal.App.4th at p. 85, fn. 3.) Witkin explains: "Slander of title is a false and unprivileged disparagement, oral or written, of the title to real or personal property, resulting in actual pecuniary damage. [Citations.] [¶] . . . [¶] . . . The statement is disparaging if it throws any doubt on the ownership of the property. The disparagement may occur not only by complete denial of the title, but also by claim of some interest in it. Thus, filing or recording a document that appears to claim an interest or to cast doubt on the title may furnish the basis for an action. [Citations.]" (5 Witkin, Summary of Cal. Law (11th ed. 2017) Torts, § 747, pp. 1033-1034.)

In the present case, we agree with the trial court that defendants' official corporate filings in Barbados and California disparaged plaintiffs' property interest in BIB, BIC, and the other plaintiff entities by publishing the false statements that Lam—who was also a BIB shareholder—and Meyer had been ousted as management of the plaintiff entities and that defendants now controlled those entities. Indeed, the filings purported to make official defendants' complete control over the plaintiff entities. As plaintiffs observe, "these publications to the world would be likely to lead third persons to infer that there had been a change in the following ownership and control interest of plaintiffs, individually or collectively: [¶] (1) That BIB was now under different ownership, management, and/or control than before, which disparaged [appellant] Jackie Lam's direct ownership and control of shares in BIB, because he was a shareholder and one of the directors of BIB [citation]; [¶] (2) That BIC was now under different ownership management, and/or control than before, which disparaged plaintiff BIB's direct ownership and control of 90 percent of the shares of BIC [citation]; [¶] That all of BIC's subsidiary corporations and business entities (NDC, Limen, BIC Properties, and Vintage) were now under different ownership, management and/or control than before, which disparaged plaintiff BIC's direct ownership and control of all of these entities [citation]."

All of these interests were "transferable and therefore salable or otherwise capable of profitable disposal." (Rest.2d Torts, § 624, com. c.) They therefore constituted property interests for purposes of plaintiffs' slander of title cause of action. (See Rest.2d

Torts, § 624; *Sumner Hill*, *supra*, 205 Cal.App.4th at p. 1030.)[15] Moreover, as the trial court found, the false statements defendants "published were aimed at disrupting the ability of plaintiff business entities to conduct the business of managing a real estate development." The corporate filings thus were "disparaging" (see Rest.2d Torts, § 629) in that they were meant to and did "cast doubt upon . . . the existence or extent of" plaintiffs' interest in the plaintiff entities. (*Gudger v. Manton* (1943) 21 Cal.2d 537, 542-543 (*Gudger*), disapproved on another ground in *Albertson v. Raboff* (1956) 46 Cal.2d 375, 381; see 5 Witkin, Cal. Criminal Law, *supra*, § 747, pp. 1033-1034..)[16]

Defendants nonetheless maintain that the corporate filings did not state that plaintiffs no longer had an ownership interest in the plaintiff entities but instead, merely substituted certain defendants as directors and officers. They argue that the filings thus affected only the *use* of property, not its ownership. (See *Niedert v. Rieger* (7th Cir. 1999) 200 F.3d 522, 528 [cited by defendants, holding that because defendant's affidavit challenged only plaintiff's use of his land, i.e., his right to build a two-story house on it, plaintiff had failed to state a claim for slander of title]; *Gantt v. Riverbend Estates, Inc.* (Fla.Ct.App. 2000) 755 So.2d 817, 818 [cited by defendants, holding that a nonexclusive easement to use servient property was not subject to slander of title claim].) We disagree.

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[15] In arguing that only property with marketable title is subject to a slander of title claim, defendants cite *Howard v. Schaniel* (1980) 113 Cal.App.3d 256, 264, in which the appellate court rejected a slander of title claim because " 'title acquired by adverse possession is not a marketable title until the title is established by judicial proceedings against the record owner [citation].' " Given that the holding in *Howard* was based on the fact that the property interest claimed involved adverse possession, it is not relevant to the present case. (See *Sumner Hill*, *supra*, 205 Cal.App.4th at pp. 1028-1029 [similarly distinguishing holding in *Howard*].)

[16] Defendants' intent for the corporate filings to interfere with plaintiffs' ownership and control of the plaintiff entities is also reflected in Tana's and Chang's letters to Schenkkan at Howard Rice, directing him to withdraw BIC's pending motion for additional attorney fees against Global Reach in the Alameda litigation, to give up BIC's judgment against Global Reach (including $810,000 in attorney fees) in exchange for mutual releases, to forward all of Meyer's communications with counsel, and to cease communication with anyone but Chang.

For a statement to be disparaging to another's property interest, "it is not necessary for it to deny the other's ownership. . . . [I]t is enough that the matter stated impairs the vendibility of the land or other thing by denying or throwing doubt upon the other's power to make an effective sale or other disposal of it." (Rest.2d Torts, § 629, com. d.) Disparagement can thus include statements that "*by implication* deny the existence of another's legally protected interest in land, chattels and intangible things." (Rest.2d Torts, § 629, com. a, italics added; cf. *Hartford Casualty Insurance Co. v. Swift Distribution, Inc.* (2014) 59 Cal.4th 277, 295 (*Hartford*) [explaining, in trade libel context, that "[d]isparagement by 'reasonable implication' [citations] requires . . . a clear or necessary inference].)

Again, it was not merely the interests of the directors and officers of the corporations in their jobs that were disparaged. The sudden and complete replacement of their management, which was reflected in the corporate filings and which a third party would reasonably infer reflected new ownership and control, affected the value and interfered with the potential salability of the plaintiff entities and Lam's BIB shares. The trial court specifically found that defendants' purpose in taking these actions was to harm plaintiffs by interfering with their rights to ownership and control of the plaintiff entities. The filings thus cast doubt "by clear or necessary inference" on the property interests of BIC and BIB as well as Lam, a BIB shareholder, in the plaintiff entities. (*Hartford, supra*, 59 Cal.4th at p. 295; Rest.2d Torts, § 629, com. a.) As the trial court put it, "Kwai and Tana knowingly and wrongfully slandered the title of BIB stock, and Kwai, Tana and Chang knowingly and wrongfully cast doubt on who owned or controlled BIC and consequently who owned each of the plaintiff business entities."[17]

[17] Plaintiffs aptly describe the basis a third party would have for inferring a change in corporate ownership and control of the plaintiff entities: "[Defendants'] filing showed (in the middle of the biggest real estate crash in decades) concurrent changes for all five corporate plaintiffs in their directors, officers, corporate offices, and agents for service of process, to persons who had no connection to the prior long-term unified corporate control under Lai Ming Chan Meyer and Jackie Lam. . . ."

Nor was it necessary for the corporate filings to cast a *legal* cloud on plaintiffs' interest in the plaintiff entities. (See *Seeley*, *supra*, 190 Cal.App.3d at p. 858.) As a panel of this Division explained in *Seeley*: "Nowhere does a California decision require that the published matter create a legal 'cloud' upon plaintiff's title to constitute a disparagement. Indeed, the tort may be committed through the use of oral statements [citation] or signs [citation], neither of which involve any recordation whatsoever." (*Ibid.*; cf. *Gudger*, *supra*, 21 Cal.2d at pp. 542-543 [existence of a cloud on title "in the technical sense" is immaterial. "If the matter is reasonably understood to cast doubt upon the existence or extent of another's interest in land, it is disparaging to the latter's title where it is so understood by the recipient," citing Rest.2d Torts, § 629]; *Sumner Hill*, *supra*, 205 Cal.App.4th at p. 1030 [same].) Hence, a slander of title action may be based on "a publication of no real legal consequence" or one that "create[s] no interest in the property" if a third party could reasonably understand it as an announcement "to all the world" that the defendant was claiming an interest in the property. (*Seeley*, at pp. 858, 859.) "What makes conduct actionable is not whether a defendant succeeds in casting a legal cloud on plaintiff's title, but whether the defendant could reasonably foresee that the false publication might determine the conduct of a third person buyer or lessee. [Citations.]" (*Truck Ins. Exchange*, *supra*, 53 Cal.App.4th at p. 84; accord, *Seeley*, at p. 858 ["The spurious 'Memorandum of Agreement' [purporting to involve the lease of plaintiff's property] appears to be a perfect example of a publication of no real legal consequence, but one which [the defendant] could well anticipate might chill the enthusiasm of any prospective purchaser of [the plaintiff's] property"].)

Finally, defendants argue that they should not have been found liable for slander of title "in the absence of any showing that [they] knew of circumstances indicating that a third person would be likely to be influenced by the filings in a way that would cause actual pecuniary loss to BIB or BIC."[18] Defendants cite to comment b of the

[18] Defendants also point out that there is no evidence that any third party actually saw the corporate filings before they were removed. But the question here is not whether

Restatement, section 623A, which provides: "It is not enough that the publisher knows that there is some remote possibility that a reasonable man would not take into account, that some third person might be influenced by his publication. He does not take the risk that by some unlikely possibility his casual statement may prevent a sale or lease of land or goods. He must know of some circumstances that would lead a reasonable man to realize that the publication of the falsehood would be likely to cause the pecuniary loss to the other. It is not enough to make him liable that he could by reasonable diligence have discovered the likelihood that it would do so."

This comment is plainly inapplicable to the present circumstances in which defendants did not inadvertently make a "casual statement" which, only by "reasonable diligence," would have led them to discover the likelihood that plaintiffs would be harmed. (Rest.2d Torts, § 623A, com. b.) Rather, the evidence showed and the trial court found that defendants published the false statements in locations that were accessible to the public, with knowledge of the falsity of their statements, and with the intent to harm plaintiffs by their publication of those statements, including the intent that the statements be "reasonably understood" by third parties "to cast doubt upon the existence or extent" of plaintiffs' interest in the plaintiff entities. (*Gudger*, *supra*, 21 Cal.2d at pp. 542-543; *Seeley*, *supra*, 190 Cal.App.3d at pp. 858, 859.)

For all of these reasons, we conclude that, in the particular circumstances of this case, the trial court properly determined that defendants slandered plaintiffs' title by disparaging their interest in the property in question. (See *Sumner Hill*, *supra*, 205

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a third party was in fact aware of and influenced by the false statements, but rather whether defendants "could reasonably foresee that the false publication *might* determine the conduct of a third person buyer or lessee." (*Truck Ins. Exchange*, *supra*, 53 Cal.App.4th at p. 84, italics added; accord, *Seeley*, *supra*, 190 Cal.App.3d at p. 858 ["key to whether [a] defendant's conduct is actionable is not whether he has succeeded in casting a legal cloud on the plaintiff's title," but whether he could reasonably foresee that a third person's conduct "*might be determined thereby*"].)

Cal.App.4th at p. 1030; *Seeley*, *supra*, 190 Cal.App.3d at p. 858; Rest.2d Torts, §§ 623A, 624, 629.)[19]

III. *Trial Court's Award of Compensatory Damages*

Defendants also challenge the trial court's award of attorney fees for the entire period of June 2008 to May 2011, as compensatory damages for plaintiffs' pecuniary loss.

" ' "Pecuniary loss" ' is an essential element of a slander of title cause of action. [Citations.]" (*Sumner Hill*, *supra*, 205 Cal.App.4th at p. 1030.) Defendants acknowledge that the law permits an award of attorney fees as compensatory damages in slander of title cases, as discussed in section 633 of the Restatement. That section sets forth the rules regarding pecuniary loss applicable to all publications of injurious falsehood, including slander of title:

"(1) The pecuniary loss for which a publisher of injurious falsehood is subject to liability is restricted to

"(a) the pecuniary loss that results directly and immediately from the effect of the conduct of third persons, including impairment of vendibility or value caused by disparagement, and

"(b) the expense of measures reasonably necessary to counteract the publication, including litigation to remove the doubt cast upon vendibility or value by disparagement.

"(2) This pecuniary loss may be established by

"(a) proof of the conduct of specific persons, or

"(b) proof that the loss has resulted from the conduct of a number of persons whom it is impossible to identify."

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[19] In light of this conclusion, we agree with plaintiffs that it is not necessary to determine whether defendants' letters to Schenkkan and Meyer also support the court's finding that defendants slandered plaintiffs' title. Likewise, we need not determine whether defendants' conduct constituted the more general tort of publication of injurious falsehood alleged in plaintiffs' third cause of action.

Comment a to the Restatement, section 633 provides that the rules stated in this section "are applicable to the publication of any injurious falsehood within the rules stated in § 623A, including the disparagement of another's property in land and other things (see § 624), and disparagement of their quality. (See § 626)." Comment k to the Restatement, section 633 discusses the applicability of the rule stated in subdivision (1)(b) regarding pecuniary loss for the expense of litigation, explaining that, while the rule "is primarily applicable to the disparagement of property in land," it is also "applicable whenever similar relief may be obtained by an action to remove the cloud cast by the publication of disparaging matter upon the title to chattels or intangible things, or upon the quality of land or other things."

"California courts have adopted the Restatement definition of pecuniary damage for purposes of a slander of title cause of action. [Citations.] Accordingly, it is well established that attorney fees and litigation costs are recoverable as pecuniary damages in slander of title causes of action when, as expressed in subdivision (1)(b) of section 633 of the Restatement, litigation is necessary 'to remove the doubt cast' upon the vendibility or value of plaintiff's property. [Citations.]" (*Sumner Hill*, *supra*, 205 Cal.App.4th at p. 1030; accord, *Seeley*, *supra*, 190 Cal.App.3d at p. 865 [citing Rest.2d Torts, § 633]; *Appel v. Burman*, *supra*, 159 Cal.App.3d at p. 1215 [same].)

In *Sumner Hill*, the appellate court concluded that litigation expenses alone, with no other damages, are available in slander of title actions: "While it is true that an essential element of a cause of action for slander of title is that the plaintiff suffered pecuniary damage as a result of the disparagement of title [citation], the law is equally clear that the expense of legal proceedings necessary to remove doubt cast by the disparagement and to clear title is a recognized form of pecuniary damage in such cases [citations]." (*Sumner Hill*, *supra*, 205 Cal.App.4th at p. 1032; accord, *Contra Costa Title Co. v. Waloff* (1960) 184 Cal.App.2d 59, 68 [analogizing slander of title action to malicious prosecution action since "[b]oth are torts based on conduct calculated to result in litigation"].) "[A]llowing the recovery of attorney fees as damages in such cases is an application of the rule that a plaintiff is entitled to recover the amount of damages that

will compensate for all the detriment proximately caused by the defendant's tortious conduct." (*Sumner Hill,* at p. 1032.)

The *Sumner Hill* court rejected the defendants' assertion that permitting plaintiffs to recover attorney fees in such cases "would overthrow the American rule regarding recovery of attorney fees, as set forth in Code of Civil Procedure section 1021." (*Sumner Hill*, *supra*, 205 Cal.App.4th at p. 1034.) The court explained: "[W]hat we are dealing with here (as in the case of malicious prosecution) is a tort in which the case law has deemed such attorney fees and costs to be a form of special damages flowing from the defendant's tortuous conduct. [Citation.] An award of fees *as damages* is distinguishable form an award of fees *as fees*, and only the latter is directly covered by section 1021. [Citations.]" (*Id.* at p. 1034.) The *Sumner Hill* court therefore held that, "at least in cases such as this one where title was disparaged in a *recorded* instrument, attorney fees and costs necessary to clear title or remove the doubt cast on it by defendant's falsehood are, by themselves, sufficient pecuniary damages for purposes of a cause of action for slander of title." (*Sumner Hill*, at p. 1031.)[20]

In the present case, the trial court awarded a total of $784,285.78 in attorney fees and costs, for the period between June 23, 2008—the date of Chang's letter firing Howard Rice as plaintiffs' counsel—and May 6, 2011—shortly before the court ordered defendants to show cause why they should not be held in contempt for violating the two Barbados injunctions and the August 2008 San Francisco injunction. The court found "that the attorney's fees and costs incurred were reasonable and necessary to cure the harm caused by defendants' disparagement. This finding is bolstered by the overwhelming evidence that defendants proceeded with their illegal takeover in the mistaken belief that the plaintiffs' attorney's fees were not recoverable. For this reason,

[20] Although, unlike in *Sumner Hill*, this case does not involve land or a recorded instrument, we believe the same reasoning is applicable in the unusual circumstances presented here, where defendants filed official corporate documents with two government entities and plaintiffs had to counteract the publication by way of litigation. (See Rest.2d Torts, § 633, subd. (1)(b).)

they ignored or rejected all efforts to 'stand down' and did what they could to run up the fees to force a settlement."

Defendants contend the court erred in awarding as damages all attorney fees plaintiffs incurred between June 2008 and May 2011, rather than only those fees actually necessary to cure the disparagement. According to defendants, plaintiffs "*fully attained* this goal no later than 'a few days' after defendants filed the corporate disclosure statements with the California Secretary of State and Barbados corporations ministry . . . , which is when Mitch [Meyer, Meyers's husband, who was an employee of the plaintiff entities] testified that plaintiffs filed revised disclosure statements that reverted the names of the officers and directors of the plaintiff entities to those in place prior to the June 18, 2008 shareholders' meeting." Defendants therefore assert that, "[a]t the absolute latest, any risk of ongoing or future slander was cured by August 8, 2008, when the trial court issued [the second injunction]. Once that injunction was in place, plaintiffs were fully protected from any future statement by defendants that they were the officers of BIB, or had any right to control it or make decisions on its behalf."

In support of their position, defendants cite *Seeley*, in which we found that, "[a]lthough attorney fees and litigation expenses reasonably necessary to remove the [disparaging statement] from the record were recoverable, those incurred merely in pursuit of damages against . . . defendants were not. [Citation.]" (*Seeley*, *supra*, 190 Cal.App.3d at pp. 865–866; compare *Contra Costa Title Co. v. Waloff*, *supra*, 184 Cal.App.2d at p. 67 [court did not award attorney fees to plaintiff for prosecuting a slander of title suit, but instead was "allowing as an element of damages therein the cost of removing from the title the cloud wrongfully placed thereon"].)

This case differs from *Seeley* in that the ongoing litigation at issue here was not undertaken for the purpose of prosecuting the slander of title and other causes of action in pursuit of damages. Rather, as the court found, the litigation was necessary to remove the doubt cast by defendants' corporate filings upon plaintiffs' interest in the plaintiff entities, as well as to contain defendants' aggressive efforts to continue the disparagement. (See Rest.2d Torts, § 633, subd. (1)(b) [publisher of injurious falsehood

is subject to liability for, inter alia, "the expense of measures reasonably necessary to counteract the publication, including litigation to remove the doubt cast upon vendibility or value by disparagement"].) Even after the August 8, 2008 injunction was issued, which defendants claim is the latest time at which "any risk of ongoing or future slander was cured," defendants continued to forcefully claim that they were in control of the plaintiff entities and refused to agree that they would not persist with these claims. One example of defendants' ongoing efforts to cast doubt on ownership of the plaintiff entities was Tana's assertion in a May 2011 bankruptcy proceeding that defendants' controlled the plaintiff entities, which led plaintiffs to initiate contempt proceedings on May 10, 2011. Without a declaratory judgment, there was nothing to keep them from continuing the disparagement, including re-filing the corporate information statements.[21]

Further litigation was therefore necessary "to counteract the publication and remove the doubt cast by" defendants' actions (Rest.2d Torts, § 633, subd. (1)(b)), and an award of damages in the form of attorney fees was warranted.[22] As noted, plaintiffs

[21] As plaintiffs' former counsel, Dirk Schenkkan, testified, changing the names of the directors back to the individuals originally listed in the filings with the California Secretary of State and Barbados government did "[n]ot by any means" cure the harm, which required that plaintiffs "ensure [defendants] didn't do anything further, and that they weren't out there informing third parties like the State of Barbados and the State of California and perhaps BIC's banking relationships and its landlords and any other people who might have credit relationships with the company and become concerned over who was actually running the company." Schenkkan testified that there was nothing in place to stop defendants from changing the names back again on the corporate filings. Schenkkan testified that he made nine separate unsuccessful efforts in the first weeks after receiving the letters from Tana and Chang in June 2008, to get defendants to agree to wait for a court to resolve the ownership issues and to "take no further action and also reveal to us any other actions they had taken under color of this purported authority that might end up injuring the companies in the meanwhile."

[22] The court plainly understood the parameters of attorney fees as damages in this case, as when it said "that the amount that it takes to clear up the doubt that is cast on the authority or the ownership is recoverable as damages." The court also expressly disagreed with Tana's argument that the injunction "stopped everything" and so "[t]here was no need for a contempt proceeding."

requested and the trial court awarded attorney fees as damages only through May 6, 2011, over two years before plaintiffs prevailed on their declaratory relief cause of action and two years, eight months before they prevailed on their slander of title claim. (Compare *Seeley*, *supra*, 190 Cal.App.3d at pp. 865–866.) Thus, in contrast to *Seeley*, *supra*, at page 852, in which the party who wanted to buy the plaintiff's land obtained summary judgment declaring the disparaging lease memorandum invalid and expunging it from record prior to the plaintiff's successful slander of title action, here, the cloud on plaintiffs' interest in the plaintiff entities remained long after defendants' filings were removed, which required an ongoing legal effort to fully counteract.

Moreover, that some of the litigation may have been undertaken for the joint purpose of counteracting defendants' false statements *and* fighting their takeover attempt more broadly does not mean that the latter fees are not recoverable as damages, particularly given the intertwined nature of the issues. The court in *Sumner Hill* addressed this question of segregation of the various attorney fees expended: "In slander of title cases, the nature of the property rights and interests at stake, and concerning which the plaintiff has been forced to litigate, may differ on a case-by-case basis. In some cases, the slander of title issues may be sufficiently broad that resolution of those issues would be inseparable from other issues and claims that arose in the same litigation." (*Sumner Hill*, *supra*, 205 Cal.App.4th at p. 1036.) The *Sumner Hill* court concluded the defendants in that case had "failed to explain why, as a matter of law, the trier of fact could not conclude on this record that the claims and issues were so inextricably intertwined that apportionment was not feasible." (*Id.* at p. 1037.) Here too,

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We reject defendants' assertion, raised in their reply brief, that the trial court erroneously "failed to keep in mind that slander of title and injurious falsehood are ultimately retrospective torts that address *past* speech, and are thus limited to curing harm caused by specific statements *already made*." Here, the court did not award attorney fees as damages solely "for litigation commenced to prevent *potential* conduct merely feared by plaintiffs . . . ." Instead, as noted, the court was justified in awarding attorney fees for litigation necessary to counteract defendants' false statements, including, as defendants put it in their opening brief, to cure "any risk of ongoing or future slander."

to the extent some of the fees awarded were also based on the larger fight against defendants' improper conduct, the trial court reasonably found that the slander of title issues were "sufficiently broad that resolution of those issues [was] inseparable from other issues and claims that arose in the same litigation," at least through May 6, 2011. (*Id*. at p. 1036.)[23]

Defendants nonetheless argue that even if attorney fees as damages were properly awarded to plaintiffs for their efforts to contain and resolve disparagement, the fees incurred in connection with the contempt claims should not have been considered part of the damages for the slander of title. According to defendants, segregating the contempt fees from the recoverable fees "would have been simple for the trial court to accomplish, because plaintiffs' own evidence clearly delineated between fees and costs related to the 'takeover' versus fees and costs related to 'contempt.' "

During argument in the trial court regarding compensatory damages, the court stated that it had considered whether it should treat the fees for plaintiffs' ultimately unsuccessful contempt motion as part of the damages award, explaining its view as

[23] Defendants further argue against the award of attorney fees by asserting that plaintiffs "did not need their tort claims to achieve their primary goal of stymieing Global Reach's efforts to make use of Tang's power of attorney. Indeed, they could have solved that problem faster by filing an action for an expedited proceeding to determine corporate directors, under Corporations Code section 709—a vehicle far better suited than tort law for the resolution of intra-corporate disputes, and which provides for trial *five days* after a complaint is filed." (Fn. omitted.) Aside from the fact that this statute applies only to "domestic corporation[s]" (Corp. Code, § 709, subd. (a)), we agree with plaintiffs that, having "been found to have *knowingly* pursued a 'borderline criminal strategy' [citation], of trying to extract money from a third party with a false takeover claim, of having rejected every request to back off from their scheme and instead try their claims in a court of law, extending over nearly eight years, it is rather brazen of [defendants] to complain that [plaintiffs] should have defended themselves differently than using the approach that finally stopped them." We find unconvincing defendants' attempt to cast plaintiffs as "[d]isgruntled investors and corporate insiders [who] should not be running to the courthouse door at the first sign of managerial disagreement, knowing they can recoup their attorney's fees just by claiming that every challenge to their corporate control is a 'slander' to the 'title' of their shares."

follows: "So we have the situation where we've got the aggrieved lender trying to do an end run to get at this pile of dough that exists in California. He's frustrated at every turn. He feels like he's been double dealt. Maybe he has been. So he cooks up a scheme to take over the companies, and he does, and all hell breaks loose. First in Barbados and then in California. He, his lawyer, and the other appointed directors and officers are told don't hold yourself out as officers and directors. Injunctive relief pending, whatever, the action in Barbados, the nature of which I am still not clear on, and then this declaratory relief action that was filed. Following this there is a new round of letters sent, positions taken, about who we are and what we are doing. So what's the solution? You just wait for the declaratory relief action? You take a deposition? Or do you seek to enforce a court's order, and the only way to do that, in my opinion, is contempt. How do I segregate the two? What were they supposed to have done to mitigate their damages, if you will, and how is the contempt a kind of separate pathway to the end they seek which is getting your guys off title and not making claim [*sic*] anymore?"

The court further observed that its "failure to find contempt was by about the narrowest margin I could imagine and had . . . much to do with my reluctance to impose sanctions for filings in a courtroom. I'm not sure I'm right on it. But I didn't do it. The answer is I can't see how you could have this lawsuit and find it unreasonable to seek contempt. Your best argument might be that it was awfully expensive to pursue contempt. But pursuing contempt and pursuing the lawsuit were intimately linked. So I'm not prepared to knock out the 400-plus [thousand dollars in contempt fees]." The court later explained that its statement of decision made clear that it was not awarding plaintiffs any fees that "may be recoverable for the enforcement by means of contempt of [a] court order." Rather, it had found that plaintiffs were "entitled to all of their fees. And I found that the contempt action . . . was part and parcel of the entire effort to clear the ownership and authority and to maintain it thus . . . ."

We find reasonable the court's conclusion that plaintiffs' efforts in pursuing contempt were simply part of their overall attempt to counteract and remove the doubt cast by defendants' slander of title, and that the contempt-related fees were therefore

inseparable from the efforts to cure the harm. (See *Sumner Hill*, *supra*, 205 Cal.App.4th at p. 1036.)[24] Accordingly, the court properly awarded as damages the attorney fees plaintiffs expended over slightly less than three years to counteract and cure the cloud cast by defendants' disparagement related to the ownership and control of the plaintiff entities. (See Rest.2d Torts, §§ 623A, 624, 633; see also *Sumner Hill*, at pp. 1036-1037.)

Finally, as to the intentional interference with contract cause of action, the court awarded as damages the $11,000 in attorney fees plaintiffs paid to Howard Rice "for the time it took for the firm to sort out who it represented and satisfy itself that defendants' instructions and threats [in their June 2008 letters to Schenkkan] could prudently be disregarded." Because the $11,000 amount was also included in the total amount we have concluded the court properly awarded for the attorney fees and costs plaintiffs expended "to cure the harm caused by defendants' disparagement," we need not decide

[24] Defendants point to trial exhibit 313A, which includes a breakdown of the amount of attorney fees and costs plaintiffs paid to Howard Rice related to "contempt" ($495,029.86), as part of the total fees and costs spent on the "takeover" ($868,640.87). Defendants argue that the contempt fees are thus divisible from the rest of the fees and, therefore, should be subtracted from the total fees before determining the amount of damages plaintiffs are owed for fighting defendants' slander of title. First, as plaintiffs point out, the trial court questioned the evidentiary value of the "title of the columns" in exhibit 313A. Second, on cross-examination, Mitch Meyer testified that no damages were requested for plaintiffs' new counsel for filing or prosecuting the contempt motion in May and June 2011. Instead, the fee amounts in the "contempt" column in exhibit 313A were listed only through August 2009 and none of the fees were related to the actual motion for contempt filed in 2011. Meyer explained that the "contempt" fees listed in the exhibit were "only about the Howard Rice and [Barbados counsel's] invoices incurred in trying to counter what we viewed as the violations of the injunctions: and obtaining restraining orders against defendants. The need to pursue contempt is reflected in Mitch Meyers's trial testimony regarding when plaintiffs "finally got to the point of" deciding to file a motion for contempt: "I came to the conclusion that now, almost three years after the preliminary injunction was issued, they still do not accept it. They believe they are still the management of the company that we run." This testimony underscores the intertwined nature of the issues involved. (See *Sumner Hill*, *supra*, 205 Cal.App.4th at p. 1037.)

whether that amount was *also* properly awarded as damages in the intentional interference with contract cause of action.

IV. *Trial Court's Award of Punitive Damages*

Defendants contend that even if the trial court properly found defendants liable for attorney fees as compensatory damages, it erred in assessing punitive damages against Tana.

At the conclusion of the punitive damages phase of the trial, the court explained the basis of its punitive damages ruling, first describing the overall purpose of Kwai and Tana's conduct: "It was the effort by [Kwai] to collect what turned out to be a really bad loan. And between Kwai and [Tana], they might as well have gone out and hired leg-breakers for all the subtlety with which they approached this.

"If we go step by step, Tana and probably Kwai, although all he said was that he authorized everything and left it to the lawyers, were extremely clever in the face of consistent rebukes about their legal status to pursue the debt in the way they hoped to. But piece by piece—yes, there's a statute that, taken out of all context, in Barbados appears to say that if I hold up the bank and sit behind the president's seat, that I am now the president until someone files a lawsuit to the contrary.

"That is the kind of thinking I think that Tana may seriously delude himself into believing is good lawyering. If that is good lawyering, we could shut up all the courtrooms and just avail ourselves of the alley. That is not good lawyering. It is a borderline criminal act. [¶] . . . The whole thing stinks of a two-bit collection action carried out by some highly sophisticated people."

The court then observed that Tana's counsel "ma[d]e a point that Tana has said he had absolutely no interest in the outcome other than serving his client. He wasn't getting paid, and his contingent fee agreement ended even before the really—the real first step where you knew things were going off the tracks, the assignment of the Global Reach claim from the foreign to the newly formed domestic arm or entity [i.e., Global Reach Collections].

"I could say I just don't believe him, but for purposes of this I'll say he did not have a promise of payment. He did not have a contractual right. Then it's even more disturbing and dangerous that a lawyer would embark upon a self-righteous crusade on behalf of and with the authorization of his client to fix things in the way that he decided to do it." The court then said to Tana: "But what you did and what Kwai did through you was just kind of cold-blood, unfolding [*sic*], reprehensible. Just ignoring what I consider to be pretty plain facts that any lawyer, any decent businessman would have taken into account. I found specifically that you and Kwai and the other defendants I found culpable . . . acted with reckless disregard for the truth of the matter: The power of attorney. The ability to take over Starble and vote its shares."

The court concluded with an explanation of the amount of punitive damages assessed from both Kwai and Tana: "In assessing punitive damages, I take into account the fact that the plaintiffs mustered absolutely no evidence of [Kwai's] current net worth, and I can only speculate that he's worth anything. I award one dollar, a nominal amount, because I have no evidence of net worth. [¶] Tana's net worth is eight million dollars. . . . [¶] I find that the reprehensibility of the conduct is severe." The court further found "that awarding an exactly equal amount of punitive damages to the principal judgment is an adequate form of deterrence. . . ."

In its statement of decision, the court found "by clear and convincing evidence that Kwai and Tana acted with malice and oppression and fraud. They knowingly embarked on an illegal scheme to takeover [*sic*] plaintiff entities [and] force payment of the SK Tang loan. Kwai and Tana acted with willful disregard of the rights of the shareholders of BIB and BIC. A third phase to assess exemplary damages has concluded. The court has determined that an award of exemplary damages is warranted. The court finds that exemplary damages against Kwai in the amount of $1 be awarded to plaintiffs. The court finds that exemplary damages against Tana in the amount of one times compensatory damages or $784,285.78 be awarded to plaintiffs."

A. *Substantial Evidence of Malice, Oppression, or Fraud*

Defendants first claim that substantial evidence does not support the court's finding that Tana was guilty of malice, oppression, or fraud, as was required to justify an award of punitive damages.

Punitive damages may be awarded in slander of title actions. (*Seeley, supra,* 190 Cal.App.3d at p. 866.) They may be awarded in addition to actual damages "for the sake of example and by way of punishing the defendant" only "where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." (Civil Code, § 3294, subd. (a).)[25] "Malice" is defined in section 3294 as "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (§ 3294, subd. (c)(1).) " 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (§ 3294, subd. (c)(2).) " 'Fraud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (§ 3294, subd. (c)(3).)

The trial court's finding that a defendant acted with oppression, fraud, or malice must be upheld if it is supported by substantial evidence. (*Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc*. (2000) 78 Cal.App.4th 847, 891 (*Shade Foods*).) "As in other cases involving the issue of substantial evidence, we are bound to 'consider the evidence in the light most favorable to the prevailing party, giving him the benefit of *every reasonable inference*, and *resolving conflicts* in support of the judgment.' [Citation.] But since the [court's] findings were subject to a heightened burden of proof, we must review the record in support of these findings in light of that burden. In other words, we must inquire whether the record contains 'substantial evidence to support a

[25] All further statutory references are to the Civil Code unless otherwise indicated.

determination by clear and convincing evidence . . . .' [Citation.]" (*Ibid*.; accord, *Stewart v. Truck Insurance Exchange* (1993) 17 Cal.App.4th 468, 481-481.)

"However, as with any challenge to the sufficiency of the evidence, it is the appellant's burden to set forth not just the facts in its favor, but all material evidence on the point. ' "Unless this is done the error is deemed waived." ' [Citation.]" (*Stewart v. Union Carbide Corp.* (2010) 190 Cal.App.4th 23, 34, disapproved on another ground in *Webb v. Special Electric Co., Inc.* (2016) 63 Cal.4th 167, 188.) Here, in arguing that there is not substantial evidence to support the court's findings under section 3294, defendants have presented an extremely one-sided view of the evidence, which justifies a finding of forfeiture. (See *ibid*.)

Moreover, even were we to address defendants' claim on the merits, we would find it lacking. First, defendants challenge the court's specific finding that Tana, together with Kwai, "knowingly embarked on an illegal scheme to takeover [*sic*] plaintiff entities to force payment of the SK Tang loan." Defendants assert that the court based this finding as to Tana on (1) its incorrect belief that Tana had a contingent fee agreement with Kwai that would enrich Tana if defendants obtained a large settlement, and (2) its conclusion that defendants' goal was to run up plaintiffs' attorney fees, which was based solely on Choy's statement to Mitch Meyer in 2007 that defendants could " 'make you spend money on attorney fees.' "

With respect to the question of a contingent fee agreement, Tana testified during the punitive damages phase of the trial that his contingency fee agreement with Kwai ended when the trial court in Alameda County dismissed the Global Reach action following Kwai's failure to pay the required bond. He also had acknowledged earlier in the trial, however, that 90 percent of his litigation practice over the past several years had been the cases related to Global Reach and Global Reach Collections, with all of his representation being on a contingency fee basis. The court was not required to believe Tana's later testimony on this point over his initial testimony and other relevant evidence admitted at trial.

In addition, the court made clear at the conclusion of the punitive damages phase of trial that, even assuming it believed Tana's testimony that his contingent fee agreement had ended before the slander of title occurred and he had no financial interest in this matter, "it's even more disturbing and dangerous that a lawyer would embark upon a self-righteous crusade on behalf of and with the authorization of his client to fix things in the way that he decided to do it." Thus, the court did not, as defendants assert, base its finding regarding Tana's participation in the illegal scheme solely on the existence of a contingent fee agreement. Rather, its finding was based on the abundant evidence in the record, which it cited in both its oral ruling and statement of decision and which defendants ignore, that supports its determination that defendants acted with malice, oppression, and/or fraud when they "knowingly embark[ed] on an illegal scheme to takeover [*sic*] plaintiff entities to force payment of the SK Tang loan." (See § 3294, subd. (a); *Shade Foods*, *supra*, 78 Cal.App.4th at p. 891.)

Likewise, defendants' claim that the court based its finding that defendants' goal was to run up plaintiffs' attorney fees solely on Choy's 2007 statement to Mitch Meyer distorts the record and ignores the evidence that supports the finding, beyond the cited testimony of Mitch Meyer. The court found—and circumstantial evidence in the record supports its finding—that defendants attempted to force plaintiffs to pay the SK Tang loan amount by disrupting their businesses and running up their attorney fees. As the court stated, the evidence of defendants' strategy of "provoking a war over corporate control that would generate another big legal bill for BIB and BIC" was revealed not only in Choy's statement to Mitch Meyer, but also in (1) "the Global Reach bankruptcy," (2) "Tana's contingent fee agreement," (3) "Tana's reckless disregard for lawful notice and the Barbados injunction when [he] held the June 28[, 2008] meeting and subsequent Board meeting," (4) "Tana's intransigence in refusing repeated offers to 'stand down' and let the Barbados court sort out the lawfulness of the takeover" and (5) "his admission at trial that he did not anticipate that plaintiffs could recover attorney's fees if he was

wrong."[26] The evidence thus supports the court's finding that part of defendants' plan was to run up plaintiffs' attorney fees and that their conduct warranted punitive damages. (See § 3294, subd. (a); *Shade Foods, supra*, 78 Cal.App.4th at p. 891.)

Second, defendants challenge the court's finding that "Kwai and Tana acted with willful disregard of the rights of the shareholders of BIB and BIC." According to defendants, "to the extent the court based its ruling on its determination that defendants owed, and breached, fiduciary duties to the plaintiffs, that conclusion was erroneous because a party cannot owe fiduciary duties to shareholders of an entity of which it never became a fiduciary." This assertion is puzzling in that there is nothing from which to infer that the court was referring to a breach of fiduciary duty when it made this statement. Instead, the court's language closely followed the definitions of malice (§ 3294, subd. (c)(1) [acting with "conscious disregard of the rights or safety of others"]) and oppression (§ 3294, subd. (c)(2) ["despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights"]). Defendants' argument regarding their lack of fiduciary duties to plaintiffs is irrelevant to the court's finding in support of its award of punitive damages.

Defendants next argue that BIB was remiss in not holding annual shareholder meetings, as required by Barbados law, and that "[h]ad BIB held a shareholder meeting, either the annual meeting required by Barbados law or the one [defendants] requested, that would have provided them an opportunity to discuss Global Reach's claims of ownership and control of Starble, and the power of attorney Global Reach obtained from Tang, without engaging in any litigation at all." The trial court rejected this "unclean hands" argument, explaining in its statement of decision in the declaratory relief phase of

[26] We find unpersuasive defendants' assertion that the record contains "significant evidence that Tana's motive was purely to advance his client's interests within what he believed to be the permissible bounds of the law; that doing so may increase an opponent's fees does not render it wrongful." This interpretation of Tana's motive simply ignores the evidence in the record, on which the trial court relied, showing a different and much less innocent motive on the part of Tana.

trial that "[t]he failure to call a meeting was justified by Kwai's refusal and failure to provide evidence of his authority to represent Starble, and in fact, as the court has concluded, Kwai did not have authority to call such a meeting . . . ." We agree with the court that defendants' unclean hands argument is meritless and fails to excuse or justify Tana's conduct.

Defendants further argue that evidence of Tana's "despicable" conduct was insufficient to warrant an award of punitive damages because he, unlike BIB, followed the law. As defendants put it: "[T]he record contains significant undisputed evidence that Tana relied on his Barbados counsel and at least attempted to interpret and apply Barbados law as best he could," by (1) relying on the advice of his Barbados attorney, Alair Shepherd, who testified that he advised Tana that the first Barbados injunction applied only to restrain the meeting held on March 25, 2008, and that Starble was entitled to vote its BIB shares, and (2) relying "on various provisions of Barbados law in taking the actions he did."[27]

As already noted, at the conclusion of the punitive damages phase of trial, the court made clear that it completely rejected this argument and explained the basis in the record for that rejection: "[Tana and Kwai] were extremely clever in the face of consistent rebukes about their legal status to pursue the debt in the way they hoped to. But piece by piece—yes, there's a statute that, taken out of all context, in Barbados appears to say that if I hold up the bank and sit behind the president's seat, that I am now the president until someone files a lawsuit to the contrary. [¶] That is the kind of thinking I think that Tana may seriously delude himself into believing is good lawyering. If that is good lawyering, we could shut up all the courtrooms and just avail ourselves of

[27] Specifically, defendants state that "Tana relied on section 81 of the Barbados Companies Act, which states that '[a]n act of a director or officer is valid notwithstanding any irregularity in his election or appointment, or any defect in his disqualification.' [Citation.] Similarly, section 117 of the Barbados Companies Act states that '[t]he acts of a person as a director are valid notwithstanding that [¶] . . . the person's appointment as a director was defective . . . .' [Citation.]"

the alley. That is not good lawyering. It is a borderline criminal act." Also, in its statement of decision, the court specifically found that plaintiffs had "introduced sufficient evidence to establish both Tana and Kwai knew that they lacked the authority to call the BIB shareholder's meeting, vote Starble's shares in BIB, appoint officers and directors, repudiate the Chan Dang loan and otherwise interfere with plaintiff business entities. The evidence establishes that they accepted the risk of these unlawful tactics in order to force BIB to pay Kwai what SK Tang owed."

The court thus acknowledged Tana's position that he had relied on Barbados law, but found, on the contrary, that Tana knew that what he was doing was illegal and harmful to plaintiffs, but did it anyway in order to achieve his and Kwai's goals. Substantial evidence in the record supports the court's finding that there was no good faith reliance on Barbados law or counsel that would preclude an award of punitive damages. (See § 3294, subd. (a).)

In sum, even if this issue were not forfeited, we would find that substantial evidence supports the trial court's determination, by clear and convincing evidence, that Tana was "guilty of oppression, fraud or malice," for purposes of awarding punitive damages. (§ 3294, subd. (a); see also *Shade Foods, supra*, 78 Cal.App.4th at p. 891.)

B. *Alleged Due Process Violation*

Defendants contend the punitive damage award violated due process because, as a matter of law, Tana's conduct was not sufficiently reprehensible to satisfy constitutional requirements.

"[I]n deciding whether an award of punitive damages is constitutionally excessive," the appellate court must conduct "an independent assessment of the reprehensibility of the defendant's conduct, the relationship between the award and the harm done to the plaintiff, and the relationship between the award and civil penalties authorized for comparable conduct. [Citations.]" (*Simon v. San Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1172.) In this case, defendants challenge only the trial court's reprehensibility finding.

The United States Supreme Court has explained that " '[t]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct.' [Citation.] We have instructed courts to determine the reprehensibility of a defendant by considering whether: the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident. [Citation.] The existence of any one of these factors weighing in favor of a plaintiff may not be sufficient to sustain a punitive damages award; and the absence of all of them renders any award suspect. It should be presumed a plaintiff has been made whole for his injuries by compensatory damages, so punitive damages should only be awarded if the defendant's culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence. [Citation.]" (*State Farm Mutual Automobile Insurance. Co. v. Campbell* (2003) 538 U.S. 408, 419 (*State Farm*); accord, *Jet Source Charter, Inc. v. Doherty* (2007) 148 Cal.App.4th 1, 8-9.)

Here, defendants argue that none of the factors set forth in *State Farm* for determining the degree of reprehensibility are present in this case. We agree that the harm caused was not physical, did not evince an indifference to others' health or safety, and was not aimed at financially vulnerable targets. It is less clear whether the conduct involved "repeated actions"; defendants published the disparaging statements in California and Barbados only once, although the cloud cast over plaintiffs' property interests caused by those statements continued as defendants kept insisting that the plaintiff entities were now under new ownership and control and refused to stand down. (*State Farm*, *supra*, 538 U.S. at p. 419; see also pt. II., *ante*.) There can be no doubt, however, that the harm caused by Tana's conduct "was the result of intentional malice, trickery, or deceit," *not* "mere accident." (*Ibid*.) We need not repeat all of the damning evidence or the trial court's various findings already set forth in this opinion, other than

to say that, in light of the evidence of Tana's relentless, intentionally harmful conduct, we agree with the court's finding that "the reprehensibility of the conduct" was "severe."[28]

Therefore, especially given that the punitive damages awarded were equal to the amount of the compensatory damages (see *Jet Source Charter, Inc. v. Doherty*, *supra*, 148 Cal.App.4th at p. 9 [" 'few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process' "]) and was limited to approximately 10 percent of Tana's net worth (see *Seeley*, *supra*, 190 Cal.App.3d at p. 869 ["awards totaling more than 10 percent of a defendant's net worth have been disfavored by our courts"], we conclude defendants have not demonstrated that the court's punitive damages award violated due process. (See *State Farm*, *supra*, 538 U.S. at p. 419; *Simon v. San Pablo U.S. Holding Co.*, *supra*, 35 Cal.4th at p. 1172.)

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to plaintiffs.

[28] Although not raised by defendants, we would likewise find, in comparing "the relationship between the award and the harm done to the plaintiff[s], and the relationship between the award and civil penalties authorized for comparable conduct," that the punitive damages award was not constitutionally excessive. (*Simon*, *supra*, 35 Cal.4th at p. 1172.)

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Kline, P.J.

We concur:

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Richman, J.

_____
Miller, J.