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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SOUTH DISTRICT - LONG BEACH COURTHOUSE

BOSCO TUAN TRAN, et al., Plaintiffs, vs. WARREN E&P, INC., etc., et al. Defendants. AND RELATED CROSS-ACTION	CASE NO.: NC057268 Assigned for all purposes to the Hon. Judge Ross M. Klein, Department 11 **BRIEF IN SUPPORT OF CLOSING ARGUMENT**

I. THE LEASE CLEARLY INCLUDES THE DRIVEWAY AT ISSUE

The lease between Plaintiffs Bosco Tran, Sonny Tran, and Sonny & Bosco, Inc. (the "Plaintiffs") and Warren Resources of California, Inc. ("WRCI") unambiguously states that it included "the South East Corner of 1445 Judson St. Long Beach, CA. The area is Approximately 5000 Sq Ft." (Defendant's and Cross-complainant's Trial Exh. 100.) Nowhere does the lease state that it does *not* include the driveway; rather it expressly indicates it includes the entire "South East Corner" of WRCI's Lot G - the area to the furthest corner of Lot G inclusive of the driveway. Los Angeles County Assessor maps, recorded documents, and expert testimony confirm and corroborate that the leased premises, including the driveway, were all part of WRCI's property. (See, e.g., Defendant's and Cross-complainant's Trial Exhs. 103 &106.)

Plaintiffs former claims of complete ownership in the driveway and current claim of a

prescriptive easement in the driveway is directly contradictory to the express terms of the lease itself. "California recognizes the objective theory of contracts [ ], under which '[i]t is the objective intent, as evidenced by the words of the contract, rather than the subjective intent of one of the parties, that controls interpretation' []. The parties' undisclosed intent or understanding is irrelevant to contract interpretation." (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 956 [internal citation omitted].)

Furthermore, as businessmen, Plaintiffs are expected to examine and understand the terms of any contract before signing. Plaintiffs may not rely on a lack of understanding or an inability to read the lease as a basis to determine they thought the driveway was theirs. "The care and diligence of a prudent man in the transaction of his business would demand an examination of the instrument before signing, either by himself or by some one for him in whom he had a right to place confidence. The fact that the plaintiff was illiterate, and could read manuscript only with difficulty, did not render this precaution less necessary." (*Hawkins v. Hawkins* (1875) 50 Cal. 558, 560.) "[I]n the absence of any allegation of fraud or undue influence, a party cannot rely upon his own negligence in failing to read the instrument signed by him." (*Greve v. Taft Realty Co.* (1929) 101 Cal.App. 343, 352 [referencing *Placer County Bank v. Freeman* (1899) 126 Cal. 90.)

Because the lease clearly included the entire South East Corner of Lot G, Plaintiffs failure to timely vacate such premises and their continued use of the driveway to perform customer repairs, block access to WRCI's driveway, and to double park their trucks on it constitutes a breach of contract, unjust enrichment, trespass to land, and private and public nuisance.

II. ASSUMING AN EASEMENT ON THE DRIVEWAY PREVIOUSLY EXISTED, THE FORMER LEASE, PLAINTIFFS INCOMPATIBLE USE OF THE DRIVEWAY, AND MERGER OF THE TENEMENTS EXTINGUISHED THE EASEMENT

Assuming, *arguendo*, Plaintiffs obtained an easement for the disputed driveway from Lot 8's predecessor, Jesus Gonzales, for ingress and egress (Second Am. Verified Compl., at ¶ 15), such easement was extinguished because of (1) Plaintiffs lease agreement with Global Oil and subsequently WRCI, (2) Plaintiffs use of the driveway which was directly incompatible with its original purpose, and (3) the merger of the servient and dominant tenements after the lease ended

and WRCI was finally able to enclose its property.

"In order to justify extinguishment of an easement, '[t]he acts of the owner of the dominant tenement ... must be of a character so decisive and conclusive as to indicate a clear intent to abandon the easement.'" (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 768 [citation omitted].) Here, instead of permitting Plaintiffs to freely utilize the entire South East Corner of Lot G, Global Oil and WRCI had a lease agreement with Plaintiffs to utilize such corner. Clearly then, Lot G's property owner decisively and conclusively sought to abandon and terminate the easement by requiring a lease to be entered with Plaintiffs.

Secondly, Plaintiffs improperly used the driveway to conduct truck repairs on instead of using it solely for ingress and egress. "A servitude is extinguished . . . [b]y the performance of any act upon either tenement, by the owner of the servitude, or with his assent, which is incompatible with its nature or exercise[.]" (Civ. Code, § 811, subd. 3.) "The courts have interpreted this incompatibility as necessitating a *permanent* interference or an act of a nature such that thereafter exercise of the easement cannot be made without severe burden upon the servient tenement." (*Buechner v. Jonas* (1964) 228 Cal.App.2d 127, 132 [emphasis in original].) Because Plaintiffs utilized the driveway for an incompatible purpose different than the original purpose of the easement itself, and Plaintiffs own staging area prevented other trucks from using the driveway for ingress and egress, any such claimed ingress and egress easement no longer exists.

Finally, the when the former easement for the disputed driveway and Lot G became vested solely in WRCI, the lesser estate merged into the greater estate and the easement became terminated. "The early common law was unequivocal in stating that when a smaller estate and a larger estate came into the same hands, assuming no estate intervened, there was a merger of the smaller into the larger. . .This same general view has been accepted and follow[ed] in California, where the transaction in question took place and where the land is located." (*Lloyd Corp. v. Riddell* (S.D. Cal. 1963) 222 F.Supp. 587, 591 *aff'd in part, rev'd in part,* (9th Cir. 1965) 347 F.2d 455.)

By Plaintiffs own actions of entering the lease, using the driveway for an incompatible use, and by the doctrine of merger, any alleged easement Plaintiffs may have had in the disputed

driveway has been overtly extinguished.

III. WRCI IS A SUBSEQUENT BONA FIDE PURCHASER OF LOT G AND IS NOT SUBJECT TO ANY UNRECORDED PRESCRIPTIVE EASEMENTS OF WHICH IT DID NOT HAVE NOTICE AT THE TIME IT PURCHASED LOT G

A. A Subsequent Bona fide Purchaser of Land is Not Bound by any Previously-Established Prescriptive Easements unless the Purchaser had Actual or Constructive Notice of such Easements at the Time of Purchase

A subsequent purchaser of property is charged with notice of those matters affecting the property that would be apparent from inspection and reasonable inquiry of persons who are visibly in occupancy or using the property in a manner at variance with record title. (See Civil Code, §1217.) In keeping with this principle, the possession and use of property in a manner that is apparent upon inspection provides inquiry notice of any unknown prescriptive title or easement, or any other easement on the property. (See 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, § 209, p. 412.)

In order to be binding against a subsequent purchaser, there must be visible evidence of the easement that may be seen by an inspection in order to put the subsequent purchaser on notice. (See *Ocean Shore R. Co. v. Spring Val. Water Co.* (1933) 218 Cal. 86, 88-89.)

On point with the facts of the instant dispute is the Second District Court of Appeal case of *Gates Rubber Co. v. Ulman* (1989) 214 Cal.App.3d 356. In *Gates,* a subsequent purchaser bought land subject to an existing lease with a tenant. The tenant also had an unwritten option agreement to purchase the land.

Although the court found that the tenant's purchase option was a covenant running with the land, it found that the subsequent purchaser was not bound by the tenant's unrecorded purchase option agreement. (See *id.* at 365, 370-371.) Nothing in the tenant's use of its leasehold put the purchaser on notice of the unrecorded covenant. (See *id.* at 370.) The subsequent purchaser was also not obligated to investigate whether lease might include unrecorded covenants because nothing in the tenant's use of the leasehold was inconsistent with the written lease. (See *id.* at 370-371.) The purchase option could not be enforced against the subsequent purchaser. (See *id.* at 359, 371.)

B. WRCI had No Notice of any Prescriptive Easement over the Driveway because when it Purchased the Property, All Activity Understood by WRCI, and Would Have Been Understood by Any Bona Fide Purchaser, Was the Use of the Land Consistent with the Written Lease

WRCI purchased Lot G in late 2005. When it did so, it was given an opportunity to inspect the property and review title documents. Because Cross-defendants allege they had established or been assigned an unrecorded prescriptive easement to which they are only now seeking to record title, the title documents for Lot G obviously did not then contain any evidence in 2005 of the as yet unrecorded easement. So WRCI could not have, by record notice within the title documents, learned of Cross-defendants unrecorded easement. (See, e.g., Defendant's and Cross-complainant's Trial Exh. 101. Quit Claim Deed for Lot G [only easement identified therein is a utility easement over northern portion of Lot G].)

Like in *Gates*, at the time of purchase of Lot G, WRCI was given an opportunity to physically inspect the property. At that time, it did observe Cross-defendants' use of the southern end of Lot G, including the storage area and the driveway. But this observation would not have given WRCI actual or constructive notice that Lot G was encumbered by an unrecorded prescriptive easement over the driveway. Cross-defendants' use of the driveway was wholly consistent with the seeming terms of the lease. (See *Gates*, *supra*, at 366-367.)

The lease provided to WRCI when in purchased Lot G described the leasehold of Cross-defendants as the 5,000 square feet of the South East Corner of Lot G. It made no mention of any exclusions from the lease for a driveway or an easement. (See *id.*, at 366 ["The possession required to impart notice to a subsequent purchaser must be open, notorious, exclusive and visible, and *not consistent with the record title*," italics in original, quotations omitted, citing *Claremont Terrace Homeowners' Assn. v. United States* (1983) 146 Cal.App.3d 398, 408, and see 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, § 206, pp. 412-413.) WRCI, as a bona fide purchaser, would not have implied notice from such language (or the absence thereof) that any such easement existed.

WRCI, as would all bona fide purchasers in its possession, reasonably assumed that any activity on the driveway was within the ambit of the lease. This is particularly so given that the

lease is for the "south east corner," and the driveway is the *most south east portion* of the property. There is no area on Lot G more south of or more east of the driveway.

Thus, in observing activity on the driveway, the south east most portion of the property, WRCI would have no notice that it should investigate whether some of that activity being conducted by Cross-defendants was pursuant to a land or possessory interest of Cross-defendants other than the lease. (See *Gates*, *supra*, at 370 ["In the present case, there was nothing apparent from appellant's possession that would give notice of rights other than those contained in the recorded short-form lease, which in turn referred to the long-form lease. Neither the short-form lease nor the long-form lease provided notice of the option to purchase."].)[1] WRCI would have no implied notice that the activity on the driveway might be due to something other than licensed use of the driveway under the lease.

C. To the Extent the Court Determines the Lease Does Not Include the Driveway, that Determination Does Not mean that Cross-defendants are Entitled to their Easement

To the extent the Court might agree with Cross-defendants that the lease's description of the property is ambiguous, such a determination further *supports* WRCI's argument that, as a subsequent bona fide purchaser, it should not be subject to the easement. If the lease's description of the property is sufficiently ambiguous for the Court to determine that the parties to the lease (Cross-defendants and Lot G's prior owner) did not ascribe the same or a similar meaning to the area covered by the lease, then WRCI, reviewing the lease after its execution by the parties, would have been in no better position to determine its meaning.

Thus, assuming the Court determines that the lease was so ambiguous as to require a judicial determination at trial of the executing parties' intent in crafting the ambiguous language, it would be manifestly unjust to claim that a party that did not negotiate or draft the lease, after the

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[1] Nor would an inspection at that time have revealed the unrecorded prescriptive easement to WRCI. As testimony has shown, Cross-defendants did not begin claiming they had a prescriptive easement over the driveway until 2011. During an inspection by Mr. Dahlgren in 2006, Cross-defendants also made no mention of the purported easement or any other claim of right to the driveway. It was only in 2009, when Cross-defendants' right of possession of the leasehold was terminated, that WRCI, by virtue of Cross-defendants' holdover tenancy on both the storage area and the driveway, first had constructive notice of a dispute regarding the parties' respective interests in the driveway.

fact, had the knowledge or wherewithal to properly interpret the ambiguous language such that the party would be on notice that portions of the property were not covered by the lease. (See, e.g., *Gates*, *supra*, at 370.)

Thus, WRCI is a subsequent bona fide purchaser of Lot G and is not subject to any unrecorded prescriptive easements of which it did not have actual, record, or constructive notice of at the time it purchased Lot G.

IV. PLAINTIFFS HAVE NOT PLEAD NOR ESTABLISHED AN EASEMENT BY NECESSITY

None of Plaintiffs' complaints, including their operative Second Amended Verified Complaint, alleges an easement by necessity. (See Second Am. Verified Compl., at ¶ 16 [Plaintiffs are the owners by adverse possession of an easement by prescription located in Los Angeles County, California[.]") Even when Plaintiffs were asked in a request for admission that they claim a right to use the driveway based on having obtained a prescriptive easement, Plaintiffs responded: "Without waiving Plaintiff's right to **adverse possession** in this action, Plaintiff's response: Admit." (See, e.g., Further Response of Sonny Tran to Request for Admission No. 9 [emphasis added].)[2]

However, testimony during trial revealed for the first time that Plaintiffs are alternatively alleging an easement by necessity. While such testimony was improper because of Plaintiffs failure to properly plead and preserve such allegation, Plaintiffs nevertheless fail to satisfy the requirements of an easement by necessity.

"'In order to establish an easement by necessity, the dominant tenement must be completely landlocked; the easement must be absolutely necessary for access to the dominant tenement, and there cannot be any other possible means of access.'" (*Dubin v. Robert Newhall Chesebrough Trust* (2002) 96 Cal.App.4th 465, 477 [quoting 6 Mill & Starr, Cal. Real Estate,

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[2] Plaintiffs provided the same response when asked to admit whether Plaintiffs claimed a right to use the driveway based on having perfected a prescriptive easement. (See, e.g., Defendant's and Cross-complainant's Request for Admission, No. 10: "Admit that you claim a right to use the driveway based on having perfected a prescriptive easement." Plaintiff Sonny Tran's Further Response to Request for Admission, No 10: "Without waiving Plaintiff's right to adverse possession in this action, Plaintiff's response: Admit.")

§15:28, p. 102].) Thus, an easement by necessity is founded on necessity, *not convenience.* (*Murphy v. Burch* (2009) 46 Cal.4th 157, 164 ["To satisfy the strict-necessity requirement, the party claiming the easement must demonstrate it is strictly necessary for access to the alleged dominant tenement. [ ] No easement will be implied where there is another possible means of access, even if that access is shown to be inconvenient, difficult, or costly."] [internal citation omitted].)

Here, repeated trial testimony, deposition testimony, and discovery revealed that Plaintiffs have *two* other alternative driveways to access their property. (See Plaintiffs' Exhs. 17 [back easement for ingress and egress of Lot 8] and Exhs. 30-43 & 46-47 [various photographs depicting front driveway at different angles].) Despite Plaintiffs testimony that the use of such two alternative driveways are inconvenient and difficult for their operation of their business, such alleged hardships are inherently irrelevant as the existence of such driveways terminate any successful allegation of an easement by necessity.

V. WRCI ESTABLISHED ALTER EGO LIABILITY

The requirements for applying the alter ego doctrine are met in this case. Under California law, Sonny & Bosco, Inc. is not an independent entity separate and apart from Sonny Tran and Bosco Tuan Tran and their failure to disregard the corporate fiction and formalities in this case would sanction fraud and promote injustice on Cross-complainants. As such, the corporate fiction should be discarded and Cross-defendants should be found liable in their individual capacities.

The line between the Sonny Tran and Bosco Tuan Tran as individuals and Sonny & Bosco, Inc. is so blurred that separate personalities no longer exist. Cross-defendants have blatantly disregarded legal formalities since the inception of Sonny & Bosco, Inc. The company's Statements of Information (Plaintiffs' and Cross-defendants' Trial Exh. 19 [identifying Bosco Tuan Tran as Secretary and CFO of Sonny & Bosco, Inc. from 2006-2012]), Meeting Minutes (Plaintiffs' and Cross-defendants' Trial Exh. 20 [listing Rita McBride as Secretary and Sonny Tran as CFO of Sonny & Bosco, Inc. from 2006-2012]), and even the "corporate officers" themselves fail to consistently identify the corporations' President, Vice-President, CFO, and Secretary.

This failure to abide by corporate legal formalities and the inability to define separate personalities is further demonstrated by the fact that Sonny & Bosco, Inc.'s business licences (Plaintiffs' and Cross-defendants' Trial Exh. 22), fire permits (Plaintiffs' and Cross-defendants' Trial Exh. 23), CUPA permits (Plaintiffs' and Cross-defendants' Trial Exh. 24), and automotive repair licences (Plaintiffs' and Cross-defendants' Trial Exh. 25) fail to list Sonny & Bosco, Inc. but are instead listed under Bosco Tuan Tran.

Lacking a clear corporate structure, Sonny Tran and Bosco Tuan Tran treat the corporate entity as an extension of themselves and have committed one of the most widely recognized elements of the alter ego doctrine – the commingling of the individuals' assets and the corporate entity's assets by forfeiting the fair market rental value of the individually owned property so that their purportedly separate corporation can use the property *gratis* and in perpetuity. (See, e.g., *Tomaselli v. Transmerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1285). The Trans have commingled assets with the corporation by allowing it to use their property rent-free. (Plaintiffs' and Cross-defendants' Trial Exh. 16.) While Cross-defendants claim that they receive rent from the company, they never produced a single document evidencing such payments, and they testified inconsistently about such rent. Sonny Tran testified he got it monthly. Bosco Tuan Tran testified that he and his nephew received it yearly. Sonny Tran testified during cross-examination at trial that he had a receipt showing he had been paid rent by the company, yet never produced it on redirect. Bosco Tuan Tran attempted to make a similar claim on cross examination, but also didn't produce such a receipt on redirect. Bosco Tuan Tran couldn't testify to how much he got.

Further the corporation's Meeting Minutes from 2005-2012 indicate that the corporation never ratified an agreement for the payment of rent to the Trans, the company's March 2011 to March 2012 Income Statement substantiate that rent was never listed as an expense, and the corporation's 2011 Tax Return shows that Sonny & Bosco, Inc. failed to list or otherwise deduct rent as an expense in 2011. (See Plaintiffs' and Cross-defendants' Trial Exh. 20 [meeting minutes], and Declaration of Bosco Tuan Tran I/S/O Reply on Motion for Preliminary Injunction [lodged during trial] at ¶ 12, Exh. "A" [income statements], and Exh. "B" [tax returns].)

The Plaintiffs overt failure to disregard the corporate fiction in this case sanctions fraud

and promotes injustice on Cross-complainants. Because Plaintiffs Sonny Tran and Bosco Tran treat Sonny & Bosco, Inc. as merely an extension of themselves, alter ego liability is established.

VI. CONCLUSION

Plaintiffs have never established that the lease did not include the driveway in dispute and if anything, assessor maps and recorded documents clearly indicate that Lot G includes the driveway. Even if the driveway at one point in time was an easement, such easement was terminated by the Plaintiffs own inconsistent actions and use of the driveway, as well as WRCI being a bona fide purchaser of Lot 8 without any actual, record, or constructive notice of such unrecorded easement.

Because the lease clearly included the entire South East Corner of Lot G which includes areas both above and below the driveway in dispute, Plaintiffs failure to timely vacate such premises and their continued use of the driveway to perform customer repairs, block access to WRCI's driveway, and to double park their trucks on it constitutes a breach of contract, unjust enrichment, trespass to land, and private and public nuisance. While Plaintiffs red-herring testimony of easement by necessity completely fails, what is clear is that Plaintiffs Sonny Tran and Bosco Tran treat Sonny & Bosco, Inc. as an extension of themselves by commingling assets and not observing corporate formalities - thus evidencing alter ego liability.

Dated: June 20, 2013

MICHEL & ASSOCIATES, P.C.

Joshua Robert Dale,
Attorneys for Defendant WARREN E&P, INC. and Cross-complainant WARREN RESOURCES OF CALIFORNIA, INC.

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Christina Sanchez, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

On June 20, 2013, I served the foregoing document(s) described as

BRIEF IN SUPPORT OF CLOSING ARGUMENT

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

Dave Vo, Esq.
VO LAW FIRM
7372 Prince Drive, Suite 108
Huntington Beach, CA 92647

__ (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on June 20, 2013, at Long Beach, California.

X (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on June 20, 2013, at Long Beach, California.

__ (OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance.
Executed on June 20, 2013, at Long Beach, California.

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

___ (FEDERAL) I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.

Christina Sanchez
CHRISTINA SANCHEZ