

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

RANDALL L. GOODMAN et al.,

Plaintiffs and Appellants,

v.

JESUS LOZANO et al.,

Defendants and Respondents.

G036774, G037091

(Super. Ct. No. 01CC02874)

ORDER DENYING PETITION FOR
REHEARING AND MODIFYING
OPINION; CHANGE IN JUDGMENT

(1) The petition for rehearing, filed by Appellants on February 25, 2008, is DENIED.

(2) The opinion, filed February 8, 2008, is hereby modified as follows:

(2a) On page 6 of the slip opinion, delete the second full paragraph and substitute, in its stead, this paragraph:

Under the peculiar facts of this case, there can be no doubt that the Mobricis and at least Jesus Lozano were in a general partnership. Indeed, at the trial level there never was any dispute over the issue. In closing arguments, Goodman and

Guinther’s own trial counsel described Mobrisci as “a joint -- *certainly a partner* of Mr. Lozano.” (Italics added.) For his part, Jesus Lozano testified that the arrangement he had with the Mobriscis was “fifty percent of the profit and/or loss.” (Cf. *April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 819 [elements of joint venture are joint interest in common business, an understanding to share both profit and loss, and right to joint control].) Finally, Alberto Mobrisci testified that the Mobriscis met Jesus Lozano in 1989 or 1990, and formed an oral business “relationship” where they would buy residential properties -- the two of them “built” about seven or eight homes. Their agreement was: “Mr. Lozano would provide the money to build; and the profits, we would share them 50-50. Mobrisci was the “construction arm of the venture.”

(2b) On page 9 of the slip opinion, at the end of the paragraph ending with the words “arising out of the Lozano-Mobrisci partnership,” insert the following new footnote 5, and renumber all subsequent footnotes accordingly:

The double recovery principle in section 877 also operates in favor of Natalia Lozano, wife of Jesus Lozano, regardless of whether she may, or may not, have technically been a partner in the Lozano-Mobrisci partnership. (She certainly held title to the property as a joint tenant with her husband, Jesus.) Her involvement in the case was completely passive, her exposure totally vicarious (whether arising directly from her status as joint owner of the developed property, or as a member of the Lozano-Mobrisci partnership), and any award against her could only be traceable to some failure by the Mobriscis from their duties arising out of their partnership with her husband. As the court noted in *Gacksetter v. Frawley* (2006) 135 Cal.App.4th 1257, 1271-1272, the phrase “joint tortfeasor” as used in sections 877 and 877.6 is given a broad meaning, and certainly includes defendants whose liability is only derivative or vicarious.

(2c) On page 42 of the slip opinion, delete the final, one-sentence, paragraph of the opinion and substitute, in its stead, this paragraph:

Recognizing that our analysis in this opinion has required us to part company with some prior published opinions, we are persuaded that this case is an

instance where the interests of justice require that each side bear its own costs on appeal. (See Cal. Rules of Court, rule 2.278(a)(5).)

(3) The modification specified in (2c) above changes the appellate judgment. Accordingly, the finality period for the opinion filed February 8, 2008, begins to run from the filing date of this modification order. (See Cal. Rules of Court, rule 8.264(c)(2).)

MOORE, J.

WE CONCUR:

SILLS, P. J.

RYLAARSDAM, J.