



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In re:

J. DOUGLASS JENNINGS, JR. AND PEGGY L. JENNINGS,
Debtors.

BANKRUPTCY NO. 11-04720-LA7

RAMOS PROPERTIES, L.P. AND SSM CAPITAL, INC.,
Plaintiffs.

ADVERSARY NO. 11-90312-LA7

v.
J. DOUGLASS JENNINGS, JR.; PEGGY L. JENNINGS; AND DOES 1
THROUGH 20,
Defendants.

Date of Hearing: August 7, 2017
Time: 10:00 a.m.
Name of Judge: Louise DeCarl Adler

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON REMAND

IT IS HEREBY ORDERED as set forth on the continuation page(s) attached, numbered two (2) through twelve (12).

DATED: September 20, 2017


Judge, United States Bankruptcy Court

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On remand, the claims of Ramos Properties, LP and SSM Capital, Inc. (“Plaintiffs”) against Peggy L. Jennings (“Defendant” or “Peggy Jennings”) came on for trial on August 7 and 8, 2017. Alan Vanderhoff appeared on behalf of Plaintiffs; and L. Scott Keehn appeared on behalf of Peggy Jennings. No other appearances were made.

The sole factual issue to be tried was whether Peggy Jennings possessed the intent to: (1) commit larceny against the Plaintiffs; (2) commit embezzlement against the Plaintiffs; and/or (3) cause willful and malicious injury to Plaintiffs and Plaintiffs’ property.

Plaintiffs called two witnesses. Plaintiffs first called Peggy Jennings as a witness. Plaintiffs’ counsel asked approximately 175 questions of Peggy Jennings. She asserted her rights under the Fifth Amendment of the Constitution, and refused to answer each and every question asked of her by Plaintiffs’ counsel on the grounds that to do so might incriminate her.

As Plaintiffs’ counsel asked questions of Peggy Jennings, he read portions of the transcript of Peggy Jennings’ deposition into the record. Plaintiffs moved to have the portions of Peggy Jennings’ deposition transcript read by Plaintiffs’ counsel admitted into evidence on the grounds that Peggy Jennings had made herself an unavailable witness. The portions of Peggy Jennings’ deposition transcript read by Plaintiffs’ counsel were received into evidence by the Court, and are reflected in the transcript of the proceedings.

Plaintiffs also called J. Douglass Jennings as a witness. J Douglass Jennings asserted his rights under the Fifth Amendment of the Constitution and refused to answer each and every question asked of him by Plaintiffs’ counsel on the grounds that to do so might incriminate him.

Plaintiffs moved its Exhibits 1 through 10 into evidence. Each of the exhibits was received into evidence without objection. The Court took judicial notice of the State Bar of California online profile for J. Douglass Jennings which was marked as Plaintiffs’ Exhibit 11.

Plaintiffs moved to strike: (1) the Declaration of Peggy Jennings filed with the Court on June 27, 2013 [ECF No. 110-7]; (2) the Declaration of J. Douglass Jennings filed with the Court on June 27, 2013 [ECF No. 110-6]; and (3) the Declaration of J. Douglass Jennings filed with the Court on October 15, 2012 [ECF No. 86-5]. The Court granted the motion to strike, and struck the three declarations from the record pursuant to the analysis set forth in the case of *United States v. Parcels of Land*, 903 F.2d 36, 43-44 (1st Cir. 1990).

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Defendant called two witnesses, including Renee Meyer and Pamela Ramos. Defendant's Exhibits A-K were not offered into evidence. At Defendant's request, the Court took judicial notice of Defendant's Exhibits L and M.

Now therefore, having heard the testimony offered at trial, reviewed the exhibits received into evidence, reviewed the portions of Peggy Jennings' deposition transcript received into evidence, reviewed the trial briefs filed by the parties, heard the arguments made by counsel at the trial, reviewed the facts and findings that were previously adjudicated by this Court, and having considered all other duly admitted evidence, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Each of the undisputed facts set forth in Plaintiffs' Separate Statement of Undisputed Facts filed on September 28, 2012 [ECF No. 78], were previously adjudicated by this Court as not genuinely in dispute and deemed established pursuant to **Federal Rule of Civil Procedure 56(g)** as made applicable to this case through Bankruptcy Rule 7056. Each of those 82 adjudicated facts is incorporated herein by this reference as factual findings.

C. Peggy Jennings is a real estate broker licensed by the California Department of Real Estate. She has been a licensed real estate broker for at least 30 years.

D. Based on Peggy Jennings' deposition testimony, the Court finds that Peggy Jennings has a sophisticated knowledge of real estate matters, including how real estate transactions normally work. She is knowledgeable as to such things as escrows, title insurance, preliminary title reports, the recordation of deeds, and why deeds are recorded. *See P. Jennings Deposition Transcript, pp. 37-43.*

E. Peggy Jennings testified in her deposition that in a real estate transaction, the "normal" situation is for an escrow company to record the deed when the escrow closes and for the buyer to obtain title insurance. *See P. Jennings Deposition Transcript, p. 36.* Peggy Jennings testified that she agreed that title insurance provides an important protection for buyers. *See P. Jennings Deposition Transcript, pp. 41-42.*

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F. From June 1997 until April 27, 2004, J. Douglass Jennings and Peggy Jennings were the owners of record of a condominium in Park City, Utah, commonly known as Aspen Hollow #4, 8165 Royal Street East, Park City, Utah 84060 (the “Aspen Hollow Property”).

G. In April of 2004, J. Douglass Jennings and Peggy Jennings sold a 67.43% interest in the Aspen Hollow Property to Ramos Properties for a purchase price of \$1,323,032.71. Ramos Properties was a client of J. Douglass Jennings at the time of the sale.

H. On April 23, 2004, J. Douglass Jennings and Peggy Jennings executed Plaintiffs’ Exhibit 1 which is a Warranty Deed (the “2004 Warranty Deed”) which conveyed a 67.43% interest in the Aspen Hollow Property to Ramos Properties.

I. The 2004 Warranty Deed was not delivered through escrow. After the 2004 Warranty Deed was signed, J. Douglass Jennings provided a copy of the Warranty Deed to Manual Ramos, but retained the original deed. The 2004 Warranty Deed was not recorded.

J. The parties opened an escrow with Chicago Title Company, Escrow No. 48054779-KR, in order to complete the sale of the 67.43% interest in the Aspen Hollow Property.

K. On April 23, 2004, as part of the sale of the Aspen Hollow Property to Ramos Properties, Peggy Jennings signed Plaintiffs’ Exhibit 3 which are Escrow Instructions dated April 7, 2004 (the “Escrow Instructions”). The Escrow Instructions provided that the 2004 Warranty Deed would not be deposited into escrow and that the recording of the 2004 Warranty Deed would be handled outside of escrow. As a real estate broker, Peggy Jennings knew that it was irregular that the 2004 Warranty Deed would not be deposited into escrow and would not be recorded by the escrow company. She also knew that the reason deeds are recorded is to make the deeds “public knowledge.” *See P. Jennings Deposition Transcript, p. 43.* Conversely, she also knew that a deed that was not recorded would not be “public knowledge.”

L. As part of the sale of the Aspen Hollow Property to Ramos Properties, Peggy Jennings also signed Plaintiffs’ Exhibit 4 which is an Indemnity Agreement for Waiver of Title Insurance and Delivery of Deed Outside of Escrow dated April 7, 2004. The Indemnification Agreement stated:

In accepting this escrow, Escrow Agent has advised the Principals that acceptance of a real property escrow without a provision for a Title Insurance Policy or the recording of the deed in escrow, is a deviation from

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usual escrow procedure and that Escrow Agent will only accept said Escrow subject to the parties indemnifying and holding Escrow Agent harmless from any liability arising from the failure to secure a Title Insurance Policy on the Property and/or the delivery of the Grant Deed outside of escrow.

M. As set forth in Plaintiffs' Exhibit 6, \$1,323,032.71 was disbursed from escrow to Tradewinds Development, Inc. ("Tradewinds"). Tradewinds is a California corporation owned by the J. Douglass and Peggy Jennings' family trust. Peggy Jennings is the president and sole employee of Tradewinds. Peggy Jennings ran the day-to-day operation of Tradewinds. Although J. Douglass Jennings testified in his deposition that he is the vice president of Tradewinds, he has never been an employee of Tradewinds or worked for Tradewinds. *See P. Jennings Deposition Transcript, pp. 15-16.* Peggy Jennings was aware at the time that Tradewinds had received the \$1,323,032.71. *See P. Jennings Deposition Transcript, pp. 87-88.*

N. At the same time that the 67.43% interest in the Aspen Hollow Property was sold to Ramos Properties, Ramos Properties and Tradewinds entered into a transaction under which Ramos Properties would lease the 67.43% interest in the Aspen Hollow Property to Tradewinds. Peggy Jennings signed Plaintiffs' Exhibit 7, which is a Residential Lease with Option to Purchase dated April 23, 2004 (the "Lease"). The Lease was for a term of five years, with an option to purchase the 67.43% interest for a purchase price of \$1,323,032.71. The Lease provided for rent payments of \$6,615.16 per month.

O. Tradewinds made monthly rent payments to Ramos Properties in the amount of \$6,615.16 from a bank account in the name of Tradewinds. Tradewinds continued making the monthly rent payments to Ramos Properties through August 2009. The Aspen Hollow Property was used by J. Douglass Jennings and Peggy Jennings as a vacation home and was not rented out to others. J. Douglass Jennings and Peggy Jennings had exclusive possession of the Aspen Hollow Property pursuant to the terms of the Lease.

P. On October 13, 2006, J. Douglass Jennings and Peggy Jennings executed Exhibit 9, which is a second Warranty Deed that purported to convey the entire Aspen Hollow Property to J. Douglass Jennings as his sole and separate property (the "2006 Warranty Deed"). The Court finds that at the time Peggy Jennings executed the 2006 Warranty Deed, Peggy Jennings knew that she and her husband did not own 100% of the Aspen Hollow Property. Peggy Jennings knew that she had previously signed Plaintiffs' Exhibit 1 conveying a 67.43% interest in the Aspen Hollow Property to Ramos Properties, which meant that Ramos Properties owned this interest and not Peggy

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Jennings. The Court finds that it is not credible that Peggy Jennings did not read or understand the contents of Exhibit 9 -- a notarized document that she signed.

Q. The Court finds that Peggy Jennings and J. Douglass Jennings executed the 2006 Warranty Deed so that J. Douglass Jennings could obtain a cash-out-refinance of the loan secured by the Aspen Hollow Property. This finding is supported by what J. Douglass Jennings did shortly thereafter: On October 25, 2006, J. Douglass Jennings signed a Uniform Residential Loan Application for a new loan from Washington Mutual Bank in the increased amount of \$2,520,000 to be secured by a new deed of trust on the Aspen Hollow Property (the "2006 Washington Mutual Loan Application"). J. Douglass Jennings misrepresented on the 2006 Washington Mutual Loan Application that title to the Aspen Hollow Property would be held in the name of "J. Douglass Jennings, a married man as his sole and separate property." J. Douglass Jennings did not disclose on the 2006 Washington Mutual Loan Application that Ramos Properties owned a 67.43% interest in the Aspen Hollow Property. J. Douglass Jennings executed Plaintiffs' Exhibit 10 which is a new Deed of Trust dated October 24, 2006, purporting to encumber the Aspen Hollow Property and securing a new promissory note signed by J. Douglass Jennings in the increased principal amount of \$2,520,000 (the "2006 Washington Mutual Deed of Trust").

R. J. Douglass Jennings received cash from the 2006 Washington Mutual Bank Loan in the amount of \$1,021,618.70. The evidence supports a finding that Peggy Jennings knew about the 2006 Washington Mutual Bank Loan transaction; and she knew that shortly after signing the 2006 Warranty Deed the Jennings family finances were millions of dollars better off as a result of the transaction that had occurred. *See P. Jennings Deposition Transcript, pp. 88-89.* Ramos Properties did not receive any cash from the 2006 Washington Mutual Bank Loan; nor was it aware of what the Jennings had done.

S. Tradewinds, under the control of Peggy Jennings, continued to make rent payments to Ramos Properties under the Lease notwithstanding her execution of the 2006 Warranty Deed, which purported to transfer sole ownership of the Aspen Hollow Property to her husband. Plaintiffs' Exhibit 8 is a check written on a Tradewinds' bank account and signed by J. Douglass Jennings making a rent payment to Ramos Properties under the Lease in August 2009 – nearly three years after the execution of Plaintiffs' Exhibit 9 which purported to convey the entire Aspen Hollow Property to J. Douglass Jennings as his sole and separate property. The Court finds that Tradewinds' continuing payment of rent constituted a continuing fraud on Ramos Properties by J. Douglass Jennings and Peggy Jennings because the payments were intended to conceal what they had done. The rent payments also constitute conspiratorial conduct by J. Douglass Jennings and Peggy Jennings to conceal what they had done.

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T. The Jennings were eventually unable to service the higher indebtedness owed on the Aspen Hollow Property. In September 2009, an Amended Notice of Default was recorded against the Aspen Hollow Property by the successor in interest under the 2006 Washington Mutual Deed of Trust. Thereafter, a foreclosure was conducted, and the Aspen Hollow Property was sold to JP Morgan Chase by a Trustee's Deed recorded on June 3, 2010. Ramos Properties' 67.43% interest in the Aspen Hollow Property was extinguished by the foreclosure because Peggy Jennings and J. Douglass Jennings had kept possession of the 2004 Warranty Deed and had not recorded it.

CONCLUSIONS OF LAW

1. For purposes of § 523(a)(4), federal law (as opposed to state law) governs the definitions of larceny and embezzlement. *Comcast of L.A., Inc., v. Sandoval (In re Sandoval)*, 341 B.R. 282, 294 (Bankr. C.D. Cal. 2006).

2. Under federal law, "larceny" is defined as the "felonious taking of another's property with the intent to convert it or deprive the owner of the same." *Ormsby v. First Am. Title Co. (In re Ormsby)*, 591 F.3d 1199, 1205 (9th Cir. 2010).

3. "Felonious" is defined as "proceeding from an evil heart or purpose; malicious; villainous ... [w]rongful; (of an act) done without excuse of color or right." *In re Ormsby*, 591 F.3d at 1205 n.4 (citing *In re Kiesewetter*, 391 B.R. 740, 748 (Bankr. W.D. Pa. 2008)(quoting Black's Law Dictionary (8th ed. 2004)).

4. Under federal law, "embezzlement" requires the showing of three elements: (1) property owned by another is rightfully in the possession of the debtor; (2) the debtor's appropriation of the property to a use other than the use for which the property was entrusted to the debtor; and (3) circumstances indicating fraud. *Sandoval*, 341 B.R. at 294 (citing *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991)).

5. "Direct evidence of an intent to deceive is rarely shown." *In re Campbell*, 490 B.R. 390, 401 (Bankr. Ariz. 2013). Because direct evidence of intent is usually unobtainable, intent may be inferred from the surrounding circumstances. *Id.* (citations omitted). "The court must consider whether the totality of circumstances paints a picture of deceptive conduct by the debtor that indicates an intent to deceive the creditor." *Id.* (citations omitted); see also *In re Woodfield*, 978 F.2d 516, 518 (9th Cir. 1992) (existence of intent is a finding of fact that may be inferred from surrounding circumstances and "badges of fraud"); *In re Lehman Brothers Holdings Inc.*, 469 B.R. 415, 448 (Bankr. S.D. N.Y. 2012) (because actual fraud is rarely proven by direct evidence since individuals are rarely willing to admit such intent, courts look to other "badges of fraud"); *c.f. In re Doherty*, 2010 WL2680310, *2 (Bankr. S.D. Cal. 2010) (since direct evidence of fraud is

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rarely available, circumstantial evidence or “badges of fraud” are most often considered to determine intent of debtor in fraudulent transfer case).

6. The Court finds and concludes that Peggy Jennings possessed the requisite intent for larceny. Peggy Jennings took the 67.43% interest in the Aspen Hollow Property owned by Ramos Properties with the intent to convert it or deprive Ramos Properties of the same. After conveying the property to Ramos Properties in 2004 in exchange for a purchase price of \$1,323,032.71, Peggy Jennings signed the 2006 Warranty Deed purporting to convey the same property to her husband to be used to obtain a fraudulent loan on the Aspen Hollow Property from Washington Mutual Bank. Peggy Jennings’ taking of the property owned by Ramos Properties was felonious because she proceeded from an evil heart or purpose, malicious, and villainous. The act was done without excuse of color or right.

7. Peggy Jennings’ intent to commit larceny may be inferred from: (1) her knowledge that she had conveyed a 67.43% interest in the Aspen Hollow Property to Ramos Properties in 2004; (2) her knowledge that the company she controlled, Tradewinds, had received \$1,323,032.71 from Ramos Properties as a result of the sale; (3) her knowledge that the 2004 Warranty Deed had not been recorded; (4) her execution of the 2006 Warranty Deed with knowledge of what she signed; (5) her knowledge of the 2006 Washington Mutual Bank Loan transaction in which the Jennings family received \$1,021,618.70 from the refinance of the Aspen Hollow Property; and (6) her active concealment of the theft for nearly three years through continued payments of rent by the company she controlled, Tradewinds.

8. The Court finds and concludes that Peggy Jennings possessed the requisite intent for embezzlement. Peggy Jennings was in rightful possession of Ramos Properties’ 67.43% interest in the Aspen Hollow Property by virtue of the Lease that she signed on behalf of Tradewinds. The Aspen Hollow Property was used by J. Douglass Jennings and Peggy Jennings as a vacation home. J. Douglass Jennings and Peggy Jennings had exclusive possession of the Aspen Hollow Property pursuant to the terms of the Lease. J. Douglass Jennings and Peggy Jennings appropriated the Aspen Hollow Property for a use other than the use for which the property was entrusted to them. Their exclusive possession of the Aspen Hollow Property under the Lease, coupled with their possession of the original 2004 Warranty Deed and their failure to record that deed, enabled them to perpetrate a fraud on Ramos Properties and on Washington Mutual Bank by executing the fraudulent 2006 Warranty Deed and using that fraudulent deed to refinance the Aspen Hollow Property. The circumstances indicating fraud include the execution of the fraudulent 2006 Warranty Deed; the use of that deed to obtain the 2006 Washington Mutual Bank Loan; the misrepresentations on the 2006 Washington Mutual Loan Application; and the Jennings’ continuing concealment of the fraud by making rent

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payments after title to the Aspen Hollow Property had been conveyed to J. Douglass Jennings as his sole and separate property.

9. Peggy Jennings' intent to commit embezzlement may be inferred from: (1) her knowledge that she had conveyed a 67.43% interest in the Aspen Hollow Property to Ramos Properties in 2004; (2) her knowledge that the company she controlled, Tradewinds, had received \$1,323,032.71 from Ramos Properties as a result of the sale; (3) her knowledge that the 2004 Warranty Deed had not been recorded; (4) her knowledge of the effect of and the purpose of recording a transfer deed; (5) her execution of the 2006 Warranty Deed with knowledge of what she signed; (6) her knowledge of the 2006 Washington Mutual Bank Loan transaction in which the Jennings family received \$1,021,618.70 from the refinance of the Aspen Hollow Property; and (7) her active concealment of the theft for nearly three years through continued payments of rent by the company she controlled, Tradewinds.

10. A “willful injury” is established when the debtor has a subjective motive to inflict injury, or when the debtor believes that injury is substantially certain to result from his/her conduct. *In re Su*, 290 F.3d 1140, 1142 (9th Cir. 2002). The debtor is charged with knowledge of the natural consequences of his actions; the debtor's knowledge may be inferred from the circumstantial evidence. *Ormsby*, 591 F.3d at 1206. A “malicious injury” involves: (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; and (4) is done without just cause or excuse. *Ormsby*, 591 F.3d at 1207 (citing *In re Jercich*, 238 F.3d 1202, 1209 (9th Cir. 2001)); Malice may be inferred based on the nature of the wrongful act. *Ormsby*, at 1207 (citing *Littleton*, 942 F.2d at 544).

11. The Court finds and concludes that Peggy Jennings committed a willful and malicious injury against Ramos Properties and its 67.43% interest in the Aspen Hollow Property. Peggy Jennings is a seasoned real estate broker. Her deposition testimony demonstrated that she possessed substantial knowledge of real estate transactions, including the recordation of deeds and the effect of recordation. When Peggy Jennings signed the 2006 Warranty Deed she knew that she had already sold a 67.43% interest in the Aspen Hollow Property to Ramos Properties. She also knew that the 2004 Warranty Deed had not been recorded, and that the recordation of the 2006 Warranty Deed and the subsequent refinance of the Aspen Hollow Property would extinguish the interest of Ramos Properties. Peggy Jennings was aware of the 2006 Washington Mutual Bank Loan transaction, and was an essential participant in carrying out this transaction. Peggy Jennings benefitted from the 2006 Washington Mutual Bank Loan transaction by receiving more than \$1 million from this fraudulent loan transaction. She is charged with knowledge of the natural consequences of her actions. Her knowledge may be inferred from the circumstantial evidence. As a seasoned real estate broker, Peggy Jennings was aware of the consequences of signing a deed that purported to convey to her husband

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property that she had already sold to someone else. The 2006 Warranty Deed was a fraudulent deed which she executed intentionally. The 2006 Warranty Deed would necessarily cause injury to the party to whom she had already sold the property. The execution of the fraudulent 2006 Warranty Deed was done without just cause or excuse.

12. As long as two or more persons agree to perform a wrongful act, the law places civil liability for the resulting damage on all of them, regardless of whether they actually commit the tort themselves. *Wyatt v. Union Mortgage Co.*, 24 Cal.3d 773, 784 (1979). “The effect of charging ... conspiratorial conduct is to implicate all ... who agree to the plan to commit the wrong as well as those who actually carry it out. [Citations.]” *Black v. Sullivan*, 48 Cal. App. 3d 557, 566 (1975); *Wyatt v. Union Mortgage Co.*, 24 Cal.3d at 784. Therefore a plaintiff is entitled to damages from those defendants who concurred in the tortious scheme with knowledge of its unlawful purpose. *Wyatt v. Union Mortgage Co.*, 24 Cal.3d at 784; *Black v. Sullivan*, 48 Cal. App. 3d at 557, 566 (1975). Furthermore, the requisite concurrence and knowledge may be inferred from the nature of the acts done, the relation of the parties, the interests of the alleged conspirators, and other circumstances. *Wyatt v. Union Mortgage Co.*, 24 Cal.3d at 785. Tacit consent as well as express approval will suffice to hold a person liable as a co-conspirator. *Holder v. Home Sav. & Loan Assn.*, 267 Cal. App. 2d 91, 108 (1968).

13. The Court finds and concludes that Peggy Jennings acted in concert with J. Douglass Jennings to deprive Ramos Properties of its 67.43% interest in the Aspen Hollow Property. Peggy Jennings and J. Douglass Jennings both signed the 2004 Warranty Deed and the Escrow Instructions, which provided that the 2004 Warranty Deed would not be recorded through escrow. They both participated in the creation of the Lease, which enabled them to take lawful possession of the 67.43% interest in the Aspen Hollow Property owned by Ramos Properties. They both signed the 2006 Warranty Deed, which purported to convey to J. Douglass Jennings the 67.43% interest in the Aspen Hollow Property owned by Ramos Properties. They both participated in the concealment of their theft by causing Tradewinds, a company controlled by Peggy Jennings, to continue making payments of “rent” for nearly three years after the execution of the 2006 Warranty Deed. As a result, Peggy Jennings and J. Douglass Jennings are joint and severally liable to Ramos Properties as co-conspirators for the judgments entered against each of them.

14. The Court finds and concludes that the wrongful conduct of Peggy Jennings proximately caused the Plaintiffs' damages. The decision of Peggy Jennings to knowingly execute and record the fraudulent 2006 Warranty Deed conveying to J. Douglass Jennings a far greater interest than they owned – in lieu of recording the 2004 Warranty Deed – enabled J. Douglass Jennings to misrepresent his 100% ownership of the Aspen Hollow Property to Washington Mutual Bank to obtain the 2006 Washington Mutual Bank Loan

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in the increased amount of \$2,520,000, and pull out \$1,021,618.70 in cash which he retained for the benefit of the Jennings family.

15. Plaintiffs were not informed of these wrongful actions until 2009 when the Jennings were unable to service the higher indebtedness. Plaintiffs did not authorize this new \$2,520,000 loan. Plaintiffs owed no obligation to take over the Aspen Hollow Property from Plaintiffs, or repay the unauthorized 2006 Wells Fargo Bank Loan to prevent the foreclosure of the property.

16. The 2006 Warranty Deed and the foreclosure caused Plaintiffs to lose their 67.43% ownership interest and their investment. Accordingly, Plaintiffs are entitled to damages proximately calculated as follows:

- a) The purchase price for their 67.43% ownership interest in the amount of \$1,323,032.71.
- b) Plus interest from October 13, 2006 (the date of executing the 2006 Warranty Deed) to the present at the Federal legal rate of 5.07% (183.77 per day). There were 3,990 days between October 13, 2006 and September 15, 2017 (the estimated date of the entry of judgment). Prejudgment interest is hereby established at \$733,242.30.
- c) Minus rental payments received by Plaintiffs from Tradewinds between 2006 and 2009 in the amount of \$224,915.44.
- d) Minus the allocable share of mortgage payments actually made by the Jennings from 2004 to the date they ceased making mortgage payments (without any increase by reason of the larger mortgage amount taken by J. Douglass Jennings in 2006). The total allocable share of mortgage payments is \$318,828.23.
- e) The judgment amount shall be \$1,512,531.34. The judgment amount is calculated as follows: \$1,323,032.71 (purchase price) + \$733,242.30 (pre-judgment interest) = \$2,056,275.01.
\$2,056,275.01 - \$224,915.44 (rental payments) - \$318,828.23 (mortgage payments) = \$1,512,531.34.

17. Bankruptcy Courts have jurisdiction to enter a monetary judgment on a disputed claim in the course of making a determination that a debt is nondischargeable. *Sasson v. Sokoloff* (*In re Sasson*), 424 F.3d 864, 868 (9th Cir. 2005); *Cowen v. Kennedy* (*In re Kennedy*), 108 F.3d 1015 (9th Cir. 1997). The Court hereby establishes the

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existence and amount of the debt owing by Peggy Jennings to the Plaintiffs in the amount of \$1,512,531.34 based on larceny and embezzlement committed by Peggy Jennings. The Court hereby awards judgment to the Plaintiffs against Peggy Jennings in the amount of \$1,512,531.34 (the “Money Judgment”).

18. The Court having found that Peggy Jennings committed larceny and embezzlement against Plaintiffs, the Money Judgment against Peggy Jennings shall be nondischargeable pursuant to Section 523(a)(4) of the Bankruptcy Code.

19. The Court having found that the actions of Peggy Jennings constituted willful and malicious injury by her to Plaintiffs and Plaintiffs’ property, the Money Judgment against Peggy Jennings shall be nondischargeable pursuant to Section 523(a)(6) of the Bankruptcy Code.

20. J. Douglass Jennings and Peggy Jennings are jointly liable with each other on the grounds of civil conspiracy to cause willful and malicious injury to Plaintiffs within the meaning of Section 523(a)(6) of the Bankruptcy Code.

Notice Recipients

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Recipients of Notice of Electronic Filing:

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TOTAL: 5

Recipients submitted to the BNC (Bankruptcy Noticing Center):

dft	J. Douglass Jennings, Jr.	3655 Nobel Drive	Suite 200	San Diego, CA 92122
dft	Peggy L. Jennings	3655 Nobel Drive	Suite 200	San Diego, CA 92122
dft	J. Douglass Jennings, Jr., A Professional Corporation	3655 Nobel Drive	Suite 200	San Diego, CA 92122
md	John L. Morrell	401 West A Street Ste. #2600	San Diego, CA 92101	

TOTAL: 4