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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 EIGHT

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| SUMINARTI SAYUTI YUSUF,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>ANDREW TIJA et al.,<br><br>Defendants and Appellants. | B222277<br><br>(Los Angeles County<br>Super. Ct. No. BC375866) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Coleman A. Swart and John S. Wiley, Judges. Affirmed.

Law Offices of Mark J. Werksman and Mark M. Hathaway for Defendants and Appellants.

O'Melveny & Myers, Paul G. McNamara, Robert S. Nicksin; Bet Tzedek Legal Services, Gus T. May and Kevin Kish for Plaintiff and Respondent.

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Appellants Andrew Tjia and his wife Sycamore Choi were found liable by a jury for various labor law violations and tortious conduct, including human trafficking and intentional infliction of emotional distress. On appeal, they contend no substantial evidence supports the verdict on the tort causes of action, the trial court committed instructional and evidentiary errors, and improperly awarded treble damages. We affirm the judgment in its entirety.

## FACTS

Respondent Suminarti Sayuti Yusuf is an Indonesian native who has worked as a nanny and domestic servant around the world, including as a nanny for the Saudi ambassador in London for three years. She also worked in Saudi Arabia for an American woman named Delaina Tighe as a nanny and domestic servant for 15 years, until the children enrolled in college. Delaina Tighe's mother lived in San Diego and respondent travelled there with the Tighe family at least three times during her tenure with them. She has also worked for short periods of time in Chicago and Germany. During each of the times she was in the United States and abroad, she often went shopping on her own and interacted with people outside of the household. Respondent speaks English, "Arabic" and Indonesian.

In 2005, respondent was introduced to Sudibyo Tjiptokesuma, who needed a housekeeper for his son, appellant Tjia, in the United States. In December 2005, respondent met with appellants and agreed to work for them in exchange for $500 per month, plus expenses and meals. Appellants requested and respondent agreed that she would work for Tjiptokesuma for one month in his household and learn to cook before leaving for the United States. She would be paid once she arrived in the United States. Respondent gave appellants her passport so they could buy and arrange for her ticket to the United States.

In January 2006, she left Indonesia with Tjiptokesuma, who kept her passport and filled out all of the immigration forms when they landed. On the landing form, Tjiptokesuma listed a false destination address, 333 Boylston Street, instead of appellants' address in La Canada. Although respondent saw her passport on a desk the

day after she arrived, she did not retrieve it and appellants kept her passport in a safe deposit box at a bank.

Respondent began working for appellants the day after she arrived in the United States. Her daily duties included doing the laundry, ironing, cleaning the bathrooms, cleaning the five-bedroom home, washing the windows, cooking and sweeping the floors. Appellant Choi also had respondent massage her feet every day.

Respondent occasionally left the house in the company of one or both of the appellants to go to a restaurant or to the supermarket but otherwise was told that she would be thrown in jail and deported if she left the house by herself. Appellants also told her that she could be raped and that "American people would pretend to help you, but they would kill you, harvest your organs, and sell them." Appellants refused to allow respondent to take a day off to go to San Diego, to go to the Indonesian consulate or to go to a mosque.

Appellants' son occasionally came into respondent's room to look for his laundered clothing during the night. Appellant Choi also came into respondent's room to rummage through her luggage while respondent feigned sleep. Appellants derided respondent's dark skin color and Muslim religion, saying, "Don't tell anybody that you are a Muslim because here it's accepted that Muslim people are terrorists." Appellants also repeatedly berated respondent for being "stupid" and not doing her job well. In one incident, appellant Choi turned on the shower while respondent was cleaning the bathtub and drenched her for no reason.

After working for appellants for two months, respondent sought help from Marilyn and Dawn Tighe, family members of her former employer, Delaina Tighe. Dawn Tighe called the FBI and sheriff's deputies escorted respondent from appellants' home on April 1, 2006. Respondent was never paid for her services while she worked for appellants.

Respondent filed suit against appellants on August 13, 2007, for human trafficking, failure to pay minimum wage and overtime, failure to provide breaks, waiting time penalties, fraud, false imprisonment, invasion of privacy, intentional infliction of emotional distress, conversion and negligence. (Civ. Code, § 52.5; Lab. Code, §§ 203,

226.7, 970, 1194, subd. (a), 1194.2, subd. (a), 1197.) After a week-long jury trial beginning October 22, 2009, the jury returned a verdict finding appellants liable for all of the causes of action alleged in the complaint and awarding respondent $257,599.14 in damages. The jury also found appellants liable for punitive damages in the amount of $250,000 each. This appeal was timely filed on February 8, 2010.

## DISCUSSION

### I. Exclusion of Witness Testimony Was Proper

On September 22, 2009, respondent filed a motion to compel the deposition of Sudibyo Tjiptokesuma, Tjia's father who lives in Indonesia, among other witnesses. At argument, defense counsel agreed to make him available for deposition when he arrived in the United States but stated he had previously refused to produce Tjiptokesuma because he was concerned that the District Attorney might arrest Tjiptokesuma in connection with this incident. In a minute order, the trial court ruled that "Indonesia witnesses are to be made available when necessary and possible."

Tjiptokesuma, who was 75 years old at the time of trial, arrived in Los Angeles on October 25, 2009, and was deposed from 6:20 p.m. to 9:45 p.m. on October 26, 2009. The deposition was to continue the next day due to Tjiptokesuma's fatigue. When appellant's counsel refused to produce Tjiptokesuma the next day for further deposition, respondent moved to exclude his testimony from trial. Appellants made an offer of proof that Tjiptokesuma would corroborate appellants' testimony that he hired Yusuf to work for his household and to help him and his wife when they travelled to the United States. However, the deposition only covered how he met respondent in Indonesia and what the terms of her employment were in his household initially and did not address whether she was employed by appellants while in the United States. The trial court sustained the objection and excluded the entire testimony, reasoning, "He could have made himself available yesterday. It's a voluntary act on his part. . . ."

Appellants contend that it was error to exclude Tjiptokesuma's testimony because he was the only one who could have refuted respondent's story that she was hired to do work for appellants. Appellants further argue that there is no legal basis for the exclusion

since there was no deposition notice or subpoena, no motion in limine, no written motion to compel and no order granting a motion to compel. In fact, appellants argue that they complied with the trial court's minute order that "Indonesia witnesses are to be made available when necessary and possible." Appellants characterize the exclusion as a baseless evidentiary sanction.

We review the trial court's decision for an abuse of discretion[1] and find none. (*Bullis v. Security Pac. Nat. Bank* (1978) 21 Cal.3d 801, 815.) The trial court had authority under Code of Civil Procedure section 2023.030 to issue an evidence sanction for any discovery abuse, including disobeying a court order to provide discovery. The record shows there was a motion to compel the deposition of Tjiptokesuma. This motion was granted by the trial court and appellants only partially complied with the court's directive to make Tjiptokesuma "available when necessary and possible." Appellant's argument that respondent should have simply issued a subpoena to an Indonesian national not subject to the jurisdiction of the American judicial system or the Hague Convention is disingenuous; as is the argument that Tjiptokesuma is simply a third party witness over whom they have no control. The record shows that appellants' counsel knew when Tjiptokesuma was in the country, was ordered to produce him for deposition, did produce him for deposition for approximately three hours, defended him at the deposition and then refused to produce him to finish the deposition the next day. There was no abuse of discretion in the trial court's decision to exclude his testimony.

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**1** We reject appellant's argument that we must conduct an independent review of the issue because "an entire class of evidence has been declared inadmissible." Appellants concede that Tjiptokesuma would have "provide[d] corroborating testimony that the contract with Yusuf was only with *him*, and not Tjia or Choi." Unlike the cases cited by appellants, Tjiptokesuma's "corroborating" evidence does not equate to an entire class of evidence, especially since Choi also testified that respondent worked for Tjiptokesuma. (*Lawless v. Calaway* (1944) 24 Cal.2d 81, 91 [excluded all testimony on standard of care in negligence case]; *Aas v. Superior Court* (2000) 24 Cal.4th 627, 634-635 [excluded all evidence of defects that have not resulted in bodily injury or physical property damage].)

## II. The Instructional Error Issue Was Waived

The trial court instructed the jury on human trafficking as it is defined under California state law, namely, article I, section 6 of the California Constitution and Civil Code section 52.5. Appellants argue the trial court committed instructional error when it refused to instruct the jury on a federal standard of human trafficking rather than on the state statute. It is appellants' view that the Thirteenth Amendment of the United States Constitution provides Congress with exclusive authority over issues involving human trafficking, especially as it pertains to international slavery. As a result, the trial court should have based its instruction on the federal Trafficking Victims Protection Act (TVPA) (22 U.S.C. § 7101, et seq.), which appellants contend preempts any state human trafficking statute. According to appellants, there are significant differences between the TVPA and the California human trafficking statutes and they were prejudiced by the trial court's instruction. We need not reach the issue of preemption or prejudice because we find that appellants have waived the issue. (*Karlsson v. Ford Motor Co.* (2006) 140 Cal.App.4th 1202, 1236.) Appellants concede in their brief they never made the argument below but urge us to excuse any waiver of error.[2] We decline to do so.

## III. Substantial Evidence Supports Verdict on Tort Claims

Appellants also contend that respondent failed to introduce substantial evidence to support her claims for human trafficking, conversion, invasion of privacy and intentional infliction of emotional distress. In support, appellants attempt to highlight the deficiencies in the evidence and question the credibility of respondent's testimony. We examine the elements and the evidence admitted to prove each of these causes of action to determine whether they are supported by substantial evidence. (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.)

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[2] At oral argument, appellants retracted their concession insofar as they claim they did not waive the error because they requested a special instruction at trial. Nevertheless, the record shows appellants failed to raise the issue of preemption below and their failure to object on that point is a waiver of their right to assert it on appeal. (*Jamison v. Lindsay* (1980) 108 Cal.App.3d 223, 234.)

**A. Human Trafficking**

Civil Code section 52.5 provides a civil cause of action for a victim of human trafficking. Penal Code section 236.1 defines human trafficking as follows:

> "(a) Any person who deprives or violates the personal liberty of another with the intent to…obtain forced labor or services, is guilty of human trafficking.
>
> [¶] . . . [¶]
>
> "(d)(1) For purposes of this section, unlawful deprivation or violation of the personal liberty of another includes substantial and sustained restriction of another's liberty accomplished through fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out.
>
> (2) Duress includes knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or immigration document of the victim.
>
> (e) For purposes of this section, 'forced labor or services' means labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, or coercion, or equivalent conduct that would reasonably overbear the will of the person."

Here, respondent was deprived of her personal liberty through duress in that appellants admitted they possessed her passport. Respondent testified that she was led to believe she would be deported because she did not have her passport and she was an illegal immigrant. Contrary to appellants' argument, there is no duty under the statute that respondent ask for the passport back. There was no obligation that she take it when she saw it on appellants' desk the day after she arrived. That alone is sufficient to show deprivation of liberty. We also note, however, that there was substantial evidence that appellants deceived respondent into believing that she would be raped and her organs harvested if she tried to leave the house. By characterizing these fears as "unreasonable" and "nonsense," appellants urge us to reweigh the evidence and judge respondent's credibility. That, we cannot do. (*Kuhn v. Department of General Services*, *supra*, 22 Cal.App.4th at p. 1633.)

Substantial evidence also supports a finding that appellants had the intent to obtain labor through force, fraud or coercion that would reasonably overbear respondent's will The evidence shows appellants brought respondent to the United States from Indonesia and promised to pay her $500 a month to perform domestic work, but failed to pay her for the month she spent in Tjiptokesuma's household or for the two months she worked in the United States. Respondent testified that appellants consistently berated her for her work and became incensed when she asked for a day off to go to San Diego. They also refused to allow her to go to the Indonesian embassy or to a mosque. That is more than sufficient evidence of fraud and coercion under the statute.

**B. Conversion**

"The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066.) Appellants take issue with the second and third elements of the claim. First, they contend there was no evidence that appellant Tjia took the passport; it was appellant Choi who admitted that she placed the passport in the safe deposit box. Appellants further characterize Choi's actions as one done for the benefit of respondent from which a bailee/bailor relationship arose. Finally, respondent never requested the return of her passport; therefore, appellants contend there were no damages as "there can be no conversion where an owner either expressly or impliedly assents to or ratifies the taking, use or disposition of [her] property." (*Farrington v. A. Teichert & Son* (1943) 59 Cal.App.2d 468, 474 (*Farrington*).) None of appellants' arguments pass muster.

First, there is no requirement that Tjia be the one to physically take possession of the passport. (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 451.) In any case, the jury heard that Tjia told the police "he did actually withhold her passport and kept it at his place of employment, which was a bank . . . he kept it there because [respondent] was stealing from them and making trouble and he did not want her to leave the country with the passport."

Second, we find no indication that appellants presented any evidence that a bailment existed and appellants have not directed us to anything in the record showing it. In fact, Choi testified that she took respondent's passport because she believed respondent was stealing from her.

Finally, substantial evidence supports a finding that respondent did not acquiesce to appellants' keeping her passport. That respondent did not expressly ask for her passport back does not prove implied consent. The case relied upon by appellants for this proposition fails to support their theory. In *Farrington*, *supra*, 59 Cal.App.2d at page 474, the defendant contractor believed that the rock, sand and gravel he was excavating in connection with a project was taken from land owned by the City of Los Angeles when, in fact, part of the gravel pit was located on the plaintiff's land. The plaintiff visited the pit seven or eight times but did not discuss his concerns with the contractor until three months after he discovered their activities on his land. When he did talk to the contractor, the contractor offered to stop operations but the plaintiff encouraged him to continue so that he could "get something out of it." (*Id.* at p. 472.) The court found that the plaintiff encouraged and abetted the taking and the Court of Appeal affirmed. (*Id*. at p. 474.)

Here, the facts are significantly different from those in *Farrington*. Respondent never encouraged appellants to keep her passport. Instead, she gave her passport to appellants to arrange for the flight to the United States and they kept it after she arrived and after she told them she no longer wished to work for them. Respondent complained to Dawn Tighe that appellants had taken her passport and that she believed she would be deported if she did not have her passport. That is sufficient evidence to support a claim for conversion.

**C. Invasion of Privacy and Intentional Infliction of Emotional Distress**

Appellants continue to reinterpret the testimony presented at trial to support their argument that substantial evidence fails to support the jury's findings on the invasion of privacy and intentional infliction of emotional distress claims. For example, appellants argue that Choi rummaging through respondent's luggage while she was feigning sleep is

not an invasion of privacy that is "highly offensive to a reasonable person" because "[i]n the average single family residence occupied by multiple adults, where much personal privacy is sacrificed, the aggrieved female just goes and gets the [items that were purportedly taken from her] from the other female's room." Appellants also argue that their behavior was not so "extreme and outrageous" as to support a claim for intentional infliction of emotional distress because their comments that respondent would be raped or that she was too dark or that all Muslims are terrorists are "tongue in cheek comments that were not meant to traumatize anyone." Neither was Choi's behavior extreme or outrageous when she drenched respondent in the bathtub because it was "in the privacy of a single family residence (i.e., not in front of a large group of people) . . . ."

These arguments are certainly appropriate for closing arguments, but they were rejected by the jury. We find that these few examples of appellants' behavior we have cited above provide the requisite substantial evidence for invasion of privacy and intentional infliction of emotional distress. This is not a close issue.

**D. Punitive Damages**

We similarly conclude that substantial evidence supports a finding of malice, oppression or fraud for punitive damages. Contrary to appellants' blanket statement that there is no evidence supporting the jury's punitive damages award, the evidence shows that appellants berated respondent, failed to pay her the promised wages, disparaged her ethnicity and religion, refused to allow her any time off and severely restricted her liberty by coercion. We need say nothing more.

## IV. Attorney Fees and Treble Damages

Appellants seek to reverse the attorney fees and treble damages awards provided under the human trafficking and labor law statutes. (Civ. Code, § 52.5; Lab. Code, § 1194.) Because we find that substantial evidence supports the verdict, there is no basis to reverse the fee award or damages award.

## DISPOSITION

The judgment is affirmed. Respondent to recover her costs on appeal.

BIGELOW, P. J.

We concur:

RUBIN, J.

GRIMES, J.