

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BEVERLY HILLS COURT  
JAN 11 2007  
RECEIVED

RECEIVED  
BEVERLY HILLS COURT  
JAN 11 2007  
RECEIVED

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES, BEVERLY HILLS BRANCH**

ALAN KLEIMAN, an individual;  
Plaintiff,

vs.

BARRY BEN YAKOV, an individual; JUSTIN  
JACOBSON, an individual; and DOES 1 to  
100, Inclusive,  
Defendants.

CASE NO. 06 C00247  
[LIMITED JURISDICTION]

JUDGE RICHARD STONE  
DIV. 6

**[PROPOSED]**

**ORDER FOR AND JUDGMENT  
NOTWITHSTANDING THE VERDICT**

The above entitled action came on regularly for jury trial on October 11, 2006, in Division 6 of the Superior Court, Beverly Hills Branch, the Honorable Judge Richard Stone, presiding. Appearing on behalf of Plaintiff ALAN KLEIMAN was Bryan M. Thomas and Douglas J. Del Tondo.

Appearing on behalf of Defendant BARRY BEN YAKOV was Gregory Marks.

On October 11, 2006, a jury of 12 persons was regularly impaneled and sworn to try the action. Witnesses on the part of Plaintiff ALAN KLEIMAN were sworn and examined. No witnesses for Defendant BARRY BEN YAKOV were called.

The parties stipulated that the Court would add physical repair damages in the total sum of \$7,072.67 to the judgment.

1 After hearing the evidence and arguments of counsel, the jury was duly instructed by the Court  
2 and the cause was submitted to the jury with directions to return a verdict on special issues. The jury  
3 deliberated and thereafter returned into Court with its verdict as follows:

4 We, the jury in the above-entitled cause, find the following on the questions  
5 submitted to us:

6 Question 1: What are plaintiff Alan Kleiman's loss of use damages?

7 TOTAL DAMAGES: \$ 11,866.00

8 Question 2: If you awarded loss of use damages, what was the rental  
9 rate used to compute the loss of use damages?

10 ANSWER: \$ 174.50 (per day); \$ 1,121.50 (per week)

11  
12 Dated: October 11, 2006

/S/  
Foreperson Signature

13  
14 Juror Seat Number: 3

Christopher M. Fuchs  
Print Name Clearly

15  
16  
17 Judgment was thereafter entered on October 31, 2006, for a total of \$18,938.67 (comprised of  
18 \$11,866 in loss of use damages and \$7,072.67 in physical repair damages), plus \$2,277.19 in costs.

19 Thereafter, Plaintiff ALAN KLEIMAN moved the Court for judgment in Plaintiff's favor,  
20 notwithstanding the verdict, on the amount of loss of use damages and this motion came on regularly  
21 to be heard before this Court on January 9, 2006. Douglas Del Tondo appeared as counsel for  
22 Plaintiff ALAN KLEIMAN and Gregory Marks appeared as counsel for Defendant BARRY BEN  
23 YAKOV.

24 The parties agreed that Defendant BARRY BEN YAKOV had previous paid the physical repair  
25 damages in the amount of \$7,078.67 prior to trial on April 8, 2005, and therefore the parties stipulated  
26 that the judgment award of \$7,072.67 be stricken from the judgment.

1 The motion was argued and submitted for decision, and the Court being fully advised in the  
2 matter, and good cause appearing therefor:

3  
4 IT IS ORDERED, ADJUDGED AND DECREED:

5 1. That the motion of Plaintiff ALAN KLEIMAN for judgment in Plaintiff's favor,  
6 notwithstanding the verdict of the jury, is hereby granted.

7 2. That the Judgment entered on October 31, 2006, on the verdict is vacated and set aside.

8 3. That parties stipulate that the amount of \$7,072.67 included in the Judgment by stipulation  
9 shall no longer be part of this Judgment since the physical repair damages of \$7,078.67 were paid by  
10 Defendant BARRY BEN YAKOV prior to trial. Therefore the award of amount of \$7,072.67 for  
11 physical repair damages is stricken from the Judgement.

12 3. That Plaintiff ALAN KLEIMAN is to have judgment for the total amount of \$22,868.19,  
13 comprised of \$20,591 in loss of use damages and \$2,277.19 in costs, together with interest thereon at  
14 the legal rate of ten percent (10%) per annum from the date of judgment until paid.

15  
16 FEB 2 2007  
17 Dated: \_\_\_\_\_

RICHARD A. STONE  
\_\_\_\_\_  
Honorable Richard Stone  
JUDGE OF THE SUPERIOR COURT

18  
19  
20  
21  
22  
23  
24  
25  
26  
27 Z:\Kleiman #4948\Post Trial\Motion JNOV\Proposed Judgment #4 after JNOV.wpd.wpd  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2201 Dupont Drive, Suite 820, Irvine, California 92612. I am an attorney admitted to practice before the bar of this court at whose direction the service was made.

On the Date of Service indicated below, I served the foregoing document(s) described as PROPOSED ORDER AND JUDGMENT JNOV on the person(s) listed below in the action of Kleiman vs. Yakov by placing a true copy thereof in sealed envelopes addressed as follows:

Gregory W. Marks  
Early, Maslach, & Oelze  
700 S. Flower Street, Suite 2800  
Los Angeles CA 90017

Following ordinary business practices, I placed for collection and mailing at the above business address, the described document(s) in a sealed envelope, with postage fully prepaid. I am "readily familiar" with the firm's practice for collection and processing of correspondence for mailing. Under that practice it would be deposited with the United States Postal Service on the day on which it is collected at the firm.

I deposited the fully prepaid envelope with the United States Postal Service at Irvine, California.

I personally served such envelopes, at the address(es) or upon the individuals listed above.

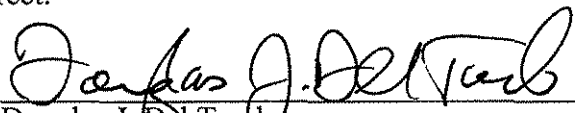
I deposited in a box or other facility regularly maintained by Federal Express, an express service carrier, or delivered to an authorized Federal Express driver or courier, the described document(s) in a sealed envelope, with postage fully prepaid.

By facsimile machine, I caused the above-referenced document(s) to be transmitted to the above person(s) at the following telephone number ( ) - . Attached to this declaration is a "TX Confirmation Report" confirming the status of transmission.

Date of Service: January 10, 2007

Executed on January 10, 2007, at Irvine, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
\_\_\_\_\_  
Douglas J. Del Tondo