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LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

XTC INVESTMENTS, LLC,

Case No. BC377400

Plaintiff,

vs.

STATEMENT OF DECISION

BLUENOSE TRADING, INC., a Delaware Corporation, SANFORD GAUM, an individual, and DOES 1 through 100, inclusive,

Defendants.

FACTUAL FINDINGS

In 1993 Sanford Gaum ("Gaum") acquired commercial property located at 6620-6708 El Paseo Plaza in Pico Rivera. The property consisted of a mini mall and professional offices. Twelve tenants occupied 20,000 square feet of space. In early 1994, Gaum transferred the property to Bluenose Trading, Inc. ("Bluenose"), in exchange for eighty percent interest in Bluenose. Bluenose's sole business was, and is, the ownership and management of the Pico Rivera property.

On April 15, 1994, Gaum transferred his eighty percent interest in Bluenose to Nova

1 Gold, a corporation owned entirely by Gaum. On May 15, 1995, Gaum transferred his interest in
2 Nova Gold to his brother, Errol, a resident of Canada. No money changed hands for this
3 transaction. The consideration was the cancellation of a moral debt Gaum owed to Errol.

4 Gaum's arrangement with his brother and Nova Gold is as follows: Gaum is the Chief
5 Financial Officer, and his brother is President. As CFO, Gaum controls all finances for Nova
6 Gold, has the sole check-writing and signing authority, sees to it that state and federal income tax
7 returns are filed properly, and makes sure that state licenses and foreign designations are up-to-
8 date. On behalf of Nova Gold, Gaum writes checks to himself for salary (which he says is \$2800
9 monthly), but does not issue himself a W2 or 1099 statement. In addition, Gaum writes checks
10 for his health insurance premiums, all of his living and day-to-day travel expenses (including
11 automobile expenses) and the rent for his residence (which is owned by another corporate entity
12 associated with Gaum). Once a year, Gaum wires money to a Canadian bank. The amount wired
13 represents Nova Gold's profits after all expenses have been deducted.

14 In addition to the above, Nova Gold has issued Gaum two powers of attorney. One of
15 these provides Gaum with power over all outstanding Nova Gold Shares, including the right to
16 vote as a 100% shareholder at Nova Gold shareholder meetings. The second provides Gaum with
17 the power to control the 80% ownership interest Nova Gold has in Bluenose, including the right
18 to vote those shares at the Bluenose shareholder meetings.

19 Nova Gold does no management services for Bluenose and does not charge Blue Nose for
20 any of the work done by Gaum.

21 Bluenose's current shareholders are Mike Irwin (ten percent), Fred Jacobson (ten percent)
22 and Nova Gold (eighty percent). Its officers are: Gaum (Chief Financial Officer and Property
23 Manager), Jacobson (President) and Irwin (Secretary). As Property Manager, Gaum collects and
24 deposits rents, negotiates leases and does all other things an onsite manager does, although he has
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1 no office at the property. As Chief Financial Officer, he prepares all income/expense statements,
2 manages expenses, keeps records for federal and state tax returns and pays California State
3 licensing fees. He writes "all or almost all of the checks pretty much most of the time." Gaum is
4 not paid for his work as CFO and Property Manager, but Gaum does write Bluenose checks to
5 himself for what he terms "expense reimbursement."

7 Jacobson, although president, isn't certain of whether or not Gaum is an officer, and is
8 not certain what Gaum's compensation is, but thinks it's seventy-five percent of Bluenose's
9 income. Likewise, Jacobson does not know exactly what percentage of Bluenose that Gaum
10 owns, but thinks it's maybe seventy-five percent of Bluenose Trading.

11 On April 6, 2006 XTC Investments, LLC ("XTC") obtained a judgment against Gaum in
12 federal court, for \$612,207.19. Mark Cohen is a principal in XTC. The basis for the judgment
13 was an investment that XTC entered into with Gaum that failed in part due to Gaum's breach of
14 contract. Gaum represented to Cohen that he owned the Pico Rivera mini mall property, Gaum's
15 residence, a property in Manchester, among others. Gaum never said he was in property
16 management.

18 Accountant Bernard Grace prepares corporate tax returns for Bluenose and Nova Gold .
19 For the purpose of preparing Nova Gold's tax return, Gaum told Grace that he, Gaum, was one
20 hundred percent owner of Nova Gold. Gaum never mentioned to Grace anything about the two
21 powers of attorney. On another occasion, Gaum instructed Grace to write a letter indicating that
22 Gaum was a one hundred percent shareholder in Nova Gold.

24 The Pico-Rivera property owned by Bluenose is, and has been, quite profitable. Its
25 income for 2002, 2003, 2004, 2005, was, respectively, \$83,585, \$98,620, \$142,312, \$159,381.
26 For 2006, its income was \$154,956, or \$12,913 per month. Eighty percent of this income, or
27 \$10,330 per month was paid to Nova Gold. Gaum was paid nothing.
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DISCUSSION

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2 Gaum, his brother Errol, Bluenose and Nova Gold all worked together under a conspiracy
3 whereby Gaum maintained absolute and total control over the Pico Rivera property and all
4 income from that property, while at the same time shielding Gaum from any of his personal
5 creditor claims. Gaum maintained an image to the outside world that he had substantial real
6 property assets and income, permitting him to enter into investments on the strength of his
7 perceived credit-worthiness, while concealing from potential investors the fact that he had
8 structured his assets so that he would be judgment-proof.
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10 Gaum worked as a property manager, utilizing his special knowledge and management
11 skills. But under this conspiracy, Bluenose did not pay Gaum for his special skills. Instead, the
12 money which would be due Gaum, was funneled into a Nova Gold bank account that Gaum at all
13 times controlled. From that account, Gaum paid all his personal living expenses, including his
14 housing costs and his automobile and transportation costs, and gave him a monthly stipend, all
15 without W2s or 1098s.
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17 This procedure had the effect of concealing Gaum's earnings from creditors, making it
18 impossible for them to learn about, attach or garnish the monies that were due Gaum. At the
19 same time, Gaum held himself out to the plaintiff (and the community he lived in) as having title
20 to all the assets that he had transferred to Nova Gold, creating the impression that he was a sound
21 investment partner.
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23 "By participation in a civil conspiracy, a coconspirator effectively adopts as his or her
24 own the torts of the other coconspirators within the ambit of the conspiracy. . . In such an action
25 the major significance of the conspiracy lies in the fact that it renders each participant in the
26 wrongful act responsible as a joint tortfeasor for all damages ensuing from the wrong, irrespective
27 of whether or not he was a direct actor and regardless of the degree of his activity." *Applied*
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1 *Equipment corporation v. Litton Saudi Arabia Limited*, 7 Cal.4th 503, 511.

2 Accordingly, the court finds that Gaum and his brother Errol, Bluenose, and Nova Gold
3 all participated in a conspiracy in violation of Civil Code §§ 3439 et seq., and that all funds that
4 were paid to Nova Gold by Bluenose were funds that would have been paid directly to Gaum as
5 his earnings for his special knowledge as Bluenose's CFO and Property Manager, and would have
6 been subject to the claims of plaintiff XTC. The court specifically finds that defendants engaged
7 in that conduct with malice, oppression and fraud. The court finds that based upon the facts
8 presented during the trial that Bluenose possesses sufficient assets in the Pico-Rivera property and
9 derives sufficient income to support punitive damages in an amount equal to the actual damages
10 and that a multiplier of 1 to 1 is entirely appropriate and reasonable.

12 RULING

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- 14 1. Defendant's motion for nonsuit following the plaintiffs opening statement is:
 - 15 a. Denied with respect to the first cause of action for fraudulent transfer;
 - 16 b. Granted for the second cause of action for tortious interference with business;
 - 17 c. Granted for the third cause of action for willful misconduct; and
 - 18 d. Denied for the fourth cause of action for declaratory judgment.
 - 19 2. Defendant's motion for nonsuit after plaintiff's case in chief is:
 - 20 a. Denied as to the first cause of action for fraudulent transfer;
 - 21 b. Granted as to plaintiff's prayer for a declaration that Bluenose is the alter ego of
22 Sanford Guam, and said prayer is struck. This is pursuant to *Postal Instant Press*
23 *v. Kaswa Corporation*, 162 Cal.App.4th 510.
 - 24 c. Granted as to plaintiff's prayer for cancellation of deeds to 6620-6708 El Paseo
25 Plaza, and for attachment and injunction against those properties, and said prayer
26 is struck. These properties were transferred from defendant Guam years prior to
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- 1 the entry of the judgment of which the court takes judicial notice.
- 2 3. Does 1 through 100 are dismissed.
- 3 4. Plaintiff's motion to amend the complaint to conform to proof is granted.
- 4 5. Judgment for the plaintiff on the first cause of action for fraudulent conveyance against all
- 5 remaining defendants, jointly and severely for \$318,551 general damages and \$318,551
- 6 punitive damages, adding to a total judgment of \$637,102 plus statutory interest from
- 7 April 7, 2006 to present.
- 8
- 9 6. Judgment for defense on the fourth cause of action for declaratory relief.

10 **DEFENDANT'S SPECIFIED CONTROVERTED ISSUES**

11 **Issue 1.** The cause(s) of action upon which the court found in favor of plaintiff, justifying

12 the award of \$637,102 plus statutory interest from April 7, 2006 to present.

13 Explanation: Judgment was granted for the plaintiff as to the first cause of action. See

14 Item 5 of the above ruling.

15 **Issue 2.** The basis for the court's determination that defendant Sanford Gaum's testimony

16 lacks credibility.

17 Explanation: The court specifically finds that Gaum's testimony lacked credibility and

18 was intentionally deceptive. This was based upon observation of Mr. Gaum, his demeanor while

19 testifying, inconsistencies in his testimony and impeachment by deposition and documentary

20 evidence. His testimony was also inconsistent with that of Bernard Grace, his accountant and that

21 of the plaintiff, whom the court found believable and credible.

22 **Issue 3.** The basis for the Court's determination that during all times relevant to these

23 proceedings that defendant Gaum and defendant Blucnose conspired with Nova Gold to transfer

24 funds which were earned by defendant Gaum for his skills, special knowledge and management

25 services, to Nova Gold, who in turn, funneled these monies back to defendant Gaum.

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