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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUL 24 2015

ALAN CARLSON, Clerk of the Court


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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

MERI NISHIUCHI, in the right of and for the
benefit of Atia Co., LP,

Plaintiff,

v.

PATRICIA TING (aka PATRICIA TING
LEE), an individual; MICHAEL SEUNG
HOON LEE, an individual, DIVINE
CREATIONS LLC, a California Limited
Liability Company, KANG S. CHEN, an
individual, and DOES 1-10, inclusive,

Defendants,

and

ATIA CO., LP, a Limited Partnership,

Nominal Defendant.

UNLIMITED CIVIL CASE

Case No.: 30-2013-00661506-CU-FR-CJC

[REDACTED]

STATEMENT OF DECISION

Judge: Hon. David Chaffee
Dept.: C-20
Trial Date: November 10, 2014

[Complaint Filed: July 8, 2013]

1 This is a California limited partnership derivative action under Corp. Code §15910.02.
2 Trial was held based on the “Partner’s Derivative Second Amended Complaint.” The causes of
3 action were: 1) Aiding and Abetting Breach of Fiduciary Duty; 2) Conversion; 3) Fraudulent
4 Transfers; 4) Constructive Fraudulent Transfers; and, 5) Violation of Penal Code §496. After
5 opening statements, the Court granted Defendants’ motion for nonsuit on the fifth cause of action
6 for Violation of Penal Code §496.

7
8 On November 19, 2014, the Court rendered an oral decision (“Court’s Oral Decision”) in
9 favor of Plaintiff. The Reporter’s Transcript of the Courts’ decision is incorporated and attached
10 hereto as **Attachment A**. The additional prominent facts were as follows:

11
12 **I. CONVERSION (CACI 2100)**

13
14 The Court’s Oral Decision states, “As to Michael Lee and Divine Creations, on all four
15 causes of action, *including conversion*, the court finds against them in the amount of \$446,555.”
16 (Trial Transcript, p. 394:15-17, emphasis added.)

17
18 The Court did not find against Defendant Patricia Ting on conversion. Patricia Ting was
19 not a party to the lease which states that the tenant was responsible for rent and costs of tenant
20 improvements. Additionally, Atia Co. LP’s (herein “Atia Co.”) money was put into Darwin
21 Ting’s bank account and comingled with his personal money; there is no evidence that the same
22 discrete sum that was deposited into Darwin Ting’s bank account was transferred to Patricia
23 Ting.

24
25 Plaintiff Atia Co. claims that Defendants Michael Lee and Divine Creations, LLC (herein
26 “Divine Creations”) wrongfully exercised control over its personal property. The elements of a
27 conversion claim are: (1) the plaintiff’s ownership or right to possession of the property; (2) the
28 defendant’s conversion by a wrongful act or disposition of property rights; and (3) damages

1 resulting from the conversion. Conversion is a strict liability tort. *Burlesci v. Petersen* (1998), 68
2 Cal. App. 4th 1062; *Oakdale Village Group v. Fong* (1996), 43 Cal. App. 4th 539, 543-545.

3
4 **1. Right to Possession.**

5 The first element of conversion is plaintiff's ownership or right to possession of the
6 property at the time of the conversion. *Cerra v. Blackstone* (1985), 172 Cal. App. 3d 604, 609.
7 Money can be the subject of conversion if it is a specific, identifiable sum, although it is not
8 necessary that each coin or bill be earmarked. *Weiss v. Marcus*, 51 Cal. App. 3d 590, 599.

9
10 Plaintiff Atia Co. owned and had a right to possess \$446,555. Atia Co. owns 99% of
11 UNT Atia Co. II, LP. (Exhibit 32, p. 1.) UNT Atia Co. II, LP owned bank accounts. (e.g. Exhibit
12 54, Exhibit 125, p. 42:15 - 48:23.) UNT Atia Co. II, LP owns real property known as the Canyon
13 Point Plaza shopping center. (Id.)

14
15 **2. Wrongful Act.**

16 A manual taking of the property is not necessary; it is only necessary to show an
17 assumption of control or ownership over the property, or that the alleged converter has applied
18 the property to his or her own use. *Oakdale Village Group v. Fong* (1996), 43 Cal. App. 4th 539,
19 543-544.

20
21 Here, Defendants Michael Lee and Divine Creations intentionally and substantially
22 interfered with Plaintiff Atia Co.'s property by applying \$446,555 to their own use. Defendants
23 and Darwin Ting operated their family bakery business at the leased space located at Canyon
24 Point Plaza; the business was Divine Creations doing business as Eat Cake. Michael Lee was
25 Divine Creations' Chief Executive Officer. (Exhibit 20, page 2.) Patricia Ting and Darwin Ting
26 were Divine Creations' managers and members. (Id.)

1 On March 27, 2010, Michael Lee entered into a lease for space at the Canyon Point
2 Plaza. (Exhibit 19.) The lease specified: Tenant's construction shall be installed by Landlord's
3 contractor, at Tenant's sole cost and expense. (Id. at page 17, para. 12.) As the Court stated in its
4 Oral Verdict "the lessee effectively was Michael Lee, the name on the lease agreement. We
5 could also ascribe it to the master entity for Eat Cake, the entity known as Divine Creations."
6 (Trial Transcript, p.391:1- 4.) Michael Lee and Darwin Ting had a verbal agreement that the
7 tenant did not have to pay for tenant's construction. From July 29, 2010 through June 2011,
8 \$446,555 that Atia Co. had a right to was applied to Divine Creations' and Michael Lee's use. In
9 Patricia Ting's Responses to Requests for Admissions, she admitted:

10 No. 70. On July 29, 2010 U.N.T. II Atia Co. (herein "UNT II") paid \$14,700.39 to
11 Epoxygreen for tenant improvements of Divine Creations dba Eat Cake.

12 No. 71. On January 16, 2011 UNT II paid \$7,695 to J-JR Interior Drywall Systems
13 for tenant improvements of Divine Creations, LLC dba Eat Cake.

14 No. 72. On January 27, 2011 UNT II paid \$4,300 to Francisco Davila for tenant
15 improvements of Divine Creations, LLC dba Eat Cake.

16 No. 73. On January 27, 2011 UNT II paid \$7,059.59 to Stiles Construction Service
17 for tenant improvements of Divine Creations, LLC dba Eat Cake.

18 No. 74. On March 6, 2011 UNT II paid \$83,234.21 to Stiles Construction Service
19 for tenant improvements of Divine Creations, LLC dba Eat Cake.

20 No. 75. On March 20 ,2011 UNT II paid \$51,720.93 to Stiles Construction Service
21 for tenant improvements of Divine Creations, LLC dba Eat Cake.

22 No. 76. On March 29,2011 UNT II paid \$28,742.14 to Stiles Construction Service
23 for tenant improvements of Divine Creations, LLC dba Eat Cake.

24 No. 77. On March 29, 2011 UNT II paid \$29,665.34 to Charlie's Fixture for tenant
25 improvements of Divine Creations, LLC dba Eat Cake.

26 No. 78. On April 2, 2011 UNT II paid \$13,291.54 to Stiles Construction Service
27 for tenant improvements of Divine Creations, LLC dba Eat Cake.
28

- 1 No. 79. On April 2, 2011 UNT II paid \$19,005.26 to Stiles Construction Service
2 for tenant improvements of Divine Creations, LLC dba Eat Cake.
- 3 No. 80. On April 20, 2011 UNT II paid \$2,005.58 to Charlie's Fixture for tenant
4 improvements of Divine Creations, LLC dba Eat Cake.
- 5 No. 81. On May 12, 2011 UNT II paid \$350 to Stiles Construction Service for
6 tenant improvements of Divine Creations, LLC dba Eat Cake.
- 7 No. 82. On May 12, 2011 UNT II paid \$237.60 to Stiles Construction Service for
8 tenant improvements of Divine Creations, LLC dba Eat Cake.
- 9 No. 83. On May 12, 2011 UNT II paid \$175 to Stiles Construction Service for
10 tenant improvements of Divine Creations, LLC dba Eat Cake.
- 11 No. 84. On May 12, 2011 UNT II paid \$1,205 to Stiles Construction Service for
12 tenant improvements of Divine Creations, LLC dba Eat Cake.
- 13 No. 85. On May 12, 2011 UNT II paid \$1,280 to Stiles Construction Service for
14 tenant improvements of Divine Creations, LLC dba Eat Cake.
- 15 No. 86. On May 21, 2011 UNT II paid \$6,364.51 to Charlie's Fixture for tenant
16 improvements of Divine Creations, LLC dba Eat Cake.
- 17 No. 87. On June 1, 2011 UNT II paid \$14,838.10 to Stiles Construction Service
18 for tenant improvements of Divine Creations, LLC dba Eat Cake.
- 19 No. 88. On June 7, 2011 UNT II paid \$28,707.46 to Stiles Construction Service
20 for tenant improvements of Divine Creations, LLC dba Eat Cake.
- 21 No. 89. On June 12, 2011 UNT II paid \$5,000 to Eat Cake Cafe for tenant
22 improvements of Divine Creations, LLC dba Eat Cake.
- 23 No. 90. On June 12, 2011 UNT II paid \$8,766.10 to American KPG, Inc. for
24 tenant improvements of Divine Creations, LLC dba Eat Cake.
- 25 No. 90. On June 12, 2011 UNT II paid \$735.38 to Charlie's Fixture for tenant
26 improvements of Divine Creations, LLC dba Eat Cake.
- 27 No. 92. On June 26, 2011 UNT II paid \$10,051.60 to Stiles Construction Service
28 for tenant improvements of Divine Creations, LLC dba Eat Cake.

1 No. 93. On July 21, 2011 UNT II paid \$3,621.38 to Life Source Water for tenant
2 improvements of Divine Creations, LLC dba Eat Cake.

3 No. 94. On January 26, 2011 UNT II paid \$53,000 to Charlie's Fixture for tenant
4 improvements of Divine Creations, LLC dba Eat Cake.

5 (Exhibit 125 p. 42:15 – 47:23.) UNT II's payment towards Defendants' tenant improvements
6 were corroborated by check images in Exhibit 54.

7

8 **3. No Consent.**

9 Atia Co. did not consent to the \$446,555 applied to Michael Lee and Divine Creations for
10 their own use.

11

12 **4. Harm.**

13 Atia Co. was harmed in the amount of \$446,555; this was the total amount UNT II paid
14 towards Divine Creations' tenant improvements.

15

16 **5. Substantial Factor.**

17 Michael Lee and Divine Creations were substantial factors in contributing to Plaintiff's
18 harm. They accepted and applied \$446,555 from Darwin Ting, money actually belonging to Atia
19 Co., towards their tenant improvements. The harm would not have occurred had Michael Lee
20 and Divine Creations not accepted and applied the \$446,555 of Plaintiff's money towards their
21 tenant improvements.

22

23 "While the evidence in this trial suggested that some lessor renovation might have been
24 needed prior to the installation of tenant improvements, the only evidence presented in this trial
25 is that all sums were applied to and expended for tenant improvements, totaling \$446,555."

26 (Trial Transcript p. 391:11-15.)

27 /./././.

28 /./././.

1 **Defense: Statute of Limitations and Laches**

2 The statute of limitations would accrue when the money was taken, in July 29, 2010 to
3 2012. *AmerUS Life Ins. Co. v. Bank of America*, N.A. (2006) 143 Cal.App.4th 631, 639. The
4 failure of the defenses is evident in the fact that the acts of conversion were checks from UNT II,
5 paying for the Defendants’ tenant improvements, with the payments beginning on July 29, 2010
6 and continuing thereon. The Complaint was filed on July 8, 2013 in this case, and therefore it
7 was filed within three-years of the payments. CCP §338(c).

8
9 “Laches is an equitable time limitation on a party’s right to bring suit, resting on the
10 maxim that equity aids the vigilant, not those who sleep on their rights.” *Magic Kitchen LLC v.*
11 *Good Things Int’l Ltd.*, 153 Cal.App.4th 1144, 1156. Laches is neglect or failure on the part of a
12 plaintiff in the assertion of a right that, when taken in conjunction with a more or less lengthy
13 period of time, and also in connect with other circumstances prejudicial to the defendant, will
14 operate as a bar in equity to the successful maintain of the plaintiff’s cause of action. *Columbia*
15 *Engineering Co. v. Joiner*, (1965) 231 Cal.App. 837, 857. California recognizes no artificial
16 rules as to the laspe of time or the degree of prejudice necessary before laches is available.
17 *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.*, (1962) 200 Cal.App.2d 322, 326.
18 A defendant must demonstrate three elements to be successfully assert a laches defense: (1)
19 delay in asserting a right or a claim, (2) the delay was not reasonable or excusable; and (3)
20 prejudice to the party against who laches is asserted. *Magic Kitchen LLC v. Good Things Int’l*
21 *Ltd.*, 153 Cal.App.4th 1144, 1156-1157

22
23 Where a claim is filed within the state limitation period, the strong presumption is that
24 laches is inapplicable. (See *Magic Kitchen supra* at 1156.) Here, Plaintiff’s claim was filed
25 within the limitation period. Moreover, the Court did not find that: (1) Plaintiff delayed bringing
26 this action, or (2) Defendants were prejudiced.

27 /././././.

28 /././././.

1 **II. FRAUDULENT TRANSFERS**

2 (CACI 4200; Cal. Civ. Code §3439.04(a))

3
4 Atia Co. claims it was harmed because judgment debtors Darwin Ting and Kuei-Mei
5 Ting fraudulently transferred property to Defendants in order to avoid paying a debt to Atia Co.
6 This is called “actual fraud”. “A transfer made or obligation incurred by a debtor is actually
7 fraudulent as to a creditor, whether the creditor’s claim arose before or after the transfer was
8 made or the obligation was incurred, if the debtor made the transfer or incurred the obligation
9 ...with actual intent to hinder, delay, or defraud any creditor of the debtor.” Cal. Civ. Code
10 §3439.04(a).

11
12 **1. Creditor.**

13 Plaintiff Atia Co. has a right to payment from Darwin Ting and Kuei-Mei Ting for
14 \$9,138,594.56. A “creditor” is a person or entity who has a claim against the debtor. Cal. Civ.
15 Code §3439.01(c). A “claim” means a right to payment, whether or not the right is reduced to
16 judgment, disputed, undisputed, legal, equitable, secured, or unsecured. Cal. Civ. Code
17 §3439.01(b). Here, Plaintiff Atia Co.’s claim arose in 2012 when it filed its lawsuit against
18 Darwin Ting and Kuei-Mei Ting (Case No.: 54308). Plaintiff’s claim resulted in a \$9,138,594.56
19 judgment against judgment debtors Darwin Ting and Kuei-Mei Ting. (Exhibit 3.)

20
21 **2. Transfer.**

22 Darwin Ting and Kuei-Mei Ting transferred property to Defendants. “ ‘Transfer’ means
23 every mode, direct or indirect, of disposing of or parting with an asset or an interest in an asset,
24 and includes payment of money.” Cal. Civ. Code §3439.01(i).

25
26 Here, Darwin Ting and Kuei-Mei Ting are joint owners of bank accounts. (Exhibits 43,
27 44, 45, 49, 50, 51, 59, 60-63.) Patricia Ting and Michael Lee own joint Citibank account ending
28

1 in 4394. (Exhibit 47.) Darwin Ting transferred two substantial amounts to account number 4394
2 as follows:

3 03/05/12 \$500,100.00

4 03/12/12 \$500,000.00

5 (Id.) Patricia used this money to purchase real property in Pasadena. (Trial Transcript, p. 169:22-
6 24.) Additionally, Patricia Ting also admitted that Darwin Ting transferred \$1,000,000 to Chang
7 Chih International Investment, LLC (herein "Chang Chih") for Patricia Ting's benefit; Patricia
8 Ting acquired title to real estate in Pasadena from Chang Chih:

9
10 Q. Now let us talk about the Del Mar properties. please. Your father, Darwin
11 Ting, paid \$1 million to Chang Chih International for you to acquire title to
12 the Del Mar property, correct?

13 A. Yes.

14 Q And it was your father who told you that he was going to pay Chang Chih
15 International and, then, Chang Chih were going to transfer the deed to you,
16 correct?

17 A. Yes.

18 Q. And you had an agreement with your father that he would transfer a
19 million dollars to Chang Chih so that you could acquire title to the Del Mar
20 property, correct?

21 A. Yes.

22 (Trial Transcript, p. 187: 1-14; Exhibit 45, p. 2.) Darwin Ting also transferred money directly to
23 Divine Creations. (Exhibit 125, p. 32:4 – 34:14; Exhibit 50.) Patricia Ting used the money she
24 received from Darwin Ting on her bakery Divine Creations. (Trial Transcript, p. 196:8-16.)

25
26 /////.

27 /////.

28 /////.

1 **3. INTENT TO HINDER, DEFRAUD**

2 Darwin Ting and Kuei-Mei Ting transferred the property with the intent to hinder, delay,
3 or defraud one or more of his creditors. Based on Civ. Code §3439.04(b) and CACI 4201, the
4 factors to consider in determining actual intent to defraud, among other factors, are the
5 following:

6
7 **(a) Whether the transfer was to a family member or relative:** Darwin Ting and
8 Kuei-Mei Ting are Patricia Ting's parents. Patricia Ting and Michael Lee are husband
9 and wife. Thus, the transfers were to family members.

10 **(b) Whether Darwin Ting retained possession or control of the money after it**
11 **was transferred:** After Patricia Ting and Michael Lee were sued in July 2013, they sold
12 the Pasadena real properties which was purchased with money received from Darwin
13 Ting. The proceeds from the sales were \$1.6 million, of which Patricia Ting transferred
14 \$980,000 back to her father Darwin Ting. (Trial Transcript, p. 194:23-24 and p. 390:18-
15 22.) Additionally, on March 24, 2014, Patricia Ting transferred another \$70,000 to her
16 father. Thus, Darwin Ting retained control of the money after it was transferred to
17 Defendants.

18 **(c) Whether the transfer was disclosed or concealed:** N/A.

19
20 **(d) Whether before the transfer was made, Darwin Ting had been sued or**
21 **threatened with suit:** Darwin Ting was sued on February 2, 2012 (Case No.: 54308). In
22 March 2012, Darwin Ting transferred \$1,000,100 to Citibank account number 4394.
23 (Exhibit 47.) On March 27, 2012, Darwin Ting transferred \$1,000,000 to Chang Chih.
24 (Exhibit 45, p. 2.) Thus, after Darwin Ting was sued, he made the transfers to
25 Defendants.
26
27
28

1 (e) **Whether the transfer was of substantially all of Darwin Ting's assets:** In April
2 27, 2010, Darwin Ting declared that his total assets, including investments, were \$6.1
3 million. (Exhibit 4.) Within twelve months of being sued, Darwin Ting transferred
4 **\$6,428,797** out of his bank accounts:

- 5
- 6 - March 5, 2012, \$500,100 To Defendants (Exhibit 47, p. 7)
- 7 - March 12, 2012, \$500,000 To Defendants (Exhibit 47, p. 7)
- 8 - March 27, 2012, \$1,000,000 To Chang Chih (Exhibit 49, p. 1)
- 9 - March 30, 2012, \$1,000,000 To Yong Fen Li (Exhibit 30, p. 1)
- 10 - April 2, 2012, \$500,000 To Yong Fen Li (Exhibit 45, p. 3)
- 11 - May 28, 2012, Transferred \$200,000 To Henry Ting (Exhibit 59)
- 12 - August 7, 2012, \$400,000 To Tao Ye In Hong Kong (Exhibit 62, p. 2)
- 13 - September 24, 2012, \$590,000 To Tao Ye In Hong Kong (Exhibit 60, p.2)
- 14 - September 24, 2012, \$210,000 To Tao Ye In Hong Kong (Exhibit 61, p. 3)
- 15 - October 10, 2012, \$204,743 To FTB (Exhibit 63, p. 2)
- 16 - October 10, 2012, \$333,656 To IRS (Exhibit 63, p. 2)
- 17 - October 15, 2012, \$135,347 To Wang Hung Yuan in Hong Kong (Exhibit 63, p.2)
- 18 - October 15, 2012, \$154,951 To Lin Yu Wan in Hong Kong (Exhibit 63, p. 2)
- 19 - 2012-2013 \$700,000 Transferred To Lawyers (Exhibit 43 and 44)

20 _____
21 **TOTALS \$6,428,797**
22 _____

23 In Case No.: 54308, the Amended Judgment ordered disgorgement of \$6,620,179. After
24 costs and prejudgment interest, the total judgment was \$9,138,594. The transfers to Patricia Ting,
25 along with others, left Darwin Ting without funds to satisfy Plaintiff's judgment.

26 (f) **Whether Darwin Ting fled:** Patricia Ting testified that her parents, Darwin Ting
27 and Kuei-Mei Ting, are living in Taiwan. (Trial Transcript, p. 213: 19-20, p. 215:3-4.)
28

1 Patricia Ting claimed she did not know her parents address or phone number. (Id. p.
2 215:14-25.) Thus, Darwin Ting has fled the United States.

3 **(g) Whether Darwin Ting removed or concealed assets:** Based on subsection (e)
4 above, Darwin Ting transferred \$1,490,298 to Hong Kong. Patricia Ting testified that she
5 also transferred \$980,000 to her father, who is living in Taiwan. (Trial Transcript, p.
6 194:23-24.) Then on March 24, 2014, Patricia Ting transferred another \$70,000 to her
7 father. Thus, \$540,298 was removed to Asia after Darwin Ting was sued.

8
9 **(h) Whether the value received by Darwin Ting was not reasonably equivalent**
10 **to the value of the asset transferred:** Patricia Ting admitted that the \$2 million she
11 received from her father was a purported gift. (Trial Transcript, p. 168: 8-24.) Thus,
12 Darwin Ting did not receive any consideration or equivalent from Defendants.

13 **(i) Whether Darwin Ting was insolvent or became insolvent shortly after the**
14 **transfer was made:** Same as subsection (e) above. The transfers to Defendants and to
15 others were part of an overall scheme to hinder and delay Plaintiff's collection on its
16 judgment.

17
18 **(j) Whether the transfer occurred shortly before or shortly after a substantial**
19 **debt was incurred:** Same as subsections (d) and (e) above.

20
21 **(k) Whether Darwin Ting transferred the essential assets of the business to a**
22 **lienholder who transferred the assets to an insider of Defendants:** N/A.

23 **(l) [Insert other appropriate factor']:** N/A.
24

25 The presence of one or more of these factors is evidence that suggest the intent to delay, hinder,
26 and defraud.
27
28

1 "[O]nly the debtor-transferor's fraudulent intent is required. (See Civ. Code, §
2 3439.04(a)(1).) The intent of the transferee is irrelevant." CACI 4200. Accord *Hansen v. Cramer*
3 (1952) 39 Cal.2d 321, 325.

4 **4. Harm.**

5 Plaintiff Atia Co. was harmed in the amount of \$2,000,100.

6
7 **5. Substantial Factor.**

8 Defendants' conduct was a substantial factor in causing Plaintiff's harm. Defendants
9 directly and indirectly accepted \$2,000,100 from Darwin Ting. The harm would not have
10 occurred if Defendants had not accepted \$2,000,100 from Darwin Ting.

11 **Defense: Good Faith.**

12
13 The transferee's intent becomes relevant if the transferee has an affirmative defense that
14 he received the debtor's property in good faith and for valuable consideration. Civ. Code
15 §3439.08(b) and Legisl. Comment. That does not appear to be the case here, where Mr. Ting
16 transferred assets to the Defendants for no consideration.

17
18 **III. CONSTRUCTIVE FRAUDULENT TRANSFER**

19
20 (CACI 4203; Civ. Code §3439.05)

21 Plaintiff Atia Co. claims it was harmed because Darwin Ting and Kuei-Mei Ting
22 transferred property to Defendants and were unable to pay Atia Co. money that was owed. This
23 is called "constructive fraud".

24
25 **1. Creditor.** Atia Co. has a right to payment from Darwin Ting and Kuei-Mei
26 Ting. Plaintiff Atia Co.'s claim arose in 2012 when it filed its lawsuit against Darwin Ting (Case
27 No.: 54308). Plaintiff's claim resulted in a \$9,138,594.56 judgment against judgment debtors
28 Darwin Ting and Kuei-Mei Ting. (Exhibit 3.)

1
2 **2. Transfer.** See above discussion “II. Fraudulent Transfer”, subsection 2.
3 “Transfer”.

4
5 **3. No Consideration.** The consideration received by the debtor must have been
6 unreasonably lower in value than the asset transferred or the obligation incurred. Cal. Civ. Code
7 §§3439.04(b), 3439.05. Patricia Ting admitted that the \$2 million she received from her father
8 was a purported gift. (Trial Transcript, p. 168: 8-24.) Thus, Darwin Ting did not receive any
9 consideration or equivalent from Defendants.

10
11 **4. Right to Payment.** Plaintiff Atia Co.’s right to payment from Darwin Ting and
12 Kuei-Mei Ting arose before Darwin Ting and Kuei-Mei Ting transferred the property to
13 Defendants. A creditor need not have a judgment or a matured claim against a debtor to enforce
14 the remedies of the UFTA. (Cal. Civ. Code §3439.07, 1986 Leg. Comm. (3)-(4); *Cortez v. Vogt*,
15 52 Cal. App. 4th 917, 930, 60 Cal. Rptr. 2d 841, 849 (1997) (UFTA case).) The holder of an
16 unliquidated tort claim or a contingent claim may be a creditor protected by the UFTA. Cal. Civ.
17 Code §3439.01, 1986 Leg. Comm. (3); see also *Allard v. De Lorean*, 884 F.2d 464, 466 (9th Cir.
18 1989) (UFCA case) (a person with a contingent claim for damages is a creditor.) The
19 relationship of debtor and creditor arises in tort cases the moment that a cause of action accrues.
20 *Hansen v. Cramer*, 39 Cal. 2d 321, 323 (1952) (UFCA case) (plaintiff had standing as a creditor
21 where defendant made an allegedly fraudulent transfer during plaintiff’s tort action.)

22
23 Here, Darwin Ting was sued on February 2, 2012 (Case No.: 54308). In March 2012,
24 Darwin Ting transferred \$1,000,100 to Defendants’ Citibank account number 4394. (Exhibit 47.)
25 On March 27, 2012, Darwin Ting transferred \$1,000,000 to Chang Chih– for Defendants’
26 benefit. (Exhibit 45, p. 2.) Thus, after Darwin Ting was sued, he made the transfers to
27 Defendants.

28 // // // //

1 **5. Insolvent.** Darwin Ting and Kuei-Mei Ting became insolvent as a result of
2 the transfer. See above discussion “II. Fraudulent Transfers”, subsection 3. “Intent to Hinder,
3 Defraud”, (e) and (i).

4
5 **6. Harm.** Plaintiff Atia Co. was harmed in the amount of \$2,000,100.
6

7 **7. Substantial Factor.** Defendants’ conduct was a substantial factor in causing
8 Plaintiff’s harm. Defendants directly and indirectly accepted \$2,000,100 from Darwin Ting. The
9 harm would not have occurred if Defendants had not accepted \$2,000,100 from Darwin Ting.
10

11 **Defense: Good Faith.**

12 The transferee’s intent becomes relevant if the transferee has an affirmative defense that
13 he received the debtor’s property in good faith and for valuable consideration. Civ. Code
14 §3439.08(b) and Legisl. Comment. That does not appear to be the case here, where Mr. Ting
15 transferred assets to the Defendants for no consideration.
16

17 **IV. AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

18 All discussions supra are incorporated hereunder.

19 Plaintiff Atia Co. alleged aiding and abetting breach of fiduciary against all Defendants,
20 i.e. Patricia Ting, Michael Lee, and Divine Creations. This statement will discuss in this order:

- 21 1 - Darwin Ting and Kuei-Mei Ting’s breach of fiduciary duty;
22 2 - Aiding and Abetting by Michael Lee, and Divine Creations; and,
23 3 - Aiding and Abetting by Patricia Ting.

24 /././././.

25 /././././.

26 /././././.

27 /././././.

28 /././././.

1 1. DARWIN TING AND KUEI-MEI TING'S BREACH OF FIDUCIARY
2 DUTY

3 "The elements of a cause of action for breach of fiduciary duty are: (1) existence of a
4 fiduciary duty; (2) the breach of that duty; and (3) damage proximately caused by that breach.
5 [Citation.]" *Mosier v. Southern California Physicians Insurance Exchange* (1998) 63 Cal.App.4th
6 1022, 1044.

7
8 Existence of Duty. "The fiduciary duties that a general partner owes to the limited
9 partnership and the other partners are the duties of loyalty and care under subdivisions (b) and
10 (c)." Corp. Code § 15904.08(a). Darwin Ting and Kuei-Mei Ting (collectively "the Tings") were
11 the general partners of Atia Co. (see Limited Partnership Agreement, Ex. 1, p. 3, section 2.01.)
12 Therefore, the Tings owed Atia Co. and the other limited partners a fiduciary duty. The Tings are
13 husband and wife.

14
15 Breach of Duty.

16 "A general partner is not entitled to remuneration for services performed for the
17 partnership." Cal Corp Code § 15904.06(f).

18 In 2010 through 2011, Mr. Ting used checks and money from the partnership and paid
19 \$446,555 for Michael Lee and Divine Creations' tenant improvements. As to unpaid loans,
20 Darwin Ting admitted that he took loans of more than \$3.6 million from the Partnership in 2012,
21 and repaid only around \$1.5 million that year. (Exhibit 422, Special Interrogatories No. 47.) Mr.
22 Ting breached his fiduciary duty to Atia Co.

23
24 Damages.

25 There is no reasonable doubt that the limited partnership was damaged by the Tings'
26 fiduciary breach. The actual dollar amount of damages was not an issue in this case.

1 The Court took judicial notice of the entire case *Nishiuchi v. Atia Co.*. Case Number 30-
2 2012-00542358, in which Honorable Derek Hunt found Mr. Ting was liable to Plaintiff for
3 breach of fiduciary duty. “The trial of the Nishiuchi versus Atia Co. case was held before Judge
4 Derek Hunt. An amended judgment against Darwin and Kuei-Mei Ting and their various family
5 trusts was filed on April 23, 2014, long after much of the activities that are at issue in this case
6 occurred. The judgment itself awarded damages and interest against the defendants that I’ve just
7 listed for an amount in excess of \$9 million.” (Trial Transcript, p.389:19-25.)

8
9 The Court relied on the findings and judgment in the related case, *Nishiuchi v. Atia Co.*,
10 Case No. 2012-542308, to establish the breach of fiduciary duty by Darwin Ting. The Court took
11 judicial notice of the entire case file, in which Hon. Derek Hunt found that Mr. Ting was liable to
12 Plaintiff for breach of fiduciary duty. (Trial Transcript, p.388:17-26.) It appears this Court
13 treated the breach as having been established by the judgment from related Case No. 2012-
14 542308.

15
16 **2. DEFENDANTS AIDING AND ABETTING THE TINGS’ BREACH OF**
17 **FUDICIARY DUTY**
18

19 As relevant, liability may be imposed on one who aids and abets the commission of an
20 intentional tort if the person knows the other's conduct constitutes a breach of duty and gives
21 substantial assistance or encouragement to the other to so act. *Schulz v. Neovi Data Corp.* (2007)
22 152 Cal.App.4th 86, 93. The aider and abettor must have actual knowledge of the primary
23 violation in which they purportedly participated. *Casey v. U.S. Bank National Ass'n* (2005) 127
24 Cal.App.4th 1138, 1148.

25
26 Our District Court of Appeals has not yet affirmatively decided if specific intent to
27 facilitate a wrong, is a required element of the tort. See *Schulz v. Neovi Data Corp.* (2007) 152
28 Cal.App.4th 86, 95 (declining to decide); accord *Nasrawi v. Buck Consultants LLC* (2014) 231

1 Cal.App.4th 328, 345 (same). But see *Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.*
2 (2005) 131 Cal.App.4th 802, 823 n.10. The law seems to be unsettled in this area.

3
4 **Michael and Divine Creations' Knowledge of Darwin Ting's Breach of Duty.**

5 Darwin Ting and Michael Lee were Divine Creations' members and managers.
6 Therefore, Michael Lee's knowledge is imputed to Divine Creations. Michael Lee knew that
7 Darwin Ting was Atia Co.'s general partner. Michael Lee knew that Darwin Ting was managing
8 the Canyon Point shopping center. (Trial Transcript, p.229:10-12.)

9
10 Michael Lee signed a lease at the Canyon Point plaza so that Divine Creations may do
11 business at the premises. Darwin Ting counter signed the lease. (Exhibit 19.) Darwin Ting and
12 Michael Lee agreed that Michael did not have to oblige certain terms of the lease. The lease
13 terms state that the tenant is responsible for the costs of tenant improvements.

14
15 Using checks and money from the partnership, Mr. Ting paid \$446,555 for Michael Lee
16 and Divine Creations' tenant improvements. Ultimately, all payments were for the benefit of the
17 bakery owners and operators, i.e. Darwin Ting, Patricia Ting, and Michael Lee. Michael Lee
18 knew Darwin Ting was breaching his fiduciary duty to Atia Co.

19
20 **Michael Lee and Divine Creations Gave Substantial Assistance to Darwin Ting.**

21 Michael Lee was Divine Creations' member and manager. Therefore, Michael Lee was
22 also acting for Divine Creations. When Michael Lee signed the lease, he had an agreement with
23 Darwin Ting that certain terms of the lease did not need to be obliged. Michael Lee gave Darwin
24 Ting substantial assistance by signing the lease.

25
26 "While the evidence in this trial suggested that some lessor renovation might have been
27 needed prior to the installation of tenant improvements, the only evidence presented in this trial
28

1 is that all sums were applied to and expended for tenant improvements. totaling \$446,555.”
2 (Trial Transcript p. 391:11-15.)
3

4 **Michael Lee and Divine Creations’ Specific Intent.**

5 Michael Lee was Divine Creations’ member and manager. Therefore, Michael Lee’s
6 intent is imputed to Divine Creations. When Michael Lee signed the lease, he and Darwin Ting
7 had an agreement that certain terms of the lease were not going to be honored. The Court finds
8 that Michael had the specific intent to facilitate Darwin Ting’s conduct which he knew was
9 wrongful.
10

11 **Patricia Ting’s Knowledge of Darwin Ting’s Breach of Duty.**

12 In the instant case, “The Court, on its own Motion, will take judicial notice of the entire
13 court file in the case entitled: *Nishiuchi versus Atia co.*, Case Number 30-2012-00542358. In
14 particular, I would observe that the complaint in that case was filed on February 2, 2012. A
15 notice and acknowledgment of receipt was filed on May 7, 2012. It was signed and dated for
16 Darwin and Kuei-Mei Ting and Atia Co., LP on March 21, 2012. An answer or general denial
17 for those defendants was filed on April 20, 2012.” (Trial Transcript, p.388:17-26.)
18

19 “On August 15, 2013, Judge Hunt issued his first minute order regarding phase 1
20 regarding the liability for breach of fiduciary duty of defendant, Mr. Ting in particular. and found
21 against the defendants in that minute order. On January 13, 2014, Judge Hunt issued his second
22 minute order regarding phase 2 of that trial regarding the amounts to be disgorged back to the
23 limited partnership, and, directed disgorgement by the Tings of millions of dollars.” (Trial
24 Transcript, p.389:26-390:4.)

25 //

26 //

27 //

28 //

1 Patricia Ting knew her father was Atia Co.'s general partner. Defendants had knowledge
2 of Atia Co.'s lawsuit against the Tings. The Court's oral verdict states:

3
4 "Darwin Ting, as we know from the evidence in this case, purported to give his
5 daughter, Patricia Ting, \$2 million. Exhibit 47, page 7 shows in particular that Mr.
6 Ting wired \$500,000 to Patricia Ting and Michael Lee's bank account on March
7 5, 2012. And that was \$500,100 on March 5, 2012. And an additional \$500,000
8 was wired on March 12, 2012.

9 In addition, as we see from Exhibit 49, on March 27, 2012 Mr. Ting wired \$1
10 million to Chang Chih International Investments, which of course is the
11 investment name, if you will, or the operating name for a particular player in this
12 whole matter, Andy Zhang.

13 The money, which of course totals \$2,000,100, was all used for the purchase of
14 several properties all in the name of Patricia Ting and her spouse, Michael Lee.
15 The Pasadena properties, the subject of the purchase, generally were described in
16 this trial as the Catalina and the Del Mar properties."

17 (Trial Transcript, p.389:1-18.)

18
19 "The Court does not subscribe to the, quote, 'coincidence' end quote, theory as driving any of
20 the transfers of money in this matter." (Trial Transcript, p.391: 26 – 392:2) "To the court, all
21 this massive parking funds to avoid judgment. Some might refer to this as judgment proofing."
22 (Trial Transcript, p.392:13-15.) Hence, Patricia Ting had knowledge of her father, Darwin
23 Ting's, breach of fiduciary duty.

24 /////.

25 /////.

26 /////.

27 /////.

28

1 **Patricia Ting Gave Substantial Assistance to the Tings.**

2 The Court's oral verdict states:

3
4 We know that the sale of the Catalina and Del Mar properties occurred
5 shortly after the date of issuance of the minute order of Judge Hunt,
6 August 15, 2013, of phase 1 of that trial. And in particular we know that
7 the Catalina deeds were signed on August 26. Two were recorded on
8 August 30. One was recorded on September 5. As to the Del Mar property,
9 the deed was signed on September 7, 2013, and it was recorded on
10 September 13, 2013.

11
12 We learned from Patricia Ting that subsequent to these sales she gave
13 \$980,000 to her father, who, by that time, was living in Taiwan. And we
14 know that on March 25, [2014] Ms. Ting also sent him another \$70,000,
15 for a total of \$1,050,000.

16 (Trial Transcript, p.390:10-22.)

17
18 **Patricia Ting's Specific Intent to Assist her father, Darwin Ting.**

19 Patricia Ting assisted her father in avoiding judgment, also known as judgment proofing.

20 (Trial Transcript, p.392:13-15.) The Court's oral verdict states:

21 "Shortly after the Nishiuchi versus Atia lawsuit was filed in early February 2012,
22 Mr. Ting transferred \$2 million to his daughter to purchase real estate for cash, no
23 liens, no other money. In other words, the property to be held free and clear.
24 Shortly after phase 1 of the Nishiuchi trial established Mr. Ting's liability, the real
25 estate was sold and much of the cash received was given or sent by Ms. Ting to
26 her father, Mr. Ting, again, while now residing in Taiwan." (Trial Transcript, p.
27 392:2-10.)

1 The Court finds that Patricia Ting had specific intent to facilitate Darwin Ting's conduct which
2 she knew was wrongful.

3
4 **Witness Creditability.**

5 The Court's oral verdict states:

6 I must turn for a moment to credibility, because of course credibility plays
7 some part in all of this. And while I do not like commenting on this
8 particularly, first of all, with respect to Mr. Ting, Mr. Ting, as a witness,
9 as reflected by the deposition transcript, gives no credit to himself. His
10 self-interest and self preservation were too tied up in what he was
11 testifying to and about.

12
13 As to Ms. Ting, I found, quite honestly, Ms. Ting's appearance, presence,
14 and her manner of speaking to be excellent. At first I thought her to be
15 very credible and very believable. But all of that ultimately was belied by
16 her inability to respond in a form that I think would be mandated by the
17 relationship of daughter and father and daughter and mother in being
18 unwilling, unable to place the address, the telephone number, location, real
19 location of her parents.

20
21 And I have to say that I understand that there's this family thing going on
22 here that would place her in the awkward position of not wanting to give
23 up parents, who obviously could be pursued in further judgment collection
24 matters through the hague convention and otherwise, but she's a witness
25 on the stand; and she's obligated to respond with the truth and not with
26 some "I don't remember" or "I don't know" response to something as
27 simple as that.

1 In addition, her responses to the questions about her \$500,000 investment,
2 that money derived from the sale of the Manhattan beach property, which
3 she testified she transferred to an investment house in Taiwan, which just
4 happened to have an investment advisor in Hong Kong and to which she
5 testified that she had invested \$400,000 in some tech company for which
6 she couldn't remember the name of the tech company, she couldn't
7 remember what exactly the technology was that the company produced,
8 and otherwise could not remember what her investment did, strikes me,
9 once again, as being ludicrous in terms of her memory. Clearly this
10 evidence, this testimony shows no candor or truthfulness on her part.
11 Ultimately, as we know from the jury instructions, a witness who cannot
12 be believed on one thing probably cannot be believed on other and all
13 things. I take testimony from her, therefore, with a grain of salt.

14 (Trial Transcript, p. 392:23 - 394:10.)


15
16 **Conclusion**

17 "All of the inferences from the evidence presented in this court lead the court to the
18 conclusion and finding in favor of the plaintiff and against the defendants, Patricia Ting, Michael
19 Lee, and Divine Creations." (Trial Transcript, p.394:11-14.) The Court finds by weight and
20 strong probability that Defendants gave substantial assistance to Darwin Ting with the specific
21 intent to aid and abet Darwin Ting's breach of fiduciary duty which Defendants knew was
22 wrongful. The Court made the finding that each and every Defendant had specific intent to aid
23 and abet Darwin Ting's breach of fiduciary duty and specific intent can be implied from the
24 findings of transfers without consideration. The \$2,000,100 from Darwin Ting to Patricia Ting
25 was a gift; Patricia Ting did not give any equivalence of consideration in exchange. Darwin Ting
26 and Kuei-Mei Ting have fled the country and are now living somewhere in Taiwan. Moreover,
27 Darwin Ting retained control of the money, i.e. after the Phase 1 minute order was issued in the
28 *Nishiuchi* case, Patricia Ting transferred over \$1 million back to Darwin Ting.

1 As a matter of law, an inference is dispelled when the contrary evidence is "clear,
2 positive, uncontradicted, and of such a nature that it cannot rationally be disbelieved." *Blank v.*
3 *Coffin* (1942) 20 C 2d 457, 461. Defendants Michael Lee, Patricia Ting, and Divine Creations
4 did not dispel the logical inference with clear, positive, uncontradicted, and of such a nature that
5 it cannot rationally be disbelieved.

6
7 The Court orders the disgorgement, damages, and avoidance of transfer as follows: As to
8 Michael Lee and Divine Creations, LLC on conversion, fraudulent transfers, and aiding and
9 abetting breach of fiduciary duty, the Court finds against them in the amount of \$446,555. As
10 against Patricia Ting, the Court finds on actual fraudulent transfers, constructive fraudulent
11 transfer, and aiding and abetting breach of fiduciary duty in the amount of \$2,000,100.

12
13 Dated: **JUL 24 2015**

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16 Honorable David Chaffee
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EXHIBIT
ATTACHMENT A

ATTACHMENT A

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
DEPARTMENT C20

MERI NISHIUCHI, IN THE RIGHT OF)
AND FOR THE BENEFIT OF ATIA CO.,)
LP,)

PLAINTIFF,)

VS.)

CASE NO. 2013-00661506

PATRICIA TING (AKA PATRICIA)
TING LEE), AN INDIVIDUAL;)
MICHAEL SEUNG HOON LEE, AN)
INDIVIDUAL, DIVINE CREATIONS)
LLC, A CALIFORNIA LIMITED)
LIABILITY COMPANY, KANG S. CHEN,)
AN INDIVIDUAL, AND DOES 1 - 10,)
INCLUSIVE,)

DEFENDANTS,)

AND)

ATIA CO. LP, A LIMITED)
PARTNERSHIP,)

NOMINAL DEFENDANT.)

HONORABLE DAVID F. CHAFFEE, JUDGE PRESIDING

REPORTER'S TRANSCRIPT

NOVEMBER 19, 2014

APPEARANCES OF COUNSEL:

(ON FOLLOWING PAGE.)

LYNN O. PETERSON, CCRR, CSR NO. 7706
OFFICIAL COURT REPORTER

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:

NAKASE LAW FIRM

BY: BRAD NAKASE, ESQ.

AND

BY: WILLIAM A. COHAN, ESQ.

FOR THE DEFENDANT:

BURNS & MOSS

BY: GEORGE S. BURNS, ESQ.

BY: VICTORIA E. MOSS, ESQ.

CHRONOLOGICAL WITNESS INDEX

WITNESSES: _____ DIRECT CROSS REDIRECT REGROSS VOIR
DIRE

(NONE)

ALPHABETICAL WITNESS INDEX

WITNESSES: _____ DIRECT CROSS REDIRECT RECROSS DIRE^{VOIR}
(NONE)

1 SANTA ANA, CALIFORNIA - WEDNESDAY, NOVEMBER 19, 2014

2 MORNING SESSION

3 -000-

4 (THE FOLLOWING PROCEEDINGS WERE HAD IN
5 OPEN COURT:)

6 THE COURT: SORRY FOR THE DELAY. NOTHING LIKE BUILDING
7 SUSPENSE, I SUPPOSE. SO WE RETURN ON THE RECORD TO
8 NISHIUCHI VERSUS TING. AND, ACTUALLY, I WOULD TURN FIRST TO
9 PLAINTIFF'S ATTORNEYS.

10 THERE WAS A PARTY DEFENDANT IN THIS CASE NAMED
11 KANG S. CHEN. I HAVE HEARD NO EVIDENCE THAT I UNDERSTAND
12 IMPLICATES MR. CHEN IN ANY OF THIS.

13 SO WHAT'S THE STATUS OF KANG CHEN?

14 MR. NAKASE: HE WAS DISMISSED FROM THE CASE,
15 YOUR HONOR.

16 THE COURT: GOOD TO KNOW. THANK YOU.

17 ALL RIGHT. SO AT THE OUTSET, THE COURT, ON ITS OWN
18 MOTION, WILL TAKE JUDICIAL NOTICE OF THE ENTIRE COURT FILE
19 IN THE CASE ENTITLED: *NISHIUCHI VERSUS ATIA CO.*, CASE
20 NUMBER 30-2012-00542358. IN PARTICULAR, I WOULD OBSERVE
21 THAT THE COMPLAINT IN THAT CASE WAS FILED ON FEBRUARY 2,
22 2012. A NOTICE AND ACKNOWLEDGMENT OF RECEIPT WAS FILED ON
23 MAY 7, 2012. IT WAS SIGNED AND DATED FOR DARWIN AND
24 KEUI-MEI TING AND ATIA CO., LP ON MARCH 21, 2012. AN ANSWER
25 OR GENERAL DENIAL FOR THOSE DEFENDANTS WAS FILED ON APRIL
26 20, 2012.

1 DARWIN TING, AS WE KNOW FROM THE EVIDENCE IN THIS
2 CASE, PURPORTED TO GIVE HIS DAUGHTER, PATRICIA TING,
3 \$2 MILLION. EXHIBIT 47, PAGE 7 SHOWS IN PARTICULAR THAT
4 MR. TING WIRED \$500,000 TO PATRICIA TING AND MICHAEL LEE'S
5 BANK ACCOUNT ON MARCH 5, 2012. AND THAT WAS \$500,100 ON
6 MARCH 5, 2012. AND AN ADDITIONAL \$500,000 WAS WIRED ON
7 MARCH 12, 2012.

8 IN ADDITION, AS WE SEE FROM EXHIBIT 49, ON MARCH
9 27, 2012 MR. TING WIRED \$1 MILLION TO CHANG CHIH
10 INTERNATIONAL INVESTMENTS, WHICH OF COURSE IS THE INVESTMENT
11 NAME, IF YOU WILL, OR THE OPERATING NAME FOR A PARTICULAR
12 PLAYER IN THIS WHOLE MATTER, ANDY ZHANG.

13 THE MONEY, WHICH OF COURSE TOTALS \$2,000,100, WAS
14 ALL USED FOR THE PURCHASE OF SEVERAL PROPERTIES ALL IN THE
15 NAME OF PATRICIA TING AND HER SPOUSE, MICHAEL LEE. THE
16 PASADENA PROPERTIES, THE SUBJECT OF THE PURCHASE, GENERALLY
17 WERE DESCRIBED IN THIS TRIAL AS THE CATALINA AND THE DEL MAR
18 PROPERTIES.

19 THE TRIAL OF THE *NISHIUCHI VERSUS ATIA CO.* CASE WAS
20 HELD BEFORE JUDGE DEREK HUNT. AN AMENDED JUDGMENT AGAINST
21 DARWIN AND KEUI-MEI TING AND THEIR VARIOUS FAMILY TRUSTS WAS
22 FILED ON APRIL 23, 2014, LONG AFTER MUCH OF THE ACTIVITIES
23 THAT ARE AT ISSUE IN THIS CASE OCCURRED. THE JUDGMENT
24 ITSELF AWARDED DAMAGES AND INTEREST AGAINST THE DEFENDANTS
25 THAT I'VE JUST LISTED FOR AN AMOUNT IN EXCESS OF \$9 MILLION.

26 PRIOR TO THAT DATE, ON AUGUST 15, 2013, JUDGE HUNT

1 ISSUED HIS FIRST MINUTE ORDER REGARDING PHASE 1 REGARDING
2 THE LIABILITY FOR BREACH OF FIDUCIARY DUTY OF DEFENDANT,
3 MR. TING IN PARTICULAR, AND FOUND AGAINST THE DEFENDANTS IN
4 THAT MINUTE ORDER.

5 ON JANUARY 13, 2014, JUDGE HUNT ISSUED HIS SECOND
6 MINUTE ORDER REGARDING PHASE 2 OF THAT TRIAL REGARDING THE
7 AMOUNTS TO BE DISGORGED BACK TO THE LIMITED PARTNERSHIP,
8 AND, DIRECTED DISGORGEMENT BY THE TINGS OF MILLIONS OF
9 DOLLARS.

10 WE KNOW THAT THE SALE OF THE CATALINA AND DEL MAR
11 PROPERTIES OCCURRED SHORTLY AFTER THE DATE OF ISSUANCE OF
12 THE MINUTE ORDER OF JUDGE HUNT, AUGUST 15, 2013, OF PHASE 1
13 OF THAT TRIAL. AND IN PARTICULAR WE KNOW THAT THE CATALINA
14 DEEDS WERE SIGNED ON AUGUST 26. TWO WERE RECORDED ON AUGUST
15 30. ONE WAS RECORDED ON SEPTEMBER 5. AS TO THE DEL MAR
16 PROPERTY, THE DEED WAS SIGNED ON SEPTEMBER 7, 2013, AND IT
17 WAS RECORDED ON SEPTEMBER 13, 2013.

18 WE LEARNED FROM PATRICIA TING THAT SUBSEQUENT TO
19 THESE SALES SHE GAVE \$980,000 TO HER FATHER, WHO, BY THAT
20 TIME, WAS LIVING IN TAIWAN. AND WE KNOW THAT ON MARCH 25,
21 2015 MS. TING ALSO SENT HIM ANOTHER \$70,000, FOR A TOTAL OF
22 \$1,050,000.

23 WE TURN FOR A MOMENT TO THE BAKERY, EAT CAKE. THE
24 BAKERY, OF COURSE, WAS ESTABLISHED PURSUANT TO A LEASE AT
25 THE CANYON POINT MARKETPLACE SHOPPING CENTER. THAT LEASE,
26 SHOWN AS EXHIBIT 19, REQUIRED THE LESSEE TO PAY FOR THE

1 TENANT IMPROVEMENTS. THE LESSEE EFFECTIVELY WAS
2 MICHAEL LEE, THE NAME ON THE LEASE AGREEMENT. WE COULD ALSO
3 ASCRIBE IT TO THE MASTER ENTITY FOR EAT CAKE, THE ENTITY
4 KNOWN AS DIVINE CREATIONS.

5 WE FURTHER KNOW THAT THE CHECKS PRODUCED IN THIS
6 TRIAL SHOW THAT ATIA, OR SOME SUBSIDIARY OF THAT ENTITY,
7 PAID FOR THE TENANT IMPROVEMENTS, ALL, ULTIMATELY, FOR THE
8 BENEFIT OF THE BAKERY OWNERS AND OPERATORS, THOSE INCLUDING,
9 ACCORDING TO THE RECORDS, DARWIN TING, PATRICIA TING,
10 MICHAEL LEE.

11 WHILE THE EVIDENCE IN THIS TRIAL SUGGESTED THAT
12 SOME LESSOR RENOVATION MIGHT HAVE BEEN NEEDED PRIOR TO THE
13 INSTALLATION OF TENANT IMPROVEMENTS, THE ONLY EVIDENCE
14 PRESENTED IN THIS TRIAL IS THAT ALL SUMS WERE APPLIED TO AND
15 EXPENDED FOR TENANT IMPROVEMENTS, TOTALING \$446,555.

16 THE DEFENSE IN THIS CASE HAS PORTRAYED THE
17 SIGNIFICANT PLAYERS IN THIS ACTION, THE TINGS, FATHER AND
18 DAUGHTER, AS A LOVING, RICH, GENEROUS FATHER JUST DOING SOME
19 ESTATE PLANNING, AND A LOVING DAUGHTER HAPPILY ACCEPTING THE
20 GENEROSITY OF HER FATHER. AND I HAVE NO DOUBT THAT THERE IS
21 SOME TRUTH IN THESE CHARACTERIZATIONS. THE PROBLEM IN THIS
22 CASE IS THAT THE EVIDENCE VERY CLEARLY REVEALS THAT DARWIN
23 TING WAS FUNDING HIS ESTATE PLAN WITH MONEY THAT BELONGED TO
24 ATIA AND THE PARTNERSHIP THAT OPERATED ATIA AND NOT OUT OF
25 HIS OWN POCKET.

26 THE COURT DOES NOT SUBSCRIBE TO THE, QUOTE,

1 "COINCIDENCE" END QUOTE, THEORY AS DRIVING ANY OF THE
2 TRANSFERS OF MONEY IN THIS MATTER. SHORTLY AFTER THE
3 *NISHIUCHI VERSUS ATIA* LAWSUIT WAS FILED IN EARLY FEBRUARY
4 2012, MR. TING TRANSFERRED \$2 MILLION TO HIS DAUGHTER TO
5 PURCHASE REAL ESTATE FOR CASH, NO LIENS, NO OTHER MONEY. IN
6 OTHER WORDS, THE PROPERTY TO BE HELD FREE AND CLEAR.
7 SHORTLY AFTER PHASE 1 OF THE *NISHIUCHI* TRIAL ESTABLISHED
8 MR. TING'S LIABILITY, THE REAL ESTATE WAS SOLD AND MUCH OF
9 THE CASH RECEIVED WAS GIVEN OR SENT BY MS. TING TO HER
10 FATHER, MR. TING, AGAIN, WHILE NOW RESIDING IN TAIWAN.

11 THE DEFENSE ARGUES THAT THESE EVENTS REFLECT TWO
12 GIFTS, ONE FROM THE FATHER TO THE DAUGHTER AND THE OTHER
13 FROM THE DAUGHTER BACK TO THE FATHER. TO THE COURT, ALL
14 THIS MASSIVE PARKING FUNDS TO AVOID JUDGEMENT. SOME MIGHT
15 REFER TO THIS AS JUDGMENT PROOFING.

16 IN ANY EVENT, THIS SEEMS TO ME TO GIVE PROOF TO THE
17 CLAIMS ASSERTED BY THE PLAINTIFFS HERE THAT ATIA, HAVING
18 BEEN LOOTED OF FUNDS BY MR. TING, WAS IN FACT CONTINUING TO
19 SUFFER DESPITE THE CLAIMS OF MR. TING'S WEALTH BEING SOME
20 FORM OF OPPORTUNITY PROVIDED AT THE SAME TIME THIS
21 LITIGATION WAS GOING ON PROVIDING ESTATE PLANNING TO BENEFIT
22 HIS DAUGHTERS.

23 I MUST TURN FOR A MOMENT TO CREDIBILITY, BECAUSE OF
24 COURSE CREDIBILITY PLAYS SOME PART IN ALL OF THIS. AND
25 WHILE I DO NOT LIKE COMMENTING ON THIS PARTICULARLY, FIRST
26 OF ALL, WITH RESPECT TO MR. TING, MR. TING, AS A WITNESS, AS

1 REFLECTED BY THE DEPOSITION TRANSCRIPT, GIVES NO CREDIT TO
2 HIMSELF. HIS SELF-INTEREST AND SELF PRESERVATION WERE TOO
3 TIED UP IN WHAT HE WAS TESTIFYING TO AND ABOUT.

4 AS TO MS. TING, I FOUND, QUITE HONESTLY, MS. TING'S
5 APPEARANCE, PRESENCE, AND HER MANNER OF SPEAKING TO BE
6 EXCELLENT. AT FIRST I THOUGHT HER TO BE VERY CREDIBLE AND
7 VERY BELIEVABLE. BUT ALL OF THAT ULTIMATELY WAS BELIED BY
8 HER INABILITY TO RESPOND IN A FORM THAT I THINK WOULD BE
9 MANDATED BY THE RELATIONSHIP OF DAUGHTER AND FATHER AND
10 DAUGHTER AND MOTHER IN BEING UNWILLING, UNABLE TO PLACE THE
11 ADDRESS, THE TELEPHONE NUMBER, LOCATION, REAL LOCATION OF
12 HER PARENTS.

13 AND I HAVE TO SAY THAT I UNDERSTAND THAT THERE'S
14 THIS FAMILY THING GOING ON HERE THAT WOULD PLACE HER IN THE
15 AWKWARD POSITION OF NOT WANTING TO GIVE UP PARENTS, WHO
16 OBVIOUSLY COULD BE PURSUED IN FURTHER JUDGMENT COLLECTION
17 MATTERS THROUGH THE HAGUE CONVENTION AND OTHERWISE, BUT
18 SHE'S A WITNESS ON THE STAND; AND SHE'S OBLIGATED TO RESPOND
19 WITH THE TRUTH AND NOT WITH SOME "I DON'T REMEMBER" OR "I
20 DON'T KNOW" RESPONSE TO SOMETHING AS SIMPLE AS THAT.

21 IN ADDITION, HER RESPONSES TO THE QUESTIONS ABOUT
22 HER \$500,000 INVESTMENT, THAT MONEY DERIVED FROM THE SALE OF
23 THE MANHATTAN BEACH PROPERTY, WHICH SHE TESTIFIED SHE
24 TRANSFERRED TO AN INVESTMENT HOUSE IN TAIWAN, WHICH JUST
25 HAPPENED TO HAVE AN INVESTMENT ADVISOR IN HONG KONG AND TO
26 WHICH SHE TESTIFIED THAT SHE HAD INVESTED \$400,000 IN SOME

1 TECH COMPANY FOR WHICH SHE COULDN'T REMEMBER THE NAME OF THE
2 TECH COMPANY, SHE COULDN'T REMEMBER WHAT EXACTLY THE
3 TECHNOLOGY WAS THAT THE COMPANY PRODUCED, AND OTHERWISE
4 COULD NOT REMEMBER WHAT HER INVESTMENT DID, STRIKES ME, ONCE
5 AGAIN, AS BEING LUDICROUS IN TERMS OF HER MEMORY. CLEARLY
6 THIS EVIDENCE, THIS TESTIMONY SHOWS NO CANDOR OR
7 TRUTHFULNESS ON HER PART. ULTIMATELY, AS WE KNOW FROM THE
8 JURY INSTRUCTIONS, A WITNESS WHO CANNOT BE BELIEVED ON ONE
9 THING PROBABLY CANNOT BE BELIEVED ON OTHER AND ALL THINGS.
10 I TAKE TESTIMONY FROM HER, THEREFORE, WITH A GRAIN OF SALT.

11 ALL OF THE INFERENCES FROM THE EVIDENCE PRESENTED
12 IN THIS COURT LEAD THE COURT TO THE CONCLUSION AND FINDING
13 IN FAVOR OF THE PLAINTIFF AND AGAINST THE DEFENDANTS,
14 PATRICIA TING, MICHAEL LEE, AND DIVINE CREATIONS.

15 AS TO MICHAEL LEE AND DIVINE CREATIONS, ON ALL FOUR
16 CAUSES OF ACTION, INCLUDING CONVERSION, THE COURT FINDS
17 AGAINST THEM IN THE AMOUNT OF \$446,555.

18 AS AGAINST PATRICIA TING, THE COURT FINDS ON ALL
19 CAUSES OF ACTION EXCEPT CONVERSION IN THE AMOUNT OF
20 \$2,000,100. SO JUST TO BE CLEAR, THAT'S \$2,000,100.00.

21 I WANT TO CLOSE BY EXPRESSING MY RESPECT AND
22 ADMIRATION FOR THE ADVOCACY OF THE DEFENSE LAWYERS IN THIS
23 CASE. ULTIMATELY I HAVE TO SAY TO YOU THAT, WHERE I COME
24 FROM, FACTS WIN OR LOSE CASES. ADVOCACY IS GREAT. YOU WERE
25 EDUCATORS. BUT I TRULY, EVEN THOUGH THE JUDGMENT OF WHICH,
26 BY THE WAY, I EXPECT IT TO BE APPEALED, HAS GONE THE WAY IT

1 HAS GONE, I WANT YOU TO KNOW HOW MUCH I DO RESPECT YOU TWO
2 AS ADVOCATES IN THIS COURTROOM AND IN THIS CASE. THANK YOU
3 FOR YOUR PARTICIPATION HERE.

4 MR. BURNS: THANK YOU, YOUR HONOR.

5 THE COURT: NOW, WITH RESPECT TO THIS MATTER, WHAT I AM
6 GOING TO DO, ANTICIPATING THAT THERE WILL BE A REQUEST FOR A
7 STATEMENT OF DECISION, IS INDICATE THAT AS TO THE PREVAILING
8 PARTY, WHICH, I BELIEVE, MR. NAKASE, YOU WILL HAPPILY ACCEPT
9 THE JOB, WILL BE TO PREPARE, IF THE REQUEST IS MADE, TO
10 PREPARE A PROPOSED STATEMENT OF DECISION.

11 I AM ORDERING AT THIS POINT, SHOULD THAT REQUEST BE
12 MADE, TO HAVE A TRANSCRIPT OF MY STATEMENTS PREPARED BY THE
13 REPORTER, AND THAT TO BE INCORPORATED BY REFERENCE AND
14 ATTACHED TO THE PROPOSED STATEMENT OF DECISION, PLEASE.

15 MR. NAKASE: THANK YOU, YOUR HONOR.

16 THE COURT: ALL RIGHT. SO YOU'LL PREPARE THE JUDGMENT
17 AND CIRCULATE IT, OF COURSE. AND WE'LL FIND OUT IF THERE'S
18 ANY OBJECTION TO THE PROPOSED JUDGMENT AS WELL.

19 MR. BURNS: COULD I ASK A CLARIFICATION ON THE RULING
20 THAT MAY -- THE COURT RECITED THAT THE FINDINGS WERE ON, AS
21 YOU SAID, ALL CAUSES OF ACTION. BUT THAT REFLECTS THAT THE
22 COURT PRE-TRIAL DISMISSED ON NONSUIT --

23 THE COURT: ONLY AS TO THE REMAINING CAUSES OF ACTION.

24 MR. BURNS: VERY WELL. I WANTED TO MAKE SURE THAT WAS
25 CLEAR IN THE RECORD.

26 THE COURT: THANKS FOR THE CLARIFICATION. ALL RIGHT.

1 THE CLERK: I DON'T SEE A DISMISSAL ON KANG CHEN.

2 THE COURT: WE'LL GRANT MR. NAKASE'S MOTION TO DISMISS
3 MR. KANG CHEN?

4 MR. NAKASE: YES, YOUR HONOR.

5 THE COURT: KANG S. CHEN?

6 MR. NAKASE: YES, YOUR HONOR.

7 THE COURT: DISMISSED ON YOUR MOTION.

8 MR. NAKASE: THANK YOU, YOUR HONOR.

9 THE COURT: ALL RIGHT. GOOD LUCK EVERYBODY. THANK
10 YOU.

11 MR. BURNS: THANK YOU, YOUR HONOR.

12 MR. COHAN: THANK YOU VERY MUCH, YOUR HONOR.

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14 (END OF PROCEEDINGS.)

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PROOF OF SERVICE

ATIA CO., LP v. PATRICIA TING, et al. (Case No: 30-2013-00661506-CU-FR-CJC)
CALIFORNIA SUPERIOR COURT, ORANGE COUNTY, CENTRAL JUSTICE CENTER

1 I, Lisa B. Phillipson, declare:

2 I am employed in the City of San Diego, County of San Diego, State of California. I am
3 over the age of 18 years and not a party to this action. My business address is 2221 Camino Del
4 Rio South, Suite 300, San Diego, California 92108.

5 On June 30, 2015, I served the documents named below on the parties in this action as
6 follows:

- 7 1. [PROPOSED] STATEMENT OF DECISION (PDF and Word Version).

8 **SERVED UPON:**

9 **Attorney for Defendants Patricia Ting, Michael Lee and Divine Creations, LLC:**

10 George S. Burns, Esq.

11 BURNS & MOSS

12 620 Newport Center Drive, Suite 600

13 Newport Beach, CA 92660

14 george@burnsandmossllaw.com

15 vem@burnsandmossllaw.com

16 X (By E-Mail) I caused the above-listed documents to be served electronically from
17 lisa@nakaselaw.com to the persons at the e-mail addresses listed above or on the
18 attached service list. I did not receive, within a reasonable time after the transmission,
19 any electronic message or other indication that the transmission was unsuccessful.

20 I hereby certify that I am employed in the office of a member of the Bar of this Court at
21 whose direction the service was made.

22 I declare under penalty of perjury under the laws of the State of California that the above
23 is true and correct. Executed on June 30, 2015 at San Diego, California.

24 

25 Lisa B. Phillipson