

PASSPORT 420, LLC, Plaintiff, Cross-complainant and Respondent,
v.
STARR INDEMNITY & LIABILITY COMPANY, Defendant, Cross-defendant and Appellant.

2d Civil No. B343113.

Court of Appeals of California, Second District, Division Six.

Filed October 1, 2026.

Appeal from the Superior Court of Santa Barbara County, Super. Ct. No. 19CV03596) (Santa Barbara County, Colleen Sterne, Judge.

Cunningham Swaim and Steven D. Sanfelippo, Carl J. Basile, Jonathan E. Hembree; LaMontagne & Amador and Ralph S. LaMontagne, Jr., Eric A. Amador, for Defendant, Cross-Defendant and Appellant.

Moskovitz Appellate Team and Myron Moskovitz, Jason R. Marks; Cappello & Noël and Richard Lloyd and Lawrence James Conlan (Presidio Law Firm), for Plaintiff, Cross-Complainant and Respondent.

CERTIFIED FOR PUBLICATION

YEGAN, J.

An applicant for insurance has a duty to disclose facts within the applicant's knowledge which are material to the insurance contract. (Ins. Code, § 332.)^[1] A fact is material if it is reasonable and probable that knowing the fact would change the insurer's decisions about the contract. (§ 334.) We hold that, if an applicant for insurance fails to disclose a material fact, the insurer may rescind the policy when it learns the truth, even if the carrier never asked the applicant about that fact. Here, the insured did not disclose that almost two million dollars used to purchase the insured property had been embezzled.

Starr Indemnity & Liability Company (Starr) issued an aircraft insurance policy to Passport 420, LLC (Passport), covering a jet purchased by Passport. Among many other provisions, the policy includes a "War Risk" endorsement stating that Starr will pay for the "physical loss" of the aircraft caused by, ". . . seizure. . . by, or under the order of any government, public or local authority, whether civil, military or de facto[.]" After the policy was renewed for a third one-year term, the United States government seized the aircraft as part of a criminal prosecution against former attorney Michael Avenatti, one of the members of Passport. It is undisputed that Avenatti embezzled approximately two million dollars from a client and used the money to pay for his share of the aircraft's purchase price. It is also undisputed that the only other member of Passport, William Parrish, had no actual knowledge of and did not participate in Avenatti's crime.

Starr denied coverage for the loss. Passport filed this lawsuit for breach of contract and breach of the implied covenant of good faith and fair dealing. At the close of Passport's case, Starr moved for judgment (Code Civ. Proc., § 631.8) on the ground that Passport concealed Avenatti's embezzlement, entitling Starr to rescind the policy. (§ 331.) The trial court denied the motion. The jury found in favor of Passport, awarding both compensatory and punitive damages.

Starr appeals the judgment awarding Passport \$3,990,000 for breach of the insurance policy, \$1,048,331.51 in prejudgment interest, \$1,417,068.27 in attorney's fees, \$125,971.01 in costs and punitive damages of \$15,000,000. Passport appeals the award of prejudgment interest, contending that it should have been calculated from the date Starr sent its reservation of rights letter, rather than from the date Starr denied coverage.

We conclude the trial court erred when it denied Starr's motion for judgment because Passport concealed the material fact that Avenatti embezzled funds used to purchase the aircraft and his knowledge of that fact is imputed to Passport. Starr was, therefore, entitled to rescind the policy. Accordingly, we reverse the judgment. Because the resolution of this issue is dispositive of the entire appeal, we do not reach Starr's remaining contentions.^[2]

Facts

In 2016, Avenatti represented William Parrish, an extremely successful engineer and business person who is also an experienced, licensed pilot. At Avenatti's suggestion, the two decided to buy a jet together. Avenatti drafted an operating agreement creating Passport 420, LLC (Passport). Passport had two members: Avenatti & Associates APC, Avenatti's law firm, and Spring Creek Research LLC, a firm controlled by Parrish. In July 2016, the parties executed the operating agreement. Through Spring Creek, Parrish contributed 52.7% of the purchase price of the jet; at Avenatti's direction, Avenatti & Associates contributed the remainder.

Section 5 of the operating agreement provides, "The affairs of the Company [Passport 420] shall be managed by a Manager. [¶] 5.1 The Manager shall have full and complete authority, power and discretion to manage and control the affairs of the Company, to make all decisions regarding such matters, and to perform any and all other acts and activities customary or incident to the Company's purpose. The actions of the Manager taken in accordance with this Agreement shall bind the Company." Avenatti was appointed the Manager. No formal election for the position was held after that initial appointment.

Five months later, in January 2017, Passport took delivery of the aircraft. Passport hired Christopher Ohman, a commercial pilot, to fly and manage the maintenance of the jet. Ohman completed the application to obtain an aircraft insurance policy from Starr. The application requests information identifying the aircraft, the qualifications of its pilots and the arrangements made to maintain it. It also requests information regarding any liens or loans secured by the aircraft. The application does not, however, request any information regarding the source of the funds used to purchase the aircraft, the financial condition of Passport, or the finances of its individual members. Before the seizure occurred, Starr conducted no inquiry into the source of Passport's funds or its financial condition. It also did not investigate the entities and individuals who formed Passport, beyond a Google search of Avenatti and Parrish's names. Starr issued the policy effective January 26, 2017.

The underwriter responsible for processing Passport's application and issuing the insurance policy itself did not request additional information from the members of Passport or its insurance broker regarding the source of funds used to purchase the aircraft. Starr did not conduct a formal background check of either Passport or its members. This sort of investigation is not standard in the industry. The underwriter was not aware of anything on the application that would inform an insured "that Starr is interested in the source of funds used to purchase the aircraft[.]"

Starr maintains an underwriting manual that includes a list of factors to consider in assessing insurance risk. The source of an applicant's funds or its financial condition are not included on that list or specifically mentioned elsewhere in the manual. Instead, the risk factors considered by Starr focus on airworthiness and the insured's ability to operate the aircraft safely.

In considering whether to insure an aircraft that is going to be piloted by an owner, Starr's underwriters consider "what aircraft they have flown in the past, what training they've done, if they had any claim records or incidents or FAA violations, where they tend to operate the aircraft, if it is U.S. based, if they are going to go international. [¶] We would look at where it is going to be hangared out, who is managing the aircraft, what is their experience and background." Starr does not "typically" investigate "whether or not there was theft involved in the purchase of the aircraft[.]" The focus of underwriters is "the risk of the aircraft, where it's operating, how it's operating."

Starr contends that it would not insure an aircraft if it was aware the aircraft had been purchased with "illegal funds." Starr "would never intentionally write [an insurance policy for] something that had stolen funds or illegal activity."

The underwriter's supervisor agreed that, if Starr had "any idea that maybe one penny is illicitly funded, we would not participate on that risk." Starr might be able to determine whether illicit funding was involved by conducting background checks. However, "When we see an attorney, we expect, okay, A they're financed; B, they're following the law." Starr relies on the insurance brokers to provide accurate information regarding applicants. Starr could require brokers to verify their clients' banking and financial information but it "deal[s] with hundreds, if not thousands, of risks that we insure every year. And so to go to that length, it would be noncommercial." Although Starr maintains that an insurance policy "will be null and void" if the insurer is "financing an asset with illicit funds," its application forms and policies contain no specific language to that effect. This is not determinative.^[3]

By the spring of 2018, Parrish's relationship with Avenatti was fracturing. Ohman resigned as their pilot and Avenatti stopped paying Passport's bills. Parrish assumed managerial duties for Passport and started paying its bills. Avenatti refused to sign a document formally appointing Parrish the manager of Passport. In August 2018, Parrish and Spring Creek notified Avenatti that, "based on your defaults under the operating agreement and the breaches of your fiduciary duties to Mr. Parrish and Spring Creek, including your refusal to comply with Mr. Parrish's recent request to elect him as Manager of Passport 420,

Mr. Parrish will now assume the role of Manager and all responsibilities and rights that go with it." Avenatti did not respond to the letter.

About six months after removing Avenatti as manager, Parrish submitted an application to renew the Starr policy for another one-year term, using the same insurance broker Passport had used for the prior applications. The application removed information relating to Avenatti and replaced it with Parrish's information. Parrish signed the application on behalf of Passport. Starr renewed the policy without further inquiry.

The United States Treasury Department seized the aircraft on April 10, 2019. Avenatti was indicted for wire and bank fraud the same day. About two weeks later, Parrish submitted a "Sworn Statement in Proof of Loss" to Starr seeking to recover \$3,990,000, the insured value of the aircraft less the \$10,000 deductible. The claim requests payment be made to "William Parrish [¶] Passport 420, LLC[.]"

Starr's adjuster acknowledged receipt of the sworn statement and explained to Passport's insurance broker that Starr's coverage investigation was not complete. The adjuster asked Parrish to document his status as the "managing member" of Passport, to explain why he "is asking for payment to be made to him as an individual instead of Passport 420 LLC," and to provide any information Parrish might have regarding Avenatti's involvement with the aircraft and the criminal charges pending against him. After counsel for Parrish responded, Starr sent a reservation of rights letter declining to pay the claim until its ongoing investigation was complete.

Passport filed its complaint in this matter about two weeks after it received the reservation of rights letter. Starr denied Passport's claim and purported to rescind the policy about two months after Avenatti's criminal case ended with his conviction. The letter notifying Passport of the denial relied on the evidence of Avenatti's crimes and "Passport 420's concealment of material facts from Starr during the underwriting process — specifically, that the Aircraft was purchased with stolen funds" (Bold omitted.) Starr also contended that a number of exclusions and other policy conditions precluded coverage.

Contentions

Starr contends the judgment should be reversed for many reasons.^[4] We reach only one of these contentions. We conclude the trial court erred when it denied Starr's motion for judgment based on its equitable rescission claim. This is a classic case of concealment based upon Passport's failure to disclose the material fact that Avenatti used embezzled funds to purchase the jet, increasing the risk that it would be seized by the government. (Civ. Code, § 1689, subd. (b)(1).) Avenatti's knowledge of his crime must be imputed to Passport because he was its manager when he used the embezzled funds to purchase the jet and when Passport obtained the Starr policy. This issue is dispositive of the entire appeal and we need not reach Starr's remaining contentions.

Standard of Review

Our standard of review on appeal is de novo here and "we are not bound by a trial court's interpretation of the law and independently review the application of the law to undisputed facts." (*People ex rel. Dept. of Motor Vehicles v. Cars 4 Causes* (2006) 139 Cal.App.4th 1006, 1012; see also *Orange County Water Dist. v. MAG Aerospace Industries, Inc.* (2017) 12 Cal.App.5th 229, 239-240 [findings of fact reviewed for substantial evidence; legal conclusions reviewed under a de novo or independent standard].)

Discussion

Each party to an insurance contract has a duty to disclose "all facts within his knowledge which are or which he believes to be material to the contract" (§ 332.) Concealment of material facts, "whether intentional or unintentional, entitles the injured party to rescind insurance." (§§ 330, 331.) The question whether a fact is material, "is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries." (§ 334.)

These statutes impose "'heavy burdens of disclosure' upon both parties to a contract of insurance" (*Mitchell v. United National Ins. Co.* (2005) 127 Cal.App.4th 457, 468 (*Mitchell*), quoting *Imperial Casualty & Indemnity Co. v. Sogomonian* (1988) 198 Cal.App.3d 169, 179-180.) As our Supreme Court has explained in the context of life insurance, "It is generally held that an insurer has a right to know all that the applicant for insurance knows regarding the state of his health and medical history. [Citations.] Material misrepresentation or concealment of such facts are grounds for rescission of the policy, and an actual intent to deceive need not be shown. [Citations.] Materiality is determined solely by the probable and reasonable effect which truthful answers would have had upon the insurer." (*Thompson v. Occidental Life Ins. Co.* (1973) 9 Cal.3d 904, 915-916.) A misrepresentation may be considered material if "'a truthful statement would have affected the insurer's underwriting decision.'" (*Douglas v. Fidelity National Ins. Co.* (2014) 229 Cal.App.4th 392, 408 (*Douglas*)). The same principles of materiality apply "to first party property claims and claims on liability insurance policies." (*Duarte v. Pacific Specialty Ins. Co.* (2017) 13 Cal.App.5th 45, 53 (*Duarte*)).

The insurer is not required to demonstrate "a causal relationship between the material misrepresentation or concealment of material fact and the nature of the claim. . . . This is because the focus of the inquiry is not on the state of mind of the insured or applicant, but on 'the probable and reasonable effect which truthful answers would have had upon the insurer.'" (*Duarte, supra*, 3 Cal.App.5th at p. 53, quoting *Merced County Mutual Fire Ins. Co. v. State of California* (1991) 233 Cal.App.3d 765, 772.) "'Essentially, we must decide whether the insurer was misled into accepting the risk or fixing the premium of insurance. . . .'" (*Lunardi v. Great-West Life Assurance Co.* (1995) 37 Cal.App.4th 807, 828 (*Lunardi*), quoting *Old Line Life Ins. Co. v. Superior Court* (1991) 229 Cal.App.3d 1600, 1605 (*Old Line Life Ins. Co.*)).

Here, Starr's underwriter and his supervisor both testified that the use of embezzled funds in the aircraft purchase was a material fact and that Starr would not have issued the policy had it known the truth. This seems self-evident but the trial court rejected this testimony as self-serving and lacking credibility because, during the application process, Starr asked no questions regarding the source of funds. Starr's "lackadaisical" underwriting practices, the trial court found, showed that, "Starr 'essentially said we don't care. We will just cover the plane. We don't care where the money came from.'" "We don't know who these people are except we Googled them, and so we are going to go ahead and write the policy." Starr was, the trial court concluded, "'assuming a lot of risk' [when you do that]."

Passport urges us to adopt a similar understanding of materiality. It contends the embezzlement was not a material fact to Starr because Starr did not inquire about it or any other aspect of Passport's finances. In Passport's view, Starr assumed the risk that the conduct of Passport and its members would violate federal law and result in a seizure of the jet.

We need not opine on the trial court's criticism of Starr's underwriting practices or Passport's understanding of Starr's underwriting priorities. We are convinced that both Passport and the trial court misunderstand the Insurance Code. Read together, sections 332, 334 and 336 provide that the materiality of a concealed fact does not depend on the insurer's inquiry or the reasonableness of any investigation it conducts. Instead, an applicant for insurance has a duty to communicate to the insurer "in good faith, all facts within his knowledge which are or which he believes to be material to the contract . . . and which the [insurer] has not the means of ascertaining." (§ 332.) This affirmative duty of disclosure means that the insurer has no duty to inquire about a material fact unless that fact is "distinctly implied from other facts that had been revealed," or the insurer "has actual knowledge that facts presented in an application were untrue." (*Colony Ins. Co. v. Crusader Ins. Co.* (2010) 188 Cal.App.4th 743, 753; see also § 336; *Mitchell, supra*, 127 Cal.App.4th at p. 476 [insurer has right to rescind if it was unaware insured's representations were false]; *Lunardi, supra*, 37 Cal.App.4th at p. 826 [insurer not required to "take all possible measures to reveal undisclosed conditions"]; *Old Line Life Ins. Co., supra*, 229 Cal.App.3d at p. 1606 ["insurer's right to disclosure of material facts may be waived by its own failure to follow up obvious leads"]; *Anaheim Builders Supply, Inc. v. Lincoln Nat. Life Ins. Co.* (1965) 233 Cal.App.2d 400, 411 [insurer does not waive right to rescind based on concealed facts "'until the insurer had become aware of the falsity of those representations"']).

Moreover, the question is not whether Starr asked about the source of Passport's funds. The question is whether its underwriting decision would have been different had Passport disclosed the true facts. (§ 334; *Douglas, supra*, 229 Cal.App.4th at p. 408; *Lunardi, supra*, 37 Cal.App.4th at p. 828.) The materiality of a concealed fact "depends on the "'probable and reasonable effect that truthful disclosure would have had upon the insurer in determining the advantages of the proposed contract. . . .'" (*Lunardi*, at p. 828.) Thus, to find the concealment immaterial, we would have to conclude that Starr would have insured Passport against government seizure of its aircraft even though it knew some of the funds used to purchase the aircraft were obtained through the commission of a federal crime. We cannot do so.

We can accept, for the purposes of this analysis, that the trial court was not required to credit the testimony of Starr's witnesses on this issue. (*Higgins v. Higgins* (2017) 11 Cal.App.5th 648, 658.) But we review de novo its legal conclusion that Avenatti's use of embezzled funds was not material within the meaning of section 334. (*Jones v. Quality Coast, Inc.* (2021) 69 Cal.App.5th 766, 773.) Here, the trial court erred. As a matter of law, no reasonable insurer would insure property against government seizure if it knew the property was acquired with embezzled funds. Because the use of embezzled funds vastly increases the risk of a government seizure, any rational insurer would decline to insure the property, exclude government seizure from the policy, or require an increased premium in exchange for the increased risk. (*Mitchell, supra*, 127 Cal.App.4th at p. 474 ["The test for materiality is whether the information would have caused the underwriter to reject the application, charge a higher premium, or amend the policy terms, had the underwriter known the true facts"].)

As a matter of law, the undisclosed fact of Avenatti's embezzlement was material within the meaning of section 334. The concealment of this material fact entitled Starr to rescind the policy. (§ 331.) The remaining question is whether Avenatti's knowledge of his crimes is imputed to Passport. We conclude it must be.

Malevolent Agent Exception

As a general rule, the knowledge of an agent (here, Avenatti) is imputed to his or her principal (Passport). (Civ. Code, § 2332; *O'Riordan v. Federal Kemper Life Assurance Co.* (2005) 36 Cal.4th 281, 286; *Stueve Bros. Farms, LLC v. Berger Kahn* (2013) 222 Cal.App.4th 303, 316 (*Stueve Bros.*).) The principal is deemed to know "any facts relating to the subject matter of the agency of which the agent acquired knowledge or notice while acting as such within the scope of the agent's authority." (3 Witkin, Summary of Cal. Law (11th ed. 2026) Agency and Employment, § 161, p. 216.)

An exception to this imputation rule exists for a "malevolent" or "rogue" agent who acts adversely to the interests of the principal. "[W]here a malevolent agent's actions are hostile to his principal, we neither presume that the agent will disclose those actions to his principal nor impute the agent's knowledge of his own misdeeds to his principal." (*Stueve Bros., supra*, 222 Cal.App.4th at p. 316.) In *Stueve Bros.*, for example, an attorney used the elaborate estate plan he created for his clients to steal their money. His crimes were discovered years later, after the attorney moved to a different law firm, taking the clients with him. Tasked with untangling a complicated statute of limitations argument, the court of appeal concluded knowledge of the attorney's misconduct could not be imputed to his new law firm or to clients of that firm because the attorney was not presumed to have informed his new employer of his past crimes. (*Ibid.*)

Similarly, in *People v. Park* (1978) 87 Cal.App.3d 550, an agent convinced two clients to invest in a real estate development being promoted by Park. The agent gave their money to Park and received a finder's fee in exchange. Park never began the development and never returned the investors' money. He argued the agent's knowledge of risks associated with the investment should be imputed to the investors. This contention was rejected. "While in general the knowledge of an agent which he is under a duty to disclose is to be imputed to the principal, it is well established that where the agent acts in his own interest or where the interest of the agent is adverse to his principal, the knowledge of the agent will not be imputed to the principal. . . ." (*Id.* at p. 566.) Because the agent "was a double agent who acted not only on behalf of the investors, but also for [Park]," his knowledge of Park's risky plan was not imputed to the investors. (*Ibid.*)

In both *Stueve Bros.* and *Park*, the agent acted adversely to the principal and the principal received no benefit from the agent's actions. Here, by contrast, Avenatti's actions benefited Passport, at least initially, because they allowed Passport to complete the aircraft purchase. The malevolent agent exception does not apply under these circumstances. As Witkin notes, "California courts have drawn a distinction between situations in which the agent acts in an adverse capacity and those in which the agent acts for the principal but has a personal adverse interest." (3 Witkin, Summary of Cal. Law (11th ed. 2026) Agency and Employment, § 166, pp. 219-220, citing *McKenney v. Ellsworth* (1913) 165 Cal. 326, 329.) Under the latter circumstances, the principal is deemed to know whatever facts the agent knows.

The Restatement of Agency adopts a slightly broader version of this rule. "For purposes of determining a principal's legal relations with a third party, notice of a fact that an agent knows . . . is not imputed to the principal if the agent acts adversely to the principal . . . intending to act solely for the agent's own purposes . . . Nevertheless, notice is imputed (a) when necessary to protect the rights of a third party who dealt with the principal in good faith" (Rest.3d Agency, § 5.04, emphasis added.) American Jurisprudence makes the same point, noting that the adverse interest exception "applies only where the agent has totally abandoned the principal's interest and is acting entirely for the agent's own or another's

purposes; it cannot be invoked merely because the agent has a conflict of interest or because the agent is not acting primarily for the principal." (3 Am.Jur.2d (2026) Agency, § 230.)

Here, Avenatti embezzled his client's money after he became Passport's manager. Although he was not acting as an agent of Passport when he committed the embezzlement, he surely was acting as its agent when he applied those funds to the aircraft purchase. The purchase was made by Passport, not Avenatti as an individual. Unlike the attorney in *Stueve Bros.*, Avenatti did not use Passport's funds for his own purposes. He used embezzled funds for Passport's unknowing benefit. Avenatti was also acting as Passport's manager and in its interest when Passport obtained the Starr insurance policy. Nothing in the record suggests that, when it issued the policy, Starr was not dealing with Passport in good faith.

The malevolent agent exception cannot apply on these facts. Passport is deemed to have shared Avenatti's knowledge of his crimes. As a consequence, we conclude Passport concealed the material fact of the embezzlement from Starr. Starr was entitled to equitable rescission of the resulting policy. (§ 331.) The trial court erred when it denied Starr's motion for judgment.

Conclusion

The judgment is reversed. Passport's cross-appeal is dismissed. Costs to Starr.

CODY, P. J. and BALODANO, J., concurs.

[1] All further statutory references are to the Insurance Code unless otherwise stated.

[2] Starr's request for judicial notice filed on February 11, 2026, is granted. Passport's cross-appeal is dismissed as moot.

[3] A person (here, an attorney), or an entity, that owns a multimillion-dollar jet "free and clear," and is applying to insure the jet is, generally speaking, a reliable source of the information sought in the application for insurance. Without additional, suspicious circumstances, (1) there is no reason for an insurance carrier to reject the application and (2) no reason for it to inquire into the source of funds used to purchase the jet. Here, there were no "red flags." Even if a duty to inquire existed, it is more than speculative to conclude that the carrier would have discovered that Avenatti used embezzled funds to purchase the jet. It took the federal and state governments years to discover his crimes.

To be sure, Avenatti defrauded many clients. They were victims. He defrauded Passport 420, LLC. It was a victim. He defrauded William Parrish. He was a victim. And he defrauded Starr, the insurance carrier. It was a victim. None of these victims had any inkling that Avenatti was a master deceiver and a criminal.

[4] (1) Parrish and Spring Creek lack standing to pursue this lawsuit on behalf of Passport. (2) Starr was entitled to rescind the policy because Passport concealed the material fact that embezzled funds were used to purchase the aircraft and Avenatti's knowledge of that fact must be imputed to Passport. (3) Coverage is barred by an exclusion in the policy for "illegal, criminal or dishonest acts or activities, alleged or otherwise, committed by or at the direction of or with the knowledge and consent of directors or officers of the insured and with the knowledge at the time that such act was illegal or criminal" (4) Coverage is barred by Insurance Code section 533. (5) The finding that Starr breached the implied covenant of good faith and fair dealing is not supported by substantial evidence because Starr's failure to pay policy benefits was not unreasonable or without proper cause. (6) The trial court erred in awarding Passport attorney fees and costs under *Brandt v. Superior Court* (1985) 37 Cal.3d 813, because the issue was not presented to the jury and Starr did not stipulate to have the issue decided by the trial court. (7) The punitive damages award is not supported by substantial evidence of oppression, fraud or malice. (8) The trial court erred in denying Starr's motion for new trial based on evidence it discovered through Avenatti a few days after judgment.

In its cross-appeal, Passport contends the trial court erred in its award of pre-judgment interest. The trial court awarded interest from the date Starr denied the claim. It should, according to Passport, have awarded pre-judgment interest from the date of Starr's reservation of rights letter.

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