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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

GARY GIBSON et al., Plaintiffs and Respondents, v. GJ PARK ASSOCIATES, LLC et al., Defendants and Appellants.	B224808 (Los Angeles County Super. Ct. No. BC371578)

APPEAL from a judgment of the Superior Court of Los Angeles County, William F. Fahey, Judge. Reversed in part; affirmed in part.

Harrington, Foxx, Dubrow & Canter, Dale B. Goldfarb and Daniel E. Kenney; Gilchrist & Rutter, Richard H. Close, Thomas W. Casparian and Yen H. Hope, for Defendants and Appellants.

Haney, Roderick, Torbett & Arnold, formerly Haney, Buchanan & Patterson, Steven H. Haney and Darren T. McBratney for Plaintiffs and Respondents Gary Gibson, Deborah Gibson, Jerome Cowan and Bruce Gold as Trustee.

I. INTRODUCTION

This is an appeal and a cross-appeal from a judgment entered concerning habitability claims of resident homeowners of a mobilehome park. Plaintiffs, Gary Gibson, Deborah Gibson, Jerome Cowan, Bruce Gold and the Estate of Elizabeth Thompson, are owners of residences in the mobilehome park. Plaintiffs filed suit against the property owner and the management company, defendants, GJ Park Associates, LLC, M.A. and Cirillo & Associates doing business as Star Mobilehome Park Management, respectively. Pursuant to the parties' stipulation, the matter was tried by reference. The referee awarded restitution of rents under the unfair competition law (Bus. & Prof. Code,[1] § 17200 et seq.) and attorney fees in favor of plaintiffs under the Mobilehome Residency Law. (Civ. Code, § 798 et seq.)

The trial court entered a judgment consistent with the referee's findings and conclusions. Thereafter, defendants filed motions for a new trial motion and to change the judgment. However, the trial court subsequently vacated the judgment in part. The trial court reasoned the restitution award was erroneous because plaintiffs had adequate remedies at law but failed to prove the extent of their damages. The trial court then entered a new judgment awarding attorney fees to plaintiffs. On appeal, defendants challenge the attorney fee award. On cross-appeal, plaintiffs challenge the ruling setting aside the restitution award. We reverse that portion of the judgment setting aside the unfair competition law restitution award. We affirm the judgment in all other respects.

[1] All further statutory references are to the Business and Professions Code unless otherwise indicated.

II. PROCEDURAL HISTORY

A. Second Amended Complaint, Answer And Reference

The second amended complaint alleges plaintiffs resided in or owned mobilehomes in the community of Mountain View Estates in Canoga Park. It was further alleged that, due to defendants' conduct, plaintiffs did and continue to experience: willful violations of the Mobilehome Residency Law (Civ. Code, § 798 et seq.); unfair, unlawful or fraudulent business practices under section 17200 et seq.; and contractual breaches. Defendants allegedly: failed to maintain adequate electrical systems; allowed geologic and infrastructure problems to exist; continued to hide the true state of the mobilehome park from plaintiffs; willfully engaged in a series of Mobilehome Residency Law violations; and engaged in unfair business practices. Defendant' actions were allegedly designed to discriminate, harass, annoy, frustrate, cause harm, loss of money or property damage to plaintiffs or force them to leave the park. Defendants allegedly tied park improvements and other promises to long term high rent increases and to avoid being sued.

Plaintiffs allegedly were damaged because of: time spent on seeking defendants' compliance with electrical codes; harassment; high rents; a reduction in home market value; unusually high electric bills; over 50 park wide electrical power outages; loss of motor driven appliances; over 20 park wide water turn offs; flooded and muddy streets; and illnesses from dust and debris caused by five years of trenching and jack hammering. Plaintiffs alleged that defendants' conduct had deprived them of the quiet enjoyment of their homes. Plaintiffs asserted claims for: negligence; nuisance; negligence per se for violations of the Mobilehome Residency Law and Health and Safety Code sections 18251, 18254, 18670 and 18700; violations of numerous subdivisions of title 25 of the California Code of Regulations; violations of the implied warranty of habitability and covenant of quiet enjoyment; unfair business practices; and declaratory relief. The Unfair Competition Law claim alleges: "As a proximate result of defendants' unlawful

and unfair business practices, plaintiffs have suffered monetary losses, and losses to property, and paid excess rents for their spaces and defendants have made improper and illegal profits from submetering electrical utilities, and failing to maintain the electrical utilities resulting in high electric bills to plaintiffs, but not using the profits to repair, replace or maintain the electrical system. Plaintiffs are entitled to restitution of the losses and excess rental amount and a disgorgement of defendants' improper profits resulting from plaintiffs rents. In addition, as a result of plaintiffs being charge[d] excess rents, the value of the Park has shown significant increase, and because the Park's value is measured by income stream, i.e. rents minus costs, plaintiffs are entitled to a portion of the Park's increased property value as a result of those excess rents paid to defendants, to be determined at the time of trial. Plaintiffs also are entitled to injunctive relief enjoining these unfair and unlawful business practices."

Plaintiffs sought compensatory damages for diminution in home value, loss of use and enjoyment and restitution of rental payments. The Unfair Competition Law prayer for relief states in part: "Plaintiffs and Plaintiff Class pray for judgment against defendants, and each of them as follows: [¶] . . . . For an order requiring defendants to disgorge any improper profits and restore to plaintiffs monetary losses resulting from defendants' unfair and unlawful business practices; and restitution to plaintiffs those profits or losses; and any prejudgment interest thereon. Plaintiffs also sought statutory penalties, punitive damages and attorney fees.

Defendants answered the second amended complaint. On October 17, 2008, during the trial, the parties stipulated the case would be tried by a reference pursuant to Code of Civil Procedure section 638. The trial court set forth the terms of the stipulation and secured the personal approval of the terms of the reference from the parties or their duly authorized representatives. The terms of the reference are set forth in detail below.

B. Trial By Reference

1. Reference and trial

The matter was tried before the Retired Judge Gregory C. O'Brien, Jr., acting as a referee. Prior to the reference, the trial court ruled that any claims arising before May 23, 2004, were time barred. However, the referee allowed historical evidence for context. After an eight-day trial, the referee issued a written decision. We summarize the testimony and referee's findings below.

2. Background Information

Mountain View Estates is a 156-unit mobilehome park, which GJ Park Associates purchased in 2000 A pre-purchase report provided that the property was in fair condition for its age, size and amenities. However, the pre-purchase report stated "many improvements" were needed and some deferred maintenance items required attention. The report stated that the following items were in disrepair: recreational lighting; street lights; the swimming pool deck and furniture; pool; mail boxes; and recreation building doors. The report further noted the common area landscaping was in poor condition. And, the report stated that many of the park's residents had installed 225-amp breakers rather than 200 amps. The electrical system was 30 years old and needed replacing. The water system was reported to be inadequate.

The referee also summarized evidence concerning problems with the common area maintenance over the course of several years. The problems included: electrical and water systems; hillside erosion; street lamps; common area amenities (pool, spa, and clubhouse); rodents and pests; trees, driveways, patios and views; and alleged retaliatory treatment. On February 1, 2002, the California Department of Housing and Community Development (the department) issued the first of what would eventually be 251 activity reports which contained notices of violations at Mountain View Estates.

3. Specific problems with common area

a. the electrical system

The February 1, 2002 activity report indicated the electrical system failed to adequately supply the 200-amp demand required by title 25 of the California Code of Regulations. The referee found the undisputed testimony established the original electrical system was not intended to service all-electric homes. The developer's subsequent failure to create a natural gas companion service resulted in a greater load demand.

Construction work on the electrical system began in September 2002. It took six years to complete the construction work. Sal Poidomani, a department enforcement officer, testified the project should have been completed in 18 to 24 months. Gerard Moulin, an electrical engineer, testified that the work should have taken about one year. A department inspector, Carlos Udria, testified the project should have been completed in 6 to 18 months. Moreover, the work was haphazard and did not comply with national electrical standards. During the construction period, there were frequent power outages.

The construction work for the electrical system required trenching because it was underground. Jesus Ramos, who supervised the work, was not licensed or certified to perform electrical construction. Mr. Ramos determined that a jackhammer would be needed to perform the trenching.

In correspondence dated March 25, 2003, between the department and co-owner, William McGregor, Mr. Poidomani expressed concern about the timeliness of the completion of the work. The letter identified a June 2003 target date for completing the work. However, the work was not completed until May 2008.

According to the residents, the jackhammer was operated from 2002 until 2005 for about 160 days a year, up to 6 hours a day. Ms. Gibson testified that the noise, dust and fumes made life extremely stressful. Open trenches were left in front of homes for long periods of time. Ms. Thompson testified a delivery person fell into one of the trenches

but was uninjured. A resident, Mary Chudacoff, asked the property manager to set warning signals around the trenches which were dangerous at night. The park office manager, Candy Nawroth, said she was "working on it" but no action was taken.

According to Mr. Gibson, after May 23, 2004, there were about 30 to 40 blackouts. The general manager for the management company, Jeffrey Leek, testified that they may have been as many as 50 outages. According to plaintiffs, some of the blackouts lasted all day and into the evening. Some of the blackouts were noticed and others were not. The blackouts would occur sometimes in extreme hot or cold weather. The effects of the blackouts included: spoiled food; water leaked onto kitchen floors; ruined social events; and unplanned restaurants meals and hotel stays. Ms. Thompson, who had cancer, described the effects of the blackouts on her. Because of her radiation treatments, she was not permitted to use public accommodations. She was often confined to her home in extreme hot weather. She was unable to cook meals or use her appliances.

The residents also testified that they had frequent brown-outs, power surges, and flickering lights during the construction period. Mr. Gibson testified the power surges caused him to lose a television, two washers, two dryers, three toasters, and two microwaves. The "voltage drops" occurred on a daily basis until June 2007 when the "secondary" to his home was replaced. Mr. Cowan testified he had to replace an electric range, a computer, a refrigerator, a toaster and an oven. None of the residents had bills for their losses.

Defendants' electrical designer, Susumu Kono, testified he drew up the plans for the electrical system. According to Mr. Kono, the mobilehome park owners did not cause delay. Rather, the plans had to be modified during construction to accommodate the department's demands. The department wanted the primary high voltage system to be completed before going to the secondary distribution system. Mr. Kono did not find any evidence of breakers tripping which would have occurred if there were power surges. The flickering lights and shrinking television screens would have been the result of the secondary system. The problems would most likely have been because of electrical problems within the individual mobilehomes.

Mr. Udria, a department inspector, asked Mr. Kono questions about the construction. According to Mr. Udria, Mr. Kono's answers were frequently non-responsive or misleading. Mr. Kono took five or six months to answer one question and then provided wrong information.

James Murdock, the owner of La Cumbre Management Company, testified that he managed Mountain View Estates from August 2000 until September 2002.
Mr. Murdock had a number of conversations about the electrical system with William T. McGregor, a principal of the owner. Due to poor grounding people were occasionally shocked. Mr. Murdock was told that the mobilehome park owner did not intend to do major electrical work in the park for budget reasons.

Patricia Brown, a resident and former president of the homeowners' association, testified that more than 100 signatures were collected about the electrical problems. She thought the petition and a letter describing the problems were sent to Mr. McGregor. The association also created a triplicate form for complaints which were passed on to defendants. The association did not receive a reply from defendants.

Henry Anderson, a resident and former president of the homeowners' association testified. While he was president, there were a many of concerns raised with park management. At one point, Michael Cirillo, president of the management company, met with residents. The residents complained about noise, mud flows, rodents, electrical outages, water seepage and appliances burning out. Mr. Cirillo made a "lot" of promises at the meeting but never responded any further to the numerous complaints.
Mr. Anderson collected complaint forms from the residents and passed them on to the management company. However, the management company was unresponsive to the complaints.

Mr. Leek had been the park manager since 2003. He testified that he had previously managed 35 mobilehome parks. Notices of power outages were hand delivered to residents. He had not received any complaints about inadequate notice. According to Mr. Leek the trenches were covered and the park was "remarkably" clean.

Mr. Leek testified he never saw any association complaint forms. But, residents had to complain directly to the management company and not through an association.

Mr. McGregor testified the park spent about $3 million upgrading the electrical system. In the early stages of the work, Mr. McGregor had frequent contacts with Mr. Gibson. Mr. McGregor had regular meetings with committees of residents. However, the residents stopped communicating with him about the electrical system.

b. water system problems

In addition to electrical problems, plaintiffs produced evidence that there were at least 20 water outages after May 23, 2004. Some of the outages lasted all day long. Most of the outages occurred without notice. Mr. Gold was without water for a number of days after a grading contractor broke the water line. Mr. Gold had to move to a hotel. Ms. Brown testified that she was without water for three days when a water line broke under her home.

Defendants denied that the residents complained about water issues. According to Mr. Cirillo the homeowners association was difficult to deal with because there was no clear "voice." Mr. Cirillo was unsure which party spoke for the group because of discord among the association's members. Mr. Cirillo blamed Mr. Gibson for creating issues with the department.

c. hillside erosion

Ms. Gibson complained that during the rainy season "a river of mud" would flow down the adjacent hillside and in front of her home. The swales did allow for efficient water runoff. Then pools would collect and become stagnant and mosquito infected. The owners asserted that it was each residents' responsibility to deal with the mud because it originated from an adjacent county-owned hillside. But, Mr. McGregor

testified that when he purchased Mountain View Estates, he constructed retaining walls along the adjacent slopes

d. street lamps

Mr. Gibson testified he complained about the lighting system for nine years. Over the past several years, the street lamps were chronically out. Sometimes, as many as 20 to 30 lights were out. Mr. Gibson testified that he discontinued nightly walks because the area is filled with wildlife. Although the management company had recently replaced light bulbs, the standards were not re-cemented to the bases. Mr. Cowan often came home to find the light standard lying across his driveway blocking his car. Aside from coyotes, there had been two assaults in the park which made lighting a serious safety issue.

When Ms. Thompson requested a light be replaced in front of her property, the management company replaced it with a red bulb. Ms. Thompson was told by other residents that the red bulb was a crude prank. This was because a red bulb should not be in front of the home of a respectable single woman. When Ms. Thompson confronted Ms. Nawroth, the officer manager said the red bulb was all that was in stock. Ms. Thompson purchased a white bulb and replaced it herself.

According to Mr. Leek, the mobilehome park management company regularly inspected street lamps and repaired problems within a day or two. However, on April 17, 2008, the department issued a citation to the park for light standards. Mr. Poidomani testified that 18 lights were out on March 28, 2008. As recently as 2009, 21 lights were out.

e. clubhouse, pool and spa

The evidence concerning the amenities of the park was summarized by the referee as follows. "At the heart of Mountain View's common area amenities is its clubhouse.

[Mr.] Gibson described a 2002 homeowners meeting at which [Mr.] McGregor presented a rendering of the clubhouse that showed a multimedia room, new furniture and other refurbishments. [Mr.] Gibson said that [Mr.] McGregor that if these upgrades did not occur by the end of the year, there would be no rental increase. [Mr.] Gibson said that the upgrades did not take place, but the rents were raised and have been raised regularly since."

There was an explosion when the clubhouse fireplace was reconstructed. The stonemason left a void space within the hearth into which propane migrated causing the explosion. The department issued a citation after the management company allowed the debris to sit on the floor so long without attempting to reconstruct it. A second violation notice was issued two months later. This was because defendants failed to comply with the first notice. Mr. Poidomani testified the mobilehome park management company gave no explanation for the delay. Several witnesses testified: the clubhouse had no furniture; the clubhouse was unclean; the kitchen was 30 years old; the barbecues had not worked for at least 5 to 10 years; the pool was not maintained and had missing tiles and a cracked deck; and the Jacuzzi had not worked for three years. Mr. Gibson was denied access to the pool unless he signed a Civil Code section 1542 liability waiver.

According to Mr. McGregor, the large community room was intended to be vacant for special events such as meetings. In that case, folding chairs are stored in a closet. He also said defendants spent more than $200,000 refurbishing the clubhouse. But, no receipts were produced. Mr. Leek denied that the pool or Jacuzzi was closed for significant periods of time.

f. rodents and pests

The referee found the park "is in an area teeming" with wildlife. The referee's decision summarized the evidence on the rodent problem as follows: "Mountain View is an area teaming with wildlife. [Mr.] Gibson said he complained to management about problems with ground squirrels, rats, gophers, raccoons, supplying photos he had taken.

He said these entreaties have been ignored. [Mr.] Cowan testified that when he complained to management about raccoons living under his home, he was told 'it's your problem, deal with it.'"

g. trees, driveways, patios and views

Mr. Cowan testified that tree roots on his lot migrated into his driveway and created a 12-inch mound. As a result, water ran back under his home. The water stagnated and created a stench that lasted for four years. The mobilehome park management company initially claimed the problem could not be fixed unless Mr. Cowan dismantled a storage shed at his own expense. However, defendants eventually relented. Encroaching roots had uplifted Ms. Brown's patio but the management company took no action. Defendants ignored one resident's complaints about a tree blocking her view.

h. retaliatory conduct

The referee summarized incidents where the plaintiffs were treated shabbily, denied park privileges and were publicly embarrassed. The referee also cited instances where certain residents were given favorable treatment. Defendants denied retaliating against plaintiffs or giving special treatment to other residents.

4. Standard of care

Allan Snyder, who had owned two property management companies and managed 16 to 20 mobile home parks, testified for plaintiffs on the standard of care. According to Mr. Snyder, property managers must exercise reasonable and prudent care with respect to tenant expectations. The property managers must also comply with park rules and the law. Mr. Snyder testified that he had never seen as many citations as had been issued against Mountain View Estates. The referee's decision states: "[Mr. Snyder] said

Defendants should be either conducted a thorough investigation or appealed them. He said the fact that after years of corrections, meetings and negotiations with [the department] the agency finally signed off does not indicate a timely response to continuing problems at the park." In Mr. Snyder's opinion, the property manager's lack of timely investigation and response breached the professional standard of care. Defendant did not call a witness to testify on the standard of care. But defendants argued it was one of ordinary care.

5. Damages evidence

Plaintiffs relied on testimony from James Brabant, an appraiser. Defendants presented no opinion testimony on the issue of damages. The referee summarized the damages evidence as follows: "Mr. Brabant testified that the historic electrical issues at Mountain View, even when resolved to the residents' satisfaction (as distinguished from [department] approval) represent only about 10 percent of the ongoing problems at the park. He testified that a knowledgeable buyer would have notice of the current tenant issues with park management, the current conditions of the clubhouse, pool and spa and the history of agency citations."

The referee noted that Mr. Brabant had used a comparable mobilehome approach to reach his conclusions. Mr. Brabant chose Calabasas Village and Oakridge Estates but did not investigate whether those properties had a citation history with the department. On a sales comparison approach, the Mountain View Estates mobilehomes were worth approximately 40 percent less than comparable properties of similar age, character, amenities and location. The referee found that the Mr. Brabant's opinion was not supported by actual sales data. Calabasas Village does not have a view and long-term leases which protect tenants from unforeseen rent increases.

6. Specific claims

a. Negligence and negligence per se

The referee found that plaintiffs had established defendants failed to exercise reasonable and prudent care to meet tenant expectations. The referee ruled: "The expectations describe by the witnesses were hardly extravagant: End the noise, stop the mud, fix my driveway, restore my view, trim my neighbor's trees, replace the lights, standards, cover the trenches, clean the pool, repair the spa, fix the fireplace, exterminate the rats. For the most part, the resident office managers seemed to have a standard reply: 'I'm working on it.' Evidently, they were not."

The referee cited as an example of a statutory violation Civil Code section 798.24 which regulates access to common areas: "Never mind that [Mr.] Gibson says he was not permitted to use the pool, the witness' description of broken barbecues, inoperable spa, cracked decking, gym equipment in frequent disrepair, would seem to a make a trip to the clubhouse and its environs unenjoyable even if allowed." The referee further found: "Apparently no law says that a clubhouse community room must contain furniture but the representation that it is being saved for meetings and special events, with chairs tucked away in a closet for those rare occasions is offensive. The fact that debris from the exploded fireplace sat on the clubhouse floors for months, incurring citation from [the department], suggests that no meetings of special events were contemplated in the near future."

The referee found that by Mr. Brabant's analysis concluded plaintiffs had overpaid rent and the homes had diminished in value. However, the referee concluded Mr. Brabant's opinion was too speculative to provide a proper basis for damages. But, the referee added, "In all fairness to the witness, I frankly cannot think of any other approach that might work in the factual circumstances presented by this case."

With respect to emotional distress claims, the referee report states: "Plaintiffs also testified to emotional distress. None of them, however, has sought medical attention.

Much of their emotional distress, moreover, is from incidents dating back years. Those claims are time-barred. What emotional distress is causally connected to events since May 23, 2004 is nearly impossible to determine. Though negligence has been shown, awarding appropriate damages for negligence is not possible."

b. Nuisance

The referee cited Civil Code section 798.87, subdivision (a). Civil Code section 798.87, subdivision (a) provides that "a substantial failure" of a mobilehome management to maintain physical improvements to common facilities in good working order is deemed a public nuisance. Civil Code section 798.86, subdivision (a) provides for a $2,000 civil penalty for each willful violation by the management.

The referee found: "Considering the evidence in the case, I have no doubt Plaintiffs are entitled to civil penalties under [Civil Code section 798.86, subdivision (a)] for willful violations within the past year. However, as they have not quantified the specific incidents for which they would seek penalties, I am not in a position to do it for them. Moreover, considering the willful acts within the past year only, it strikes me that assessing a $2,000 civil penalty for each would be inadequate as damages in this case. Moreover, in their closing brief, Plaintiffs elected punitive damages [pursuant to Civil Code section 3294] instead of statutory penalties [as authorized by Civil Code section 798.86, subdivision (b)]."

The referee then ruled that by electing punitive damages, Code of Civil Procedure section 340, limited plaintiffs to a one-year period of damages. But, the referee found: "[T]hat punitive damages addressing only one year's worth of willful misconduct would be inadequate to address the willful neglect and mistreatment of Plaintiffs that has occurred since May 23, 2004. The wrongs occurring to Plaintiffs in this case would be shameful even if the Mobilehome Park Residency Law had never been enacted. Such conduct deserves redress, vindication of statute aside."

c. Unfair business practices

The referee concluded that section 17200 authorized an action and restitution over a four-year period. Citing *Prudential Home Mortgage Company, Inc. v. Superior Court* (1998) 66 Cal.App.4th 1236, 1250, the referee acknowledged that restitution was unwarranted where there was an adequate legal remedy. But the referee found plaintiffs had no adequate legal remedy. The referee chose disgorgement of rent as the appropriate remedy. In choosing disgorgement, the referee stated: "It quantifies damages that take into account the very relationship between the parties. The landlord collected the tenants' money, for which the tenants received in return endless insults to their sensibilities: years of noise, mud, dangerous conditions, a studied neglect of simple services, a clubhouse with no furniture, a badly maintained pool and spa, and inexcusably rude, petty, bullying behavior. Moreover renters are consumers. Landlords are businesses. [Citation.] By refusing to pay for basic services and amenities expected by custom or required by law, Defendant owner and its agent have in a very real sense unfairly and illegally undercut the costs of their competitors."

7. Post-trial Motions

After a July 30, 2009 status conference, the trial court ordered the parties to brief whether the referee should hear post-trial motions regarding rents, fees and costs. Plaintiffs maintained the trial was by general reference so the referee should hear all post-trial motions. The trial court ruled the referee would hear the post-trial motions.

C. The Judgment And Amended Judgment

On November 7, 2009, the referee awarded plaintiffs $314,126.32 in restitution for rents, $388.759.00 in attorney fees and $39,486.98 in costs. On January 28, 2010, judgment was entered in plaintiff's favor. The judgment awarded plaintiffs: restitution pursuant to section 17200 et seq. in the total amount of $314,126.32; attorney fees of $388,759; and Civil Code section 798.85 costs of $39,486.98.

On February 22, 2010, defendants filed a motion for a new trial motion or, in the alternative, an order vacating judgment. On April 7, 2010, the new trial motion was denied. However, the trial court vacated the portion of the judgment awarding restitution. The trial court set aside the restitution judgment because plaintiffs had adequate legal remedies but had failed to produce evidence of damages. The trial court refused to set aside the attorney fee and cost awards because plaintiffs were the prevailing parties under the Mobilehome Residency Law. Judgment was entered on April 29, 2010. Defendants filed a notice of appeal from that portion of the judgment awarding attorney fees and costs. Plaintiffs filed a cross-appeal from that portion of the judgment setting aside the restitution award.

III. DISCUSSION

A. Overview

The primary issue raised in defendants' appeal is whether the attorney fee award was proper. Resolution of that issue depends to some extent on whether the trial court correctly set aside the restitution award, which is the issue raised by plaintiffs' cross-appeal. For that reason, we first address the cross-appeal's merits. The parties discuss the law concerning general and special references. Given our resolution of the waiver issue, we need not discuss the parties' reference contentions.

B. Waiver Of The Right To Contest The Referee's Findings In The Trial Court

We first address defendants' argument the trial court correctly granted their motion to correct the judgment. Even with a general reference, a trial court retains power over new trial motions and other post-judgment remedies. (Code Civ. Proc., § 663; *Kajima Engineering and Construction, Inc. v. Pacific Bell* (2002) 103 Cal.App.4th 1397,1401 citing *National Union Fire Ins. Co. v. Nationwide Ins. Co.* (1999) 69 Cal.App.4th 709, 716.) Nor does a general reference preclude a court from modifying conclusions of law which are not justified by the facts. (*Calderwood v. Pyser* (1866) 31 Cal. 333, 337; *Estate of Bassi* (1965) 234 Cal.App.2d 529, 539.)

All of this being said, defendants waived their right to contest the referee's findings in the trial court. At the outset, it bears emphasis the trial court had entered judgment. The trial court did not have the power grant a new trial on its own motion. (Code Civ. Proc., § 659 ["The party intending to move for a new trial must file with the clerk and serve upon each adverse party a notice of his intention to move for a new trial. . . ."]; *Schroeder v. Auto Driveaway Co.* (1974) 11 Cal.3d 908, 919; 8 Witkin, Cal. Procedure (5th ed.) "Attack on Judgment in Trial Court," § 46, p. 632.) Similarly, a trial court may not correct a judgment pursuant to Code of Civil Procedure section 663 on its own motion. (*Bowman v. Bowman* (1947) 29 Cal.2d 808, 814; *Eisenberg v. Superior Court* (1924) 193 Cal. 575, 579.) A trial court may not correct a judgment pursuant to Code of Civil Procedure section 663 unless a *party* has filed a motion seeking such relief. (Code Civ. Proc., § 663 ["A judgment or decree, when based upon a decision by the court, or the special verdict of a jury, may, upon motion of the *party* aggrieved, be set aside and vacated"]; *Duff v. Duff* (1967) 256 Cal.App.2d 781, 784-785; *Chase v. Superior Court* (1962) 210 Cal.App.2d 872, 875.) Thus, if the waiver of the right to "contest the referee's findings in the trial court" is enforceable, the trial court had no authority to grant the motion to set aside the judgment in part.

Defendants' waiver of the right to "contest the referee's findings in the trial court" is fully enforceable. An agreement to an alternative dispute resolution process is

construed like other contracts. (*Platt Pacific, Inc. v. Andelson* (1993) 6 Cal.4th 307, 310-311, 313 [arbitration agreement]; *City of Gardena v. Rikuo Corp.* (2011) 192 Cal.App.4th 595, 604-605 [waiver of right to appeal as part of consent judgment].) This is an issue of waiver. Generally, "waiver" denotes the voluntary relinquishment of a known right. (*Platt Pacific, Inc. v. Andelson*, *supra*, 6 Cal.4th at p. 315; *Gould v. Corinthian Colleges, Inc.* (2011) 192 Cal.App.4th 1176, 1179.) To constitute waiver, the following must be present: a right; knowledge of the right; and an intent to relinquish the right. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053; *City of Ukiah v. Fones* (1966) 64 Cal.2d 104, 107.) Typically, waiver is a fact issue. (*Bickel v. City of Piedmont*, *supra*, 16 Cal.4th at p. 1053; *Keating v. Superior Court* (1982) 31 Cal.3d 584, 605, disapproved on different grounds in *Southland Corp. v. Keating* (1984) 465 U.S. 1, 17.) Whether a waiver occurred is reviewed of substantial evidence. (*Bickel v. City of Piedmont*, *supra*, 16 Cal.4th at p. 1053; *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 983.) But, if as a matter of law a waiver occurred, we may reverse a finding to the contrary. (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 189; *Roberts v. El Cajon Motors, Inc.* (2011) 200 Cal.App.4th 832, 841.)

Here, defendants agreed not to contest the referee's findings in the trial court. After the final report was filed and judgment was entered, defendants did what they expressly agreed not to do—they challenged the referee's findings in the trial court. They waived the right to do so. And, as noted, the trial court could not decide to grant a new trial or set aside the judgment on its own motion. The order granting the section 663 motion to set aside the judgment must be reversed. We need not discuss whether defendants, after inducing plaintiffs to abandon an ongoing jury trial and forswearing challenging the referee's findings, were estopped to attack them as they did.

C. Return Of Rent

1. Substantial evidence supports the referee's Unfair Competition Law findings.

Defendants assert the referee's restitution award must be set aside. Although defendants could not attack the referee's factual or legal findings in the trial court, they are free to do so on appeal. We conclude defendants' contentions have no merit. Thus, as we have reversed the order granting partial judgment, we order reinstatement of the restitution order.

We have previously discussed the referee's Unfair Competition Law findings: plaintiffs had no adequate remedies at law; they are entitled to restitution; disgorgement of rent, an equitable remedy, was justified given defendants' wide-ranging misconduct; defendants acted unfairly by refusing to provide basic services and amenities expected by custom and required by law; by failing to act as they did, defendants illegally undercut their costs incurred by competitors. We review the referee's factual findings for substantial evidence. (*BMP Property Development v. Melvin* (1988) 198 Cal.App.3d 526, 530; *Stark v. City of Los Angeles* (1985) 168 Cal.App.3d 276, 284.) A referee's findings are treated on appeal the same as a special verdict. (Code Civ. Proc., § 645; *Gunter v. Sanchez* (1850) 1 Cal. 45, 49 ["no rule of law having been violated, the finding of the referees, like the verdict of a jury, ought to be final"]; *Williams v. Flinn & Treacy* (1923) 61 Cal.App. 352, 358-359.)

Section 17203 states in part, "The court may make such orders or judgments . . . as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition . . . , or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition." In *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 177, our Supreme Court described the restitutionary remedy available under section 17203 in the context of unpaid wages. In *Cortez*, our Supreme Court digested its prior rulings in two section 17500 deceptive advertising cases. The two cases

were *People v. Superior Court (Jayhill)* (1973) 9 Cal.3d 283, 286 and *Fletcher v. Security Pacific National Bank* (1979) 23 Cal.3d 442, 452 which involved section 17535.[2] The language in sections 17203 and 17535 closely parallel one another. In *Cortez*, our Supreme Court held: "The object of the restitution order in each case was money that once had been in the possession of the person to whom it was to be restored. The status quo ante to be achieved by the restitution order was to again place the victim in possession of that money. Section 17535 thus confirmed the equitable power of the court, recognized in *Jayhill*, to order restoration of money to the victim. The power it confirms, however, is only a power to order the defendant '"to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any [unlawful] practice."' [Citation.]" (*Cortez v. Purolator Air Filtration Products Co., supra*, 23 Cal.4th at p. 177; see *Pineda v. Bank of America N.A.* (2011) 50 Cal.4th 1389, 1401; *State of California v. Altus Finance* (2005) 36 Cal.4th 1284, 1304.)

In *Cortez*, our Supreme Court then held that repayment of unlawfully withheld wages was a proper restitutionary remedy under section 17203: "[O]rders for payment of wages unlawfully withheld from an employee are also a restitutionary remedy authorized by section 17203. The employer has acquired the money to be paid by means of an unlawful practice that constitutes unfair competition as defined by section 17200. The employee is, quite obviously, a 'person in interest' (§ 17203) to whom that money may be restored. The concept of restoration or restitution, as used in the [Unfair Competition Law] is not limited only to the return of money or property that was once in the possession of that person. The commonly understood meaning of 'restore' includes a return of property to a person from whom it was acquired [citation], but earned wages

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2 Section 17535 states in part: "The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person, corporation, firm, partnership, joint stock company, or any other association or organization of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful."

that are due and payable . . . are as much the property of the employee who has given his or her labor to the employer in exchange for that property as is property a person surrenders through an unfair business practice. An order that earned wages be paid is therefore a restitutionary remedy authorized by the [Unfair Competition Law]." (*Cortez v. Purolator Air Filtration Products Co.*, *supra*, 23 Cal.4th at pp. 177-178; see *Pineda v. Bank of America N.A.*, *supra*, 50 Cal.4th at p. 1401.) The goal of a section 17203 restitutionary order is to restore the plaintiff to the status quo ante. (*Pineda v. Bank of America N.A.*, *supra*, 50 Cal.4th at p. 1401; *Cortez v. Purolator Air Filtration Products Co.*, *supra*, 23 Cal.4th at p. 177.) And, in a case such as this, section 17203 restitution is cumulative to other available remedies. (§ 17205; *State of California v. Altus Finance*, *supra*, 36 Cal.4th at p. 1303.)

Here, the referee could reasonably find repayment of the rents taken from plaintiffs over a four-year period was a proper restitutionary remedy. The complaint expressly sought restoring plaintiffs for the moneys, rent, paid to defendants. The referee found: defendants collected money from plaintiffs and failed to provide required services; there were horrific conditions in the mobile home park; by refusing to provide "basic services and amenities," defendants acted unfairly and undercut their competitors; and requiring return of rent quantified the losses sustained by plaintiffs. In essence, plaintiffs paid moneys to defendants. The referee found plaintiffs gave up money they were entitled to keep given defendants' acts of unfair competition. We agree with plaintiffs that substantial evidence supports the referee's restitution findings. (See *Day v. AT & T Corp.* (1998) 63 Cal.App.4th 325, 339 ["the intent of the section is make whole, equitably, the victim of the unfair practice."]; *Bradstreet v. Wong* (2008) 161 Cal.App.4th 1440, 1461 ["restitution is available where "'a defendant has wrongfully acquired funds or property in which a plaintiff has an ownership or vested interest.'""].)

2. Defendant's arguments

First, defendant argues an element of a section 17200 restitutionary award is a lack of an adequate remedy at law. No California authority to so holds and we are not bound by the federal district court authority cited by defendants. (*People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 296 ["[W]hile we may find lower federal court decisions on points of state law persuasive, they do not control."]; *People v. Avena* (1996) 13 Cal.4th 394, 431 [same].) In any event, the referee found there was no adequate legal remedy given the shortened statutes of limitations for other claims. Substantial evidence supports those findings. Second, defendants argue the Unfair Competition Law does not allow for a restitution award when there are other legal remedies. This contention has no merit given our prior discussion concerning section 17205. (See *State of California v. Altus Finance*, *supra*, 36 Cal.4th at p. 1303.) Third, defendants argue the case of *Moran v. Department of Motor Vehicles* (2006) 139 Cal.App.4th 688, 691-694 holds no equitable remedy may be entered when there are adequate legal remedies. *Moran* does not involve any discussion of the Unfair Competition Law.

Fourth, defendants argue that the disgorgement order is a disguised damage award. Our discussion in part II(C)(1) disposes of this contention. The referee could reasonably find the unlawful conduct which spanned the four years prior to the complaint's filing was of such severity that restitution was appropriate. Fifth, defendants argue there was no evidence they undercut their competitors. This contention has not merit. There was evidence: of extensive violations of statutory and regulatory requirements; the massive record of violations of law was unprecedented; defendants reduced their overhead by not providing legally mandated services; and high rents were charged without a corresponding provision of services. A fair inference from this state of affairs is defendants' overhead was lower than that of competitors who obeyed the law. In conducting substantial evidence review, we give the testimony the benefit of every reasonable inference. (*In re Marriage of Bonds* (2000) 24 Cal.4th 1, 35 ["[T]he reviewing court should draw all reasonable inferences in favor of the judgment below."];

Associated Builders and Contractors, Inc. v. San Francisco Airports Com. (1999) 21 Cal.4th 352, 374 ["[W]e resolve all conflicts in favor of the prevailing party, indulging in all legitimate and reasonable inferences from the record."].) None of defendants' arguments warrant setting aside the referee's findings.

D. The Appeal

Defendants contend the attorney fee award must be reversed because plaintiffs were not the prevailing parties under Civil Code section 798.85. Civil Code section 798.85 states: "In an action arising out of the provisions of this chapter the prevailing party shall be entitled to reasonable attorney's fees and costs. A party shall be deemed a prevailing party for the purposes of this section if the judgment is rendered in his or her favor or where the litigation is dismissed in his or her favor prior to or during the trial, unless the parties otherwise agree in the settlement or compromise."

Defendants initially argue the attorney fee award should have been set aside once the restitution award was no longer viable. But, we have ordered reinstatement of the restitution award in its entirety. Defendants also argue that the referee never made specific findings that they violated the Mobilehome Residency Law but this contention lacks merit. The referee made extensive specific findings that defendants repeatedly violated the statutory provisions governing mobilehome parks common areas as we have previously discussed. After the trial court reinstates the restitution award, plaintiffs will be entitled to attorney fee as parties obtaining a judgment in their favor in an action arising from the Mobilehome Residency Law claims. (Civ. Code, § 798.85.) Any appellate attorney fee motion must be filed in accordance with California Rules of Court, rules 3.1702(c) and 8.278(c).

IV. DISPOSITION

The portion of the judgment setting aside the restitution award is reversed. Upon remittitur issuance, the restitution award is to be reinstated in its entirety. The judgment is affirmed in all other respects. Plaintiffs, Gary Gibson, Deborah Gibson, Jerome Cowan, Bruce Gold and the Estate of Elizabeth Thompson, are awarded their costs on appeal from defendants, GJ Park Associates, LLC, M.A. and Cirillo & Associates doing business as Star Mobilehome Park Management, jointly and severally.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

KRIEGLER, J.

KUMAR, J.*

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