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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

DANIEL F. GUERRETTE, Plaintiff and Appellant, v. FARMERS GROUP, INC., et al., Defendants and Respondents.	B237819 (Los Angeles County Super. Ct. No. BC400889)

APPEAL from a judgment of the Superior Court of Los Angeles County, William A. MacLaughlin, Judge. Affirmed.

Law Offices of Arthur Leinwohl and Arthur Leinwohl for Plaintiff and Appellant.

Greines, Martin, Stein & Richland, Robert A. Olson, Sheila A. Wirkus; Tharpe & Howell, Christopher S. Maile; Carlson, Calladine & Peterson, Robert M. Peterson, Melissa A. Dubbs; Stone & Hiles, Frank L. Kurasz, John Walker and Jason A. Kirkpatrick for Defendants and Respondents.

INTRODUCTION

Plaintiff Daniel Guerrette suffered a substantial loss of property after his house burned down. He made a claim with defendant Fire Insurance Exchange (Fire) pursuant to a homeowners insurance policy he had with the company. Although Fire initially made numerous payments to Guerrette, it denied the balance of his claim on the ground that he made material misrepresentations to Fire. In its claim denial letter, Fire stated that Guerrette made false statements relating to four items—a stereo system, hardwood flooring, a toilet and personal tools.

Guerrette sued Fire for breach of contract and breach of the implied covenant of good faith and fair dealing. He also sued defendants Farmers Insurance Exchange (Farmers Exchange) and Farmers Group, Inc. (FGI) on the grounds that Farmers Exchange and FGI are alter egos or joint venturers of Fire.

The trial on Guerrette's action was bifurcated. In the first phase, a bench trial, the court ruled that Farmers Exchange and FGI were not alter egos of Fire. In the second phase, the court granted FGI's motion for nonsuit on the grounds FGI was not directly liable to Guerrette and there was no substantial evidence FGI was a joint venturer of Fire. The jury then returned a special verdict in favor of Fire and Farmers Exchange, finding that Guerrette had concealed or misrepresented a material fact or circumstance related to his loss. Pursuant to the verdict, the court entered judgment in favor of defendants. Guerrette filed a motion for new trial, which was denied.

Guerrette's main argument on appeal is that the trial court erroneously denied his motion in limine to exclude all evidence relating to his loss other than the four items identified in Fire's claim denial letter. He also argues, inter alia, that the trial court abused its discretion in denying his motion for new trial because there was insufficient evidence to support the verdict, and that the trial court erroneously ruled against him on his alter ego and joint venture claims. For the reasons that follow, we shall reject Guerrette's arguments and affirm the judgment.

FACTUTAL AND PROCEDURAL BACKGROUND

1. *Guerrette's Policy*

Guerrette purchased from Fire a "protector plus" homeowners insurance policy with numerous endorsements. The policy provided coverage for losses resulting from an accidental fire, including damage to the dwelling, loss of personal property or "contents" on the insured real property, debris removal, and additional living expenses.

The policy limited its coverage of property used in a business to $200. Guerrette was a carpenter and contractor who owned many tools for his profession, as well as personal tools. The tools he owned for business purposes were covered under the policy up to $200. The tools he owned for personal purposes were covered under his contents coverage, which had a limit of $255,000.

Under the policy, Guerrette had certain duties, including an obligation to cooperate in the processing of a claim. The policy also provided: "This entire policy is void if any insured has knowingly and willfully concealed or misrepresented any material fact or circumstance relating to this insurance before or after the loss."

2. *The Defendants*

Fire is the named insurer on the declarations page of Guerrette's policy. The company does not have any employees. Farmers Exchange provides claims adjustment services to Fire pursuant to an agreement between the two entities. Fire receives administrative services, including actuarial, tax, accounting, underwriting, and marketing services from Farmers Underwriters Association, a wholly owned subsidiary of FGI. Fire and Farmers Exchange are reciprocal insurers, also known as inter-insurance exchanges under the California Insurance Code (see *Tran v. Farmers Group, Inc.* (2002) 104 Cal.App.4th 1202, 1210-1211); FGI is a Nevada corporation. Fire, Farmers Exchange and FGI each have offices at the same address on Wilshire Boulevard in Los Angeles.

3. *Guerrette's Loss and Fire's Payments on His Claim*

On August 28, 2007, Guerrette's house in Kings Beach, California, burned down. The fire was caused by a malfunction of a light. Defendants do not contend the fire was caused by arson.

Claims adjustor Eldon Lewis was notified about the loss in the early hours of August 29, 2007. Lewis was an employee of Farmers Exchange who worked from his home in Kansas. Within three hours of being notified of the loss, Lewis was on a flight to California to inspect the loss scene and adjust Guerrette's claim.

Lewis authorized many payments by Fire to Guerrette pursuant to plaintiff's policy. Fire immediately issued a $3,000 payment to Guerrette to cover emergency expenses. Between September 2007 and March 2008, Fire made four payments to Guerrette and his mortgage company for reimbursement of damages caused to the house and garage on plaintiff's property, totaling more than $278,000. Additionally, Fire reimbursed Guerrette $2,300 per month for 11 months, totaling $25,300, for the cost of renting a temporary residence. Finally, between September and November 2007, Fire paid the full amount of Guerrette's first two contents claims, totaling about $53,000.

4. *Guerrette's Third Contents Claim*

On February 11, 2008, Guerrette faxed his third contents claim to Fire. The document was 18 pages and consisted of an inventory list of over 200 items of personal property which Guerrette contends were lost in the fire, as well as supporting documents. There were many valuable items on the inventory list, including an $8,200 painting, hardwood flooring worth approximately $21,000, $10,500 of CD's and DVD's, a $1,895 espresso machine, over $8,000 of stereo equipment, numerous expensive tools and guns, silver and gold coins and jewelry, and a Rolex watch worth about $20,000. The total amount of the third contents claim was about $190,000. It is this claim that is the primary subject of this lawsuit.

Lewis and his supervisor James Brooks were both surprised and concerned about the scope of the claim, especially because it was submitted almost six months after the

loss and many of the items on the list were not previously mentioned by Guerrette. Farmers Exchange assigned Stephen Davis of its special investigations unit to investigate whether the third contents claim was fraudulent. Fire also retained attorney Aviv Tuchman to investigate the claim.

a. *Stereo Equipment and Service Plan*

Guerrette's third contents claim listed a receiver, speakers, and a subwoofer, all of which were "4 months old" and "still in box." The total cost of this stereo equipment was $8,000. Additionally, the claim listed a four-year service plan for all the stereo equipment for about $750. Next to each item, including the service plan, the claim stated: "Receipt included."

Guerrette attached to the third contents claim a document from Magnolia Home Theater, which is a Best Buy store in Reno, Nevada. The document listed the stereo equipment and service plan itemized on the inventory list, as well as the price for each item. On the printed document the following was handwritten: "Paid in Full 6/22/06."

Aviv Tuchman contacted the Best Buy store in Reno and learned that Guerrette had *not* purchased stereo equipment or a service plan from the store. According to a general manager of Best Buy, the document attached to Guerrette's claim was a quote for the cost of the equipment and service plan, and not a "receipt."

Tuchman did not confront Guerrette with his findings. At no time prior to Fire's denial of Guerrette's third contents claim did Guerrette specifically discuss with a representative of Fire where and when he allegedly purchased the stereo equipment and service plan.

At trial, Guerrette testified that in June of 2006, he purchased the stereo equipment and service plan from two men who were selling stereo equipment out of their van at a flea market in Roseville, California. According to Guerrette, he paid cash for the equipment and service plan. Guerrette further testified that he obtained the Best Buy document he submitted with his third contents claim after the fire.

b. *Hardwood Flooring*

The third contents claim stated that Guerrette lost in the fire 1,202.5 square feet of hickory hardwood flooring "from" J Z Floors, Inc. (JZ Floors). It also stated that Guerrette "paid" $21,627.34 for the flooring and that a "receipt" was included.

Attached to the third contents claim was a document from JZ Floors that appeared to be a receipt. The document ostensibly memorialized a purchase of 1,202.50 square feet of hickory hardwood flooring for a price of $21,627.34. On the printed document the following was handwritten: "Paid in Full 7/17/06."

Tuchman contacted Joe Zeigler of JZ Floors. Zeigler stated that Guerrette never purchased anything from his company and that JZ Floors merely gave Guerrette a written quote. He further stated that the document attached to the third contents claim was an altered version of the quote Guerrette received from JZ Floors. The document was altered in at least three ways. First, the word "QUOTE" at the top center of the document was removed. Second, the words "quote date" and a printed date of "9/17/07" were removed. Finally, the handwritten words, "Paid in Full 7/17/06" were added. Zeigler sent to Tuchman the actual document JZ Floors provided to Guerrette, and signed a declaration under penalty of perjury regarding the matter.

Before Fire denied the third contents claim, Tuchman did not inform Guerrette about his communications with Zeigler. At trial, Guerrette denied altering the JZ Floors quote. Although Guerrette conceded that "someone" altered the quote, he testified that he faxed the unaltered quote to Fire.

Guerrette further testified that in the summer of 2006 he obtained 1,202.50 square feet of hickory hardwood flooring in a barter transaction with Ken Mulhern, who lived and worked in the San Diego area. Under his alleged agreement with Mulhern, Guerrette provided home remodeling services to Mulhern in exchange for the hardwood flooring.

c. *Toilet*

The third contents claim stated that Guerrette lost in the fire a toilet he obtained from Western Nevada Supply of Reno, Nevada for $507.52. Attached to the claim was a

credit card receipt from Western Nevada Supply for a purchase of $507.52. When Tuchman called Western Nevada Supply, however, he learned that the receipt was generated from a purchase made with a credit card belonging to Don Mooneyham, not Guerrette. At trial, Guerrette testified that Mooneyham purchased the toilet on his behalf, and that he reimbursed him for the purchase.

d. *Personal Tools*

The third contents claim listed many tools which were allegedly located inside Guerrette's garage. Guerrette represented to Fire that these tools were for personal use, and that he had a hobby of building toys to give away. Several of Guerrette's friends and co-workers, however, advised investigator Taylor Kullowatz that they were not aware of this hobby and that the tools located in the garage were for business purposes.

5. *Guerrette's Alleged Failure to Cooperate*

In at least five letters from April 8 to May 26, 2008, Tuchman requested Guerrette to submit to an examination under oath and to produce additional documents supporting his third contents claim, including documents relating to his checking, savings, business and mortgage accounts, phone records, and receipts and invoices. Tuchman and Guerrette also had several telephone conversations regarding Guerrette submitting to an examination and Guerrette producing documents.

Although Guerrette advised Tuchman he had gathered some relevant documents, he never provided any to Tuchman. Guerrette also never attended an examination under oath, though his examination was scheduled at least once and many attempts were made to reschedule.

On May 27, 2008, Guerrette's attorney at the time, Dean Headley, sent a letter to Tuchman promising to produce documents and to schedule Guerrette's examination after Headley returned from vacation on June 9, 2008. When Headley returned from vacation, Tuchman talked to him over the telephone. Headley advised Tuchman at that time that Guerrette would not submit additional documents to support his third contents claim. Further, in Tuchman's view, "[i]t became obvious that we [Fire] could not secure the

examination and there was no reason to go forward with it because our attempts were not successful." Guerrette contends that he was willing to submit to an examination and that Fire's investigation of his claim was inadequate.

6. *The Claim Denial Letter*

On June 25, 2008, Fire sent a letter to Headley regarding Guerrette's claim. A draft of the letter had been written by Tuchman for Lewis's signature.

The letter stated that Guerrette had made material misrepresentations regarding the stereo equipment, hardwood flooring, toilet and personal tools he listed in his third contents claim. After explaining the reasons Fire believed Guerrette's representations were false and discussing certain terms of the policy, the letter stated that Fire would deny the "remaining portions of the claim."

7. *Guerrette's Pleadings*

In October 2008, Guerrette commenced this action by filing a complaint against defendants in the superior court. Guerrette's operative pleading, his first amended complaint (FAC), set forth breach of contract and breach of the implied covenant and good faith and fair dealing causes of action against Fire, Farmers Exchange and FGI.[1] The gravamen of these causes of action was that Guerrette suffered damages as a result of defendants' "misconduct in handling [his] claim." Specifically, the FAC alleged that by failing and refusing to pay Guerrette for the balance of his third contents claim, defendants breached the insurance contract and the implied covenant of good faith and fair dealing, thereby causing Guerrette to suffer damages. The FAC did not allege that defendants wrongfully cancelled Guerrette's insurance policy.

[1] The FAC also set forth causes of action for fraud, intentional infliction of emotional distress, breach of fiduciary duty, and "*Brandt*" attorney fees. Guerrette, however, did not pursue these causes of action at trial.

8. *The Trial*

a. *Motion in Limine*

Before the trial Guerrette filed a motion in limine seeking to exclude all evidence "relating to plaintiff's contents loss submissions to defendants of items other than the four items that were the sole foundation for the defendants' denial of further coverage in June 2008." The legal basis for this motion was that such evidence was irrelevant or, alternatively, it should be excluded pursuant to Evidence Code section 352.[2] The trial court denied the motion.

b. *Bench Trial on Alter Ego*

The trial court bifurcated the trial. The first phase was a bench trial regarding Guerrette's alter ego allegations. At the conclusion of this phase, the trial court issued a ruling and statement of decision in defendants' favor, finding that Guerrette did not prove defendants were alter egos of each other.

c. *Testimony Regarding Third Contents Claims*

The second phase of the trial was before a jury. This phase concerned Guerrette's two causes of action, as well as his allegation that Farmers Exchange and FGI were joint venturers with Fire.

A major focus of this phase was Guerrette's third contents claim. Guerrette asserted in his opening statement and closing argument that he should recover the full $190,000 amount of this claim, less about $6,000 because of the policy's limits on coverage for gold and silver. Guerrette thus was seeking to recover compensation for items in his third contents claim in addition to the four items specified in the claim denial letter.

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[2] This statute states: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.)

There was considerable testimony regarding such items, much of it solicited by Guerrette's counsel. Witnesses testified about numerous items allegedly lost in the fire, including Guerrette's paintings, CDs and DVDs, and guns and ammunition. For example, Guerrette testified that he lost numerous guns, including handguns in the fire. Defendants, however, impeached this testimony with a declaration Guerrette signed under penalty of perjury in response to his ex-wife's request for an injunction. The declaration, executed shortly before the fire, stated that Guerrette possessed "[n]o handguns at all." Guerrette testified at trial that his statement in his declaration regarding handguns was a "lie," and that he had in fact lost handguns in the fire. At no time during the trial did Guerrette raise a specific relevancy or Evidence Code section 352 objection to evidence relating to the third contents claim.

d. *CACI No. 2309*

Plaintiff and defendants proposed two different versions of California Civil Jury Instructions (CACI) No. 2309, which concerns fraudulent claims by an insured to an insurance company. Under Guerrette's proposed instruction, Fire could deny Guerrette benefits under the policy if it proved, inter alia, Guerrette's representation that "wood flooring, a toilet, a stereo system, *and* personal tools were lost in the fire" was untrue. (Italics added.) Under defendants' proposed instruction, Fire could deny Guerrette benefits under the policy if it proved that Guerrette made "*a* material misrepresentation" to Fire. (Italics added.) The trial court gave Fire's proposed jury instruction, with minor modifications, instead of Guerrette's.

e. *FGI's Motion for Nonsuit*

After both sides rested, FGI filed a motion for nonsuit on the grounds that it did not have direct liability to Guerrette and that it was not a joint venturer with Fire. The court granted the motion.

f. *Jury Question*

The third question of the special verdict form stated: "Did Fire Insurance Exchange prove that Mr. Guerrette concealed or misrepresented any material fact or

circumstance related to this loss?" During deliberations the jury asked the trial court whether the word "any" in this question was a typographical error. The court instructed the jury that the word "any" was intended.

g. *Special Verdict*

On August 5, 2011, the jury returned a special verdict. The jury found that Guerrette suffered a loss which was covered under his insurance policy and that Fire was notified of the loss as required by the policy. It also found, however, that Guerrette concealed or misrepresented a material fact or circumstance related to the loss. Pursuant to the instructions of the special verdict form, the jury did not respond to the remaining questions, including questions relating to damages, and the presiding juror signed the form.

9. *Judgment*

On September 13, 2011, the trial court entered a judgment in favor of Fire, Farmers Exchange and FGI and against Guerrette.

10. *Motion for New Trial*

After the judgment was entered, Guerrette filed a motion for new trial on the grounds that there was an irregularity in the proceedings, an accident or surprise at the trial, insufficient evidence to support the verdict, and an error in law. The trial court denied the motion.

Guerrette filed a timely notice of appeal of the judgment.[3]

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[3] Guerrette's notice of appeal is from the "judgment" dated November 14, 2011. The court actually entered its order denying Guerrette's motion for new trial on that date, not its judgment. An order denying a motion for new trial is not independently appealable but may be reviewed on appeal from the underlying judgment. (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 19.) We shall consider the notice of appeal as an appeal of the underlying judgment dated September 13, 2011.

DISCUSSION

1. *Guerrette's Motion in Limine*

a. *Standard of Review*

We review the trial court's ruling on a motion in limine for abuse of discretion. (*Piedra v. Dugan* (2004) 123 Cal.App.4th 1483, 1493.) A trial court does not abuse its discretion unless it acts in an arbitrary, capricious or patently absurd manner. (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1419.)

b. *The Trial Court Did Not Abuse Its Discretion in Overruling Guerrette's Relevancy and Evidence Code Section 352 Objections*

The first ground for Guerrette's motion in limine is that evidence relating to items on the third contents claim other than the four items mentioned in the claim denial letter is irrelevant. We reject this contention.

Relevant evidence means "evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) The evidence Guerrette objected to was relevant for a number of reasons. Guerrette sought to recover damages for virtually every item on the inventory list submitted with his third contents claim. Thus evidence showing that Guerrette did not in fact lose any or all of those items in the fire is relevant because it disproves a fact or facts of consequence. Such evidence is also relevant because it undermines Guerrette's credibility.

Defendants, for example, introduced evidence indicating that Guerrette did not own handguns that were destroyed in the fire. If the jury believed Guerrette did not own handguns, this finding would not only undermine Guerrette's credibility with respect to his other claims, it would also be a basis for the jury to find that Guerrette made a material misrepresentation to Fire, which by itself would have allowed Fire deny the

balance of Guerrette's claim under the express terms of the policy.[4] Evidence regarding Guerrette's possession of handguns was therefore relevant.

Guerrette also based his motion in limine on Evidence Code section 352. He did not, however, provide any analysis in his briefs regarding how the admission of the evidence he sought to exclude would necessitate an undue consumption of time, or create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. Guerrette thus forfeited any claim of error based on Evidence Code section 352.

c. *Because Fire Did Not Cancel Guerrette's Policy, It Was Not Required to Comply With Insurance Code Section 677*

Insurance Code sections 675 et seq. regulate the manner in which certain policies of insurance, including homeowners policies, can be cancelled. Under Insurance Code section 676, no "notice of cancellation" shall be effective unless it is based on one or more of certain grounds, including the nonpayment of premium by the insured, the discovery of fraud or a material misrepresentation by the insured, and physical changes in the insured property which result in the property becoming uninsurable.

Insurance Code section 677, subdivision (a) provides that all "notices of cancellation . . . shall state . . . (1) which of the grounds set forth in Section 676 is relied upon, and . . . (2) the specific information supporting the cancellation, the specific items of personal and privileged information that support those reasons, if applicable, and corresponding summary of rights." An insurer cannot cancel a homeowners policy unless it strictly complies with this statute and related statutes. (*Mackey v. Bristol West Ins. Service of Cal., Inc.* (2003) 105 Cal.App.4th 1247, 1258 (*Mackey*).)

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[4] If a misrepresentation concerns a subject reasonably relevant to an insurer's investigation of its insured's claim, and if a reasonable insurer would attach importance to the fact misrepresented, then it is material. (*Cummings v. Fire Ins. Exchange* (1988) 202 Cal.App.3d 1407, 1417.) The materiality of a misrepresentation is a mixed question of law and fact that can be decided as a matter of law if reasonable minds could not disagree on the materiality of the misrepresentation. (*Ibid.*) We conclude that as a matter of law Guerrette's alleged misrepresentation regarding his handguns was material.

Guerrette contends that under Insurance Code section 677, Fire was required to set forth in its letter dated June 25, 2008, all grounds for cancelling his *policy*, as well as the facts supporting each ground. Thus, Guerrette argues, Fire was prohibited from presenting evidence at trial regarding any alleged misrepresentations apart from the four specified in the letter. For this reason, Guerrette contends, the trial court abused its discretion in denying his motion in limine.

The premise of Guerrette's argument is incorrect. Fire did not cancel Guerrette's policy in its letter; it denied the balance of his *claim*. In the letter, Fire stated that under the terms of the policy and applicable case law, if an insured misrepresents a material fact, the insurer can "rescind the policy from that time forward *or* alternatively simply deny the claim on the ground of the misrepresentation." (Italics added.) The letter then repeatedly stated that Fire was denying the remaining portions of the "claim," and did not state anything about cancelling Guerrette's policy.

Moreover, the letter provided no other information one would expect when an insurer cancels a policy. Under the express terms of the policy, for instance, Fire was required to return the "pro-rated unused share" of the premium Guerrette paid in the event it cancelled his policy. Fire also had this obligation under Insurance Code section 481. The letter, however, made no mention of a premium refund, or a date of cancellation. Indeed, nothing in the letter indicated that if Guerrette filed a claim for a new loss covered under the terms of the policy, Fire would deny it. The letter therefore was merely a claim denial letter relating to the loss Guerrette suffered on August 28, 2007, not a notice of cancellation within the meaning of Insurance Code section 677.

It is also worth noting that in his FAC Guerrette did not allege that Fire wrongfully cancelled his policy, and at trial he did not seek to recover any damages resulting from such a cancellation. Rather, Guerrette based his action against Fire and the other defendants on the alleged wrongful denial of his claim.

The distinction between Fire cancelling Guerrette's policy and denying the balance of his claim is not merely a "quibble," as Guerrette asserts in his reply brief. It is fatal to Guerrette's argument that the court erroneously denied his motion in limine. Because Fire did not attempt to cancel his policy, it was not required to comply with Insurance Code section 677. Thus Guerrette's argument based on this statute collapses.[5]

d. *Fire Was Not Prohibited By the Doctrines of Waiver and Estoppel from Introducing Evidence at Trial Regarding Guerrette's Material Misrepresentations*

Under the doctrines of waiver and estoppel, Guerrette argues, Fire was prohibited from denying his claim for reasons other than those specified in its denial letter. We disagree.

"California courts have applied the general rule that waiver requires the insurer to intentionally relinquish its right to deny coverage and that a denial of coverage on one ground does not, absent clear and convincing evidence to suggest otherwise, impliedly waive grounds not stated in the denial." (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 31 (*Waller*).)[6] Here, nothing in the denial letter indicated Fire intentionally relinquished its right to deny coverage on grounds other than those specified in the letter. To the contrary, the letter stated that Fire "expressly reserves all rights to deny this claim on any and other available grounds under the policy, under California law and under

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[5] Even assuming Fire violated Insurance Code section 677, the trial court did not abuse its discretion in denying Guerrette's motion in limine. If a notice of cancellation does not comply with the statute, the cancellation of the policy is ineffective and the policy remains in force. (*Mackey, supra*, 105 Cal.App.4th at p. 1258; *Lee v. Industrial Indemnity Co.* (1986) 177 Cal.App.3d 921, 924.) Merely because the policy is in force, however, does not mean that the insurer is obligated to cover uncovered claims, including claims based on material misrepresentations.

[6] Contrary to Guerrette's contention, the holding in *Waller* regarding waiver and estoppel applies to first-party claims. (*Karl v. Commonwealth Land Title Ins. Co.* (1997) 60 Cal.App.4th 858, 874-875; *Chase v. Blue Cross of California* (1996) 42 Cal.App.4th 1142, 1150.)

California statutes." The letter further stated: "Neither this correspondence nor any investigation conducted by Fire Insurance Exchange into the facts and circumstances in the above captioned loss, or the policy of insurance, is intended as, nor should be construed as a waiver of any of the terms, conditions, provisions or limitations of said policy of insurance including but not limited to limits on coverage; a waiver of any of the obligations of you; nor a waiver of any defenses now or hereafter available to Fire Insurance Exchange." This language made clear that Fire did *not* waive its right to deny Guerrette's claim on grounds other than those specified in the letter.

Guerrette's estoppel argument is equally meritless. "[P]roof of estoppel requires a showing of detrimental reliance by the injured party." (*Waller, supra*, 11 Cal.4th at p. 34.) Here, Guerrette presented no argument in his brief, nor did he cite any evidence in the record, indicating that he detrimentally relied on the claim denial letter. Guerrette thus failed to show Fire was estopped from introducing evidence at trial regarding his third contents claim.

e. *Fire's Alleged Violation of Insurance Code section 790.03 Was Not a Basis for Granting Guerrette's Motion in Limine*

Guerrette argues that Insurance Code section 790.03, subdivision (h)(13), is part of a "statutory scheme mandating certain disclosures to the insured when terminating coverage." He further argues the statute supports his contention that Fire was prohibited from presenting evidence at trial regarding material misrepresentations other than those stated in the claim denial letter. Guerrette's reliance on this statute is misplaced.

Insurance Code section 790.03 provides a list of "unfair methods of competition and unfair and deceptive acts or practices in the business of insurance."[7] The statute prohibits, inter alia, "[k]nowingly committing or performing with such frequency as to indicate a general business practice" certain "unfair claims settlement practices,"

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[7] Insurance Code section 790.03 does not create a private civil cause of action against an insurer that violates any of its provisions. (*Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, 304.)

including "[f]ailing to provide promptly a reasonable explanation of the basis relied on in the insurance policy, in relation to the facts or applicable law, for the denial of a claim or for the offer of a compromise settlement." (Ins. Code, § 790.03, subd. (h)(13).)

Guerrette does not present any arguments, nor does he cite anything in the record, indicating that Fire violated Insurance Code section 790.03, subdivision (h)(13). There is no evidence that Fire engaged in a "general business practice" that violated the statute. Further, as to Guerrette's third contents claim, Fire's letter dated June 25, 2008, provided on its face a reasonable explanation for the denial of the claim, namely Guerrette's false statements regarding certain personal property allegedly destroyed in the fire. Guerrette thus did not prove that Fire violated Insurance Code section 790.03, subdivision (h)(13).

Moreover, even assuming Fire engaged in a general business practice in violation of the statute, the trial court did not abuse its discretion in denying Guerrette's motion in limine. A violation of Insurance Code section 790.03, subdivision (h)(13), does not, by itself, prohibit an insurer at a trial on its alleged bad faith denial of a claim from introducing evidence of the insured's wrongdoing not specified in the insurer's claim denial letter. Guerrette has cited no authority to support his position and we have found none.

f. *We Do Not Reach Defendants' Other Arguments Relating to the Motion in Limine*

Defendants argue that Guerrette waived any claim of error as to the denial of his motion in limine by failing to renew his objections at trial. (See *Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1675 ["A motion in limine to exclude evidence is not a sufficient objection unless it was directed to a particular, identifiable body of evidence and was made at a time when the trial court could determine the evidentiary question in its appropriate context"].) They also argue that Guerrette invited error by eliciting testimony as to the challenged issues. (See *Transport Ins. Co. v. TIG Ins. Co.* (2012) 202 Cal.App.4th 984, 1000 [" 'Under the doctrine of invited error, when a party by its own conduct induces the commission of error, it may not claim on appeal that the

judgment should be reversed because of that error' "].) Defendants further argue Guerrette did not show that he was prejudiced by the erroneous admission of evidence. (Evid. Code, § 353 [a judgment cannot be reversed by reason of the erroneous admission of evidence unless, inter alia, the error resulted in a miscarriage of justice].) We do not reach these arguments because we hold, for the reasons stated *ante*, that the trial court did not abuse its discretion in denying Guerrette's motion in limine.

2. *CACI No. 2309*

In his opening brief, Guerrette mentioned several times the trial court's decision with respect to CACI No. 2309, but did not present any coherent argument regarding whether the trial court erroneously denied his proposed jury instruction.[8] He also did not present any argument about whether the trial court's ruling on the jury instruction consisted of prejudicial error. (See *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580-581.) We thus conclude Guerrette forfeited any claim of error with respect to the trial court's ruling on CACI No. 2309. (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862; *People v. Stanley* (1995) 10 Cal.4th 764, 793.)

3. *Motion for New Trial*

Generally we review an order denying a motion for new trial for abuse of discretion. (*Sandoval v. Los Angeles County Dept. of Public Social Services* (2008) 169 Cal.App.4th 1167, 1176, fn. 6.) "To the extent that the trial court confronted conflicting declarations in denying the new trial motion, we affirm the trial court's factual determinations, whether express or implied, if supported by substantial evidence." (*Ibid.*) If we find the trial court abused its discretion in denying the motion, we independently review whether the court's error was prejudicial. (*Ibid.*; accord *Nazari v. Ayrapetyan* (2009) 171 Cal.App.4th 690, 694.)

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[8] Guerrette's discussion in the argument portion of his brief consisted of one sentence: "The court's continued disregard of the statutory scheme was the gateway for jury deliberations of ***any*** alleged, though previously undisclosed, material misrepresentation."

Guerrette asserted four grounds for a new trial: (1) there was an "irregularity in the proceedings"; (2) there was an "accident or surprise, which ordinary prudence could not have guarded against"; (3) there was an insufficiency of the evidence to justify the verdict; and (4) there was an error in law. (Code of Civil Proc., § 657.) The first, second and fourth grounds are based on the same arguments Guerrette made regarding the court's denial of his motion in limine. In particular, Guerrette contends the trial court's erroneously "merged" the two components of a notice of cancellation set forth in Insurance Code section 677, namely (1) the grounds relied on and (2) the specific information supporting each ground. As we explained *ante*, however, the trial court did not abuse its discretion in denying Guerrette's motion in limine and, in fact, Insurance Code section 677 is inapplicable to this case. We therefore conclude the trial court did not abuse its discretion in denying Guerrette's motion for a new trial based on an irregularity of the proceedings, an accident or surprise, or an error in law.

Guerrette's argument regarding an alleged insufficiency of the evidence is also unpersuasive. We presume that the record contains evidence to support every finding of fact by a jury. (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409.) " 'A party who challenges the sufficiency of the evidence to support a particular finding must *summarize the evidence* on that point, *favorable and unfavorable*, and *show how and why it is insufficient*.' " (*Ibid.*; accord *Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218 (*Doe*).) Further, a party who challenges the sufficiency of the evidence must state the facts in a light most favorable to the prevailing party. (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 737 (*Schmidlin*).) Guerrette, however, did not provide such a summary of unfavorable evidence, and did not present the facts in a light most favorable to defendants. Instead, he devoted much of his briefs rearguing the facts, which is inappropriate on appeal. (*Id.* at pp. 737-738.) Because Guerrette has failed in his obligations concerning the discussion and analysis of the evidence at trial, we deem the claim of error that there was no substantial evidence to support the verdict forfeited. (*Doe*, at p. 218; *Schmidlin,* at p. 738.)

Assuming Guerrette did not forfeit the argument, we reject it on the merits. There was clearly substantial evidence to support a finding that Guerrette made a material misrepresentation to Fire. For example, viewed in a light most favorable to Fire, the evidence indicated that Guerrette lied about purchasing hardwood flooring from JZ Floors, and went so far as to present a forged document to support his false claim. This evidence consisted of, inter alia, the third contents claim, the receipt Guerrette submitted to Fire, the actual written quote JZ Floors gave Guerrette, and Aviv Tuchman's testimony. Likewise, there was substantial evidence from which the jury could have concluded that Guerrette made material misrepresentations regarding the loss of his stereo system, toilet and personal tools.

We acknowledge that Guerrette had explanations for the ostensibly false statements he made to Fire regarding the flooring, stereo system, toilet and personal tools which the jury could have reasonably believed. But we must assume on appeal that the jury rejected his explanations, or at least one of them. The question we face is whether a reasonable jury could have found, based on all the evidence favorable to defendants, that Guerrette made a material misrepresentation to Fire. We conclude that a reasonable jury could have made such a finding.

4. *Alter Ego and Joint Venture Arguments*

Guerrette argues the trial court erroneously determined that Fire, Farmers Exchange and FGI were not alter egos of each other. He also contends the trial court erroneously granted FGI's motion for nonsuit. We do not reach these issues because we hold the trial court did not commit a reversible error with respect to Guerrette's underlying substantive claims. (Cf. *R & B Auto Center, Inc. v. Farmers Group, Inc.* (2006) 140 Cal.App.4th 327, 368.)

DISPOSITION

The judgment is affirmed. Respondents are awarded costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.