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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re the Marriage of STEVEN and  
SHELBY JONES.

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STEVEN JONES,

Respondent,

v.

SHELBY JONES,

Appellant.

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B258726

(Los Angeles County  
Super. Ct. No. MD039469)

APPEAL from a judgment of the Superior Court of Los Angeles County, Denise McLaughlin-Bennett, Judge. Affirmed.

Shelby Jones, in pro. per., for Appellant.

Lipton and Margolin, Hugh A. Lipton, and Brian G. Magruder for Respondent.

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Appellant Shelby Jones appeals from the judgment entered in this marital dissolution action between Shelby and her former husband, respondent Steven Jones.<sup>1</sup> Shelby argues that the evidence established that Steven breached his fiduciary duties to Shelby under Family Code<sup>2</sup> sections 721, 1100, and 2100 et seq. by misappropriating community assets during the marriage and failing to disclose those assets during the dissolution proceedings. Shelby also asserts that the trial court erred in failing to grant her relief under various provisions of the Family Code for Steven's alleged conduct, including awarding Shelby the value of the misappropriated assets and allocating a community tax debt solely to Steven. For the reasons set forth below, we affirm.

## **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

### **I. The Marital Dissolution Proceedings**

Shelby and Steven were married on January 17, 1997. They separated on September 24, 2010, and Steven filed a petition for dissolution of the marriage on October 18, 2010. They have three minor children, who were ages six, four, and three, respectively, when the dissolution proceedings commenced. Following a lengthy custody dispute, the trial court ordered Shelby and Steven to share joint physical and legal custody of the children, and ordered Steven to pay Shelby temporary child and spousal support. At various times in the proceedings, both parties were represented by counsel. By the start of trial in March 2013, Steven continued to be represented by counsel and Shelby was representing herself. The trial was held over a five-day period on contested issues of child and spousal support, division of community assets and liabilities, and attorney's fees and costs.

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<sup>1</sup> As is customary in dissolution proceedings, we refer to the parties by their given names for clarity of reference, and not out of disrespect. (*In re Marriage of Schmir* (2005) 134 Cal.App.4th 43, 46, fn. 1.)

<sup>2</sup> All further statutory references are to the Family Code.

## **II. The Evidence at Trial**

### **A. The Parties' Employment History**

Shelby has a bachelor of science degree in biology and previously worked as an environmental science technician. Following the birth of the parties' first child in 2004, Shelby became a stay-at-home mother and focused her attention on raising the children. At the time of trial, Shelby had not obtained employment outside the home. Steven has a doctorate degree in ceramic engineering, and operated his own business, SMJ Carbon Technology, Inc. from 1999 to 2007. In November 2007, Steven was hired by Allcomp, Inc. in the position of Vice President of Manufacturing. Steven's rate of pay at Allcomp has remained at \$50 per hour since he began working for the company. At the time of trial, Steven's average gross wages at Allcomp were \$8,667 per month.<sup>3</sup>

### **B. Steven's Domestic Violence History**

Shelby testified at trial that Steven was physically and verbally abusive toward her on numerous occasions during the marriage. In May 2004, while Shelby was in labor with their second child, Steven threatened that he would take the children away from her and leave her "with nothing" if she tried to stop the abuse. In January 2008, following an act of physical violence against Shelby, Steven was arrested for domestic violence and child endangerment. Steven called Shelby from jail on that occasion and told her that he wanted a divorce. In addition to her testimony, Shelby presented four police incident reports showing that officers were called to the family's home in October 2004, January 2008, October 2010, and May 2012.

In his testimony, Steven admitted that he was arrested for domestic violence in 2008 following a "scuffle" in which he "put [Shelby] on the ground" while he was intoxicated. He also admitted that he was criminally prosecuted for violating the terms of

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<sup>3</sup> Prior to the parties' separation in September 2010, Steven's average gross wages at Allcomp were approximately \$10,000 per month. Steven testified that, starting in September 2010, Allcomp eliminated overtime work for its senior management due to cash flow issues, and Steven's work hours and wages accordingly declined.

a restraining order. When asked if there were any other incidents of domestic violence against Shelby, Steven answered that there were “scuffles between both of [them].”

### **C. Steven’s Management and Control of SMJ Carbon**

In 1999, during his marriage to Shelby, Steven started a small business called SMJ Carbon Technology, Inc. (SMJ Carbon). The company operated on Edwards Air Force Base pursuant to a cooperative research and development agreement with the United States Air Force. SMJ Carbon also held an exclusive license to use a patent owned by the Air Force in its manufacture of products. Steven was one of the inventors of the patented technology, but he did not hold any ownership interest in the patent. The license agreement between SMJ Carbon and the Air Force required SMJ Carbon to pay certain royalties to the Air Force in exchange for its exclusive use of the patent. In 2003, SMJ Carbon paid the Air Force \$50,000 in royalties for its use of the patent in 2001 and 2002. SMJ Carbon owed the Air Force an additional \$300,000 in royalties between 2003 and 2007; however, the company was unable to make the required payments and defaulted under the terms of the license agreement. In August 2007, after the Air Force terminated the license agreement, SMJ Carbon ceased its business operations. According to Steven, SMJ Carbon was never a profitable company, as shown by its continued inability to meet its financial obligations.

Kevin Chaffee was Steven’s business partner at SMJ Carbon. From approximately 2002 to 2006, Steven failed to remit payroll tax contributions and withholdings for SMJ Carbon’s employees, including Chaffee, to the federal and state tax authorities. Steven also failed to pay Chaffee the full amount of wages owed to him. After ending his employment relationship with SMJ Carbon in 2006, Chaffee filed a civil lawsuit against Steven and the company for violations of the Labor Code. Based on Steven’s failure to pay the required payroll taxes for SMJ Carbon, both the federal and state tax authorities found that he was personally liable for the company’s tax debt. The total federal tax liability was approximately \$170,000, and the total state tax liability was

\$12,650.<sup>4</sup> At trial, Shelby testified that she was aware the IRS was sending written notices to Steven at various times during their marriage, but she did not open any of the correspondence and had no knowledge of the outstanding tax debt. Shelby also testified that when she asked Steven about the content of the notices, he assured her that he was taking care of it.

In November 2007, a few months after SMJ Carbon ceased its business operations, Steven began working for Allcomp as the Vice President of Manufacturing. Allcomp is owned by Wei Shih, who has had a business relationship with Steven since 2000. In 2008, Allcomp entered into a license agreement with the Air Force for the exclusive use of the patent previously licensed to SMJ Carbon. The Allcomp facility where Steven works is located at the Air Force Research Laboratory in the same building previously occupied by SMJ Carbon. In 2008, Allcomp made two personal loans to Steven totaling \$30,000 to assist him with his ongoing legal expenses. At trial, Steven denied that he had any ownership interest in Allcomp.

#### **D. Steven's Sale of SMJ Carbon's Assets During Bankruptcy**

In May 2008, while Chaffee's civil lawsuit against Steven was pending, Steven filed a petition for Chapter 7 bankruptcy as an individual. In his bankruptcy filing, Steven listed total assets of \$762,894, consisting of the family home valued at \$650,000 and personal property valued at \$112,894. Steven listed total liabilities of \$9,820,391, including \$610,541 in home mortgages and a \$9 million damages claim alleged by Chaffee in his lawsuit. Steven stated in his bankruptcy filing that he had an ownership interest in SMJ Carbon, including certain equipment held by the company, but that the value of that interest was "uncertain." Shelby was identified in the bankruptcy filing as Steven's spouse and a co-debtor on "various debts," and her name and address were

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<sup>4</sup> By the time of trial, the state tax debt had been paid, and the federal tax debt had been partially paid through a wage garnishment issued by the Internal Revenue Service (IRS) against Steven's wages. Steven testified at trial that the balance of the federal tax debt owed was \$134,000.

included on the creditor mailing list. At trial, however, Shelby testified that she did not receive notice of the bankruptcy proceedings and never saw the bankruptcy petition filed by Steven prior to the marital dissolution proceedings.

In February 2009, during the course of the bankruptcy proceedings, Steven entered into a written agreement to sell SMJ Carbon's manufacturing equipment to Allcomp. According to Steven, he ultimately sold all of SMJ Carbon's equipment to Allcomp for a total purchase price of \$100,000 to \$150,000. Steven then used the proceeds from the sale to pay a settlement reached with Chaffee as part of the bankruptcy proceedings, as well as to pay some of the debts incurred by the parties during their marriage.<sup>5</sup> At trial, Steven admitted that he did not provide Shelby with notice that he was selling SMJ Carbon's equipment to Allcomp, but stated that he and Shelby had discussed the matter "on a regular basis."

#### **E. The Parties' Sale of the Family Residence**

During their marriage, Steven and Shelby purchased a home in Lake Elizabeth, California for \$519,000. They later spent \$300,000 to \$350,000 remodeling the home. In October 2009, they sold the home to Wei Shih, the owner of Allcomp and Steven's boss, for a total purchase price of \$300,000. According to Shelby, she was unaware of the parties' financial situation at that time, but Steven told her that their only option was to sell the home to Shih and she "knew that [she] was not to question" Steven. According to Steven, at the time of the sale to Shih, he and Shelby had failed to pay the note on the home for over a year due to the lack of available funds and the home was in foreclosure. Shortly before the home was scheduled to be sold at an auction, they were able to sell it to Shih pursuant to a bank-approved short sale. Steven and Shelby made the sale with the private understanding that Shih would sell the home back to them in a few years once

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<sup>5</sup> Steven testified that, in addition to paying \$15,000 to Chaffee to settle the civil lawsuit, he paid \$25,000 to \$30,000 in legal fees incurred in the bankruptcy proceedings, \$30,000 to Allcomp as repayment for the two personal loans, \$15,000 on a vehicle loan for the parties' truck, and other miscellaneous bills owed by the parties.

their financial situation had approved. Immediately after the sale, they began renting the home from Shih for \$1,800 per month, which was substantially less than their prior monthly payment.

Steven paid the monthly rent due on the home from October 2009 to August 2010. When the parties separated in September 2010, Steven moved out of the home and did not pay the rent or utilities due that month. According to Steven, he failed to make these payments because the parties were living far beyond their means and lacked sufficient funds. Following the separation, Shelby attempted to negotiate a short-term lease of the home directly with Shih. Shih refused, however, to enter into a lease with Shelby and later evicted her from the home for failing to pay the rent. At the time of trial, Shih had decided to sell the home, and Steven was assisting Shih in the sales process by meeting with potential buyers. Steven testified, however, that he had never attempted to purchase the home back from Shih and had no intention of doing so in the future.

### **III. The Closing Arguments at Trial**

At the conclusion of the trial, the parties submitted closing briefs. In his brief, Steven argued that the evidence showed that Shelby had willfully failed to become self-supporting by refusing to seek reasonable employment opportunities in the field of environmental science. Steven requested that the trial court order child support based on Steven's current earnings from Allcomp and on Shelby's earning capacity in her prior field. Steven further requested that the court deny spousal support to Shelby based, in part, on her willful refusal to work. In his proposed division of assets and liabilities, Steven asked the court to allocate the tax debt owed to the IRS equally between the parties. He also asked the court to deny Shelby's request for attorney's fees on the ground that she had engaged in obstreperous conduct throughout the dissolution proceedings.

In her brief, Shelby argued that the evidence showed that Steven had physically and emotionally abused her during their marriage and intimidated her into acquiescing to his demands. Shelby further argued that Steven had breached a fiduciary duty owed to

her during the marriage by systematically misappropriating the community assets of SMJ Carbon through his business relationship with Allcomp, and by coercing her into agreeing to sell the family's home to his business partner at Allcomp as part of a scheme to divest her of the home. Shelby sought an order reallocating a portion of Steven's share of community property to her, and reallocating the entirety of the IRS tax debt to Steven. Shelby also sought an order for child and spousal support based on Steven's earning capacity rather than his reported income on the ground that Steven had intentionally suppressed his income to avoid paying support. In addition, Shelby requested that the court order Steven to pay her attorney's fees based on Shelby's financial need and Steven's breach of his fiduciary duties.

#### **IV. The Trial Court's Statement of Decision**

On July 9, 2014, the trial court issued its notice of ruling and statement of decision on the contested issues at trial. With respect to Steven's income, the court found that Steven's testimony about his current income was credible and corroborated by his most recent paychecks, and that Shelby did not present any credible evidence to support her claim that Steven had failed to disclose his actual income from Allcomp. The court further found that there was no evidence that Steven had presented false information to the bankruptcy court, had misappropriated the assets of SMJ Carbon, or had failed to disclose the actual income that he earned during his operation of SMJ Carbon. The court also found that the evidence did not support Shelby's claim that Steven's current boss, Wei Shih, was actually his business partner or had colluded with Steven to cheat Shelby out of her share of community assets. With respect to the dissolution of SMJ Carbon, the court observed that, "although [Steven] is a talented inventor, he did not have the ability to successfully run a company and thus his business was destined to fail for such reason."

With respect to Shelby's income, the trial court found that there was no credible evidence to support Steven's claim that Shelby had willfully failed to become self-supporting by refusing to seek employment in the field of environmental science. The court also found that, because the available jobs in that field were not local, Shelby could



not use her prior educational or work experience to become self-supporting at that time, while also benefiting the minor children in the parties' shared custody arrangement. In addition, the court found that Shelby's claims of domestic violence by Steven were credible, and that Steven's history of abuse against Shelby continued to adversely affect her. The court further found that Steven's insistence that Shelby seek a job position that would pose an undue hardship on her and interfere with her custodial time with the children "appears to be a perpetuation of the prior abuse suffered."

Based on these findings, the trial court denied each party's request to impute income to the other for the purposes of calculating support. The court ordered that Steven continue to pay child support to Shelby in the amount of \$2,087 per month. The court also ordered that Steven continue to pay spousal support to Shelby, but reduced the amount of spousal support from \$1,134 per month to \$750 per month. In addition to dividing the community assets equally between the parties, the court ordered that the \$170,000 tax debt owed to the IRS be allocated equally between them because it was a community debt incurred during the marriage. With respect to attorney's fees, the court found that there was a disparity in access to funds between the parties, but that neither party had the ability to pay any portion of the other's attorney's fees. The court also found that there was no credible evidence that either party engaged in willful conduct designed to frustrate the settlement of the case. Based on these findings, the court denied each party's request for attorney's fees.

## **V. Shelby's Notices of Appeal**

On September 3, 2014, Shelby filed a notice of appeal from the trial court's statement of decision. On July 13, 2015, following the trial court's entry of judgment on the reserved issues, Shelby filed a notice of appeal from the judgment. On its own motion, this court has consolidated Shelby's appeals.

## **DISCUSSION**

On appeal, Shelby asserts that the judgment entered on the reserved issues must be reversed because the trial court erred in its division of community assets and liabilities

and in its orders for child and spousal support. Shelby specifically contends that she made a prima facie showing that Steven breached a fiduciary duty owed to her during the marriage under sections 721 and 1100 by misappropriating the income of SMJ Carbon, transferring the assets of SMJ Carbon without written notice to Shelby, and coercing Shelby into selling the family's home to Steven's business partner for less than the fair market value. Shelby also claims that Steven breached his fiduciary duty to her during the dissolution proceedings by failing to make a full and accurate disclosure of his assets in violation of section 2100 et seq. Shelby argues that, based on Steven's non-compliance with his fiduciary obligations both before and after the separation, the trial court should have awarded the value of the undisclosed or misappropriated community assets to Shelby and allocated the entirety of the community tax debt to Steven.

## **I. Governing Legal Principles**

In a marital dissolution action, absent an agreement by the parties, the trial court generally must divide the community estate equally. (§ 2550.) "The trial court's findings on the characterization and valuation of assets in a dissolution proceeding are factual determinations which are reviewed for substantial evidence. [Citation.] 'In this regard, the court has broad discretion to determine the manner in which community property is divided and the responsibility to fix the value of assets and liabilities in order to accomplish an equal division. . . .' [Citation.]" (*In re Marriage of Campi* (2013) 212 Cal.App.4th 1565, 1572.) In reviewing the sufficiency of the evidence supporting a finding on appeal, "all conflicts must be resolved in favor of the [prevailing party], and all legitimate and reasonable inferences indulged in [order] to uphold the [finding] if possible." (In *re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1479.)

The Family Code delineates the fiduciary duties that spouses owe to one another during the marriage and continuing through a dissolution proceeding. Section 721 states, in pertinent part, that "in transactions between themselves, spouses are subject to the general rules governing fiduciary relationships that control the actions of persons occupying confidential relations with each other," and that "[t]his confidential

relationship imposes a duty of the highest good faith and fair dealing on each spouse. . . .” (§ 721, subd. (b).) Section 1100 sets forth the rules governing a spouse’s rights of management and control over community property. Among other limitations, the statute provides that “[a] spouse may not . . . dispose of community personal property for less than fair and reasonable value, without the written consent of the other spouse.” (§ 1100, subd. (b).) In cases where one spouse has primary management and control over a community business, the managing spouse “may act alone in all transactions but shall give prior written notice to the other spouse of any sale, lease, exchange, encumbrance, or other disposition of all or substantially all of the personal property used in the operation of the business. . . .” (§ 1100, subd. (d).) Additionally, each spouse’s fiduciary duty to the other spouse in the management and control of the community estate “includes the obligation to make full disclosure to the other spouse of all material facts and information regarding the existence, characterization, and valuation of all assets in which the community has or may have an interest and debts for which the community is or may be liable, and to provide equal access to all information, records, and books that pertain to the value and character of those assets and debts, upon request.” (§ 1100, subd. (e).) The statutory remedies for a breach of a fiduciary duty by one spouse under sections 721 and 1100 “shall include, but not be limited to, an award to the other spouse of 50 percent, or an amount equal to 50 percent, of any asset undisclosed or transferred in breach of the fiduciary duty plus attorney’s fees and court costs.” (§ 1101, subd. (g).)

The Family Code also imposes a fiduciary duty of disclosure upon the parties in a marital dissolution proceeding to ensure the proper division of the community estate and fair and sufficient child and spousal support awards. (§ 2100, subd. (a).) Section 2100 thus provides that “a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of a proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties.” (§ 2100, subd. (c).) To satisfy this duty of disclosure, “each party to a proceeding for dissolution of the marriage or legal separation of the parties

shall serve on the other party a preliminary declaration of disclosure under Section 2104, . . . and a final declaration of disclosure under Section 2105. . . .” (§ 2103.) If a party fails to comply with the disclosure requirements, the trial court “shall, in addition to any other remedy provided by law, impose money sanctions against the noncomplying party. Sanctions shall be in an amount sufficient to deter repetition of the conduct or comparable conduct, and shall include reasonable attorney’s fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust.” (§ 2107, subd. (c).) The trial court also has the authority to “base an award of attorney’s fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation.” (§ 271, subd. (a).)

## **II. Steven’s Alleged Misappropriation of the Income of SMJ Carbon**

Shelby asserts that the evidence at trial established that Steven breached a fiduciary duty owed to her during the marriage by misappropriating the community assets of SMJ Carbon prior to the parties’ separation. Shelby specifically argues that she made a prima facie showing that Steven stole and hid approximately \$7 million in gross income generated by SMJ Carbon, and that Steven failed to rebut that showing by proving that he properly disposed of these community assets. In support of her argument, Shelby relies on *In re Marriage of Prentis-Margulis & Margulis* (2011) 198 Cal.App.4th 1252 (*Margulis*), which held that, in a dissolution proceeding to divide community property, “once a nonmanaging spouse makes a prima facie showing concerning the existence and value of community assets in the control of the other spouse postseparation, the burden of proof shifts to the managing spouse to rebut the showing or prove the proper disposition or lesser value of these assets. If the managing spouse fails to meet this burden, the court should charge the managing spouse with the assets according to the prima facie showing.” (*Id.* at p. 1267.) While acknowledging that *Margulis* solely addressed a managing spouse’s control and disposition of community assets postseparation, Shelby argues that the same burden-shifting analysis should apply in the preseparation context.

Even assuming, without deciding, that the burden-shifting analysis set forth in *Margulis* should apply to Steven's pre-separation management and control of community assets, Shelby failed to make a prima facie showing that Steven misappropriated \$7 million in gross income allegedly generated by SMJ Carbon during the parties' marriage. In support of her claim that SMJ Carbon made at least \$7 million in gross income, Shelby presented evidence that the company paid \$50,000 in royalties to the Air Force for its exclusive patent license in 2001 and 2002, and owed an additional \$300,000 in royalties to the Air Force for its license from 2003 to 2007. Shelby also elicited testimony from Steven that the royalties owed may have been equal to five percent of SMJ Carbon's gross income from non-governmental programs, although he was not sure about the percentage. Based on such testimony, Shelby contends that the \$350,000 in royalties owed by SMJ Carbon from 2001 to 2007 was prima facie evidence that the company must have earned at least \$7 million in gross income during that time period.

Although it is true that Steven initially testified that the royalties owed to the Air Force may have been based on a percentage of SMJ Carbon's gross income, he then stated that the royalties "very well could have been a fixed amount per year plus a percentage of income based on non-governmental programs." Shortly thereafter, Steven was shown a copy of the \$50,000 royalty check that SMJ Carbon had paid to the Air Force in 2003, and was asked by Shelby if it refreshed his recollection about the royalty payments that were made. In response, Steven testified that the check did refresh his memory about the structure of the royalty payments, and that the royalties were "set up for a fixed amount every year with a percentage of . . . operating income." Steven also testified that SMJ Carbon did not pay the royalties owed between 2003 and 2007, and was never profitable during the time he operated the business. Shelby did not offer any other evidence concerning SMJ Carbon's gross sales or income before it ceased operations in 2007.

The trial court found that Steven was credible in his testimony about his income, and that the evidence did not support a finding that Steven had failed to disclose the actual income that he received during his operation of SMJ Carbon. The trial court also

found that Shelby had failed to present credible evidence to support her claims that Steven concealed the assets of SMJ Carbon during their marriage and acted in bad faith in his management of the business. Based on its review of the evidence, the trial court found that the reason why SMJ Carbon had failed as a business was not because of any misappropriation of assets or other malfeasance by Steven, but rather because Steven “did not have the ability to successfully run a company.” On this record, the trial court’s finding that Steven did not misappropriate the community assets of SMJ Carbon during the parties’ marriage was supported by substantial evidence.

### **III. Steven’s Sale of the Assets of SMJ Carbon to Allcomp**

Shelby also contends that the evidence presented at trial showed that Steven breached his fiduciary duty to her during the marriage when he sold the manufacturing equipment owned by SMJ Carbon to Allcomp in 2009. In particular, Shelby claims that Steven violated the provisions of section 1100 by selling these community assets without giving prior written notice to Shelby or obtaining her written consent prior to the sale.

Section 1100, subdivision (d) provides, in relevant part, that a spouse with primary management and control over a community business must “give prior written notice to the other spouse of any sale, lease, exchange, encumbrance, or other disposition of all or substantially all of the personal property used in the operation of the business.” (§ 1100, subd. (d).) Shelby argues that the undisputed evidence established that Steven violated this provision because he admitted at trial that he did not give Shelby prior written notice that he was selling SMJ Carbon’s equipment to Allcomp. Instead, Steven testified that the sale “was something that [they] discussed on a regular basis.” However, the evidence also showed that Steven entered into the sales transaction with Allcomp during the bankruptcy proceedings, and that he used the proceeds from the sale to settle the claims in the bankruptcy case and to pay other community debts. Although Shelby did not jointly file for bankruptcy with Steven, she was listed in the petition as a co-debtor spouse and in the creditor mailing list as a person entitled to notices in the bankruptcy proceedings. Based on this evidence, the trial court reasonably could find that Shelby

received sufficient notice of the sale of SMJ Carbon's equipment to Allcomp and that Steven did not conceal from Shelby the actual proceeds received from the sale.

Section 1100, subdivision (b) states that "[a] spouse may not . . . dispose of community personal property for less than fair and reasonable value, without the written consent of the other spouse." (§ 1100, subd. (b).) Shelby appears to contend that Steven violated this provision because he sold SMJ Carbon's equipment to Allcomp without her written consent for \$100,000 to \$150,000, which Shelby claims was less than the fair market value of the property. In support of this claim, Shelby points to a one-page exhibit admitted at trial, which was entitled "Proprietary Information to SMJ Carbon" and listed the value of SMJ Carbon's assets at \$525,000. However, when asked about the exhibit, Steven testified that it was "sort of a schematic in a business plan" that he had prepared to assess the cost-effectiveness of moving SMJ Carbon out of state and was based on an assumption that the company would be operating at a facility in New Hampshire. Steven further testified that none of the information in the exhibit applied to the operation of SMJ Carbon at Edwards Air Force Base in California or was relevant to the value of the company's manufacturing equipment when it was sold to Allcomp. Shelby did not offer any other evidence to support a finding that Steven sold the equipment for less than fair market value or misappropriated any of the proceeds from the sale. Shelby therefore failed to demonstrate that Steven breached a fiduciary duty owed to her in the sale of SMJ Carbon's assets to Allcomp.

#### **IV. The Parties' Sale of the Family Residence to Wei Shih**

Shelby argues that Steven also breached his fiduciary duties under sections 721 and 1100 by coercing her into agreeing to sell the family residence to his alleged business partner, Wei Shih. Shelby asserts that the sale was part of an elaborate scheme between Steven and Shih to evict her from the home so that Steven could carry out his threat to "take everything from her" once Shelby tried to hold him accountable for his abuse. As support for this argument, Shelby speculates that the \$300,000 that Shih paid for the home in October 2009 may have been the same \$300,000 in unpaid royalties that SMJ

Carbon owed to the Air Force between 2003 and 2007. She further speculates that Steven may have given Shih “the green light” to evict her from the home after the parties separated in September 2010 and Steven stopped paying the rent for the home. None of Shelby’s claims, however, are supported by substantial evidence.

The record reflects that Steven and Shelby sold the home to Shih in October 2009 pursuant to a bank-approved short sale. Steven testified that, at the time of the sale, the parties had not paid the note on the home for about a year due to a lack of adequate funds, and they were \$50,000 to \$60,000 in arrears on their payments. He also testified that the home was in foreclosure and scheduled to be sold at an auction when the lender approved the short sale to Shih. While Shelby testified that a “van of realtors” had valued the home at \$1.2 million at some point prior to the sale, she did not dispute that the home was in foreclosure when it was sold to Shih and that the \$300,000 short sale price was approved by the lender. Shelby also failed to offer any credible evidence to support her claim that Steven intentionally refused to make the payments on the home prior to the foreclosure and instead provided that money to Shih so that he could buy the home and then evict Shelby one year later. To the contrary, both parties testified that, at the time of the sale, their intention was to purchase the home back from Shih in a few years once their financial situation had improved. Based on its review of the evidence, the trial court found that the family’s home was “lost due to their inability to keep up the expenses necessary to maintain ownership.” The trial court’s finding on this issue was supported by substantial evidence.

## **V. The Allocation of the Parties’ Community Tax Debt**

Shelby claims that the trial court erred in refusing to allocate the entirety of the IRS tax debt owed for SMJ Carbon’s unpaid payroll taxes solely to Steven. Shelby contends that she should not be liable for any portion of the tax debt incurred during the marriage because that debt arose from Steven’s fraud.

Section 1000 provides, however, that “[i]f the liability of [a] married person is based upon an act or omission which occurred while the married person was performing



an activity for the benefit of the community, the liability shall first be satisfied from the community estate. . . .” (§ 1000, subd. (b)(1).) Accordingly, even where a liability arises from one spouse’s criminal or tortious conduct during the marriage, the liability will be charged as a community obligation if the community benefited from such crime or tort. (*In re Marriage of Bell* (1996) 49 Cal.App.4th 300, 310 [settlement arising out of wife’s embezzlement of funds was community obligation where “community received the benefit of the embezzlement”]; *In re Marriage of Hirsch* (1989) 211 Cal.App.3d 104, 111 [civil liability arising from husband’s service on board of directors was community debt where “remuneration he received for serving on the board was undisputedly community property”].) In this case, the evidence established that Steven failed to pay the required payroll taxes for employees of SMJ Carbon between approximately 2002 and 2006. Although Shelby testified that she had no preseparation knowledge of the tax debt, she admitted that the expenses of the community during the marriage were paid from the proceeds of the business. Based on this evidence, the trial court reasonably found that the community should share the tax liability incurred by SMJ Carbon because “the marital estate did benefit from the operation of this business during the marriage.”

## **VI. Steven’s Alleged Failure to Comply with His Duties of Disclosure**

Shelby argues that, in addition to misappropriating the assets of SMJ Carbon preseparation, Steven willfully failed to disclose material facts and information about these assets postseparation in violation of his fiduciary duties of disclosure under sections 721, 1100, and 2100 et seq. Shelby specifically claims that Steven served an incomplete preliminary declaration of disclosure in violation of section 2104, failed to serve a final declaration of disclosure in violation of section 2105, and refused to produce relevant documents and information in response to Shelby’s written discovery requests. Shelby also contends that she was entitled to relief under section 2107 for Steven’s non-compliance with these disclosure requirements, even though she did not file a prior motion to compel further responses to Steven’s declaration of disclosure or to her discovery requests.

Section 2107 states that, if a party fails to serve a preliminary or final declaration of disclosure, or fails to provide the information required in the respective declarations with sufficient particularity, the court “shall, in addition to any other remedy provided by law, impose money sanctions against the noncomplying party.” (§ 2107, subd. (c).) While the complying party may move to compel a further response under section 2107, subdivision (b), the “terms of the statute simply do not require that before seeking sanctions for nondisclosure a party (1) seek further disclosure and (2) bring a motion to either compel further responses or preclude evidence.” (*In re Marriage of Feldman*, *supra*, 153 Cal.App.4th at p. 1481, fn. omitted.) Shelby is therefore correct that she was not required to file a prior motion to compel further responses to seek relief under section 2107 for Steven’s alleged breach of his disclosure obligations. However, Shelby has failed to show that the trial court erred in refusing to grant her relief under section 2107 or other provisions of the Family Code because she did not demonstrate that there was actual non-compliance with the declaration of disclosure requirements.

With respect to the final declaration of disclosure, Shelby asserts in her opening appellate brief that Steven failed to serve such declaration. However, Shelby never argued in the trial court that Steven had failed to serve a final declaration of disclosure, and the record on appeal shows that Steven filed a declaration and proof of service regarding his service of the final declaration of disclosure on October 29, 2012. To the extent Shelby is contending that she never received the final declaration of disclosure, she has forfeited any claim for relief on appeal by failing to raise the issue in the trial court in the first instance. With respect to the preliminary declaration of disclosure, Shelby appears to argue that the declaration was incomplete because it did not disclose the existence or value of the assets that Steven allegedly misappropriated from SMJ Carbon during the parties’ marriage. However, in his testimony at trial, Steven denied that he ever misappropriated any of SMJ Carbon’s assets or income, and Shelby failed to present evidence sufficient to make a *prima facie* showing that there were any stolen or missing assets held by Steven. Moreover, in ordering the division of community property equally between the parties, the trial court found that Steven was credible in his testimony that he

had not misappropriated or concealed the income or assets of SMJ Carbon, and for the reasons discussed above, the trial court's finding on this issue was supported by substantial evidence. Shelby has not identified any other deficiencies in Steven's preliminary declaration of disclosure or otherwise shown that Steven breached his fiduciary disclosure obligations. Based on the totality of the record on appeal, Shelby has failed to demonstrate error in the trial court's rulings.

### **DISPOSITION**

The judgment is affirmed. Each party shall bear its own costs on appeal.

ZELON, Acting P. J.

We concur:

SEGAL, J.

GARNETT, J.<sup>\*</sup>

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.