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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

LAMONT BRUMFIELD et al.,

Plaintiffs and Appellants,

v.

DEATH ROW RECORDS, INC., et al.,

Defendants and Appellants.

B149561

(Los Angeles County
Super. Ct. No. BC135461)

APPEAL from the judgment and order of the Superior Court of Los Angeles County. Emilie H. Elias, Judge. Affirmed.

Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, Sean Riley and Steven L. Weinberg for Defendants and Appellants.

Esner & Chang, Stuart B. Esner and Andrew N. Chang for Plaintiffs and Appellants.

* * * * *

Death Row Records, Inc. (hereafter Death Row Records), and its owner Marion Knight (hereafter Knight; sometimes collectively referred to as Death Row) appeal from a judgment entered after a jury found Death Row liable for: (1) interference with contract; (2) interference with prospective economic advantage; and (3) false promise. The jury awarded plaintiffs Lamont and Kenneth Brumfield (individually, Lamont and Kenneth, collectively the Brumfields) \$14,344,000. The trial court reduced the damage award to \$5,519,000, finding that the damages were duplicative and in excess of the evidence. The Brumfields cross-appeal from the order reducing the punitive damages award.

We affirm.

CONTENTIONS

Death Row contends that: (1) the trial court's order denying Knight's request to personally appear and give testimony at trial prevented Death Row from having a fair trial;¹ (2) the interference verdicts are erroneous; (3) the jury was improperly permitted to find Death Row liable on both interference claims; (4) the jury's false promise verdict was erroneous as a matter of law; (5) the Brumfields produced no evidence at trial supporting a permissible measure of damages; and (6) the damages awards were excessive and not supported by the record.

The Brumfields contend that the trial court's statement of reasons does not support its reduction of the punitive damages award.

FACTS AND PROCEDURAL BACKGROUND

The second amended complaint

On March 13, 2000, the Brumfields filed a second amended complaint (SAC) for: (1) breach of contract (against Ricardo E. Brown, Jr. (hereafter Kurupt)); (2)

¹ At the time of trial, Knight was incarcerated.

breach of contract (against Kurupt); (3) breach of contract (against Kurupt); (4) conspiracy to interfere with contract (against Knight, who is also known as Suge Knight and does business as Suge Music, Suge Publishing and Ain't Nuthin Goin On But Fu-Kin, Andre Young (hereafter Dr. Dre), Calvin Broadus (hereafter Snoop Doggy Dogg or Snoop Dogg), Sharitha Knight, Death Row Records, Interscope Records, Inc., and Knightlife Management, Inc.);² (5) fraud and conspiracy to defraud (against Knight, dba Suge Music, Suge Publishing and Ain't Nuthin Goin On But Fu-Kin, Dr. Dre, Snoop Dogg, Sharitha Knight, Death Row Records, Interscope Records, Inc., and Knightlife Management, Inc.); (6) intentional interference with economic relationship (against Dr. Dre, Death Row, Knight, and Knightlife Management, Inc.); (7) negligent interference with economic relationship (against Dr. Dre, Death Row Records, Knight, and Knightlife Management, Inc.); (8) violation of Business and Professions Code section 17200 (against Knight, Dr. Dre, Death Row Records, Sharitha Knight, and Knightlife Management, Inc.); (9) constructive trust and accounting (against Knight, Dr. Dre, Death Row Records, Sharitha Knight, and Knightlife Management, Inc.); and (10) quantum meruit (against Knight, Dr. Dre, Death Row Records, Sharitha Knight, and Knightlife Management, Inc.).

The Brumfields' promotion of Kurupt

The facts adduced at trial show that Lamont “discovered” Kurupt, and that the Brumfields invested much time and at least \$65,000 into Kurupt’s career. Lamont began promoting and recording young developing rappers in 1989, learning the business from one of the first rappers, Curtis Blow. Lamont, however, was not licensed as a talent agent. Sometime in late 1989 or early 1990, Lamont was introduced to Kurupt, realized that he had talent, and told Kurupt that he would like to

² Of the defendants named in the SAC, Death Row Records and Knight are the only parties to these appeals.

promote him for recording contracts and help him to record demos. Since Kurupt was under 18 years of age, Lamont met with Kurupt's father, Ricardo Brown, Sr., explained that he wanted to record Kurupt, and assured Mr. Brown that if things did not work out between Lamont and Kurupt, that Mr. Brown would not owe any money to Lamont. Lamont subsequently sent a letter to Mr. Brown to that effect. He also told Kurupt that he could walk away from Lamont if he was not satisfied with Lamont's efforts after six months.

Kenneth, Lamont's brother, operated a publishing company called Hoodsta-4-Life Publishing. When he was introduced to Kenneth, Kurupt asked him to be his manager. Kenneth also guaranteed to Kurupt's father that he would not owe Lamont or Kenneth money if they were not successful in promoting Kurupt's career.

Subsequently, in the spring of 1990, Lamont produced demos for Kurupt, set up photo shoots, and paid for Kurupt's clothing, personal and living expenses. He also arranged for Kurupt to live with him after Kurupt's father kicked him out of his house. Kenneth testified that he spent \$10,000 on Kurupt from the time they first met until Kurupt signed an exclusive management agreement with Kenneth. Lamont booked performances for Kurupt at the Good Life Club every Thursday and Sunday, as well as performances at the Palladium, the Roxy and Paradise 24. In early 1991, Lamont presented Dr. Dre with one of Kurupt's demo tapes, and in June 1991, Lamont secured publishing and recording work for Kurupt with a group called SOS, on the Tabu record label. The Brumfields prepared the paperwork to enable Kurupt to receive a 10 percent writer's share and credit.

Later, the Brumfields retained the services of attorney John Smith, a 30-year music industry veteran, to prepare three contracts between them and Kurupt. In November 1991, Kurupt signed: an exclusive recording agreement with Lamont's company Rapp Central Productions (production agreement); a publishing agreement with Kenneth's company Hoodsta-4-Life Publishing (publishing agreement); and a management agreement with Kenneth, for an initial term of three years, and one

additional option term (management agreement). The production agreement provided that Kurupt's royalty was fixed at 7 percent with an escalation to 7.5 percent at 500,000 units sold and 8 percent at one million units. After the Brumfields signed exclusive recording and publishing agreements with Kurupt, Kenneth spent \$20,000 to \$25,000 on Kurupt, and devoted 20 to 30 hours per week promoting Kurupt. The Brumfields spent at least \$65,000 over the years to support and promote Kurupt, often borrowing money from family members and friends to do so.

Dr. Dre invited Lamont, Kenneth and Kurupt to a picnic, where he spoke with them about his new record label, Death Row Records. Dr. Dre introduced Knight as his business partner. The Brumfields, as well as Kurupt, made it clear to Dr. Dre, Knight and Snoop Dogg that they had exclusive contracts with Kurupt. After Kurupt performed at the picnic, Kurupt was invited to Dr. Dre's house to record songs for Dr. Dre's album "Chronic." Because he was not sure whether Kurupt's work would be used for "Chronic," Lamont did not press the issue of his management fees. "Chronic" was released in December 1992, and sold millions of records. After the album was released, with Kurupt's work on it, Death Row and Lamont retained attorneys to work out a deal. The Brumfields' attorney proposed a royalty of 10 percent as to recordings, and a 50-50 split as to song publishing. Knight assured the Brumfields' attorney that the proposal was reasonable, and told his attorney to finalize the matter. However, Death Row's attorney never called the Brumfields' attorney to finalize the deal.

The Brumfields continued to promote Kurupt and to take care of his living expenses. When Dr. Dre invited Kurupt to go on tour to promote the "Chronic" album, Kurupt told the Brumfields that he was going to visit family in Philadelphia, but instead went on tour for four weeks. The Brumfields found out that Kurupt was on tour a week after Kurupt left. When Kurupt returned, he assured the Brumfields that everything was fine. In late 1993, Kurupt worked on another Death Row album, and was asked by an agent of Death Row to sign a contract committing him to sign on with

Interscope Records if Death Row did not work out. Lamont stopped Kurupt from signing, advising him to get an attorney to look over the contract.

In May 1994, Kenneth renewed his management agreement with Kurupt. Despite the multimillion dollar profit of the “Chronic” album and continuous assurances from Knight that the Brumfields would get paid, the Brumfields never received any compensation. At one point, Knight wanted Lamont to sign an agreement authorizing Death Row to pay the Brumfields for Kurupt’s recordings, but Lamont refused, because he already had exclusive contracts with Kurupt. At the end of 1994, Death Row moved Kurupt out of the condominium he shared with Lamont, and into a house. While cleaning out the condominium, Lamont found papers showing that Death Row had paid Kurupt advances commencing in April 1993.

Testimony on damages

Steven Ambers, the Brumfields’ damage expert, concluded that total damages sustained by the Brumfields for the torts committed against them was \$3,466,043. He reached this figure by determining that the total number of payable units attributable to a Kurupt recording was 2,939,798, multiplied by a fraction composed of the number of songs that Kurupt participated in, compared to the total number of songs on the album. If Kurupt performed with other artists on a song, the numerator was further split between Kurupt and those other artists. Ambers calculated the royalties based on a 10 percent royalty rate and determined that the total recording royalty that would have been payable to Rapp Central was \$4,451,753. He subtracted the 7 percent royalty which would have been due Kurupt, to determine that Rapp Central would have earned \$1,337,927. Ambers calculated the total damages related to the publishing agreement to be \$594,974, based on: Warner-Chappell royalties paid to Suge Publishing of \$183,679; ASCAP royalties paid to Suge Publishing of \$11,295; and estimated unreported royalties that had not yet been realized, of \$400,000.

Because Death Row was not forthcoming with documentation relating to its business and profits, Ambers was required to base some of his calculations on estimates. Ambers estimated revenue from merchandising at \$100,000 based on industry customs and standards. Ambers computed the total amount of damages relating to the recording, publishing and management agreements to be \$2,339,512. He added interest at the rate of 10 percent, for the sum of \$1,126,531. Thus, total damages was calculated at \$3,466,043.

The jury verdict

The jury awarded the following damages to the Brumfields. As to the interference with contract claims, the jury awarded compensatory damages of \$2,279,000 and exemplary damages of \$1,500,000 to Lamont, and compensatory damages of \$740,000 and exemplary damages of \$1,500,000 to Kenneth. As to the interference with prospective business advantage, the jury awarded compensatory damages of \$2,279,000 and exemplary damages of \$1,500,000 to Lamont, and compensatory damages of \$740,000 and exemplary damages of \$1,500,000 to Kenneth. As to the false promise claims, the jury awarded compensatory damages in the amount of \$1,000,000 and exemplary damages of \$2,000,000 to Lamont, and compensatory damages in the amount of \$325,000 and exemplary damages in the amount of \$2,000,000 to Kenneth. The total verdict was \$14,344,000.

Posttrial motions

Death Row filed motions for new trial, to vacate the judgment, and for judgment notwithstanding the verdict. The trial court found that the jury awarded duplicate damages for the same harm and damages that were in excess of the evidence presented. The trial court vacated the judgment and conditionally granted Death Row's motion for new trial on the issue of damages if the Brumfields declined to accept a

remitted amount of damages from \$14,344,000 to \$5,419,000. The Brumfields accepted the remittitur, and the motion for new trial was denied.

This appeal followed.

DISCUSSION

I. Whether the trial court abused its discretion in denying Knight's request to personally appear and give testimony at trial

Both the federal and state constitutions guarantee a criminal defendant the right to be personally present at trial. (U.S. Const., 6th Amend.; Cal. Const., art. I, § 15.) With respect to civil proceedings, the Fifth and Fourteenth Amendments of the federal constitution guarantee due process of law. Similarly, the California Constitution guarantees due process of law in civil proceedings. (Cal. Const., art. I, § 7, subd. (a).) However, “[i]t is well established that due process of law does not confer upon a party to civil proceedings an absolute right to be personally present at the proceedings. [Citations.]” (*Arnett v. Office of Admin. Hearings* (1996) 49 Cal.App.4th 332, 338.)

Death Row's citation to *Payne v. Superior Court* (1976) 17 Cal.3d 908, 913 as support for its argument that denial of access to the courts violates Death Row's rights under the due process and equal protection clauses of the state and federal constitutions, does not avail it. In that case, our Supreme Court held that it may be a violation of an incarcerated and indigent defendant's constitutional due process rights if he is not allowed to testify, where he does not have the alternative of representation. (*Id.* at p. 924.) Our Supreme Court left to the discretion of the trial court the task of ensuring that a defendant has a meaningful opportunity to be heard. (*Id.* at p. 927.) The court stated that the trial court must consider the possibilities of continuance, personal presence, and representation by counsel in light of the particular circumstances of that case in weighing the incarcerated party's interest in being present. (*Id.* at pp. 923-927.) In deciding whether to grant or deny a continuance, the

trial court is given broad discretion. (*Arnett v. Office of Admin. Hearings, supra*, 49 Cal.App.4th at p. 343.)

Here, Death Row was well represented by counsel, and we conclude that the trial court properly exercised its discretion in denying a five-month continuance in order to allow Knight to personally attend the trial. The record shows that the trial court denied the continuance because it believed that Knight was a security risk to the courtroom, and because he was incarcerated at the time for committing violent acts in violation of his parole. Moreover, the trial court recognized that both parties had to rely on deposition testimony since Kenneth was also incarcerated in federal prison at the time of trial. Also, the criminal proceedings and health problems on the part of counsel had resulted in the case being extended beyond the five-year limit, which passed on September 15, 2000. Further, those continuances gave both parties time to obtain further video depositions if they deemed it necessary.

At the start of trial, the trial court stated: "I told you all a year ago and -- I told you then I wasn't going to bring Mr. Knight down, and I am still not going to bring Mr. Knight down. I gave you as many depositions as you wanted up there. I gave you video depositions. He is a security risk. The fact he is in prison for violating parole or probation, whatever he is in prison for, there is no dispute as to that. He is not going to come down here. He has not followed the -- rules he has been under before. He is a security risk to this building. And his deposition has been taken. And he is just not available. Under my discretion, he is not coming." Later, in ruling upon the new trial motion, the trial court also noted that Kenneth was in federal prison out-of-state, and was also not able to attend the trial. Thus, the court stated that both sides had to rely on deposition testimony, not as a result of the actions of the court, but because of the behavior of the parties.

We conclude that the trial court did not abuse its discretion in refusing to transport Knight to the court from the correctional facility or refusing to continue the matter for five months so that he could appear at trial.

II. Whether the interference verdicts are legally erroneous

A. Whether substantial evidence supports the jury's finding that Death Row interfered with the agreements between the Brumfields and Kurupt

1. Whether the agreements are void based on the Brumfields' violation of the Talent Agencies Act

The elements of a cause of action for intentional interference with contractual relations are: (1) a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of the contract; (3) the defendant's intentional act designed to induce the breach or disruption of the contractual relationship; (4) actual breach or disruption of the contract relationship; and (5) resulting damage. (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.)

Death Row contends that the production, publishing, and management agreements upon which the jury's verdict was based were void based upon the Brumfields' violations of the California Talent Agencies Act, codified at section 1700 et seq. of the Labor Code (the Act). The Act provides that "No person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner." (Lab. Code, § 1700.5.) Under Labor Code section 1700.4, subdivision (a), "'Talent agency' means a person . . . who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists, except that the activities of procuring, offering, or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this chapter." Personal managers, who advise, counsel, direct and coordinate the development of the artist's career, serve as spokespersons, and finance the artists, are not subject to the Act.

We first note that only Kurupt has standing to bring actions arising under the Act, in a petition before the Labor Commissioner. (*Styne v. Stevens* (2001) 26 Cal.4th 42, 54-55.) The Act mandates that the parties involved shall refer disputes

under the Act to the Labor Commissioner. (*Id.* at p. 54.) All remedies before the Commissioner must be exhausted before the parties can proceed to superior court. (*Ibid.*) Accordingly, Death Row has no standing to claim the agreements are void.

In any event, the specific exception of Labor Code section 1700.4 concerning the activities of “procuring, offering, or promising to procure recording contracts for an artist . . . shall not of itself subject a person or corporation to regulation and licensing under this chapter” applies to most of the activities complained of here. Furthermore, Death Row’s citation to *Buchwald v. Superior Court* (1967) 254 Cal.App.2d 347 and *Park v. Deftones* (1999) 71 Cal.App.4th 1465 does not advance its cause because those cases hold that services rendered in violation of the Act invalidate only those contracts under which the unlawful services were rendered. Here, the complained of services, i.e., the performances at the Paradise Club, the Roxy, and the SOS recording, occurred before the exclusive contracts between Kurupt and the Brumfields were entered into in November 1991.

2. Whether the agreements are invalid because there was no mutual assent

Under Civil Code section 1578, a mistake of law occurs where one party knows of, but does not correct, a misapprehension of the law by the other party. Death Row contends that as a matter of law, no agreements were entered into between the Brumfields and Kurupt, because Kurupt understood that he signed a six-month production contract, rather than a seven-year production agreement. Death Row also cites to Lamont’s testimony that he told Kurupt he could “walk away” after the first six months of representation as support for its assertion that Kurupt misapprehended the terms of the agreements.

We conclude that substantial evidence supports the jury’s verdict that there was no mistake of law sufficient to invalidate the contracts. As to Lamont’s statement, the record shows that Lamont and Kenneth testified that when they initially contacted

Kurupt, they told him he could walk away from them after six months, if he did not like their work. This oral understanding was entered into in late 1989 or early 1990. The three agreements of which Death Row complains were entered into in November 1991. Thus, the six-month period had already expired by the time Kurupt entered into the written agreements. Moreover, the transcript shows that Kurupt did not elaborate on his statement that he had entered into a six-month production contract. Without more, the jury could conclude that there was no real misapprehension on Kurupt's part as to the material terms of the production contract with the Brumfields.

3. Whether Death Row interfered with the agreements

Death Row contends that there was no evidence that it interfered with the agreements between Kurupt and the Brumfields because Lamont consented to allow Kurupt to record for Death Row; Kenneth did not take steps to secure his rights under the Hoodsta-4-Life publishing agreement; and there was no evidence of interference on the part of Death Row. We disagree.

The evidence shows that Kurupt was in material breach of the agreements by signing contracts with Death Row, Suge Music and Sharitha Knight, contrary to the terms of his exclusive contracts with the Brumfields, and that he earned approximately \$1.5 million in royalties from his Death Row work. However, the Brumfields were never paid pursuant to their agreements. Despite Death Row's claims that there was no direct evidence that it disparaged or defamed the Brumfields, and that therefore there was no interference with the contract, circumstantial evidence shows interference. (*Eltolad Music, Inc. v. April Music, Inc.* (1983) 139 Cal.App.3d 697, 705.) The evidence shows that Death Row, its associates, and its attorney were informed early on by both the Brumfields and Kurupt, that the Brumfields had exclusive contracts with Kurupt. Knight was present when Lamont exercised his authority by stopping Kurupt from signing the agreement to join Interscope if Death Row Records failed. Despite this knowledge, Death Row induced Kurupt to execute

written contracts with Death Row Records, Suge Music and Sharitha Knight, depriving the Brumfields of their contractual rights with Kurupt. Even if, as Death Row claims, Lamont consented to Kurupt's recording on Death Row Records, the breach occurred when the Brumfields did not receive compensation pursuant to their contracts with Kurupt -- not when Kurupt recorded with Death Row Records.

B. Whether substantial evidence supports the jury's finding that Death Row interfered with the prospective economic advantage of the Brumfields

In order to establish intentional interference with prospective economic advantage, a plaintiff must show: (1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the wrongful acts of the defendant. (*Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 393.) The defendant's conduct must be wrongful, independent of the interference itself. (*Ibid.*)

Death Row first contends that there was no probability of future economic benefit in favor of the Brumfields based on their relationship with Kurupt, in the absence of Death Row's involvement in permitting Kurupt to perform on its albums. Rather, Death Row urges, the Brumfields were unsuccessful in obtaining any recognition for Kurupt as a recording artist, until he became associated with Death Row. We disagree with Death Row's analysis. The record shows that of the 17 albums Kurupt recorded on, seven were recorded on labels other than Death Row. Moreover, the fact remains that Death Row was instrumental in disrupting the relationship between the Brumfields and Kurupt, even if in doing so, Kurupt made money by working with Death Row.

Nor are we persuaded by Death Row's argument that the Brumfields cannot bring a claim against Death Row because it was not a stranger to the economic advantage derived from the opportunities generated by Kurupt's association with Death Row. The cases upon which Death Row relies hold that parties to an agreement cannot be guilty of the tort of interfering with that very agreement. (*Kasparian v. County of Los Angeles* (1995) 38 Cal.App.4th 242, 262.) Death Row simply was not a party to the agreements between the Brumfields and Kurupt, and therefore can be held liable for its interference with those agreements.

Next, Death Row urges that the Brumfields have not shown wrongful conduct independent of the interference itself, citing *Della Penna v. Toyota Motor Sales, U.S.A., Inc.*, *supra*, 11 Cal.4th 376. That case states: "[A] plaintiff seeking to recover for alleged interference with prospective economic relations has the burden of pleading and proving that the defendant's interference was wrongful 'by some measure beyond the fact of the interference itself.'" (*Id.* at pp. 392-393.) Such wrongful acts can include: (1) conduct that is independently tortious; (2) conduct that violates a statute, regulation or recognized rule of common law; or (3) conduct which is illegal or unfair or immoral according to the common understanding of society. (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 340-341.)

Death Row asserts that the only act committed by Death Row was that it convinced Kurupt that his career could be advanced only if he entered into an exclusive recording contract and songwriting agreement with Death Row. Death Row claims that this was not an independently wrongful act. We disagree and conclude that Death Row committed acts that were at the least, unfair, and at the most, fraudulent. (*Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 30 [fraudulent intent can be inferred from circumstantial evidence such as continued assurances of performance after it is clear the party will not perform].) For instance, Knight did not tell the Brumfields that Kurupt's work would be used on the "Chronic" album until it was finally released. During this time, Knight continued to assure the Brumfields that they would be

compensated. When the Brumfields' attorney met with Death Row's attorney, Death Row told its attorney to finalize the deal, but never followed through. Death Row never compensated the Brumfields, but instead, entered into contracts with Kurupt. We conclude that the evidence showed independently wrongful acts on the part of Death Row sufficient to support the verdict.

C. Whether the jury was improperly permitted to find Death Row liable on both interference claims

Death Row next contends that the trial court erred in allowing both the intentional interference with contract and interference with prospective business advantage claims to go to the jury, resulting in a massive double recovery. Death Row's citation to *Della Penna v. Toyota Motor Sales, U.S.A., Inc.*, *supra*, 11 Cal.4th at page 392, for the proposition that the two types of interference claims cannot exist together does not support its argument that alternative theories cannot go to the jury. That case merely states that the two theories are distinct. (*Id.* at pp. 392, 393.)

We find *Hasson v. Ford Motor Co.* (1977) 19 Cal.3d 530, 543 (overruled on other grounds in *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580) to be more to the point, where the court stated that when there are alternate theories of liability the court must instruct as to each of them. In its order conditionally granting the motion for new trial on the issue of damages, the trial court stated that it allowed both theories to be argued to the jury, and that the jury was permitted to decide between the two. When the jury verdict returned with a double recovery, the trial court eliminated duplicative damages. Therefore, any error was cured.

III. Whether the false promise verdict is supported by substantial evidence

In order to support a claim for fraud based upon the failure to perform a promise, it must be shown that the promisor did not intend to perform at the time the promise was made; that the defendant intended to induce the plaintiff to act to his

detriment in reliance upon the false misrepresentation; and that the plaintiff actually relied on the misrepresentation in acting to his detriment. (*Conrad v. Bank of America* (1996) 45 Cal.App.4th 133, 156, 157 [disagreed with by *Lovejoy v. AT&T Corp.* (2001) 92 Cal.App.4th 85, 93 to the extent that *Conrad* holds that a defendant is not liable for unintended consequence].)

Death Row asserts that there was no evidence of a false promise made by it with an intention not to perform other than the contention that Death Row did not perform an oral promise to pay. Moreover, Death Row argues, at one point Death Row attempted to pay Lamont some compensation, which was not accepted. The evidence supports the finding that Knight made false promises to the Brumfields without the intention of performing them. Knight repeatedly stated to the Brumfields that he was not sure if Kurupt would appear on the “Chronic” album, but that they would be compensated if he did record on the album. After the “Chronic” album was released, Knight continued to assure the Brumfields that they would be paid. When attorneys for both sides met to work out a deal, Death Row told its attorney to finalize the deal, but Death Row’s attorney never finalized any agreement with the Brumfields’ attorney. However, the Brumfields were never compensated for Kurupt’s performance on the “Chronic” album or any other work, and they were well within their rights to reject payment from Death Row when they had exclusive contracts with Kurupt.

Next, Death Row contends that the Brumfields encouraged and consented to Kurupt recording for Death Row, and therefore the Brumfields did not rely on Death Row’s promises. Moreover, according to Death Row, the oral promises did not occur until after Kurupt began to record for Death Row. The record supports the inference, however, that the Brumfields both relied on and believed Knight’s repeated assurances that the Brumfields would be compensated. Otherwise, the Brumfields would not have continued to promote Kurupt and to pay for his living expenses unless they believed that they would be compensated under their exclusive agreements with him.

Nor are we convinced by Death Row's argument that there was no evidence that their fraud caused damage because if Death Row had not recorded Kurupt, there would have been no contract, and no profits. Death Row urges that if "the true facts [had] been known, [the Brumfields] would not have permitted Kurupt to perform for [Death Row]" and the Brumfields would never have made any money, because their efforts to promote Kurupt were leading nowhere. We believe instead, that the evidence supports the finding that Death Row's fraud caused damage because if Death Row had abided by its promises to compensate the Brumfields, the Brumfields would have made money through their exclusive contracts with Kurupt.

We conclude the false promise verdict was supported by substantial evidence.

IV. Whether the evidence supported the compensatory damages award

Death Row urges that the Brumfields' damage expert's calculations were not supported by the record. We disagree. Death Row argues that the Brumfields' expert, Ambers, used 17 albums as the number of payable units upon which to base his calculations, but only 10 of those albums were Death Row releases. However, as a result of Death Row's interference with the Brumfield's contract, Kurupt severed his relationship with the Brumfields, thereby depriving the Brumfields of their percentage from all 17 albums. Moreover, Death Row argues that Kurupt was part of a duo known as Tha Dogg Pound, but the royalty was not split in half. However, the record shows that Ambers testified that if Kurupt was on a song with Daz Dillinger (the other half of Tha Dogg Pound), Ambers split the royalties in half in making his calculations.

Death Row makes many arguments on appeal which it did not raise before the trial court in its motion for new trial, and are therefore waived. (*Campbell v. McClure* (1986) 182 Cal.App.3d 806, 808.) In any event, the arguments that the judgment should be reversed because Ambers's calculations were improper are not persuasive. Death Row urges that Ambers did not factor in any of the contractual escalations which would have increased Kurupt's royalty from 7 percent to 8 percent and reduced

Lamont's share. However, Ambers testified that common industry practice would have allowed for the spread to remain the same, and the jury was entitled to give credence to Ambers's testimony in making its decision.

For the first time on appeal, Death Row urges that Ambers estimated overseas sales at an inflated 40 percent pad, amounting to \$380,551, but nothing in the record supported the estimate. Like the previous argument, Death Row has waived this argument by failing to raise it in its motion for new trial. In any event, the record shows that Ambers testified that he made his estimate "conservatively," based on industry estimates, and was hampered by the lack of documentation provided by Death Row. The jury was free to accept or reject Ambers's estimate.

Nor are we convinced by Death Row's argument, made for the first time on appeal, that Ambers did not take into account that Kurupt was to get \$.75 of every publishing dollar under the publishing agreement he signed with Kenneth. Rather, the record shows that Ambers testified that the \$183,000 received by Suge Music from Warner-Chappell was Suge Music's share of the publishing revenue, and did not include Kurupt's share. Additionally, we reject Death Row's further argument, raised for the first time on appeal, that the verdict improperly included \$400,000 because Ambers stated it was in the "pipeline," and that Death Row had not yet received the money. The record shows that Ambers testified that "pipeline" is an industry term, referring to money that Death Row has in escrow, to be distributed to a long pipeline of other people.

V. Whether the judgment should be modified based on the rate of interest

Death Row contends that Ambers made his calculations based on a 10 percent rate of interest rather than the 7 percent rate set forth in the California Constitution at article XV, section 1. (*Continental Airlines, Inc. v. McDonnell Douglas Corp.* (1989) 216 Cal.App.3d 388, 434.) However, under Civil Code section 3289, if a contract does not specify the rate of interest, the legal rate is 10 percent. Here, the contracts

between the Brumfields and Kurupt did not specify an interest rate; the verdict was based on those damages incurred because of Death Row's role in encouraging Kurupt to breach his agreements with the Brumfields. Thus, the rate of 10 percent was proper.

In any event, the record shows that Death Row did not request a special verdict concerning the award or specifying the rate of prejudgment interest, if any was awarded. Thus, due to Death Row's oversight, we cannot determine whether the jury awarded any prejudgment interest. In fact, the trial court ultimately awarded \$3,019,000 in compensatory damages, which was less than the \$3,466,043 Ambers specified.

VI. Whether substantial evidence supports the imposition of punitive damages

Under Civil Code section 3294, subdivision (a), "where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant."

Although Death Row contends that there was no evidence of fraud to justify punitive damages, we conclude that there was substantial evidence for the jury to find that malice or fraud existed. The record shows that Lamont "discovered" Kurupt, and the Brumfields promoted his career, borrowing money to pay for his living and personal expenses. Knowing of the exclusive agreements between the Brumfields and Kurupt, Death Row assured the Brumfields that they would be compensated. Instead, Death Row had Kurupt perform for its "Chronic" album and enter into exclusive agreements with Death Row, without compensating the Brumfields.

VII. Whether the trial court's order reducing the jury's punitive damages award was supported by its statement of reasons

The Brumfields argue that the reduction of the punitive damages award for Lamont from \$5 million to \$1 million was not supported by the trial court's statement of reasons.

Under Code of Civil Procedure section 657, "[w]hen a new trial is granted, on all or part of the issues, the court shall specify the ground or grounds upon which it is granted and the court's reason or reasons for granting the new trial upon each ground stated." The new trial order should be reversed if the reasons are insufficient to warrant a new trial. (*Thompson v. Friendly Hills Regional Medical Center* (1999) 71 Cal.App.4th 544, 549.)

The trial court's order gives the following reasons for reducing the punitive damages award: "The evidence of Death Row Records' and Marion Knight's net worth was skimpy at best. However, the lack of evidence was not the fault of the plaintiffs. The defendants did not provide adequate books or records. They claimed that an office building had been sold to a key employee for almost no money. The positions of Death Row Records and Marion Knight totally lacked credibility. [¶] Looking at the evidence of net worth that the [plaintiffs] did present, the amount of punitive damages was excessive. [Plaintiffs'] witness Steven Ambers testified that he could not really set forth the net worth of either Death Row Records or Marion Knight. He gave the rough estimate that Marion Knight's net worth was between twenty and thirty million dollars. He also stated that the net worth of Death Row Records, before any distribution to Marion Knight, was between two and eight million. He had no real justification for these numbers."

In a footnote, the court stated: "It should be noted that no admissible evidence was shown to the court either in support or opposition to the motion for new trial on this issue. [Plaintiffs provide] no copies of exhibits or transcripts. [Defendants]

attached copies of uncertified transcript which are specifically prohibited from being used per California Code of Civil Procedure[section] 273(b).”

The court further stated: “However, even considering the numbers of the [plaintiffs’] expert, the award of the jury was too high. The California Courts of Appeal have repeatedly stated that awards more than 10% of the defendant’s net worth are disfavored. [Citation.] [¶] The court has thus considered the evidence and given it the weight the court believes it deserves. And, the Court has considered the amount of compensatory damages shown by the evidence and considered those amounts when determining the amount of punitive damages. The court has thus found what it believes to be reasonable awards of punitive damages.”

The trial court remitted the judgment to reflect an award of \$1,500,000 in punitive damages in favor of Lamont and against Death Row Records; and \$1 million in punitive damages in favor of Kenneth, against Knight.

The Brumfields first contend that Death Row waived its right to argue that the punitive damages award was excessive because it refused to make available evidence of its financial condition to the Brumfields. Therefore, they reason, Ambers’s estimate should have been accepted by the trial court, citing *Mike Davidov Co. v. Issod* (2000) 78 Cal.App.4th 597, 608-609. That case does not avail the Brumfields. In that case, the defendant failed to comply with the court order to produce financial records so that the trial court could make an evaluation of a punitive damages award. The trial court awarded \$96,000 in punitive damages based solely on a multiplier of four times the amount of the compensatory damages. In affirming the judgment, Division Three set forth the general rule that a reviewing court cannot make an informed decision on whether the punitive damages award is excessive unless the record contains evidence of the defendant’s financial condition. (*Id.* at p. 607.) The appellate court found that the trial court’s conclusion that punitive damages can be awarded without any evidence of the defendant’s wealth to be improper. However, the court upheld the award on the basis that affirmance is proper when there is a valid basis for the order --

in that case, the defendant's failure to obey a court order to produce financial records. (*Id.* at p. 610.)

Here, on the other hand, there is no evidence that Death Row disobeyed a court order to produce financial records. We conclude that the trial court did not abuse its discretion in reducing the punitive damages award.

Next, the Brumfields argue that the court did not adequately explain why the \$5 million punitive damages award was excessive in view of Lamont's \$1.5 million award against Death Row or Kenneth's \$1 million award against Knight. We disagree. The record shows that the trial court examined the evidence of Death Row's net worth, concluding that Ambers had no real justification for his rough estimate of Knight's net worth of between \$20 and \$30 million, and Death Row Records' net worth of between \$2 and \$8 million, before distribution to Knight. Furthermore, the court stated that even considering Ambers's numbers, the award was too high, because the courts have discouraged awards of more than 10 percent of the defendant's net worth. Moreover, the court stated that it did consider the amount of compensatory damages shown by the evidence when determining a reasonable award of punitive damages.

Finally, the Brumfields argue that even if the reduction of the punitive damages award to Kenneth was supported by the trial court's rationale, the trial court only awarded punitive damages of from 3 percent to 5 percent of Knight's net worth, rather than 10 percent. However, Kenneth received a much smaller compensatory damage award of \$740,000 than Lamont, who received \$2,279,000. Therefore, the reduction in his punitive damages award to \$1,000,000 is not an abuse of discretion.

DISPOSITION

The judgment and order are affirmed. Each side is to bear their own costs of appeal.

NOT FOR PUBLICATION.

_____, J.

NOTT

We concur:

_____, P.J.

BOREN

_____, J.

ASHMANN-GERST