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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

YEONG CHEOL KIM, Plaintiff and Appellant, v. SANDRA SHIN, Defendant and Respondent.	B234536 (Los Angeles County Super. Ct. No. BC402595)

APPEAL from an order of the Superior Court of Los Angeles County, Luis A. Lavin, Judge. Affirmed.

Joseph Richard Zamora and Seju Oh for Plaintiff and Appellant.

Law Offices of Gary A. Laff and Gary A. Laff for Defendant and Respondent Sandra Shin.

I. INTRODUCTION

Plaintiff, Yeong Cheol Kim, appeals from the April 25, 2011 judgment in favor of defendant, Sandra Shin, after a court trial. Plaintiff argues the trial court erred in denying him relief by applying the unclean hands doctrine. We disagree and affirm the final judgment.

II. BACKGROUND

A. Evidence

Plaintiff was a surgeon and oncologist in South Korea. In May 2005, plaintiff met defendant in South Korea at defendant's Seoul office to discuss his desire to move to the United States. Defendant owned James Daniel & Associates, a California corporation based in Los Angeles. James Daniel & Associates was not a law office; however, it processed immigration documents for South Koreans interested in coming to the United States. Plaintiff testified he believed defendant's company, James Daniel & Associates, was a law firm because defendant introduced herself as an American lawyer specializing in immigration law.

At the May 2005 meeting, plaintiff stated he told defendant he wanted to come to the United States to work in an international organization. Defendant recommended plaintiff apply for an E-2 visa. Plaintiff testified defendant stated plaintiff could live anywhere in America if he had an E-2 visa. Plaintiff also stated defendant told him he needed to invest $400,000 in a business. Defendant testified plaintiff initially wanted to buy his older sister's business to obtain his E-2 visa but could not do so because it was a subchapter S corporation. On cross-examination, plaintiff admitted he wanted to purchase his sister's wine store but defendant recommended against it because it might attract consul attention. Defendant acknowledged the parties established Young & Sunshine Beauty, Inc. for the purpose of obtaining an E-2 visa for plaintiff. But plaintiff

testified defendant said the money would be invested in Ajoumedics through a cosmetic business and a health and yoga clinic that would be named Young & Sunshine Beauty, Inc. Plaintiff testified defendant told him she would operate the business for him. Plaintiff testified defendant sent him cosmetic wholesale brochures and told him she would hire two female employees to help her manage Young & Sunshine Beauty, Inc.

Defendant testified she incorporated Young & Sunshine Beauty, Inc. based on her discussions with plaintiff. Defendant testified plaintiff was informed that the company had to have employees and he must work for Young & Sunshine Beauty, Inc. as its owner. But defendant asserted her Fifth Amendment privilege when questioned by plaintiff's counsel about: Young & Sunshine Beauty, Inc.'s business; statements made in plaintiff's E-2 visa application; and the transfer of $400,000 out of Young & Sunshine Beauty, Inc.'s account.

On August 4, 2005, plaintiff signed a retainer agreement with the Law Offices of Thomas Le & Associates. Plaintiff testified he signed the retainer agreement at defendant's Los Angeles office. Under the terms of the written agreement, plaintiff agreed to pay the law office $12,000 and costs to obtain an E-2 visa. Mr. Le testified he shared an office suite and telephone lines with defendant but he did not share employees with her because he had no employees. Mr. Le testified he told defendant not to use his name in any advertising for James Daniel & Associates in 2005 after he found out defendant had done so. Mr. Le denied giving defendant a retainer agreement for her to use in connection with plaintiff's visa application. Mr. Le denied ever being asked to provide legal services in connection with plaintiff's E-2 visa application. And Mr. Le denied reviewing plaintiff's E-2 visa application. Mr. Le also did not authorize defendant to review the visa application on his behalf. Mr. Le denied meeting plaintiff until a settlement conference in this case. Defendant admitted she received $12,000 and costs from plaintiff in connection with the E-2 visa application for him and his family. Mr. Le denied receiving any money from plaintiff. Mr. Le asserted his Fifth Amendment privilege when questioned about defendant's involvement in his law practice.

Plaintiff told defendant he would be living in New Jersey once he arrived to the United States. However, his E-2 visa application stated he would reside in Granada Hills, California. Plaintiff stated he did not tell defendant he intended to reside at her home address in Granada Hills. Defendant testified she told plaintiff she would use her home address on the E-2 visa application because he did not have an address in the United States. Plaintiff also testified someone other than him and his family signed their E-2 visa applications. Defendant testified she asked Seung Lee to prepare the E-2 visa application for plaintiff. But defendant could not remember whether Mr. Lee was employed by James Daniel & Associates. Mr. Le believed Mr. Lee worked for defendant. Mr. Lee was not employed by the Law Offices of Thomas Le & Associates.

In preparation for plaintiff's E-2 visa interview at the American Consulate in South Korea, defendant provided a list of potential questions and answers. Plaintiff added some items which he returned to defendant. Plaintiff admitted he wrote the following paragraph to defendant: "Question, how I ought to know about the company in the U.S. Answer, when I visited the United States last year for the Korean Aesthetic -- I think that's aesthetic but it might be different -- Society's Business as advisory doctor for the association, I attended a seminar given by the L.A. Realtor's Association and was introduced to the company which I personally visited and made a decision to make an investment into." Plaintiff acknowledged he was prepared to inform the United State consulate this was how he found out about the company. But at the interview, plaintiff was asked only two questions. Plaintiff testified he was not allowed to say anything except answer the two questions.

Plaintiff and his family arrived in the United States on March 26, 2006, and immediately moved to New Jersey. Plaintiff met with defendant in Los Angeles twice. During his May 2006 visit, plaintiff told defendant he wanted to visit Young & Sunshine Beauty, Inc. Defendant told plaintiff the company was located on the seventh floor of the Equitable Building but they could not visit because company was closed that day. Plaintiff asked defendant to show him the company's bank account and the corporation's seal. Defendant showed him the corporate seal and the company's checks. Plaintiff

testified defendant did not tell him he was supposed to maintain day-to-day operation of Young & Sunshine Beauty, Inc. Defendant testified plaintiff dropped by her office in May when he came to Los Angeles for a hospital interview. Defendant stated plaintiff did not ask to visit the Young & Sunshine Beauty, Inc. warehouse, meet its employees or go over its bank statements.

Defendant testified she sent to a loan broker an employment verification letter on Young & Sunshine Beauty, Inc. stationary stating plaintiff was employed as the company's president since April 2006. The Young & Sunshine Beauty, Inc. address listed on the letter was the address of a space next to defendant's office. Plaintiff testified he lived in a rental unit but defendant showed he purchased the New Jersey home in 2006. Plaintiff admitted his wife asked the broker to obtain income verification from defendant to obtain a mortgage for the house. Plaintiff admitted he told his wife to put down a salary of $3,000 or $3,500 from Young & Sunshine Beauty, Inc. even though he never received a salary from the company. Defendant testified plaintiff sent her e-mails requesting documentation showing plaintiff earned a monthly salary from Young & Sunshine Beauty, Inc. Defendant also testified plaintiff never: used the $400,000 to operate Young & Sunshine Beauty, Inc.; authorized defendant to purchase machinery or cosmetics for Young & Sunshine Beauty, Inc.; and retained the services of yoga teachers for Young & Sunshine Beauty, Inc.

In October or November 2006, plaintiff met with defendant because he wanted to obtain permanent residency. Plaintiff testified to obtain permanent residency, defendant told him he needed to invest another $600,000 into Young & Sunshine Beauty, Inc. for a total investment of $1 million. He paid defendant $40,000 to help him obtain a green card. Plaintiff testified he also asked defendant about Young & Sunshine Beauty, Inc. at the meeting and was told the business was well managed. He testified he believed Young & Sunshine Beauty, Inc. was still operating at that time.

In Spring 2007, plaintiff contacted defendant several times by e-mail and telephone asking for Young & Sunshine Beauty, Inc.'s tax returns. He did not receive Young & Sunshine Beauty, Inc.'s tax return for 2006; however, he received tax returns

for 2007 and 2008. Plaintiff's Korean tax accountant questioned the tax returns. The accountant told plaintiff $300,000 from Young & Sunshine Beauty, Inc.'s account had been invested in a restaurant. Defendant testified plaintiff knew Young & Sunshine Beauty, Inc. was a paper company that did not do any business on its own. Defendant admitted she knew Young & Sunshine Beauty, Inc. had no business activity when she signed its 2007 income tax return. Defendant testified there was no business activity at Young & Sunshine Beauty, Inc. But the firm that Young & Sunshine Beauty, Inc. made an investment into, We Can Corporation, had actual business activities.

In November 2007, defendant turned over plaintiff's E-2 visa application and Young & Sunshine Beauty, Inc.'s company documents to Yong Ok Kim. Mr. Kim was plaintiff's lawyer. In late 2007 or early 2008, plaintiff testified he confronted defendant after discovering Young & Sunshine Beauty, Inc. was not a legitimate business enterprise. Plaintiff testified defendant told him she would return his $400,000 investment. Defendant confirmed she told plaintiff she would get plaintiff his investment back.

Both plaintiff and defendant testified she did not tell him that she transferred his investment money from Young & Sunshine Beauty, Inc. to We Can Corporation. In June 2006, defendant transferred plaintiff's $400,000 investment from Young & Sunshine Beauty, Inc. to We Can Corporation, a company located in Seattle that provided tutoring to South Korean students. Defendant testified Young & Sunshine Beauty, Inc. owns 40 percent of We Can Corporation's stock. Defendant testified she invested in We Can Corporation because plaintiff told her he did not care where the money was invested. Defendant did not expect any profit; however, she expected Young & Sunshine Beauty, Inc. would get its money back from We Can Corporation.

Defendant testified Dong Kim, We Can Corporation's president, agreed to return the money if given six-months advance notice. However, plaintiff presented evidence defendant withdrew $9,000 in cash from Young & Sunshine Beauty, Inc. in November 2006. Defendant paid Olympic Golf using a Young & Sunshine Beauty, Inc. check even though the company had no business activity. And as noted, $400,000 had been

transferred to We Can Corporation in June 2006. Defendant explained she deposited her own personal funds into Young & Sunshine Beauty, Inc.'s account to take care of bank charges on the business account. Defendant also paid We Can Corporation employees from Young & Sunshine Beauty, Inc.'s bank account. This was because Young & Sunshine Beauty, Inc. needed employees. Defendant did not tell plaintiff she was paying We Can Corporation employees from Young & Sunshine Beauty, Inc.'s account. Defendant testified We Can Corporation sent Young & Sunshine Beauty, Inc. about $10,000 per month. This was to allow Young & Sunshine Beauty, Inc. to pay the We Can Corporation's employees. Plaintiff testified he paid defendant $ 460,000 in total. Defendant later returned about $18,500 to plaintiff.

B. Statement of Decision

After a six-day court trial, the trial court issued its statement of decision on April 25, 2011. The trial court found Mr. Le, plaintiff and defendant were not credible witnesses. The trial court found defendant proposed and helped plaintiff and his family obtain an E-2 investor visa. The trial court found while defendant represented she was an immigration specialist, she never represented she was an attorney. The trial court found: defendant was never listed as an attorney on any letterhead from her company, James Daniels & Associates; plaintiff never produced any evidence such as a business card where defendant was listed as a lawyer; and defendant was never listed as a lawyer on any documents submitted to immigration authorities. In addition, defendant was not a party to the August 5, 2005 retainer agreement between plaintiff and the Law Offices of Thomas Le & Associates.

The trial court found plaintiff either received a copy of the January 20, 2006 E-2 visa application or was aware of its contents before he was interviewed by immigration officials. The trial court ruled: "Plaintiff knew that the following statements in this application were false: Young & Sunshine, Inc. ("Company") would engage in the business of skin care cosmetics and providing diet clinic and yoga classes; the Company

would have employees; and Plaintiff and his family would return to Korea upon termination of the visa." In addition, the trial court found plaintiff knew the visa application statement that he would be living in Granada Hills, California was false.

The trial court found: "Plaintiff and [defendant] concocted a false story about [plaintiff's] investment in a non-legitimate or 'dummy' business concern, Young and Sunshine, to persuade United States immigration authorities to issue the E-2 visas to Plaintiff and his family. (Exhibit B, C, and G). Prior to coming up with Plaintiff's investment in Young and Sunshine, a company established only for the purpose of allowing Plaintiff to claim that he invested in and was president of this entity, Plaintiff wanted to invest in his sister's wine store as a way to obtain the E-2 visa. In preparation for his interview with consulate officials, Plaintiff said he would answer a question about how he got to know about the company as follows: 'I attended a seminar given by the LA Realtors Association and was introduced to the company, which I personally visited and made a decision to make an investment.' (Exhibit G, p. 3). This statement was false. [¶] Plaintiff knew Young and Sunshine was not, and would never be, a legitimate enterprise with employees or any business. Plaintiff made his $400,000 investment into an account established on behalf of this entity solely for the purpose of obtaining the E-2 visa. When the visa would expire in five years, Plaintiff expected to get some portion of this investment returned to him. However, Plaintiff did not establish how much of his investment would be returned."

Also, the trial court found: "[S]ince Plaintiff knew that Young and Sunshine was not and would never be a going concern, he expected [defendant] to invest his $400,000 in another entity. [Defendant] authorized the transfer of plaintiff's investment to Wecan Corporation. Wecan has not returned Plaintiff's investment and its president, Dong Kim, promised Plaintiff to pay him back personally. Plaintiff did not call any Wecan employees or officers as witnesses. Plaintiff did not establish that [defendant] profited or received any portion of the $400,000 received by Wecan."

The trial court also found: "The E-2 visa that [defendant] helped Plaintiff obtain was valid for five years and was never revoked. After receiving his E-2 visa, Plaintiff

traveled to the United States on March 23, 2006. He flew into New York City and relocated immediately to New Jersey. [¶] Although Plaintiff knew that he had represented to immigration officials that he would live in California after the visa was issued, he lived in New Jersey at all times relevant to this lawsuit. In addition, although he knew that he was supposed to manage and operate Young and Sunshine, in 2007 Plaintiff started to interview for jobs in the United States as a doctor. Indeed, he asked [defendant] to help him obtain a green card so that he could work as a doctor. [¶] Shin returned approximately $18,500 to Plaintiff. [¶] Plaintiff still lives in New Jersey with his family pursuant to another E-2 visa obtained through his wife."

As noted, the trial court found plaintiff was not a credible witness. The trial court explained: "For example, the Court finds that he lied, or authorized his wife to lie, to a bank about his income from Young and Sunshine to allow him to obtain a mortgage to purchase a home in New Jersey. Plaintiff also lied about when he moved into this property. His testimony that he thought he was making an investment in a legitimate company, whether it was Young and Sunshine or a purported entity known as Aju Medics, was false."

The trial court denied all of plaintiff's claims under the unclean hands doctrine: plaintiff "was an active participant in conspiring with [defendant] to mislead and lie to immigration officials to obtain his E-2 visa"; plaintiff "knew his investment in Young and Sunshine was a sham"; the court would not "allow the judicial system to be used to assist Plaintiff in enforcing the parties' illegal bargain; and "[t]o allow Plaintiff to recover anything under these circumstances would allow him to profit from the very fraud that he and [defendant] helped perpetrate." The trial court also ruled: "Even if Plaintiff's claims are not barred by the affirmative defense of unclean hands, Plaintiff has failed to meet his burden of proof as to all of his causes of action. To the extent that [defendant] was negligent in her investment and the subsequent loss of Plaintiff's $400,000, the evidence at trial established that [defendant's] negligence was not a substantial factor in causing [Plaintiff's] harm, Wecan was responsible for the loss. As for the fraud causes of action, Plaintiff's reliance was not reasonable. Concerning the contract causes of action,

[defendant] was not a party to the retainer agreement, and, in any event, Plaintiff got exactly what [defendant] offered: an E-2 visa."

III. DISCUSSION

A. Standards of Review

Typically, unclean hands issues are questions of fact. (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978; *Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 620.) Appellate courts use both the substantial evidence and abuse of discretion standards of review when assessing unclean hands issues. (*In re Marriage of Dancy* (2000) 82 Cal.App.4th 1142, 1157 [substantial evidence] superseded by statue on other grounds as stated in *In re Marriage of Fellows* (2006) 39 Cal.4th 179, 185, fn.6; *Lovett v. Carrasco* (1998) 63 Cal.App.4th 48, 55 [abuse of discretion].) We view the evidence in a light most favorable to the judgment. (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660; *Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.)

B. Unclean Hands Doctrine

The doctrine of unclean hands is invoked when a party seeking relief in equity "'has violated conscience, or good faith, or other equitable principle" in his or her prior conduct. (*General Elec. Co. v. Superior Court* (1955) 45 Cal.2d 897, 899-900; *DeGarmo v. Goldman* (1942) 19 Cal.2d 755, 765.) The appellate court in *Kendall-Jackson Winery, Ltd. v. Superior Court, supra,* 76 Cal.App.4th at page 978 explained: "The doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim. [Citations.] . . . . [¶] The unclean hands doctrine protects judicial integrity and promotes justice. It protects judicial integrity because allowing a plaintiff with unclean hands to recover in an action creates doubts as to the justice provided by the judicial system. Thus, precluding recovery to the unclean

plaintiff protects the court's, rather than the opposing party's, interest." (Accord *Jay Bharat Developers, Inc. v. Minidis* (2008) 167 Cal.App.4th 437, 445.)

The unclean hands doctrine is available as an affirmative defense in both equitable and legal actions. (*Unilogic, Inc. v. Burroughs Corporation, supra,* 10 Cal.App.4th at p. 620; *Fibreboard Paper Products Corp. v. East Bay Union of Machinists* (1964) 227 Cal.App.2d 675, 727.) Whether the doctrine applies to bar a plaintiff's claims depends on: analogous case law; the nature of the misconduct; and the relationship of the misconduct to the claimed injuries. (*Blain v. Doctor's Co.* (1990) 222 Cal.App.3d 1048, 1060; *Jay Bharat Developers, Inc. v. Minidis, supra,* 167 Cal.App.4th at p. 445; *Kendall-Jackson Winery, Ltd. v. Superior Court, supra,* 76 Cal.App.4th at p. 979.) Needless to note, this case involves an effort to create a corporation which never operated in order to secure a visa, *viz*.; immigration fraud.

Here, the parties misconduct directly related to plaintiff's claims. The trial court found plaintiff actively conspired with defendant to mislead immigration officials to obtain his E-2 visa. And the trial court found plaintiff knew his investment in Young and Sunshine Beauty, Inc. was a sham. Plaintiff's misrepresentations concerning the business legitimacy of Young & Sunshine Beauty, Inc., which he knew was a sham, directly relates to his action to recover his investment.

The second prong of unclean hands analysis is directed at the nature of the misconduct. The trial court found the nature of plaintiff's misconduct in defrauding immigration officials to obtain the E-2 visa was unconscionable, in bad faith or inequitable. Plaintiff argues his conduct does not amount to the level of misconduct required under the doctrine and was collateral to the central dispute. Plaintiff contends: there was no evidence he actually lied to a State Department consul as the trial court mistakenly believed; there was no reason he would knowingly enter into an illegal bargain or conspire with defendant when he could easily legally obtain a visa; there was no reason for plaintiff to risk his legal status in the United States by getting involved in any illegal bargain or conduct; plaintiff believed the E-2 visa process was legitimate based on defendant's guidance because she represented she was an experienced

immigration attorney; he did not knowingly breach immigration law by seeking a green card; rather, he was advised by defendant that he could apply for a green card after getting his E-2 visa; and once he knew of defendant's misconduct, he acted to correct it by having his wife obtain another E-2 visa and demanding the return of his money.

Plaintiff in effect challenges the trial court's factual determinations by arguing he had no reason to obtain his E-2 visa under false pretenses. But under the substantial evidence test, it is the trial court's role to assess witness credibility to resolve the conflicts in the testimony. (*In re A.S.* (2011) 202 Cal.App.4th 237, 244; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) Here, the trial court found plaintiff was not a credible witness because: he lied, or authorized his wife to lie, to a bank about his income from Young & Sunshine Beauty, Inc. to obtain a mortgage to purchase a New Jersey home; he lied about when he moved to this property; and his testimony that he thought he was making an investment in a legitimate company was false. Moreover, plaintiff's factual contentions fail to address the trial court's findings that defendant did not represent she was an attorney. Further, the trial court found plaintiff knew the following statements in his E-2 visa application were false: Young & Sunshine Beauty, Inc. would sell skin care cosmetics and provide a diet clinic and yoga classes; the company would have employees; plaintiff and his family would return to South Korea upon termination of the visa; and plaintiff would live in Granada Hills, California. Accordingly, there was substantial evidence to support the trial court's finding of plaintiff's misconduct. The trial court did not abuse its discretion in applying the unclean hands doctrine because plaintiff's misrepresentations to immigration officials were unconscionable and in bad faith. Likewise, substantial evidence supports the trial court's findings.

Plaintiff argues the analogous case law permits him to recover despite his own misconduct if the application of the unclean hands doctrine will result in an inequitable result. Plaintiff relies on *Brown v. Grimes* (2011) 192 Cal.App.4th 265, 282-284 and *Murillo v. Rite Stuff Foods, Inc.* (1998) 65 Cal.App.4th 833, 844-847. In *Brown*, the appellate court held the unclean hands doctrine was inapplicable because: the improper agreement with a nonlawyer to split fees was unrelated to the plaintiff's fee-sharing

agreement with the defendant; the illegality of the plaintiff's agreement to split fees with the nonlawyer did not directly affect the legality of the fee-sharing agreement with the defendant; the defendant was aware of the fee-sharing agreement between the plaintiff and the nonlawyer; and the plaintiff's misconduct was neither directed at the defendant nor resulted in any prejudice. (*Brown v. Grimes, supra,* 192 Cal.App.4th at pp. 283-284.) *Brown* is distinguishable from the present case. Here, plaintiff's misconduct in connection with the E-2 visa process directly relates to his claims for: fraud; negligent misrepresentation; contract and fiduciary duty breach; and rescission.

Furthermore, plaintiff reliance on *Murillo v. Rite Stuff Foods, Inc., supra,* 65 Cal.App.4th at pages 844-847 is misplaced. In *Murillo*, the plaintiff, an undocumented alien, sued the defendants for sexual harassment, wrongful termination, and contract breach among other claims. (*Murillo v. Rite Stuff Foods, Inc., supra,* 65 Cal.App.4th at pp. 838-839.) The plaintiff admitted she obtained false resident alien and social security cards. The plaintiff did so to obtain employment with the defendants. (*Id.* at p. 845.) The appellate court ruled the plaintiff's wrongful discharge and contractual claims were barred by the unclean hands doctrine. This was because the plaintiff's misrepresentation went to the heart of the employment relationship and related directly to those claims. (*Ibid.*) However, the unclean hands doctrine did not bar the plaintiff's discrimination or tort claims arising from acts occurring during her employment. This was because the plaintiff's injuries were not the consequences of her fraud but of another employee's despicable conduct and her employer's tolerance of that misconduct. (*Id.* at p. 851-852.) The Court of Appeal found there was no direct connection between the plaintiff's wrongdoing and the harm she suffered. (*Ibid.*) Neither *Brown* nor *Murillo* permit us to reverse the judgment.

IV. DISPOSITION

The judgment is affirmed. Defendant, Sandra Shin and plaintiff, Yeong Cheol Kim shall bear their own appeal costs in the interest of justice.

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TURNER, P. J.

We concur:

MOSK, J.

KRIEGLER, J.