

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Friday the 10th day of January, 2014.*

Hong Zhao, Appellant,

against Record No. 121737
Circuit Court No. 2010-2416

America Orient Group, Inc., et al., Appellees.

America Orient Group, Inc., et al., Appellants,

against Record No. 121739
Circuit Court No. 2010-2416

Hong Zhao, Appellee.

Upon appeals from a
judgment rendered by the Circuit
Court of Fairfax County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is reversible error in the judgment rendered by the circuit court.

American Orient Group, Inc. (AOG) and its subsidiary, Seven Corners Apartments, LLC (collectively, the Companies), filed this action against Hong Zhao (Zhao), a former AOG officer and director, seeking \$20 million dollars in compensatory damages and an equal amount in punitive damages based on Zhao's alleged unlawful acts committed while employed by AOG. The complaint contained five counts alleging causes of action for breach of fiduciary duty (Count I), fraud (Count II), constructive fraud (Count III), conversion (Count IV) and unjust enrichment (Count V). Following

a three week jury trial and two and a half days of jury deliberations, the jury returned a defense verdict in favor of Zhao on Counts II through V. On the Count I breach of fiduciary duty claim, the jury found for the Companies on the issue of liability and awarded the Companies zero in compensatory damages but \$100,000 in punitive damages.

Both Zhao and the Companies challenged the jury verdicts in post-trial motions. Zhao asked the circuit court to (i) set aside the punitive damages award under Count I based on Syed v. ZH Technologies, Inc., 280 Va. 58, 73-75, 694 S.E.2d 625, 634 (2010) (overturning punitive damages award absent award of compensatory damages), in light of the jury award of zero compensatory damages for that count; and (ii) enter final judgment in his favor on all counts. The Companies requested that the circuit court set aside each of the verdicts (excepting the jury's liability finding under Count I) and impose an award of nearly \$6 million in compensatory damages pursuant to the circuit court's statutory "supervisory powers" under Code §§ 8.01-383, -383.1(B) and -430. Alternatively, the Companies requested that the circuit court grant them a new trial on all counts, with the issue on retrial limited to damages as to Counts I and V.

The circuit court ultimately set aside the zero compensatory damages verdict on Count I and the defense verdict on Count V. Over the objections of both the Companies and Zhao, it awarded the Companies \$350,000 in compensatory damages. The circuit court upheld the punitive damages awarded to the Companies on Count I (predicated on the court-determined award of compensatory damages).

The circuit court also upheld the jury verdicts in favor of Zhao on Counts II, III and IV.

Both Zhao and the Companies have appealed the circuit court's final judgment, and we have combined their appeals. In his three assignments of error, Zhao argues that the circuit court erred in (i) setting aside the jury award of zero compensatory damages on the breach of fiduciary duty count (Count I); (ii) setting aside the jury defense verdict on the unjust enrichment count (Count V); and (iii) upholding the jury award of punitive damages on the breach of fiduciary duty count.¹ The Companies argue, in their first assignment of error, that the circuit court erred in denying their motion for a new trial and in imposing "a modest increase in damages," in violation of their constitutional and statutory rights.² In their other assignment of error, the Companies argue that the circuit court erred in denying their motion for a new trial on grounds that the jury verdicts were irreconcilable and tainted by defense counsel's misconduct. We agree with Zhao on each of his assignments of error, and reject those of the Companies.

¹ Zhao did not challenge the part of the verdict under Count I in favor of the Companies on the issue of liability.

² Specifically, the Companies argue that this ruling violated (i) Article I, Section 11 of the Constitution of Virginia, by depriving them of the right to a jury determination of their claims; and (ii) Code §§ 8.01-383.1 and -430, by "effectively imposing additur without [p]laintiffs' consent."

Zhao's Appeal

As to Zhao's first and second assignments of error, we conclude the circuit court erred in setting aside both the jury award of zero compensatory damages on the breach of fiduciary duty count (Count I) and the jury defense verdict on the unjust enrichment count (Count V), and in imposing a court-determined compensatory damage award in the amount of \$350,000 on those counts.

At trial, the Companies claimed that Zhao engaged in numerous unlawful acts against them over the course of nearly thirteen years, resulting in millions of dollars in damages. In ruling on the parties' post-trial motions, the circuit court found that the evidence was sufficient to support the jury's verdicts favoring Zhao regarding all of those claims, with one exception, namely, a claim over what was referred to as the Carriage Hills property, a townhouse located in McLean. The circuit court ruled on this one claim (i) that the evidence was undisputed that Zhao wrongfully misappropriated \$350,000 of the Companies' funds in the process of purchasing and financing the townhouse, which was deeded to Zhao and his wife, and (ii) that this act constituted both a breach of Zhao's fiduciary duties to the Companies and unjust enrichment under Counts I and V, respectively.

"A trial court is authorized to set aside a jury verdict only if it is plainly wrong or without credible evidence to support it." 21 Century Sys., Inc. v. Perot Sys. Gov't Servs., Inc., 284 Va. 32, 41, 726 S.E.2d 236, 240 (2012); see Jenkins v. Pyles, 269 Va. 383, 388, 611 S.E.2d 404, 407 (2005) (citing Carter v. Lambert, 246 Va.

309, 313, 435 S.E.2d 403, 405 (1993)); Cohn v. Knowledge Connections, Inc., 266 Va. 362, 366, 585 S.E.2d 578, 581 (2003).

If there is a conflict in the testimony on a material point, or if reasonable people could differ in their conclusions of fact to be drawn from the evidence, or if the conclusion is dependent on the weight to be given to the testimony, the trial court may not substitute its conclusion for that of the jury merely because the judge disagrees with the result.

21st Century Sys., 284 Va. at 41-42, 726 S.E.2d at 241; see also Burroughs v. Keffer, 272 Va. 162, 166-67, 630 S.E.2d 297, 300 (2006).

Upon our review of the record, we conclude there was sufficient evidence to support the jury's verdicts. There was conflicting testimony concerning the Carriage Hills property in that Zhao's testimony on this matter is in direct conflict with that of Hongwei Zhang (Zhang), AOG's president and the chairman and sole shareholder of AOG's parent company.

Zhang claimed Zhao did not have authorization to spend AOG funds in buying the Carriage Hills property which was titled to Zhao and his wife. However, Zhao testified that he was, in fact, acting at Zhang's direction regarding the use of AOG funds in the Carriage Hills property-related transactions - consistent with Zhang's treatment of AOG as his alter ego, according to Zhao, rendering AOG a "piggy bank" for the personal interests of the company's officers and directors. Zhao testified that although he and his wife took out a mortgage on the property, Zhang directed that the Companies' funds be used for the down payment and for the payment of the mortgage and utilities in return for Zhao allowing the daughter of the China Minister of Finance to live in the

property for free. Zhao testified that Zhang did this to attain influence with the China Minister of Finance "because [Zhang's company] was in the problem of the investigative discovery . . . for cooking its financial books." There was evidence that Zhao paid the mortgage with his own funds after the Minister of Finance's daughter left the property in 2003.

The circuit court erred in setting aside the verdict for zero damages on the breach of fiduciary duty claim and the verdict for Zhao on the unjust enrichment claim based upon the Carriage Hills property transactions, because there was sufficient evidence to support those verdicts.

Alternatively, the issue of whether the Companies' claims were barred by the statute of limitations was also submitted to the jury, and there is evidence to support the jury having found that any wrongful act committed by Zhao regarding the Carriage Hills property claim was barred by the statute of limitations as to both Counts I and V (pursuant to Jury Instructions 34A and 36, respectively) because those acts took place more than five years before the lawsuit was filed. See Diggs v. Lail, 201 Va. 871, 877, 114 S.E.2d 743, 748 (1960) ("[The jurors are] the sole judges of the weight and credibility of evidence and the jury has the right to discard or accept the testimony or any part thereof of any witness, which the jury regards proper to discard or accept, when considered in connection with the whole evidence in the case." (internal quotation marks omitted)). The circuit court erred in ruling that the Carriage Hill property transactions constituted a breach of fiduciary duty and unjust enrichment in the amount of \$350,000 as a matter of law, and in setting aside the jury's

verdict of no compensatory damages on the breach of fiduciary duty claim, setting aside the verdict for Zhao on the unjust enrichment claim, and sua sponte imposing damages of \$350,000.

As to Zhao's third assignment of error, because we reverse the circuit court in setting aside the jury award of zero compensatory damages on Count I, we reverse the circuit court, as a matter of law, in upholding the jury award of punitive damages on that count. We do so based on Syed, in which this Court reaffirmed that in the absence of a compensatory damages award on a common law tort claim, such as presented here under Count I, a jury award of punitive damages is a legal nullity.³ 280 Va. at 74-75, 694 S.E.2d at 634.

The Companies' Appeal⁴

We reject the Companies' argument that the circuit court erred in denying their request for a new trial on all five counts on grounds that the jury verdicts are irreconcilable and tainted by defense counsel's conduct at trial.

³ The Companies argue that the jury instructions given by the circuit court "did not require the jury to link its punitive damages award to a particular compensatory damages claim." We disagree, as did the circuit court, stating that no "talismanic language" was required. The instructions on damages (Jury Instructions 51, 53 and 55), along with the jury verdict form, plainly obligated the jury to award compensatory damages as a predicate to awarding punitive damages, placing the instructions and the jury award of punitive damages squarely within the purview of Syed.

⁴ Because we reverse the circuit court's imposition of the \$350,000 compensatory damages award, we need not address the Companies' first assignment of error challenging that award on constitutional and statutory grounds.

First, the Companies argue that the jury verdict on Count I is internally irreconcilable due to the jury's divergent findings on liability, compensatory damages and punitive damages; and that the verdict on Count I is, in turn, irreconcilable with the jury defense verdicts on the other counts. To be sure, jury verdicts that are "irreconcilably inconsistent . . . cannot stand." Roanoke Hosp. Ass'n v. Doyle & Russell, 215 Va. 796, 804, 214 S.E.2d 155, 162 (1975). However, we will "harmonize" jury verdicts alleged to be inconsistent "if there is any reasonable way to do so." Atlas Food Sys. & Servs., 99 F.3d at 599. "[I]f there is an interpretation of the evidence that provides a logical explanation for the findings of the jury, the verdict is not inconsistent." Lagalo v. Allied Corp., 577 N.W.2d 462, 463 (Mich. 1998) (citation and internal quotation marks omitted); see Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd., 369 U.S. 355, 364 (1962) ("Where there is a view of the case that makes the jury's answers to special interrogatories consistent, they must be resolved that way."). Concluding that the jury verdicts in this case can be logically explained upon a reasonable view of the evidence, we reject the Companies' challenge to their validity.

Specifically with regard to the jury's punitive damages award, it was not inconsistent with the zero compensatory damages award, as the Companies contend. Rather, it was, again, a legal nullity. See Syed, 280 Va. at 73-75, 694 S.E.2d at 634. The jury instructions allowed a finding of a breach of fiduciary duty even though there were no damages as a result thereof, and there is sufficient evidence to support the jury's award of zero compensatory damages on that claim. As the court stated in Frey v. Alldata Corp., 895 F. Supp.

221 (E.D. Wis. 1995), a jury's "assess[ment] [of] punitive damages after finding zero compensatory damages . . . is superfluous, it is legally impossible, [but] not logically inconsistent." Id. at 244 (court upheld zero compensatory damages award where jury nevertheless assessed punitive damages, which were set aside).⁵

Second, the Companies argue that the "only conclusion that reasonably can be drawn" from the jury's purported inconsistent verdict on Count I is that "the jury was confused or prejudiced by defense counsel's improper attempts to paint Zhang as a villain and AOG as undeserving of any compensation." Our conclusion that the jury verdict on Count I was not inconsistent, either internally or with the jury verdicts on the other counts, undermines this argument. Furthermore, the circuit court gave appropriate limiting instructions to the jury where appropriate in regard to defense counsel's challenged comments and questions.

As this Court recently stated, "'[w]hen it plainly appears from the record and the evidence given at the trial that the parties have had a fair trial on the merits and substantial justice has been reached,' we will affirm the judgment notwithstanding the

⁵ As the trial judge in this case gleaned, when he initially set aside the jury's punitive damages award based on Syed, "[c]learly [the jurors] didn't like what Mr. Zhao did," so "they imposed punitive damages." Even if the jury believed all of Zhao's testimony, the jury would have undoubtedly viewed him as a central participant in AOG's nefarious activities at Zhang's direction. It was thus not illogical for the jury to impose punitive damages against Zhao on Count I; it was just not legally permissible. Nevertheless, in the absence of a predicate award of compensatory damages, the jury's award of punitive damages is not a relevant consideration in light of Syed.

potential for a defect or imperfection in the process by which the judgment was obtained.'" Allied Concrete Co. v. Lester, 285 Va. 295, 308, 736 S.E.2d 699, 705 (2013) (quoting Centra Health, Inc. v. Mullins, 277 Va. 59, 81, 670 S.E.2d 708, 719 (2009) (quoting Code § 8.01-678))) (some internal quotation marks omitted). That is, the Companies were "entitled to a fair trial but not a perfect one." Id. at 308, 736 S.E.2d at 706 (citation and internal quotation marks omitted). Concluding that the Companies received a fair trial in this case, we hold that the circuit court did not err in denying them a new trial on the grounds here asserted.

For these reasons, we reverse (i) those parts of the circuit court's judgment setting aside both the jury award of zero compensatory damages on Count I and the jury defense verdict on Count V; (ii) the part of the circuit court's judgment awarding \$350,000 in compensatory damages on Counts I and V; and (iii) the part of the judgment upholding the jury award of \$100,000 in punitive damages under Count I. Accordingly, we enter final judgment for Zhao, excepting that part of the jury verdict in favor of the Companies on the issue of liability under Count I, which was not challenged on appeal.

This order shall be certified to the said circuit court.

CHIEF JUSTICE KINSER, with whom JUSTICE LEMONS and JUSTICE MILLETTE join, concurring in part and dissenting in part.

Relying on Syed v. ZH Technologies, Inc., 280 Va. 58, 694 S.E.2d 625 (2010), the majority concludes that in the absence of a compensatory damage award on Count I, the jury award of punitive damages was a "legal nullity." That conclusion, however, does not

answer the argument of American Orient Group, Inc. and Seven Corners Apartments, LLC (the Companies) that the jury disregarded the instructions regarding an award of punitive damages and thus rendered a verdict that was irreconcilable with the instructions. Unlike the majority, I choose to address that argument.

The significant distinction between the jury instructions given in the present case and those in Syed, considered in conjunction with the similarity of the jury instructions in this case and Ulloa v. QSP, Inc., 271 Va. 72, 624 S.E.2d 43 (2006), demonstrates that this case does not fall "squarely within the purview of Syed." Therefore, I conclude that the circuit court erred by denying the Companies a new trial on damages with regard to Count I for breach of fiduciary duty and respectfully dissent as to that portion of the majority decision. I concur only in the result with regard to the other issues in both appeals.

In Syed, the plaintiffs brought, among others, a business conspiracy claim under Code §§ 18.2-499 and -500, and a claim for common law tortious interference with contractual relationships. 280 Va. at 63-64, 694 S.E.2d at 628. For both claims, the trial court instructed the jury to find proof of injury and proof that the plaintiffs suffered damages as a predicate to a verdict in favor of the plaintiffs.⁶ Id. at 65, 694 S.E.2d at 629. On a special

⁶ With regard to the statutory business conspiracy claim, the jury was given the following instructions:

Your verdict must be based on the facts as you find them and on the law contained in all of these instructions.

The issues in the case are:

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1. Did the defendant[s] and at least one other person act in concert, agree, associate, mutually undertake or combine together;
 2. Did they injure the plaintiff[s'] reputation, business or profession intentionally, purposefully and without lawful justification; and
 3. Did the plaintiff[s] suffer damages as a result of defendant[s'] acts.
 4. If the plaintiff[s are] entitled to recover, what is the amount of plaintiff[s'] damages. On these issues, the plaintiff[s have] the burden of proof. Your decision on these issues must be governed by the instructions that follow.

(Emphasis added.)

You shall find your verdict for [plaintiffs] if they have proven by clear and convincing evidence:

1. That [defendants] and at least one other person acted in concert, agreed, associated, mutually undertook or combined together;
2. That they injured [p]laintiffs' business reputation, trade, business or profession intentionally, purposefully, and without lawful justification; and
3. That [p]laintiffs suffered damages as a result of [d]efendants' acts.

For the tortious interference claim, the jury was given this instruction:

Your verdict must be based on the facts as you find them and on the law contained in all of these instructions.

The issues in the case are:

verdict form that listed each claim separately, the jury checked the relevant lines, stating "that [p]laintiffs have proved" their business conspiracy claim and their tortious interference claim and "find our verdict in favor of [p]laintiffs" on those claims. Syed v. ZH Technologies, Inc., Record No. 091172, Joint Appendix at 1143-45.

In a separate portion of the verdict form titled "Plaintiffs' Damages," the jury was instructed to insert the numerical amount of damages, if any, that it was awarding with regard to each claim on which the jury had found in the plaintiffs' favor. *Id.* Joint Appendix at 1147-48. Despite its earlier finding in favor of the

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1. Was there a contract between the plaintiffs and a third party; and
 2. Was there a reasonable probability of future economic benefit to the plaintiffs from that contract; and
 3. Did the defendants know of this contract; and
 4. Did the defendant use improper methods to interfere with the contract; and
 5. Did the defendants intend to interfere with the contract; and
 6. Was it reasonably certain that the business relationship would have continued in the absence of defendant's conduct?
 7. Did the defendant's interference with the contract proximately cause damage to the plaintiff?

On these issues, the plaintiffs have the burden of proof.

Syed v. ZH Technologies, Inc., Record No. 091172, Joint Appendix at 988, 990, 1010 (emphasis added).

plaintiffs on the business conspiracy and tortious interference claims, the jury awarded "\$0" compensatory damages on each of those claims. Syed, 280 Va. at 73, 693 S.E.2d at 633. In this section of the verdict form, the jury was also instructed that if it "found in favor of [p]laintiffs on their conversion, tortious interference or business conspiracy claims," the jury "may, but [is] not required to, assess punitive damages" against each one of the three defendants. Id. at 65, 694 S.E.2d at 629. The jury awarded \$375,000 in punitive damages against two defendants, even though other instructions told the jury that it could award punitive damages only if it first awarded compensatory damages. Id. at 66, 694 S.E.2d at 629.

In ruling on post-trial motions, the trial court upheld the jury verdict "'as to its findings of liability'" but set aside the verdict as to damages, finding that the jury misunderstood the instructions and verdict form with regard to damages. Id. at 66, 694 S.E.2d at 630. Consequently, the court awarded the plaintiffs a new trial limited to the issue of damages. Id.

On appeal, we reversed the trial court's judgment awarding a new trial on the business conspiracy and tortious interference claims. Id. at 75, 694 S.E.2d at 634. But we did so for different reasons. As to the business conspiracy claim, we explained that the relevant statute as well as the jury instructions required a finding of compensatory damages as an element of the cause of action and a predicate to finding liability. Id. at 73, 694 S.E.2d at 633. We held that "[b]ecause the jury's verdict form awarding '\$0' clearly indicated that no injury was sustained, [the plaintiffs] did not

bear their burden of proof on liability and it was error for the court to conduct a retrial on damages." Id. (emphasis added).

Despite jury instructions that also required a finding of damages as a predicate for establishing liability on the tortious interference claim, thus placing that claim in the same posture as the business conspiracy claim, we utilized a different rationale to hold that the trial court erred in granting the plaintiffs a new trial on that claim. In contrast to our holding on the business conspiracy claim, we concluded that because an award of compensatory damages is a necessary predicate for an award of punitive damages and because the jury assessed punitive damages even though it awarded no compensatory damages, "the trial court erred by granting a new trial on damages."⁷ Id. at 73, 694 S.E.2d at 634.

In my view, the fact that the instructions for each claim required proof that damages were sustained as a predicate to finding in favor of the plaintiffs alone warranted our reversal of the trial court's judgment granting a new trial on each claim. But, that we used different rationales in Syed for similarly positioned claims makes no difference in the appeal now before us because this case is distinguishable from Syed. In contrast to Syed, the jury here did not have to find that the Companies suffered damages in order to

⁷ The defendants challenged the tortious interference jury verdict only on the basis that the claim could not be retried because the jury awarded only punitive damages and no compensatory damages. 280 Va. at 68, 694 S.E.2d at 631. In contrast, they challenged the business conspiracy judgment "because proof of some damage is an element of the cause of action" and the jury awarded zero compensatory damages. Id.

find in favor of them on the breach of fiduciary claim.⁸ In other words, a finding of compensatory damages was not a necessary predicate to finding the defendant, Hong Zhao, liable. This distinction is significant and cannot be ignored in deciding whether the Companies are entitled at least to a new trial on damages with regard to Claim I.

The decision in Ulloa manifests the significance of the different jury instructions given in the present case compared to those in Syed. In regard to a breach of contract claim asserted in Ulloa, the trial court instructed the jury that it shall return a verdict for the plaintiff if the plaintiff "proved by a greater weight of the evidence that there was a contract and [the defendant] breached the contract."⁹ 271 Va. at 78, 624 S.E.2d at 47. The

⁸ The jury instruction for the breach of fiduciary claim stated:

On the claim of Breach of Fiduciary Duty (Count I), you shall find your verdict for the plaintiffs if you find that the plaintiffs have proved by preponderance of the evidence that

- (1) the defendant owed a fiduciary duty to the plaintiffs; and
- (2) the defendant breached that duty.

You shall find your verdict for the defendant if the plaintiffs failed to prove any one or both of the elements above.

⁹ The jury instruction for the breach of contract claim stated:

The issues in this case are was there a contract between the parties. If there was, did [the plaintiff] breach it. If [the plaintiff] is entitled to recover, what is the amount of its damages, if

instructions did not require the jury to determine whether the plaintiff suffered any damages before rendering a verdict in favor of the plaintiff. The jury found in favor of the plaintiff on the breach of contract claim, awarded zero compensatory damages, but awarded attorneys' fees to the plaintiff pursuant to the fee-shifting provisions of the parties' employment contract at issue. Id. at 78, 624 S.E.2d at 47.

On appeal, we affirmed the trial court's judgment sustaining the breach of contract verdict in favor of the plaintiff and determining that the plaintiff was entitled to attorneys' fees pursuant to the parties' contract. Id. at 80, 624 S.E.2d at 48. We stated that, "under the law of the case, the jury was not required to determine that [the plaintiff] had proven damages in order to render its verdict in favor of [the plaintiff] on its breach of contract claim." Id. Likewise, because the plaintiff obtained a favorable jury verdict on the breach of contract claim, albeit on incorrect jury instructions which became the law of the case, it was entitled to recover attorneys' fees pursuant to the employment contract. Id. at 81-87, 624 S.E.2d at 49.

any. On these issues, [the plaintiff] has the burden of proof.

You shall find your verdict for [the plaintiff] if they have proved by a greater weight of the evidence that there was a contract and [the defendant] breached the contract.

You shall find your verdict for [the defendant] if [the plaintiff] fails to prove any of the two elements.

Ulloa, 271 Va. at 77-78, 624 S.E.2d at 47.

In Ulloa, an award of punitive damages in the absence of an award of compensatory damages was not at issue. So, we were not tasked with deciding whether a new trial was warranted because the jury disregarded the instructions. Nevertheless, in Ulloa and the present case, the instructions did not require a finding that the plaintiff sustained damages as a predicate to rendering a verdict for the plaintiff. And, in Ulloa, we allowed the liability verdict to stand, and viewed it as the necessary prerequisite to award attorneys' fees even though the jury awarded zero compensatory damages. But here, although the majority technically leaves the Companies' liability verdict intact, the verdict is of no benefit because the majority refuses to award the Companies a new trial on damages on Count I despite the jury's obvious disregard of the damage instructions. I cannot reconcile the posture of the case in Ulloa with the result reached by the majority.

In my view, the decisions in Syed and Ulloa, when considered together, stand for the following principles. When a punitive damage award is challenged because a jury awarded no compensatory damages despite jury instructions directing otherwise, the punitive damage award must be set aside. But whether a plaintiff in that situation is entitled to a new trial on damages turns on whether a finding of compensatory damages was an element of the cause of action and a predicate to finding liability. If it was, then, as we stated in Syed, the plaintiff is not entitled to a new trial on damages because the plaintiff did not carry the burden of proof on liability. 280 Va. at 73, 694 S.E.2d at 633. However, in light of Ulloa, when a finding of compensatory damages is not a predicate to rendering a verdict in favor of the plaintiff, the favorable verdict

stands. With a finding of liability in its favor, the plaintiff is entitled to a new trial on damages if the jury disregarded the instructions by awarding punitive damages but zero compensatory damages.

My views are consistent with this Court's decision in Zedd v. Jenkins, 194 Va. 704, 74 S.E.2d 791 (1953). There, a jury returned a verdict for the plaintiff and awarded "\$3,000.00 as punitive damages only." Id. at 705, 74 S.E.2d at 792. The trial court instructed the jury foreman to eliminate the words "as punitive damages only," and the court subsequently entered judgment on the amended verdict. Id. at 706, 74 S.E.2d 792.

On appeal, the defendant argued that the original verdict was actually a finding that the plaintiff had sustained no damages and was thus a verdict in favor of the defendant. Id. at 706, 74 S.E.2d at 792-93. We concluded that "[t]he original finding of the jury was not a verdict for defendant. It was a finding for plaintiff in express terms." Id. at 708, 74 S.E.2d at 793. We further concluded that "[e]vidently the jury misunderstood, or misconstrued the instruction on damages," because it had awarded punitive damages without awarding the plaintiff any compensatory or even nominal damages. Id. It would be impossible, we stated, to guess "what amount of compensatory damages, if any, the jury would have awarded if it had fully understood the principles of law involved." Id. Although we affirmed the circuit court's judgment because neither party wanted another trial, we nevertheless pointed out that the proper remedy in this scenario would have been to reverse the trial court's judgment and remand for a new trial. Id. at 708, 74 S.E.2d at 793-94.

In analyzing the tortious interference claim in Syed, the Court distinguished the holding in Zedd on the basis that the jury in Zedd did not explicitly find zero compensatory damages as the jury in Syed did. Syed, 280 Va. at 74, 694 S.E.2d at 634. That distinction, however, is unconvincing here in light of the fact that the jury instructions in the present case, unlike those in Syed, did not require a finding of damages as a predicate to render a verdict in the Companies' favor.

The majority does not reconcile Syed, Ulloa, and Zedd but attempts to account for the award of punitive damages on Count I by stating that jury did not like Zhao, "undoubtedly view[ing] him as a central participant in . . . nefarious activities at Zhang's direction." That conclusion, however, requires us to speculate about how the jury evaluated the evidence. The better approach, in my view, is to rely on what we actually know. And what we actually know is that the jury failed to follow the instructions. The instructions prohibited the jury from awarding punitive damages without an award of compensatory damages, but the jury did so anyway. See Newport News & O.P. Ry. & Electric Co. v. Bradford, 100 Va. 231, 239, 40 S.E. 900, 903 (1902) ("[I]t is the duty of the court to instruct the jury as to the law, and the duty of the jury to follow the law as laid down by the court.")

Thus, as a matter of law, the verdict manifested a disregard for the plain instructions of the circuit court on the issue of damages. When a jury disregards the instructions, the verdict should be set aside and a new trial should be granted. See Rome v. Kelly Springfield, 217 Va. 943, 948, 234 S.E.2d 277, 281 (1977) (A verdict is "invalid as a matter of law" when a jury disregards the

instructions); City of Ottawa v. Heathman, 690 P.2d 1375, 1379 (Kan. 1984) ("The trial court instructs the jury as to the law governing the case, and, if the jury fails to comply with the instructions, the verdict will be set aside."); Carlson v. Locatelli, 849 P.2d 313, 315 (Nev. 1993) ("A new trial may be granted when the jury manifestly disregards the court's instructions."); Reynolds v. Pardee & Curtin Lumber Co., 310 S.E.2d 870, 875 (W. Va. 1983) ("When jury verdicts answering several questions have no logical internal consistency and do not comport with instructions, they will be reversed and the cause remanded for a new trial.").

In sum, I choose not to speculate about the basis of the jury verdict on the breach of fiduciary claim but to be guided by the one thing that is certain: the jury found Zhao liable but disregarded the instructions by assessing punitive damages without also awarding compensatory damages. Accordingly, in my view, the proper remedy is to reverse the circuit court's judgment denying the Companies' motion for a new trial on that claim, set aside the verdict, and remand for a new trial on damages only.¹⁰

For these reasons, I respectfully concur in the result on all the issues in both appeals except for the rationale and conclusion with regard to the Companies' appeal on Count I. I respectfully dissent to that portion of the majority decision.

¹⁰ Because under Ulloa, the liability verdict in favor of the Companies remains in place and also because it was not challenged in this appeal, I conclude that the appropriate remedy is a new trial only on the issue of damages.

A Copy,

Teste:

John L. Hammit

Clerk