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County of San Diego
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Clerk of the Superior Court
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SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO
HALL OF JUSTICE

SANTO DIGRIGOLI, an individual

Plaintiff,

vs.

MARYANN BOLTON, an individual;
GAFFNEY FOODS, INC., a California
corporation d.b.a. PASCUCCI FAMILY
PASTA; JOSEPH BHRIZ, and
MOHAMMED BHRIZ,

Defendants.

MARYANN BOLTON, an individual,

Cross-Complainant

vs.

SANTO DIGRIGOLI, an individual,

Cross-Defendant.

CASE NO. 37-2012-00095019-CU-BC-
CTL

[IMAGED FILE]

**[Proposed] STATEMENT OF
DECISION AND FINDINGS
THEREON**

Judge: Hon. John S. Meyer
Dept.: 61
Case Filed: April 3, 2012
Trial Date: July 19, 2013

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 A. The Court makes the following findings thereon as to **MARYANN BOLTON**: 7

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IV. RULING..... 10

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1 On July 19, 2013 at 1:30 p.m. in Department 61 of the San Diego County
2 Superior Court, this action came on regularly for trial. Scott A. McMillan appeared on
3 behalf of plaintiff Santo DiGrigoli. Gerald E. Smith appeared on behalf of defendant
4 Maryann Bolton. Moataz S. Hamza appeared on behalf of defendants Joseph Bahriz and
5 Mohamed Bahriz. Defaulted Defendant Gaffney Foods, Inc., did not appear.

6 **I. PROCEDURAL BACKGROUND**

7 Santo DiGrigoli filed his lawsuit on April 3, 2012, naming Maryann Bolton, an
8 individual; Andrew Cacciapaglia, an individual d.b.a. A Brooklyn Pizzeria; Arthur
9 Cacciapaglia, an individual d.b.a. A Brooklyn Pizzeria; Gaffney Foods, Inc. a California
10 Corporation d.b.a. Pascucci Family Past; and Does 1 through 50, as defendants.

11 (ROA_1.) The complaint was amended to correct the names of the parties. (ROA_9-10.)

12 The parties before the Court at the time of trial were Santo DiGrigoli, Maryann
13 Bolton, Mohammed Bahriz, Joseph Bahriz, and Gaffney Foods, Inc. DiGrigoli asserted
14 the following claims: (1) Breach of Contract against Bolton; (2) Conversion against all
15 Defendants; (3) Breach of Fiduciary Duty against Bolton; (4) Fraud against Bolton; (5)
16 Claim and Delivery against all Defendants; (6) Injunctive Relief against all Defendants;
17 and (7) Quantum Meruit and Unjust Enrichment against Bolton.

18 On May 8, 2012, Bolton filed her Answer to the Complaint along with a Cross-
19 Complaint. (ROA_13-14.)

20 On July 8, 2012, Defendant and Cross-Complainant, Maryann Bolton, served her
21 Cross-Complaint against Plaintiff/Cross-Defendant Santo DiGrigoli, alleging Count I,
22 Breach of Contract; Count II, Fraud; Count III, Conversion and Breach of Fiduciary
23 Duty and Count IV Constructive Trust and Accounting.

24 Gaffney Foods, Inc. (Gaffney), was properly served. (ROA_27; See Exhibit A.)
25 Gaffney failed to answer and default was requested against them on October 22, 2012
26 (ROA_52; See Exhibit B) and entered against them on November 29, 2012. (ROA_53.)

27 On November 5, 2012, Plaintiff submitted the default prove-up declarations.

28 (ROA_147.)

1 DiGrigoli propounded discovery, including admissions, upon Bolton. Bolton
2 failed to comply with the Court orders regarding that discovery. On March 22, 2013, the
3 Court entered an order deeming admitted those admissions. (ROA_86; See Exhibit C.)
4 The Court also granted DiGrigoli's request for monetary sanctions against Bolton to
5 reimburse DiGrigoli's reasonable expenses incurred for the motion to compel further
6 discovery responses and to deem admissions in the amount of \$2,120.00. (*Id.*)

7 On July 2, 2013, the Court granted Plaintiff's ex parte application and issued an
8 Order Regarding Inventory and a Protective Order preventing Defendants Joseph and
9 Mohamed Bahriz from further disposing of any equipment at issue in the case prior to
10 the final disposition of the case. (ROA_120; See Exhibit D.)

11 The parties waived their respective right to a jury trial.

12 On July 22, 2013, this matter proceeded to trial on Mr. DiGrigoli's complaints
13 seven causes of action against defendants Ms. Bolton, Joseph Bahriz, and Mohamed
14 Bahriz. Plaintiff Digrigoli's first cause of action was for Breach of Contract against
15 defendant Bolton. As the second cause of action, Mr. Digrigoli alleged Conversion
16 against all the defendants. As the third cause of action, Plaintiff alleges Defendant
17 Bolton breached her Fiduciary Duty to the Plaintiff. As to the Fourth Cause of Action,
18 Plaintiff alleged Intentional Misrepresentation and False Promise against defendant
19 Bolton. In the Fifth Cause of Action, Plaintiff Digrigoli alleged a violation of Claim and
20 Delivery, Code of Civil Procedure §§ 511.010, et seq. against all defendants and alleges
21 that that Plaintiff is, and at all times was, entitled to the immediate and exclusive
22 possession of the Property (Civil Code § 3379, et seq). In the Seventh Cause of Action,
23 Plaintiff Digrigoli sought against all the defendants an Injunction prohibiting the
24 defendants from selling the property in issue, or alternatively, requiring them to promptly
25 return the property to the Plaintiff. As for the Eighth Cause of Action, Mr. Digrigoli
26 alleged Quantum Meruit and Unjust Enrichment against Defendant Bolton. Plaintiff
27 asserts that Defendant Bolton has been unjustly enriched through the services and
28 equipment that were provided to the business venture. In addition, Defendant Bolton

1 would be further unjustly enriched if she would be able to retain the monies obtained
2 from the sale of the business and of the property.

3 In addition to the above claims, Defendant and Cross Complainant, Maryann
4 Bolton filed a Cross-Complaint against Plaintiff/Cross Defendant Santo DiGrigoli
5 alleging , a Breach of Contract; Count II, Fraud; Count III, Conversion and Breach of
6 Fiduciary Duty and Count IV Constructive Trust and Accounting. All of the claims were
7 tried before the court in the Court Trial.

8 All of the above-referenced claims in DiGrigoli’s complaint and Bolton’s cross-
9 complaint were tried before the Court in a Bench Trial July 22 through 25, 2013.
10 (ROA_141, 150, 154, and 157.) The Court heard all the evidence, and closing
11 arguments were heard on July 25, 2013. Plaintiff filed a Request for Statement of
12 Decision on September 26, 2013. (ROA_178.)

13 **II. FACTUAL BACKGROUND**

14 Plaintiff Santo DiGrigoli (“DiGrigoli”) is a very competent baker. Mr. DiGrigoli,
15 and his then spouse Silvana DiGrigoli operated a successful wholesale and retail bakery
16 business called the New York Bakery (“NYB”). They operated their bakery for over five
17 decades at various locations in San Diego County. For a number of years through 2005,
18 Mr. DiGrigoli operated out of a location on El Cajon Boulevard, in the City of San
19 Diego. In 2005, DiGrigoli relocated the bakery to a new building on Main Street, in El
20 Cajon. The New York Bakery location on Main Street in El Cajon had both retail and
21 wholesale operations. Mr. DiGrigoli had supplied many restaurants in San Diego with
22 Italian-style bread and baked goods. Mr. DiGrigoli had a list of regular wholesale
23 customers that had done business with him for over the course of years.

24 Around 2010, the business in El Cajon failed. The lender on the commercial
25 building in El Cajon, where the bakery operated, completed its foreclosure. Santo
26 DiGrigoli caused the removal of the equipment from the former bakery, into a warehouse
27 specializing in the storage of industrial equipment. Santo DiGrigoli maintained
28 exclusive ownership and control of the bakery’s personal property previously used at the

1 El Cajon location.

2 In 2010, the DiGrigolis went through a bitter, unhappy, domestic situation. They
3 separated, to later file a dissolution proceeding in Family Court. Santo DiGrigoli
4 maintained exclusive possession of the bakery equipment.

5 In April of 2011, Mr. DiGrigoli indicated he wanted to stay in business as a baker,
6 but he wanted to relocate to avoid any interference from his ex-wife. He had discussions
7 with a long-time acquaintance, Nunzio Guadagna, regarding his desire to find an
8 investor or a partner that would provide the financial backing to start the business. Mr.
9 Guadagna noted that he had a friend, Defendant Maryann Bolton (“Bolton”), who had
10 recently received about \$450,000 in a life insurance benefit from her husband’s passing,
11 and had an interest in investing her money. Mr. Guadagna arranged a meeting between
12 Ms. Bolton and Mr. DiGrigoli.

13 During the meeting, Ms. Bolton and Mr. DiGrigoli agreed to operate New York
14 Bakery as a partnership. Mr. DiGrigoli agreed to contribute his baking expertise, baking
15 equipment and his customer list to the partnership, and Ms. Bolton agreed to finance the
16 new bakery operation. Everything in the business was put in Ms. Bolton’s name to avoid
17 any potential interference from Santo DiGrigoli’s ex-wife. Notwithstanding, Mr.
18 DiGrigoli was still entitled to a percentage of the profits. The Court finds that Mr.
19 DiGrigoli and Ms. Bolton were partners. (*Santo DiGrigoli v. Maryann Bolton, et al*;
20 Partial Tr. pg. 2, lines 19 - 25, pg. 5, line 17, p. 16, line 25, July 22, 2014.)

21 The business was funded exclusively by Ms. Bolton. However, Ms. Bolton
22 presented no evidence of how much money she contributed. (*Id.* at p. 14, lines 19-23, p.
23 15, line 17.) On the other hand, Mr. DiGrigoli presented evidence that suggested Ms.
24 Bolton did not invest any more than \$20,000. (*Id.* at pg. 32, lines 14-16.) Ms. Bolton’s
25 failure to offer more favorable evidence corroborates the \$20,000 figure. (*Id.* at lines 4-
26 7.) From this \$20,000 contribution, Ms. Bolton paid the rent, deposit and other business
27 expenses. Ms. Bolton also purchased a van from Mr. DiGrigoli's son, Michael DiGrigoli,
28 for \$1,000. (*Id.* at p. 21, lines 20-21.) The van was used to make deliveries of the baked

1 goods.

2 Besides having the business relationship, the testimony presented at trial was that
3 Mr. DiGrigoli believed that a personal relationship with Ms. Bolton was developing or
4 possibly would develop. Mr. DiGrigoli and Ms. Bolton spent time at one another's
5 houses in Temecula on weekends. Ultimately, in late August of 2011, Mr. DiGrigoli
6 purchased a ring for \$5,000, and presented the ring to Ms. Bolton at a Winery in
7 Escondido. Ms. Bolton did not immediately reject Mr. DiGrigoli's proposal; but told him
8 that she'd "think about it." Some weeks later, in September 2011, Ms. Bolton informed
9 Mr. DiGrigoli that she was not interested in a relationship with him and that she'd return
10 the ring. But she did not immediately return the ring. Mr. DiGrigoli became insistent
11 that Ms. Bolton return the ring. Finally, in January of 2012, Ms. Bolton returned the
12 ring.

13 Maryann Bolton and Santo DiGrigoli made cookies, cakes and bread for several
14 months. Ms. Bolton paid herself substantial sums of money from the business, some of
15 which went to legitimate business expenses such as gas, while other charges were for
16 Ms. Bolton's personal use. Ms. Bolton failed to offer any evidence of how much
17 personal expenses she charged to the business. (*Id.* at pg. 58, lines 4-9.) On the other
18 hand, Mr. DiGrigoli presented evidence that Ms. Bolton took out \$38,000 for her
19 personal use, which the Court accepted. (*Id.* at pg. 62, lines 18-20.) Although Ms.
20 Bolton alleges that Mr. DiGrigoli may have taken money out too for personal expenses,
21 there was no evidence of that. (*Id.* at pg. 61, lines 8-10.)

22 The business never amounted to much. After several months, it failed completely.
23 Consequently, Mr. DiGrigoli was removed from the premises. Ms. Bolton was very
24 bitter, claiming that she had lost the proceeds of her husband's life insurance. She
25 decided to recoup some of her losses by selling the bakery business and all of its
26 equipment. (*Id.* at pg. 3, lines 20 - 25, pg. 4, line 1.)

27 Ms. Bolton first sold an LVO Sheet Moulder (Model Number 5M24), worth
28 approximately \$3,000, to Defendant Gaffney for \$300 (a tenth of its value.) After her

1 unauthorized sale of the equipment, Plaintiff spoke with Defendant Gaffney and
2 informed him that Ms. Bolton had acted unilaterally and without right when she offered
3 the equipment for sale but Defendant Gaffney refused to return the equipment. The
4 Court found the value of the Moulder as \$3,000. The prejudgment interest due thereon is
5 \$471.77¹ for a total of \$3,471.77.

6 The balance of the equipment was sold by Ms. Bolton to Joseph Bahriz, who was
7 introduced to her by their mutual friend, Mr. Guadagna. Ms. Bolton unilaterally gave
8 Mr. Bahriz the bakery business and equipment for \$1,000 and Mr. Bahriz's promise to
9 pay \$30,000 over time. (*Id.* at pg. 18, lines 6-8.) This transaction, which occurred
10 without Mr. DiGrigoli's knowledge or consent, constituted a breach of Ms. Bolton's
11 fiduciary duty to her partner, Mr. DiGrigoli. Mr. DiGrigoli had entrusted property to Ms.
12 Bolton, Ms. Bolton was a trustee of that property, and Ms. Bolton took that property
13 entrusted to her and sold it for her own benefit contrary to her duties as a fiduciary. (*Id.*
14 at pg. 35, lines 8-9, pg. 37, lines 5-7.) As Mr. DiGrigoli put the equipment in the
15 partnership, Ms. Bolton had a duty to protect it, but she did not.

16 Although none of the parties in this case were particularly credible, Joseph Bahriz
17 was the least credible. (*Id.* at pg. 4, lines 3-5.) He purchased the bakery and its
18 equipment with no intention of ever paying the promised \$30,000. (*Id.* at pg. 18, lines 6-
19 9.) After Mr. DiGrigoli discovered that Ms. Bolton was in the process of selling the
20 bakery business, Mr. DiGrigoli objected to all the parties involved that Ms. Bolton did
21 not have the authority to do so. Before purchasing, Mr. Bahriz called Mr. DiGrigoli's
22 attorney – Mr. Forde. Mr. Bahriz inquired to Mr. Forde regarding Mr. DiGrigoli's
23 interest in the property. Despite being warned by Mr. Forde and Mr. DiGrigoli that Ms.
24 Bolton lacked the ability to unilaterally sell the property – Mr. Bahriz proceeded to
25

26
27 ¹ The date of conversion was March 1, 2012. The Statement of Decision request
28 was submitted on September 26, 2013 (574 days after the conversion). The prejudgment
annual interest rate is 7% which is \$.57 per day on a \$3,000 judgment. (\$.57 x 574 days =
\$327.18).

1 exercise dominion and control over the bakery equipment, and sold some of it for
2 approximately \$4,000. The Court finds that despite Joseph Bahriz and his brother,
3 Mohamed Bahriz, splitting the money in some fashion, the Bahriz brothers were not
4 partners.

5 The remaining bakery equipment is still functional and includes a large baking
6 table, a walk-in freezer, a walk-in refrigerator, and some utensils. There was no
7 appraisal of the bakery business or the bakery equipment. (*Id.* at pg. 4, lines 15-16 The
8 bakery equipment was used, and there was no objective evidence to determine its value
9 with any precise accuracy. (*Id.* at pg. 10, lines 8-13.) Mr. DiGrigoli claimed the
10 equipment was worth \$108,000. (*Id.* at pg. 10, lines 14-16.) Ms. Bolton suggested it was
11 worth \$30,000. (*Id.* at pg. 35, lines 14-16.) The Court found, based on the limited
12 evidence, and in light of the sale of the business for \$30,000, that the bakery equipment
13 was worth \$30,000. (*Id.* at pg. 66, lines 7-9.)

14 The Court finds that Ms. Bolton took \$38,000 in payments from the business.
15 Ms. Bolton had invested \$20,000. (*Id.* at Pg. 62, lines 18-21.) Ms. Bolton also incurred a
16 Labor Commissioner’s judgment against her as a result of the partnership for
17 approximately \$13,000 arising from the bakery’s employment of Son Taing. (*Id.* at p. 21,
18 line 10-12; pg. 62, lines 22-23.) Ms. Bolton incurred this judgment debt on behalf of the
19 partnership. The Court finds that as Ms. Bolton is solely liable for the payment of that
20 partnership debt, that amount should be offset. (*Id.* at pg. 63, lines 1-3.)

21 **III. STATEMENT OF FINDINGS**

22 A. The Court makes the following findings thereon as to **MARYANN BOLTON**:

23 1. Mr. DiGrigoli and Ms. Bolton entered into a partnership as to New York
24 Bakery between July of 2011 and February of 2012. (*Santo DiGrigoli v. Maryann*
25 *Bolton, et al*; Partial Tr. pg. 2, lines 19 - 25, pg. 5, line 17, July 22, 2014.)

26 2. Mr. DiGrigoli contributed his baking expertise, customer list and baking
27 equipment to the partnership. (*Id.* at pg. 2, lines 15-16.)

28 3. Mr. DiGrigoli did not transfer or “gift” any personal property to Ms.

1 Bolton. (*Id.* at pg. 30, line 24.)

2 4. Ms. Bolton contributed \$20,000 to the partnership. (*Id.* at pg. 32, lines 4-
3 7.) She recovered her contribution.

4 5. Ms. Bolton charged personal expenses to the bakery business, or took
5 money from the business in the total amount of \$38,000. (*Id.* at pg. 62, lines 18-20.)

6 6. Ms. Bolton had a fiduciary duty to protect the bakery equipment, which
7 belonged to the partnership. (*Id.* at pg. 17, line 14.)

8 7. Ms. Bolton breached her fiduciary duty when she improperly transferred
9 the New York Bakery and its equipment. (*Id.* at pg. 26, lines 3-5, pg. 27, lines 16-19, pg.
10 37, lines 6-7.)

11 8. The value of the equipment Ms. Bolton improperly transferred Defendant
12 Joseph Bahriz was worth \$30,000. (*Id.* at pg. 66, lines 7-9.) The equipment comprised
13 Mr. DiGrigoli's contribution to the partnership and he is entitled to its return, or the its
14 value. Ms. Bolton had no right to unilaterally transfer or sell the equipment.
15 Accordingly, Ms. Bolton and Mr. Bahriz are jointly and severally liable to Mr. DiGrigoli
16 for \$30,000, the value of the equipment.

17 9. Ms. Bolton incurred a judgment against her for approximately \$13,000 for
18 unpaid wages, reimbursable business expenses, Labor Code penalties, and interest owed
19 to Son Taing, a former employee of the New York Bakery. Ms. Bolton incurred this
20 judgment debt on behalf of the partnership. (*Id.* at pg. 62, lines 22-23, pg. 63, lines 1-3.)

21 10. Defendant Bolton is liable to Plaintiff Santo DiGrigoli in the amount of
22 \$5,000.00, resulting from her operation of the partnership. (*Id.* at pg. 63, lines 11-14.)
23 The Court finds that this amount is the balance due to Plaintiff from Defendant Bolton
24 for her misuse of partnership funds, in breach of her fiduciary duty to Plaintiff DiGrigoli.

25 B. The Court makes the following findings as to Defendant **JOSEPH BAHRIZ**:

26 1. Joseph Bahriz was on notice that DiGrigoli disputed Bolton's authority to
27 sell the New York Bakery and its equipment. Joseph Bahriz is not a bona fide purchaser
28 for value, without notice of any defects of title.

1 2. Joseph Bahriz failed to provide anything of sufficient value for the
2 purchase of DiGrigoli's personal property. (*Id.*)

3 3. Joseph Bahriz lacks any writing within the meaning of Commercial
4 Code section 2201(1) reflecting a sale or purchase of the equipment.

5 4. Joseph Bahriz's exercise of dominion and control over the personal
6 property of DiGrigoli was wrongful and has inflicted injury to DiGrigoli.

7 5. The personal property lost is worth \$30,000. (*Id.* at pg. 66,
8 lines 7-9.)

9 6. Joseph Bahriz is jointly and severally liable, with Ms. Bolton, to Mr.
10 DiGrigoli for \$30,000, i.e., the value of the property.

11 The court additionally finds that Defendant Joseph Bahriz represented that in
12 exchange for title and possession of the bakery and the equipment therein, he would pay
13 Defendant Bolton \$1,000 immediately, and then follow up with a payment of an
14 additional \$30,000. The Court finds that Defendant Joseph Bahriz had no intention, at
15 any time, to pay the \$30,000 (*Id.* at pg. 18, lines 6-9) and as such his promise to do so
16 was a false representation. The Court also finds that Maryann Bolton relied on the
17 representation, and that her reliance was reasonable.

18 Further, Defendant Joseph Bahriz was aware that Defendant Bolton lacked
19 unencumbered title to the equipment. Despite that knowledge, Mr. Bahriz made an oral
20 agreement and accepted the unauthorized transfer of property without any intention to
21 follow through on his promise and provide the promised consideration.

22 C. The Court makes the following findings as to Defendant **GAFFNEY**:

23 1. Defendant Gaffney was properly served and failed to answer. (ROA_27;
24 Exhibit A.)

25 2. Default Judgment was requested as to Defendant Gaffney on October 22,
26 2012 (ROA_52; Exhibit B), and entered against them on November 29, 2012.
27 (ROA_53.) On November 5, 2012, Plaintiff submitted its default prove-up material.
28 (ROA_147).

1 3. Defendant Gaffney purchased the LVO Sheet Moulder (Moulder) from
2 Ms. Bolton for \$300. Gaffney Foods Inc. converted the Moulder by refusing to return the
3 equipment after Plaintiff informed him that Ms. Bolton did not have authority to make
4 the sale. (*Id.*)

5 4. The value of the Moulder at the time of the conversion, as \$3,000. (*Id.*)

6 5. Prejudgment interest is awarded in the amount of \$327.18. (*Id.*)
7

8 D. The Court makes the following findings as to Defendant **MOHAMMED**
9 **BAHRIZ**:

10 1. Defendant Mohammed Bahriz is not liable to Plaintiff Santo DiGrigoli.
11

12 **IV. RULING**

13 A. Santo DiGrigoli's Complaint

14 *Count One*: Breach of Contract. The Court after receiving all evidence, found that
15 the Plaintiff failed to carry his burden of proof and denied this claim.

16 *Count Two*: Conversion.

17 Conversion as to Gaffney Foods: The Court finds that Defendant Gaffney
18 converted the LVO Sheet Moulder belonging to Plaintiff Santo DiGrigoli. The value of
19 the Moulder at the time of the conversion was Three Thousand Dollars (\$3,000.00).
20 Additionally, Plaintiff is owed prejudgment interest at 57 cents per day for a total of 574
21 days, equaling \$327.18, for a total amount of \$3,268.47.

22 Conversion as to Bolton and Bahriz: Ms. Bolton converted property of the
23 partnership as to the equipment transferred to Joseph Bahriz. Mr. Bahriz was aware of
24 Bolton's lack of title to such property. Thus, Ms. Bolton and Joseph Bahriz are jointly
25 and severally liable in the amount of \$30,000 as to the transferred equipment.

26 *Count Three*: Breach of Fiduciary Duty. The Court finds Defendant Maryann
27 Bolton had breached her fiduciary duty owed to Plaintiff Santo DiGrigoli by virtue of
28 their partnership in the New York Bakery. The fiduciary duties owed to DiGrigoli

1 included, but were not limited to, the duty to act with the utmost good faith and in the
2 best interests of the Plaintiff (i.e. duty of loyalty), the duty to use reasonable care, the
3 duty of confidentiality, the duty to disclose, and the duty to maintain property in trust on
4 Plaintiff's behalf. Bolton breached these duties by using the business account for her
5 unauthorized, personal use in the amount of \$38,000.

6 In calculating the damages Bolton owes DiGrigoli, the Court subtracts Bolton's
7 legitimate business expenses from Bolton's misappropriated \$38,000. Specifically, the
8 Court subtracts Bolton's \$20,000 contribution to the partnership, as well as the \$13,000
9 judgment debt incurred on behalf of the partnership. The remaining balance is \$5,000,
10 which Bolton misappropriated. Accordingly, the Court awarded Plaintiff for the Breach
11 of Fiduciary Duty, Five Thousand Dollars (\$5,000.00). Likewise, the Court found the
12 transfer of equipment was a breach of fiduciary duty, and to the extent the claim for
13 conversion as to Ms. Bolton fails, she is likewise jointly and severally liable in the
14 amount of \$30,000 for the equipment improperly transferred to Joseph Bahriz.

15 *Count Four: Intentional Misrepresentation.* The Court finds that Plaintiff failed to
16 meet his burden and denies this claim as against Defendant Bolton.

17 *Count Five: Claim and Delivery.* As to Defendant Bolton and Bahriz, the Court
18 finds that Plaintiff failed to meet his burden of proof, and denies this claim. Plaintiff
19 DiGrigoli did not have exclusive ownership of the baking equipment because its use had
20 been contributed to the partnership. Therefore, he was not entitled to the immediate and
21 exclusive possession of the property.

22 *Count Six: Injunction.* The Court found after receiving all the evidence that the
23 Plaintiff failed to meet his burden and denies this claim.

24 *Count Seven: Quantum Meruit and Unjust Enrichment.* The Court finds that the
25 bakery equipment was not gifted to Defendant Maryann Bolton. Plaintiff Santo
26 DiGrigoli had contributed to the partnership by providing his bakery equipment to the
27 business and was entitled to the return of the fair market value of the equipment. The
28 Court found Plaintiff is entitled to the monies from Bolton's sale of the bakery

1 equipment to Joseph Bahriz. The Court finds that Defendant Maryann Bolton is jointly
2 and severally liable for the \$30,000.00, the value of the equipment transferred without
3 authorization.

4 B. Monetary Sanctions Ordered Against Maryann Bolton

5 On March 22, 2013, the Court heard Plaintiff Santo DiGrigoli's unopposed
6 Motion to Compel Further Discovery Responses and to Deem Admissions, or, in the
7 alternative, for Terminating Sanctions, against Defendant Maryann Bolton. After
8 considering the motion materials and the oral arguments at the hearing, the Court granted
9 DiGrigoli's motion to compel and deem admissions, and denied DiGrigoli's alternative
10 Request to Strike Defendant Maryann Bolton's Answer. Also, the Court ordered Bolton
11 to pay monetary sanctions to DiGrigoli's counsel The McMillan Law Firm, APC, in the
12 amount of \$2,120.00, which the Court found to have been reasonably incurred for
13 DiGrigoli's Motion. In response to DiGrigoli's ex parte application for a Writ of
14 Execution and an Abstract of Judgment, the Court noted that the sanctions would be
15 included in the final Judgment.

16 C. Maryann Bolton's Cross-Complaint

17 *Count One: Breach of Contract.* The Court finds that Defendant/Cross-
18 Complainant Bolton failed to carry her burden of proof and denies thi claim. Plaintiff
19 DiGrigoli did not gift his bakery equipment to Defendant Bolton. Bolton did not
20 personally own any of the business property. There was no evidence DiGrigoli retained
21 any of the business income for his personal use. The Court will enter judgment against
22 Bolton and in favor of DiGrigoli as to this cross-claim.

23 *Count Two: Fraud.* The Court finds that Defendant/Cross-Complainant Bolton
24 failed to carry her burden of proof and denied this claim. There was no evidence
25 Plaintiff DiGrigoli converted any income from the partnership for his own personal use.
26 The Court will enter judgment against Bolton and in favor of DiGrigoli as to this cross-
27 claim.

28 *Count Three: Conversion and Breach of Fiduciary Duty.* The Court finds that

1 Defendant/Cross-Complainant Bolton failed to carry her burden of proof and denies this
2 claim. There was no evidence Plaintiff DiGrigoli converted any income from the
3 partnership for his own personal use. DiGrigoli did not cause Bolton any damages. The
4 Court will enter judgment against Bolton and in favor of DiGrigoli as to this cross-claim.

5 *Count Four: Constructive Trust and Accounting.* The Court finds that the
6 Defendant/Cross-Complainant Bolton failed to carry her burden of proof and denied this
7 claim. There was no evidence DiGrigoli allowed the partnership to become defunct.
8 The Court will enter judgment against Bolton and in favor of DiGrigoli as to this cross-
9 claim.

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1 ORDER

- 2 1. Defendant Maryann Bolton is separately liable to Plaintiff Santo DiGrigoli in the
3 amount of \$5,000.00.
- 4 2. Defendant Maryann Bolton and Defendant Joseph Bahriz are jointly and severally
5 liable to Plaintiff Santo DiGrigoli for \$30,000.00, the value of the equipment.
- 6 3. Defendant Maryann Bolton is liable and shall pay Plaintiff Santo DiGrigoli's
7 counsel, The McMillan Law Firm, APC, monetary discovery sanctions in the
8 amount of \$2,120.00.
- 9 4. Defendant Maryann Bolton shall not recover anything on her cross-complaint
10 against Plaintiff Santo DiGrigoli.
- 11 5. Defendant Gaffney is separately liable to Plaintiff Santo DiGrigoli in the the
12 amount of \$3,327.18.
- 13 6. Defendant Mohammed Bahriz is not liable to Plaintiff Santo DiGrigoli.
- 14 7. Court and attorneys fees, if any, are to be determined pursuant to California Rule
15 of Court Rules 3.1700 and 3.1702.

16 **IT IS SO ORDERED**

17
18 DATED: 09/24/2015



HON. JOHN S. MEYER
Judge of the Superior Court

19
20
21
22 Submitted by:

23 The McMillan Law Firm, APC
24 Dated: September 8, 2015
24 /S/ Scott A. McMillan

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