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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ZHAOSHENG CHEN et al., Plaintiffs and Respondents, v. BAM BROKERAGE, INC. et al., Defendants and Appellants.	B286946 (Los Angeles County Super. Ct. No. KC065334)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dan T. Oki, Judge. Reversed.

Law Offices of David S. Lin and David S. Lin for Plaintiffs and Respondents.

Goe & Forsythe and Marc C. Forsythe for Defendant and Appellant BAM Brokerage, Inc.

Atkinson Andelson Loya Ruud & Romo and Dan J. Bulfer; Goe & Forsythe and Marc C. Forsythe for Defendant and Appellant Brian Horowitz.

INTRODUCTION

Yishun Chen and his son Zhaosheng Chen (the Chens) filed this action against BAM Brokerage, Inc. and its owner and principal, Brian Horowitz, alleging that Horowitz fraudulently induced the Chens to transfer certain patent rights to BAM and that BAM subsequently conveyed those patent rights to a trust created for the benefit of Horowitz's daughters, Brittany and Brooke. Following a court trial, the trial court entered judgment in favor of the Chens, ordered Horowitz and BAM to return the patent rights, and awarded the Chens $2 million in compensatory damages and $2 million in punitive damages. Horowitz and BAM appeal, arguing, among other things, substantial evidence did not support the damages awards. We agree and reverse.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Chens Contract with Horowitz To Sell Wagons*

Yishun, an engineer, immigrated to the United States from China in 1995. Sometime after 2006 Yishun, his wife Nancy, and Zhaosheng formed a company called Everyday Sports to design and manufacture recreational outdoor equipment. The Chens claim their proficiency in English was limited, and they testified at trial through a Mandarin interpreter.

In May or June 2008 the Chens met Horowitz and began doing business with him. During the next several years, Everyday Sports sold folding wagons to BAM, a distribution company formed and operated by Horowitz. In June 2011 Everyday Sports and BAM entered into a contract titled "Contract of Exclusive Operating and Marketing," which gave

BAM the exclusive right to sell in the United States certain folding wagons supplied by Everyday Sports.

Although the agreement referred to Everyday Sports as the designer of the folding wagons, the parties dispute who designed the wagons. Yishun testified at trial that he designed the wagons in 2006 and that Zhaosheng contributed to certain design aspects of the wagons. Horowitz testified that he designed the wagons in 2007 and that Zhaosheng learned of the designs from Horowitz.

B. *The Chens File Patent Applications and Assign Their Patent Rights to BAM*

In October 2008 and March 2010 the Chens filed patent applications with the United States Patent Trademark Office (USPTO) describing the folding wagons. The first application, No. 12/287,579 (the '579 Application), listed Yishun and Zhaosheng as the inventors. The second application, No. 12/715,623 (the '623 Application), listed Zhaosheng as the inventor. The USPTO published the '579 Application on April 15, 2010 and the '623 Application on June 24, 2010.[1]

At a meeting on July 29, 2011 Horowitz told the Chens that third parties were manufacturing and importing wagons that infringed on the Chens' patent rights. Horowitz gave the Chens two written documents (one for each patent application) purporting to "assign, sell and set over to BAM . . . the entire right, title and interest, domestic and foreign, in and to the inventions" pertaining to the patent applications in exchange for $1 each.

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[1] The USPTO approved the '579 application on September 6, 2011 and the '623 Application on March 5, 2013.

The Chens claimed they did not understand the documents. The Chens testified Horowitz described the documents as authorizations for Horowitz and his attorneys to file claims against infringing third parties on behalf of the Chens, not as transfers of the Chens' rights in the patents. Consistent with the Chens' testimony, Horowitz sent contemporaneous emails to Nancy stating, "My lawyer needs you to sign so he could help you," and "I need you to pay for defending your patent. I don't mind helping you but this is your part please." Horowitz testified his attorney explained the effect of the assignments, and the Chens agreed to the assignments. The Chens later sent Horowitz executed copies of the assignment documents.

C. *The Chens Sue To Recover Their Patent Rights, Which BAM Then Assigns to a Trust Named After Horowitz's Daughters*

In January 2012 the Chens learned BAM had recorded the assignments with the USPTO. In December 2012 the Chens filed this action against BAM and Horowitz seeking the return of their patent rights, compensatory damages, and punitive damages.

On February 25, 2013 Horowitz filed for Chapter 7 Bankruptcy in the United States Bankruptcy Court for the Central District of California. On August 12, 2013 the bankruptcy court granted Horowitz a discharge.

On April 17, 2013 BAM executed a document purporting to assign the patents to a trust called the Britt and Brooke International Limited (the Trust). In light of this development, the Chens amended their complaint to add a cause of action for violation of the Uniform Voidable Transactions Act (Civ. Code, § 3439 et seq. (UVTA)). At the time of trial, the operative

complaint included causes of action for intentional misrepresentation and related claims against BAM arising from the transfer of the Chens' patent rights to BAM,[2] violation of the UVTA against BAM and Horowitz arising from BAM's transfer of the Chens' patent rights to the Trust, and declaratory relief.

D. *The Trial Court Rules in Favor of the Chens*

The trial court, finding Horowitz and BAM had fraudulently induced the Chens to assign their patents rights to BAM, ruled in favor of the Chens on most of their causes of action relating to the Chens-BAM transfer.[3] The court, finding BAM (through Horowitz) subsequently assigned the patent rights to the Trust to prevent the Chens from recovering their patents, also ruled in favor of the Chens and against BAM and Horowitz on the Chens' cause of action for violation of the UVTA based on the BAM-Trust transfer. The trial court, in paragraphs 2(a), 2(b), 2(c), and 2(d) of the judgment, voided the assignment of the patents from the Chens to BAM, restored ownership of the patents to the Chens, ordered BAM and Horowitz to execute all documents necessary to restore ownership of the patent rights to the Chens, and imposed a constructive trust on the patents. The trial court, in paragraphs 2(e) and 2(f) of the judgment, awarded the Chens $2 million in compensatory damages, consisting of $500,000 in annual "loss of income" for the years 2012 through

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[2] After Horowitz filed for bankruptcy, the Chens voluntarily dismissed him from these causes of action.

[3] The court found in favor of BAM on the Chens' cause of action for negligent misrepresentation.

2015, plus $2 million in punitive damages. The court made BAM and Horowitz jointly and severally liable for both the $2 million compensatory damages award and $2 million punitive damages award.[4]

BAM and Horowitz timely appealed. BAM and Horowitz challenge only the award of compensatory damages and punitive damages and the finding of liability on the UVTA cause of action. BAM does not challenge the trial court's findings on the other causes of action or the portions of the judgment ordering BAM to return the patent rights and granting related relief.

DISCUSSION

A. *Standard of Review*

"'In reviewing a judgment based upon a statement of decision following a bench trial, we review questions of law de novo'" and "'apply a substantial evidence standard of review to the trial court's findings of fact.'" (*Ribakoff v. City of Long Beach* (2018) 27 Cal.App.5th 150, 162.) In a substantial evidence challenge, "'"'"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.]" . . . . "[T]he appellate court will 'consider all of the evidence in the light

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[4] During the trial, the Chens voluntarily dismissed Brittany and Brooke in light of the representation by their attorney (who also represented BAM and Horowitz) that the Trust had either "voided" the Chens-BAM assignment or re-conveyed the patent rights from BAM to the Chens. BAM and Horowitz take the position on appeal that BAM has the patent rights because they were never conveyed to the Trust.

most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]."""""" (*Barickman v. Mercury Casualty Co.* (2016) 2 Cal.App.5th 508, 516.)

B. *The Trial Court Erred in Awarding Compensatory Damages*

1. *The Chens' Damages Evidence*

The Chens attempted to prove their damages, not with evidence of their losses, but with evidence of Everyday Sports' decreases in income after the Chens assigned the patent rights to BAM in 2011. In particular, the Chens introduced Everyday Sports' tax returns to support their claim for damages. The tax returns showed that Everyday Sports reported the following gross sales, costs of goods sold, and gross profits for the years 2009-2013:

Year	**Gross Sales**	**Costs of Goods Sold**	**Gross Profits**
2009	$225,073	$189,497	$35,576
2010	$1,097,821	$1,068,908	$28,913
2011	$977,526	$957,539	$19,987
2012	$236,839	$195,394	$41,445
2013	$459,160	$324,975	$131,319

The Chens did not provide any written evidence of Everyday Sports' sales for the years 2014-2017. Zhaosheng testified Everyday Sports lost between $500,000 and $600,000 in annual "total income" since 2012 because it no longer could sell

the wagons subject to the patent rights the Chens had transferred to BAM. When asked on cross-examination to explain Everyday Sports' loss of income, Zhaosheng stated it "was because [Horowitz] defrauded us and took away our patents, so we stopped doing business with him. And also [Horowitz] owed us a lot of money for the products." Zhaosheng did not otherwise explain how he calculated the lost income after the patent assignments.

2. *Substantial Evidence Did Not Support the Court's Award of Compensatory Damages*

BAM and Horowitz argue substantial evidence did not support the trial court's award of compensatory damages because the Chens provided only, at best, evidence of Everyday Sports' lost gross income, but not its lost profits. BAM and Horowitz argue evidence of a plaintiff's lost gross income, standing alone, does not support an award of damages. BAM and Horowitz are correct.[5]

"In business cases, damages are based on net profits, as opposed to gross revenue." (*Meister v. Mensinger* (2014) 230 Cal.App.4th 381, 397; see *Parlour Enterprises, Inc. v. Kirin*

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[5] """Whether a plaintiff 'is entitled to a particular measure of damages is a question of law subject to de novo review. [Citations.] The amount of damages, on the other hand, is a fact question . . . [and] an award of damages will not be disturbed if it is supported by substantial evidence.""" (*Markow v. Rosner* (2016) 3 Cal.App.5th 1027, 1050.) """The evidence is insufficient to support a damage award only when no reasonable interpretation of the record supports the figure.""" (*Atkins v. City of Los Angeles* (2017) 8 Cal.App.5th 696, 738.)

Group, Inc. (2007) 152 Cal.App.4th 281, 287 ["'Damage awards in injury to business cases are based on net profits.'"]; *Kuffel v. Seaside* (1970) 11 Cal.App.3d 354, 366 ['It is fundamental that in awarding damages for the loss of profits, net profits, not gross profits, are the proper measure of recovery."].) """Net profits are the gains made from sales "after deducting the value of the labor, materials, rents, and all expenses, together with the interest of the capital employed."""""" (*Parlour Enterprises,* at p. 287; see *Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 884 (*Kids Universe*); *Resort Video, Ltd. v. Laser Video, Inc.* (1995) 35 Cal.App.4th 1679, 1700 (*Resort Video*).) To support an award of lost profits, "'[a] plaintiff must show loss of net pecuniary gain, not just loss of gross revenue.'" (*Parlour Enterprises*, at p. 287; *Kids' Universe*, at p. 884.)

Courts have routinely reversed damage awards based exclusively or primarily on decreases in the plaintiff's revenue or income without considering the plaintiff's expenses. For example, in *Gerwin v. Southeastern Cal. Assn. of Seventh Day Adventists* (1971) 14 Cal.App.3d 209 the plaintiff sued to recover the lost profits he would have realized operating a hotel after the defendant breached a contract to sell bar and restaurant equipment for use in the plaintiff's hotel. (*Id.* at pp. 212, 214-215.) The trial court awarded the plaintiff $20,000 in lost profits based on the plaintiff's evidence that a third party had offered to lease the hotel for $1,500 per month if the plaintiff could adequately furnish the hotel. (*Id.* at pp. 221-222.) The court in *Gerwin* reversed the award of lost profits because the plaintiff failed to submit evidence of the costs of providing hotel furnishings and maintaining the hotel. The court stated "there was no showing that the rental income from the lease would have

constituted net profit to plaintiff . . . . [T]he evidence, at the very most, showed loss of gross revenue, not loss of net pecuniary gain." (*Id.* at p. 222.)

Similarly, in *Kuffel v. Seaside Oil Co.* (1970) 11 Cal.App.3d 354 the plaintiffs, owners of a gasoline station, and the defendant, an oil company, entered into exclusive supply agreements. The plaintiffs sued to recover lost profits after the defendant fraudulently induced them to terminate the agreements. (*Id.* at p. 360.) The court in *Kuffel* reversed an award of damages in favor of the plaintiffs, in part because "the plaintiffs assumed that their overhead expenses . . . would have remained the same . . . even though they would have sold more gasoline . . . and by this circuitous route[ ] in actuality arrived at a loss based in part, at least, on gross profits instead of net profits." (*Id.* at p. 366; see *Resort Video*, *supra*, 35 Cal.App.4th at p. 1700 [affirming an order granting a new trial on damages where "the evidence, at most, may have shown the possibility of loss of gross revenue, not the loss of any net pecuniary gain"].)

Here, even assuming evidence of Everyday Sports' damages was evidence of the Chens' damages, the Chens failed to prove Everyday Sports lost any profits as a result of the Chens' assignment of their patent rights to BAM. While Everyday Sports' tax returns showed less total revenue in 2012 and 2013 than in 2011—the year the Chens assigned the patent rights to BAM—the tax returns did not show Everyday Sports' profits decreased. In fact, the tax returns (the only documentary evidence the Chens submitted in support of their damages claim) showed Everyday Sports' profits increased after they transferred the patent rights to BAM. According to the tax returns, the "costs of goods sold" by Everyday Sports decreased by several

hundred thousand dollars from 2011 to 2012 and 2013. As a result, Everyday Sports' reported "gross profits" increased from $19,987 in 2011 to $41,445 in 2012 and $131,319 in 2013. For all the tax returns show, the Chens appear to have made more money after they assigned their patent rights to BAM. The trial court ignored evidence of Everyday Sports' costs and profits and awarded the Chens an amount representing Everyday Sports' losses in gross sales. That was error.

The trial court's award suffers from additional evidentiary shortcomings. For example, the court stated it was awarding $2 million in compensatory damages to give the Chens $500,000 in lost income for each of the years from 2012 to 2015. But even assuming Everyday Sports' tax returns were proof of the Chens' damages, the Chens submitted Everyday Sports' tax returns only for 2012 and 2013. The Chens did not provide any documentation of Everyday Sports' income, expenses, or profits for 2014 and 2015. Absent additional information, any inference by the trial court that Everyday Sports continued to earn less revenue or may have earned less gross profits in 2014 and 2015 was speculative. (See *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 769, 773-774 ["lost profit damages must not be speculative" and "must 'be proven to be certain both as to their occurrence and their extent'"]; *Food Safety Net Services v. Eco Safe Systems USA, Inc.* (2012) 209 Cal.App.4th 1118, 1132 ["'damages which are speculative, remote, imaginary, contingent, or merely possible cannot serve as a legal basis for recovery'"]; *Greenwich S.F., LLC v. Wong* (2010) 190 Cal.App.4th 739, 760 [lost profits must be "'proven to be more than speculative, remote, or contingent'"].)

In addition, to prove to a reasonable degree of certainty that the assignments of the patent rights caused Everyday Sports (and therefore the Chens) to lose profits, the Chens had to show a nexus between Everyday Sports' failure to sell the wagons described by the two patents and any lost profits. For example, the Chens could have submitted evidence of the difference between the profits generated from selling the relevant wagon models before the assignments and the profits (if any) generated from selling the relevant wagon models after the assignments. The Chens did not attempt to do this. Nor did the Chens provide evidence of Everyday Sports' revenue (or profits) from selling the wagons compared to other products or services.

The only other evidence of damages was Zhaosheng's statement that Everyday Sports lost $500,000 to $600,000 in total income each year because it could not sell the wagons. This testimony was not substantial evidence of Everyday Sports' lost profits, let alone the Chens'. Zhaosheng did not explain how he calculated these numbers or whether his estimates were of lost gross income or lost profits. (See *Minnegren v. Nozar* (2016) 4 Cal.App.5th 500, 507 ["Speculation or conjecture alone is not substantial evidence."]; see, e.g., *Kids' Universe*, *supra*, 95 Cal.App.4th at p. 888 [evidence of lost profits was insufficient where the plaintiff "failed to assert any method for determining lost *profits*," and the opinion of the plaintiff's expert that the plaintiff would have realized profits was based on "unexplained projected capital value of [the business] without any analysis of its net worth"]; *Piscitelli v. Friedenberg* (2001) 87 Cal.App.4th 953, 988, 990 [plaintiff's estimate of lost commissions was "speculative as a matter of law" where the plaintiff "provided no evidence on which [his expert's] supposition was based"].)

Indeed, in light of Everyday Sports' tax returns, Zhaosheng was probably referring to lost gross income.

It is true that the Chens did not have to prove their lost profits with "'"mathematical precision."'" (*Sargon Enterprises, Inc. v. University of Southern California*, *supra*, 55 Cal.4th at p. 774.) But the Chens did have to introduce sufficient evidence of their claimed lost profits to a reasonable degree of certainty. (See *S. C. Anderson, Inc. v. Bank of America* (1994) 24 Cal.App.4th 529, 536 [plaintiff should "produce the best evidence available in the circumstances to attempt to establish a claim for loss of profits"]; *id.* at p. 538 [reversing an award of lost profits where "there was no showing by [the plaintiff] that it was impossible or impracticable to produce evidence relating to the accuracy of its bid . . . or its likely net profit"].) The Chens did not explain why they could not provide records showing income related to the wagon models subject to the two patents they transferred to BAM, why Everyday Sports' tax returns showed profits actually increased in the years immediately after the assignments, or even why Everyday Sports' lost profits were equivalent to the Chens' lost profits.

C. *Because the Chens Failed To Prove the UVTA Violation Caused Them Harm, the Judgment Against Horowitz Must Be Reversed*

The only cause of action against Horowitz was for violation of the UVTA by fraudulently causing BAM to transfer the Chens' patent rights to the Trust. (See Civ. Code, § 3439.04, subd. (a)(1) [a "transfer made . . . by a debtor is voidable as to a creditor" where "the debtor made the transfer" with "actual intent to hinder, delay, or defraud any creditor of the debtor"].) Horowitz

argues the judgment against him cannot stand because the Chens failed to prove his liability under the UVTA. Horowitz is correct again.[6]

"'A well-established principle of the law of fraudulent transfers is, "[a] transfer in fraud of creditors may be attacked only by one who is injured thereby. Mere intent to delay or defraud is not sufficient; injury to the creditor must be shown affirmatively. In other words, prejudice to the plaintiff is essential."'" (*Berger v. Varum* (2019) 35 Cal.App.5th 1013, 1020; accord, *Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75, 80; see *Bennett v. Paulson* (1935) 7 Cal.App.2d 120, 123 ["'The intent to delay or defraud creditors is not enough; there must also be a resulting injury to the creditor, which must be affirmatively shown.'"].) Generally, "'[i]t cannot be said that a creditor has been injured unless the transfer puts beyond [her] reach property [she] otherwise would be able to subject to the payment of [her] debt.'" (*Mehrtash*, at p. 80; accord, *Fidelity National Title Ins. Co. v. Schroeder* (2009) 179 Cal.App.4th 834, 862.)

Here, even if Horowitz were responsible for BAM's transfer of the patent rights to the Trust, the Chens failed to show the transfer caused them any harm. The evidence was undisputed that, by the time of trial, BAM had either voided the transfer to the Trust or had received the patent rights back from the Trust. Thus, the transfer from BAM to the Trust did not put the patent

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[6] BAM also argues the judgment against it under the UVTA cannot stand. The trial court, however, found BAM liable on other causes of action, and BAM does not challenge those findings or the remedies the court imposed based on those findings. Therefore, we do not address whether the Chens proved their claim against BAM for violation of the UVTA.

rights any farther from the Chens' reach than they were before the transfer of those rights from the Chens to BAM. There was no longer a transfer for the Chens to set aside or void; the Chens could recover the patent rights directly from BAM, as they could before the allegedly fraudulent transfer from BAM to the Trust.

Moreover, although the Chens may have been able to recover reliance and other consequential damages caused by the fraudulent transfer (see *Berger v. Varum*, *supra*, 35 Cal.App.5th at p. 1023 [plaintiff stated a cause of action under the UVTA where the plaintiff alleged the defendant's fraudulent transfers caused the plaintiff to incur "various fees and penalties, damage to his credit, and lost rental income"]), the Chens did not introduce any evidence of such damages. Other than their alleged lost profits (which the Chens failed to prove), the Chens did not seek or introduce evidence of any damage caused by the BAM-Trust transfer. Nor do they argue on appeal they suffered any such damages. Therefore, because the Chens did not show that any wrongful conduct by Horowitz under the UVTA caused them any harm, Horowitz is entitled to judgment on the Chens' UVTA cause of action against him.

D. *The Trial Court Erred in Awarding Punitive Damages*

Because we are reversing the trial court's judgment against Horowitz on the UVTA cause of action, we also reverse the punitive damage award against Horowitz. (See *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 315.)

As for BAM, the trial court, in addition to awarding the Chens compensatory damages, awarded the Chens their ownership rights in the patents and imposed a constructive trust.

BAM does not challenge this aspect of the judgment. And although BAM challenges the award of punitive damages, BAM does not argue the order requiring them to return the Chens' patent rights and imposing a constructive, without the (now reversed) award of compensatory damages, cannot support an award of punitive damages. (See *Fullington v. Equilon Enterprises,* LLC (2012) 210 Cal.App.4th 667, 685 ["California law permits an award of punitive damages only if a plaintiff suffers 'actual injury.'"]; *Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 530 ["'an award of exemplary damages must be accompanied by an award of compensatory damages' . . . '[o]r its equivalent, such as restitution [citation], an offset [citation], damages conclusively presumed by law [citations], or nominal damages'"]; cf. *Gagnon v. Continental Casualty Co.* (1989) 211 Cal.App.3d 1598, 1603, fn. 5 ["an actual award of compensatory damages is not necessary; rather the plaintiff need only prove that he or she *suffered* damages or injury"].) But even assuming the order awarding the Chens' their patent rights and imposing a constructive trust could support an award of punitive damages, the trial court erred in awarding punitive damages against BAM.

"[A]n award of punitive damages cannot be sustained on appeal unless the trial record contains meaningful evidence of the defendant's financial condition." (*Adams. v. Murakami* (1991) 54 Cal.3d 105, 109-110; see *Nickerson v. Stonebridge Life Ins. Co.* (2016) 63 Cal.4th 363, 374 ["evidence of a defendant's financial condition is a prerequisite to an award of punitive damages"]; *Garcia v. Myllyla* (2019) 40 Cal.App.5th 990, 995 ["A plaintiff who seeks punitive damages ordinarily must introduce evidence of a defendant's net worth."]; *Hill v. Superior Court* (2016) 244 Cal.App.4th 1281, 1287 ["The proof required to recover punitive

damages requires that the plaintiff provide evidence of the defendant's net worth."].) "Net worth is the most common measure" of proving a defendant's financial condition, but "not the exclusive measure." (*Baxter v. Peterson* (2007) 150 Cal.App.4th 673, 691 (*Baxter*).) ""'What is required is evidence of the defendant's ability to pay the damage award,'"" regardless of the measure used. (*Green v. Laibco, LLC* (2011) 192 Cal.App.4th 441, 452; accord, *Baxter*, at p. 680.) "[A] plaintiff who seeks to recover punitive damages . . . bear[s] the burden of establishing the defendant's financial condition." (*Adams*, at p. 123; see *Green*, at p. 452.)

"In most cases, evidence of earnings or profit alone" is "not sufficient 'without examining the liabilities side of the balance sheet.'. . . Normally, evidence of liabilities should accompany evidence of assets, and evidence of expenses should accompany evidence of income." (*Baxter*, *supra*, 150 Cal.App.4th at p. 680; see *Farmers & Merchants Trust Co. v. Vanetik* (2019) 33 Cal.App.5th 638, 648 (*Farmers*) ["A plaintiff seeking punitive damages must provide a balanced overview of the defendant's financial condition; a selective presentation of financial condition evidence will not survive scrutiny."].) "We may not infer sufficient wealth to pay a punitive damages award from a narrow set of data points, such as . . . ownership of valuable assets." (*Farmers*, at p. 648.)

BAM argues the evidence the Chens provided at trial was insufficient to show BAM's ability to pay punitive damages. BAM is correct again. Even if Horowitz's assets are considered part of BAM's assets, the only evidence of BAM's ability to pay was evidence of four real estate properties the Chens claimed were worth several million dollars, two of which (according to public

records submitted by the Chens) Horowitz owned or had owned and one of which BAM owned. The listed value of these real estate properties was not meaningful evidence of BAM's (or Horowitz's) ability to pay punitive damages because the Chens did not submit any evidence of the encumbrances and liabilities on the properties. (See *Baxter*, *supra*, 150 Cal.App.4th at pp. 691-692 [punitive damages reversed where, although the evidence showed the defendant owned several properties, there was no evidence whether the properties were encumbered]; *Kelly v. Haag* (2006) 145 Cal.App.4th 910, 917 [defendant's statement he had several hundred thousand dollars in equity in two properties was not "meaningful evidence of [the defendant's] financial condition or ability to pay" punitive damages because the plaintiff did not introduce evidence concerning whether the defendant still owned the properties, whether the properties were encumbered, or whether the defendant had other liabilities]; see also *Farmers*, *supra*, 33 Cal.App.5th at p. 650 [valuation of real estate property was not sufficient evidence of the defendant's financial conditions absent evidence concerning whether there were any liens on property].) Nor did the Chens introduce evidence of BAM's (or Horowitz's) other liabilities (or lack thereof).

Moreover, there was undisputed evidence BAM and Horowitz no longer owned (or never owned) three of the four properties. Horowitz testified he never owned one of the properties (he said he only rented it), and the Chens did not offer any evidence to rebut this testimony. Horowitz also testified (again without contradiction) that lenders had foreclosed on two of the properties, including the one previously owned by BAM, and the Chens' evidence of the properties' sales histories

supported Horowitz's testimony. Horowitz bought the fourth property for $3.1 million in 2006, and he testified the lender had also foreclosed on that property. While the Chens introduced evidence suggesting Horowitz still owned the property,[7] this "narrow set of data points" (*Farmers*, *supra*, 33 Cal.App.5th at p. 648) was not enough to support a punitive damage award absent any evidence of whether and to what extent the property was encumbered or other evidence of BAM's and Horowitz's liabilities.

DISPOSITION

The judgment is reversed. The matter is remanded with directions to enter a new judgment in favor of Horowitz and against the Chens and to modify the judgment against BAM by striking the award of compensatory and punitive damages in paragraphs 2(e) and 2(f) of the judgment. BAM and Horowitz are to recover their costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J. FEUER, J.

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[7] An undated history of the public record of the property reflected that Horowitz's lender had rescinded notices of default in November 2016 and February 2017. Horowitz testified the foreclosure eventually occurred in April 2017.