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**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION THREE**

THE LITTLE COTTAGE CAREGIVERS LLC,
Plaintiff and Respondent,

v.

ADIE MEIRI,
Cross-complainant and Respondent

TZEHOU KUNG,
Cross-defendant and Appellant.

APPEAL FROM LOS ANGELES COUNTY SUPERIOR COURT
GERALD ROSENBERG, JUDGE • CASE No. SC126909

APPELLANT'S OPENING BRIEF

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APPELLANT’S OPENING BRIEF

INTRODUCTION

This appeal arises from a bench trial involving competing claims of ownership of The Little Cottage Caregivers, a medical marijuana collective operating under Los Angeles law. Appellant and cross-defendant Tzehou Kung—who had been running Little Cottage after buying it from a previous owner—sought to be declared the sole owner. The trial court, however, ruled that respondent, defendant, and cross-complainant Adie Meiri owns 85 percent of Little Cottage, based on a purchase option he purportedly exercised in 2012.

The appeal presents one primary issue: when a business owner grants an option to purchase an ownership interest, but the owner sells an overlapping ownership interest to someone else before the option-holder exercises the option, can the option-holder claw back the ownership interest from a bona fide good faith purchaser who bought without knowledge of the option?

The basic timeline of events is undisputed. Vietnam Nguyen began as the sole owner of Little Cottage. In 2010, he sold a 50 percent interest in Little Cottage to Adie Meiri.¹ In 2011, he gave Adie Meiri an option to purchase an additional 35 percent interest. Before Adie Meiri exercised the option, Vietnam Nguyen sold all of his remaining ownership interest to Yun Taek “Scott” Kang, who was unaware of Adie Meiri or the open option. Sometime in late 2012, Adie Meiri purported to exercise his option to purchase the additional 35 percent.

From 2012 through 2016, Adie Meiri was completely uninvolved in the business and received no profits from it. Scott Kang, meanwhile, managed and operated Little Cottage and believed he was the sole owner. In 2014, Scott Kang transferred his interest in Little Cottage to Don Yoo. Scott Kang and Don Yoo managed and operated Little Cottage continually until 2016, when Don Yoo sold his interest in Little Cottage to Tzehou Kung. Tzehou Kung managed and operated the business, putting significant capital into its development, and learned of Adie Meiri

¹ Because some of the parties and witnesses share last names or have similar-sounding names, this brief refers to individuals by their full names.

in late 2016 when Adie Meiri, out of the blue, began filing documents on Little Cottage's behalf.

Despite the court's acknowledgement that Tzehou Kung's predecessor-in-interest acquired 50 percent of Little Cottage *before* Adie Meiri exercised the option to acquire an additional 35 percent, the trial court ruled that Adie Meiri was the 85 percent owner of Little Cottage. The trial court did so on the belief that Adie Meiri's open, *unexercised* option trumped the bona fide purchase made by Scott Kang, allowing Adie Meiri to effectively wipe out Tzehou Kung's interest acquired through Scott Kang. On that basis, the trial court entered judgment declaring Adie Meiri to be the 85 percent owner of Little Cottage and issued a permanent injunction stripping Tzehou Kung of his entire membership and interest in Little Cottage.

The trial court's decision is erroneous as a matter of law. A purchaser—such as Tzehou Kung's predecessor-in-interest, Scott Kang—who acquires property subject to an open option, but who is not on actual or constructive notice of the option, is a bona fide purchaser for value who acquires the property free of the competing claim. (*Utley v. Smith* (1955) 134 Cal.App.2d 448, 450-451 (*Utley*)). And because Tzehou Kung's predecessor-in-interest acquired 50 percent of Little Cottage free of Adie Meiri's competing claim, Tzehou Kung, too, acquired the property free of Adie Meiri's claim. (*Carr v. Rosien* (2015) 238 Cal.App.4th 845, 856 (*Carr*)). The trial court thus erred in ruling that Adie Meiri owns 85 percent because he acquired his *option* before Tzehou Kung (or his predecessor-in-interest, Scott Kang). The judgment should be

vacated with instructions to enter a new judgment declaring that Adie Meiri and Tzehou Kung are members of Little Cottage, each with a 50 percent share of the business.

At the least, the permanent injunction should be vacated because it improperly deprives Tzehou Kung of the remaining 15 percent share of Little Cottage that Adie Meiri did not claim as his own. The trial court correctly decided that the ownership of the remaining 15 percent was not before it, but incorrectly entered a permanent injunction that had the effect of stripping Tzehou Kung of his 15 percent. Thus, if this court does not hold that Tzehou Kung is the owner of 50 percent of Little Cottage, the court should still vacate the judgment with directions to make clear that Tzehou Kung is a member, and holds 15 percent, of Little Cottage.

STATEMENT OF THE CASE

A. Vietnam Nguyen creates and operates The Little Cottage Caregivers, a legally compliant medical marijuana collective.

Little Cottage is a medical marijuana collective, operating under Los Angeles law, at least as far back as 2006. (AA 264, 307.) Prior to the events at issue, Vietnam Nguyen was the sole owner, member, and manager of Little Cottage. (See AA 264, 274, 307.)²

B. In September 2010, Vietnam Nguyen sells a 50 percent interest in Little Cottage to Adie Meiri, then regrets his decision.

At some point in 2010, Shlomo Meiri, the father of respondent, defendant, and cross-complainant Adie Meiri, decided he wanted to give Adie Meiri a gift in the form of a business. (SS

² There are two components to the business: The Little Cottage Caregivers, Inc., which was licensed as a nonprofit corporation in California (see AA 264); and The Little Cottage Caregivers, LLC, also licensed in California (see AA 274, 307). At trial, Adie Meiri argued that the two components were distinct, such that Tzehou Kung's interest was in the corporation and not the LLC. (E.g., AA 96-97.) The trial court rejected this argument, finding that the parties referred to the LLC and the corporation interchangeably and that Tzehou Kung's claim of interest was also in the LLC. (AA 123-124 [finding that Scott Kang acquired full ownership of the LLC and Tzehou Kung acquired that interest]; 2 RT 9.) Adie Meiri has not appealed that finding.

84.)³ Adie Meiri was around 19 years old at the time. (SS 82.) Shlomo Meiri served as Adie Meiri’s agent, manager, and handler for all business purposes. (*Ibid.*; SS 84.)

Adie Meiri and Shlomo Meiri met with Vietnam Nguyen at the Little Cottage premises; it was the first and only time Adie Meiri and Shlomo Meiri ever went to the store. (SS 83, 85.) Shlomo Meiri reached an agreement with Vietnam Nguyen for Adie Meiri to purchase a 50 percent interest in Little Cottage, which Adie Meiri did in September 2010. (SS 85; AA 264, 274.)

After the transaction closed, Vietnam Nguyen “approached [Shlomo] in tears and begged for the company back.” (SS 85; accord, 2 RT 313-314.) Vietnam Nguyen said he had made a bad decision and wanted to regain full ownership. (*Ibid.*)

C. In January 2011, Adie Meiri and Vietnam Nguyen sign an agreement giving Vietnam Nguyen the chance to recover 50 percent of Little Cottage, and giving Adie Meiri an option to buy another 35 percent.

Shlomo Meiri retained an attorney to draft the repurchase agreement between Adie Meiri and Vietnam Nguyen. (SS 81.) The

³ Because the bench trial and certain posttrial hearings were not reported, Tzehou Kung designated a partial settled statement for the record on appeal. The superior court bundled the certified settled statement along with several of the settled statement-related filings into a 91-page packet, which is labeled “settled statement” on the front cover but “clerk’s transcript” on the first page. The certified settled statement runs from pages 64 to 89 of the settled statement packet, referred to as “SS.”

agreement required Vietnam Nguyen to pay certain consideration, including assigning to Adie Meiri the right to pursue a breach of contract claim Nguyen had against another dispensary. (AA 281.) In return, Vietnam Nguyen could get his 50 percent back—but only if Adie Meiri determined that the proceeds from the assigned claim were sufficient, or if Nguyen paid additional consideration. (SS 81; AA 282.)⁴

The repurchase agreement also included an option agreement in Adie Meiri's favor. (AA 281-282, 296.) In exchange for \$10, Adie Meiri received a two-year option to purchase another 35 percent of Little Cottage from Vietnam Nguyen for \$1,000; the option would vest if Nguyen failed to satisfy all the terms of the agreement. (AA 296, 306 [Exhibit A to the option agreement], 320 [Exhibit B to the option agreement]; 2 RT 324 [confirming exhibits are parts of the option agreement].)⁵

The repurchase agreement provided that Vietnam Nguyen's right to repurchase Adie Meiri's 50 percent interest was not assignable without Adie Meiri's consent. (AA 285.) The option agreement provided that Vietnam Nguyen could not assign his

⁴ The drafting attorney intentionally made the repurchase agreement ambiguous as to whether Vietnam Nguyen would recover the 50 percent share immediately or after the satisfaction of certain conditions. (SS 81.) For purposes of this appeal, Tzehou Kung does not contest that Adie Meiri held onto his 50 percent share of Little Cottage, so the ambiguity is not relevant.

⁵ As a result of the ambiguous drafting, the documents conflict as to what percentage of Little Cottage was covered by the option. (Compare AA 282 with AA 296.) For purposes of this appeal, all parties agree that the option gave Adie Meiri the right to purchase an additional 35 percent.

rights or duties under the agreement without written consent from Adie Meiri. (AA 297.)

Vietnam Nguyen and Adie Meiri executed the repurchase agreement and the option agreement in January 2011. (AA 286, 294-296.) There is no evidence that either agreement was recorded.

Adie Meiri and Shlomo Meiri still had not visited the premises (other than their first visit before the sale), worked in the shop, filed any statements on behalf of Little Cottage, performed any managerial function, or received any distributions or other funds from the business. (SS 83, 85.)

D. In March 2012, Yun Taek “Scott” Kang extends a loan to Vietnam Nguyen in exchange for 50 percent of Little Cottage. Scott Kang is unaware of Adie Meiri’s interest in the business.

In or around March 2012, Little Cottage was unable to pay its rent and was facing an unlawful detainer action. (AA 317.) Scott Kang agreed to loan Vietnam Nguyen enough money to cover Little Cottage’s back-due rent and other expenses in exchange for 50 percent of Little Cottage. (See SS 66; AA 317.)

Scott Kang and Vietnam Nguyen executed an agreement to memorialize the loan and transfer of interest on March 23, 2012. (SS 66 [although loan agreement does not mention Little Cottage by name, the agreement pertains to the business]; AA 317.) The agreement notes that Vietnam Nguyen would obtain the consent of a person named “Dick Van Vu” to relinquish his existing interest

in Little Cottage, but it does not state that there are any other persons or entities with an interest in the business. (AA 317.) Scott Kang did not ask if there were any other owners. (SS 66.) At no point during the transaction did Scott Kang learn about Adie Meiri, or any outstanding options to purchase Little Cottage, or any other competing interests in the business. (SS 68.) Scott Kang did not learn about Adie Meiri's claim in the business until after Tzehou Kung acquired Little Cottage in 2016. (See *ibid.*)

In addition to granting Scott Kang a 50 percent interest in Little Cottage, the agreement gave Scott Kang the right to operate and manage the business. (AA 318.) Vietnam Nguyen agreed to assist with licensing matters. (*Ibid.*)

E. In late 2012, Shlomo Meiri exercises the option to purchase another 35 percent of Little Cottage for Adie Meiri.

Sometime after Adie Meiri and Vietnam Nguyen executed the January 2011 repurchase agreement, Shlomo Meiri determined that Nguyen had not satisfied the conditions for repurchase. (SS 86.) At Shlomo Meiri's direction, Adie Meiri sent a letter informing Vietnam Nguyen of the breach and demanding additional consideration by September 30, 2011. (*Ibid.*; AA 300.)

Shlomo Meiri apparently took no further action on the demand letter until the middle of 2012—after Scott Kang had acquired his 50 percent share. At Shlomo Meiri's instruction, Adie Meiri purportedly signed and dated the option exercise notice on July 30, 2012. (2 RT 327; SS 86; AA 306.) Shlomo Meiri claimed

that he delivered the option exercise notice to Vietnam Nguyen in August 2012 at the earliest. (2 RT 327, 331-332; see SS 86-87.) He supposedly paid Vietnam Nguyen the \$1,000 option exercise price in cash, but he did not get a receipt and he lost the signed copy of the certificate by which Vietnam Nguyen transferred the additional 35 percent to Adie Meiri. (2 RT 340-341, 343; AA 320 [unexecuted assignment certificate].)

Adie Meiri and Shlomo Meiri continued not to visit the premises, work in the shop, file any statements on behalf of Little Cottage, perform any managerial function, or receive any distributions or other funds from the business. (SS 83, 85.)

F. In October 2013, Scott Kang loans Vietnam Nguyen another \$115,000 to pay Little Cottage's past-due taxes. When Vietnam Nguyen defaults, Scott Kang assumes full ownership of the business.

In the meantime, Scott Kang—who was managing Little Cottage and unaware of the Meiris—loaned Vietnam Nguyen \$115,000 so that Nguyen could pay Little Cottage's overdue taxes. (SS 67; AA 322.) Scott Kang and Vietnam Nguyen executed a promissory note to memorialize the agreement. (*Ibid.*) The agreement provided that, if Vietnam Nguyen defaulted on the loan or did not satisfy it upon maturity, Scott Kang could assume full ownership of Little Cottage. (AA 323-324.)

After Scott Kang lent the money to Vietnam Nguyen, Vietnam Nguyen became unreachable by phone for several

months. (SS 67.) Scott Kang declared the note to be in default, but Vietnam Nguyen still did not pay. (*Ibid.*) Scott Kang then exercised his rights under the promissory note and acquired full ownership of Little Cottage (or so he thought). (*Ibid.*)

G. Scott Kang sells Little Cottage to Don Yoo and continues to consult on the business. Don Yoo files multiple public documents on behalf of Little Cottage.

Scott Kang, believing he had become the sole owner of Little Cottage, transferred the business to Don Yoo in July 2014. (SS 67; AA 326.) Scott Kang served as Don Yoo's consultant following the transfer and remained in charge of Little Cottage. (SS 67.)

In October 2014, Don Yoo filed an updated manager list with the Los Angeles City Clerk, listing himself as the sole manager of Little Cottage. (AA 327.) In the same month, he filed a Statement of Information with the California Secretary of State for Little Cottage, listing himself as the sole member and manager. (AA 328.) In October 2015, Don Yoo again submitted a manager list to the Los Angeles City Clerk, listing himself as the sole manager. (AA 329.)

There is no evidence that Vietnam Nguyen or Adie Meiri filed manager lists, or other documents, on behalf of Little Cottage during this time period.

H. In 2016, Tzehou Kung becomes interested in purchasing Little Cottage. After a due diligence period, which reveals no sign of the Meiris, Tzehou Kung purchases full ownership of the business.

Appellant Tzehou Kung first learned about Little Cottage through his business advisor Tony Fong. (SS 69, 72-73.) In 2015, Tony Fong became aware of Little Cottage and thought it could be a good candidate for Tzehou Kung to purchase. (*Ibid.*) Tony Fong met Scott Kang and Don Yoo in or around June 2016. (See SS 68, 72.) Tony Fong was also introduced to Maz Gilardian, who was represented to be a silent partner in Little Cottage. (SS 73.) At no point did Scott Kang, Don Yoo, or anyone else mention Adie Meiri, Shlomo Meiri, or Vietnam Nguyen, or suggest there were additional stakeholders in Little Cottage. (*Ibid.*) Tony Fong never saw Adie Meiri, Shlomo Meiri, or Vietnam Nguyen, at the premises. (*Ibid.*)

With Tony Fong's assistance, Tzehou Kung and Don Yoo entered into an agreement allowing Tzehou Kung to conduct due diligence into Little Cottage's business, to determine whether he wanted to purchase a membership interest. (SS 73; AA 330-333.) Tony Fong reviewed a range of Little Cottage's documents, including the public filings made by Don Yoo in the previous years. (See SS 74; *ante*, Part G.) Tony Fong asked if there were additional partners in Little Cottage who should be involved in the transaction; Scott Kang and Don Yoo answered in the negative,

and told him they had bought Vietnam Nguyen out of the business. (SS 78.)

Tzehou Kung entered into an agreement with Don Yoo, Scott Kang, and Maz Gilardian to purchase the entire business. (SS 68-69, 74-75; AA 334-343.) On June 24, 2016, Don Yoo executed a document transferring his 100 percent interest in Little Cottage to Tzehou Kung. (See SS 75; AA 344.)

I. Tzehou Kung moves Little Cottage to a better location and makes significant improvements.

After purchasing the business from Don Yoo, Tzehou Kung moved Little Cottage's storefront from Foothill Boulevard in Sunland to a location on Venice Boulevard. (See SS 71; AA 345.) Tzehou Kung filed a fictitious business name statement with the County of Los Angeles, so that Little Cottage could do business under the name "Canary." (See SS 70; AA 353, 403.) Tzehou Kung also filed a Statement of Information with the California Secretary of State, stating that Tzehou Kung was the member and manager of Little Cottage, and listing the new Venice Boulevard location. (See SS 70; AA 357.)

Little Cottage completely refurbished the new Venice Boulevard location, including new floors, new walls, and new paint. (SS 77.) Little Cottage added counters and new furniture to the space. (*Ibid.*) Tzehou Kung paid for all of the improvements. (SS 71.)

J. In late 2016, Tzehou Kung learns that Adie Meiri claims an interest in Little Cottage when Adie Meiri files documents with the City and County of Los Angeles on Little Cottage's behalf.

Tzehou Kung first learned about Adie Meiri, and Adie Meiri's claimed interest in Little Cottage, after Adie Meiri filed a Statement of Information with the California Secretary of State listing himself as the sole manager of Little Cottage. (SS 68, 70, 77; AA 358.) Adie Meiri's statement was dated August 22, 2016. (SS 68, 70, 77; AA 358.) The Statement of Information listed Little Cottage as being located at an address on Sherman Way, which was inconsistent with both the prior Foothill Boulevard address and the current Venice Boulevard address. (Compare AA 358 with AA 353, 404.) Adie Meiri also filed, around the same time, an application for certificate of revivor with the California Franchise Tax Board. (AA 313.)

In response, Tzehou Kung filed a new Statement of Information with the Secretary of State, again listing himself as the sole manager and listing the Venice Boulevard address. (SS 78; AA 359.) Adie Meiri responded by filing two additional Statements of Information listing himself as the sole manager, but with the Venice Boulevard address (SS 83)—where he had never been—as well as a business tax application (AA 361-363, 314). Tzehou Kung and Adie Meiri also both filed manager's lists with the City of Los Angeles. (SS 83 [Adie Meiri's list]; AA 364 [Tzehou Kung's list].)

K. Tzehou Kung causes Little Cottage to sue Adie Meiri for a declaratory judgment as to the rightful owner of the business. The parties agree to a bench trial.

On January 10, 2017, Tzehou Kung caused Little Cottage to sue Adie Meiri for a determination and declaration of Little Cottage's and Adie Meiri's rights and duties with respect to the ownership and control of the business, in addition to other claims. (AA 14-26 [complaint]; AA 52-62 [first amended complaint].) Adie Meiri filed a cross-complaint against Tzehou Kung, asserting a Business and Professions Code section 17200 claim, seeking an accounting based on Tzehou Kung's management and receipt of money in the course of running the business, and seeking a declaratory judgment that Adie Meiri is the 85 percent owner and manager of Little Cottage. (AA 41-51.)

The parties agreed to a bench trial on all claims, and to bifurcate the trial so that the competing declaratory judgment claims would be heard first. (2 RT 372.)

Throughout 2017, Tzehou Kung and Tony Fong continued to manage Little Cottage, including filing a business tax renewal form for the business and renewing the lease at the Venice Boulevard premises. (SS 71; AA 365, 371-397.)

L. At trial, Adie Meiri and Shlomo Meiri confirm they have had no involvement in operating Little Cottage. Little Cottage is prevented from completing its cross-examination of Shlomo Meiri when the trial court removes him from the stand for refusing to follow instructions.

At trial, Adie Meiri testified that he relied on Shlomo Meiri to tell him what Little Cottage documents to sign, and that he never understood many of the documents. (SS 82.) He confirmed that he had no personal knowledge of any of the transactions at issue. (SS 82-83.) He also confirmed that he had been to the Little Cottage's premises only once, prior to purchasing his initial interest from Vietnam Nguyen; that he had never worked in any marijuana store, including Little Cottage; and that he had not performed any managerial function for Little Cottage until 2016, when he began to file forms purportedly on Little Cottage's behalf. (SS 83.) He could not name any of Little Cottage's vendors or employees and had no knowledge as to who was operating Little Cottage at the Venice Boulevard location. (*Ibid.*) He admitted he had never received any paycheck, disbursement, or other form of funds from Little Cottage. (*Ibid.*) He testified that he filed the Statement of Information for Little Cottage in late 2016 because he and Shlomo Meiri planned to move Little Cottage to the Sherman Way location, but did not explain why he suddenly took an interest in the business in 2016 when he supposedly acquired majority ownership in 2012. (*Ibid.*)

Shlomo Meiri generally explained that he had arranged Adie Meiri's purchase of 50 percent of Little Cottage, and, when he concluded that Vietnam Nguyen had defaulted on the repurchase agreement, instructed Adie Meiri to exercise the option to purchase the additional 35 percent of the business. (SS 84.) Shlomo Meiri did not explain what piqued his interest in Little Cottage in 2016, causing him and Adie Meiri to start filing documents on Little Cottage's behalf. He did say that he started investigating Little Cottage's tax status in July 2016 and that he then discovered that Little Cottage was not in good standing with the Franchise Tax Board. (*Ibid.*)

On cross-examination, Shlomo Meiri admitted that he, too, had been to the Little Cottage's premises only once, before Adie Meiri made his initial purchase of a 50 percent interest. (SS 85.) He did not visit the premises after he learned Tzehou Kung had moved the store to Venice Boulevard. (*Ibid.*) Shlomo Meiri also had no experience in cannabis business or sales. (*Ibid.*) He testified that he expected Vietnam Nguyen to manage the business, but also admitted that he had never received any paycheck, disbursement, or other form of funds from Little Cottage. (SS 85-86.)

With respect to Vietnam Nguyen's attempt to repurchase Adie Meiri's 50 percent of the business and Nguyen's failure to satisfy the repurchase conditions, Shlomo Meiri did not explain why he took no action against Vietnam Nguyen between March 2011 and late 2012. He stated that he had a hard time getting in touch with Vietnam Nguyen and that he agreed to give Nguyen

more time to come up with the money, but eventually he met with Nguyen to exercise the option. (SS 87.)

During cross-examination, when Shlomo Meiri was asked to explain how he lost the signed assignment certificate for the exercise of the option while retaining the rest of his Little Cottage-related documents, the trial court had to admonish Shlomo Meiri for his behavior on the witness stand, including refusing to answer the questions posed to him. (SS 87; 2 RT 20.) Because Shlomo Meiri continued to behave belligerently, the trial court asked Shlomo Meiri to step down, and Little Cottage was unable to complete its cross-examination. (SS 87-88; 2 RT 19-20.) Adie Meiri then rested his case. (SS 88.)

M. Despite not hearing Shlomo Meiri's full cross-examination, the trial court decides that Adie Meiri owns 85 percent of Little Cottage.

After the two-day bench trial, the parties submitted closing statements in writing. Little Cottage argued that Tzehou Kung was the 100 percent owner of Little Cottage because Tzehou Kung could trace his ownership back to Scott Kang, who had acquired 100 percent of the business from Vietnam Nguyen. (AA 114-120.)

Adie Meiri argued that he was the 85 percent owner of Little Cottage and that Vietnam Nguyen retained the other 15 percent. (AA 92-94.) Adie Meiri argued he had proven that he validly exercised the option to purchase, acquiring the other 35 percent, and that Vietnam Nguyen was still acting as manager, as evidenced by certain documents that Vietnam Nguyen filed in

Little Cottage's name in March and October 2016. (AA 92-95; see AA 308-312, 400, 406-408.) Adie Meiri did not explain why there was no evidence of Vietnam Nguyen filing documents on behalf of Little Cottage between 2012 and the beginning of 2016 or after October 2016, or any evidence that Vietnam Nguyen exercised control over the business in that time.

The trial court issued a notice of ruling finding that "Adie Meiri was a bona fide purchaser for value and that Tsehou [*sic*] was not." (AA 125.) The trial court thus concluded that Adie Meiri was the 85 percent owner and managing member of Little Cottage. (AA 123.) The trial court credited Shlomo Meiri's testimony that Adie Meiri exercised the option, even though Little Cottage was unable to complete its cross-examination of Shlomo Meiri, and even though Vietnam Nguyen had sold his remaining 50 percent interest to Scott Kang before Adie Meiri exercised the option. (See *ibid.*)

Little Cottage and Tzehou Kung requested a statement of decision and the trial court ordered Adie Meiri to prepare one. (SS 88; AA 135-147, 149.)

N. Little Cottage objects to Adie Meiri's proposed statement of decision and the trial court agrees to recall Shlomo Meiri so that Little Cottage can finish its cross-examination.

Little Cottage's counsel raised three primary objections to the proposed statement of decision, which it argued at the hearing on the proposed statement. First, Adie Meiri's proposed statement

of decision dramatically expanded on the trial court's notice of ruling, including adding findings that Tzehou Kung owned no interest in Little Cottage and that Vietnam Nguyen owned 15 percent. (2 RT 3-4, 30, 35; see AA 152-153.) As Little Cottage's counsel pointed out, the trial court's ruling was silent as to whether Tzehou Kung or Vietnam Nguyen owned the remaining 15 percent of the business. (2 RT 3-4; AA 158-159.) The trial court stated that it believed Tzehou Kung owned the remaining 15 percent but did not believe it had been asked to adjudicate the ownership of the remaining 15 percent interest. (2 RT 9.)

Second, Little Cottage objected to the trial court's finding that Adie Meiri had exercised the option to purchase the additional 35 percent. (AA 159-161.) As Little Cottage pointed out, Little Cottage was unable to fully cross-examine Shlomo Meiri due to Shlomo Meiri's own refusal to obey the trial court's orders. (AA 169.) Under those circumstances, Shlomo Meiri's testimony should have been stricken and the court should not have considered it. (*Ibid.*) At the hearing, the trial court stated that it gave Shlomo Meiri's testimony "almost . . . no value" because Little Cottage was not able to fully cross-examine him (2 RT 21); but, as Tzehou Kung's counsel pointed out, the court must have credited the testimony because Shlomo Meiri's testimony was the *only* evidence that Adie Meiri exercised the option to purchase the additional 35 percent (2 RT 23-24). The trial court therefore agreed to reopen the proceedings to allow Little Cottage to recall Shlomo Meiri and complete its cross-examination. (2 RT 24-25.)

Third, Little Cottage objected to the trial court's finding that Adie Meiri's open but unexercised option to purchase 35 percent of the business prevented Scott Kang from acquiring any ownership in the business when he purchased it from Vietnam Nguyen in March 2012. (AA 162-163.) Little Cottage argued that Vietnam Nguyen owned 50 percent of Little Cottage in March 2012, and that Adie Meiri's unrecorded option could not trump the sale to Scott Kang when there was no evidence that Scott Kang was aware of the option. (*Ibid.*; 2 RT 32-33, 36-45.) The trial court stated that provisions in the repurchase agreement and option agreement prohibiting the assignment of Vietnam Nguyen's interests without Adie Meiri's consent prevented Vietnam Nguyen from selling his 50 percent interest, but the court did not explain how those provisions could be binding on Scott Kang, who was unaware of Adie Meiri's repurchase agreement. (2 RT 43-47; see AA 283-285, 297.)

O. Shlomo Meiri insists that he exercised the option in August or September 2012, despite having no documentation or other evidentiary support. The trial court stands by its initial finding that Adie Meiri owns 85 percent of Little Cottage.

When the case was reopened and Shlomo Meiri was recalled to the stand, the trial court permitted Little Cottage's attorney to cross-examine Shlomo Meiri on his exercise of the option. (2 RT 309-310.) With respect to the exercise of the option agreement—

which allowed Adie Meiri to purchase the additional 35 percent of Little Cottage—Shlomo Meiri testified that he delivered the executed option exercise document to Vietnam Nguyen in August or September 2012. (2 RT 327, 332.) Shlomo Meiri testified that he paid the \$1,000 option price in cash, that he did not get a receipt, and that there is no paper record of the payment. (2 RT 340-342.) He also confirmed that he has no documents showing that Vietnam Nguyen executed the assignment separation certificate necessary to transfer the additional 35 percent of Little Cottage to Adie Meiri. (2 RT 343-344; see AA 320.) He claimed he had a copy but lost it. (2 RT 343.)

After Shlomo Meiri's testimony and a brief closing argument for each side, the trial court issued the same ruling as before: that Adie Meiri was the owner of 85 percent of Little Cottage because he was "first in time." (2 RT 374-375.) The trial court declined to find that Tzehou Kung owned the other 15 percent of Little Cottage, believing it could not make that determination without Vietnam Nguyen as a party to the action. (2 RT 375.)

Adie Meiri submitted another proposed statement of decision. (AA 151-155.) Little Cottage reasserted its objections (AA 178-186; 2 RT 604-607, 613-626), and the trial court entered Adie Meiri's proposed statement of decision without a finding as to who owns the other 15 percent of the business (AA 191 194).

P. The trial court enters a final judgment and permanent injunction granting Adie Meiri an 85 percent ownership in Little Cottage and removing Tzehou Kung as a member.

The trial court initially entered a “partial final judgment” and permanent injunction on the declaratory relief claims, which had to be vacated because the trial court had not yet addressed all of the outstanding claims. (AA 188-190, 213.)

In the interim, in light of the trial court’s ruling, Adie Meiri’s counsel became counsel of record for Little Cottage, replacing Tzehou Kung’s attorneys. (AA 197.) Adie Meiri and Little Cottage dismissed all the remaining claims in the action. (AA 207, 209, 211.)

The trial court then entered a final judgment and permanent injunction. (AA 214-216.) The judgment states that Adie Meiri owns 85 percent of Little Cottage and is the managing member. (*Ibid.*) The injunction effectively removes Tzehou Kung as a member from Little Cottage entirely, by permanently prohibiting him from representing Little Cottage in any capacity, voiding the agreements he made on Little Cottage’s behalf, and requiring him to remove himself from any documents representing that he is the managing member or a member of Little Cottage. (*Ibid.*)

Adie Meiri served notice of entry of the judgment on August 20, 2018. (AA 218.) Tzehou Kung timely appealed the judgment and permanent injunction on October 12, 2018. (AA 223.)

STATEMENT OF APPEALABILITY

The judgment and permanent injunction are appealable under Code of Civil Procedure section 904.1, subdivision (a)(1) and (6). (AA 223.)

LEGAL ARGUMENT

I. The trial court’s rulings that Scott Kang was not a bona fide purchaser of 50 percent of Little Cottage, and that Tzehou Kung did not acquire Scott Kang’s 50 percent interest, were erroneous as a matter of law.

A. The trial court’s determination that Scott Kang and Tzehou Kung were not bona fide purchasers is a predominantly legal question that this court reviews de novo.

Where a trial court’s ruling on a mixed question of law and fact primarily depends on the application of law to undisputed facts, this court reviews the trial court’s ruling de novo. (*Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888 (*Crocker*) [where the pertinent “inquiry requires a critical consideration, in a factual context, of legal principles and their underlying values, the question is predominantly legal and its determination is reviewed independently”].) “ “This is so because usually the application of law to fact will require the consideration of legal concepts and involve the exercise of judgment about the values [of] underlying legal principles.” ’ ” (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 385.)

Here, Tzehou Kung does not dispute the *facts* underlying the trial court's determination that he—and, implicitly, Scott Kang—were not bona fide purchasers of Little Cottage. Tzehou Kung instead disputes the trial court's *application* of the bona fide purchaser doctrine to the undisputed facts, namely, the trial court's legal conclusion that, because Adie Meiri's interest preceded Tzehou Kung's, Adie Meiri was a bona fide purchaser and Tzehou Kung was not. (2 RT 374-375; AA 125.) Thus, while the question of whether an individual is a bona fide purchaser for value is normally a question of fact reviewed for substantial evidence (e.g., *Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1254), this court should independently review the trial court's conclusions of law, based on the undisputed evidence presented at trial, as to who qualified as a bona fide purchaser for value (see *Crocker, supra*, 49 Cal.3d at p. 888).

B. The trial court erroneously ruled that Scott Kang was not a bona fide purchaser of 50 percent of Little Cottage, even though Scott Kang paid valuable consideration and was unaware of Adie Meiri's unexercised option to purchase.

The trial court found that Vietnam Nguyen transferred his 50 percent of Little Cottage to Scott Kang *before* Adie Meiri exercised the option to purchase an additional 35 percent. (AA 192-193; see *ante*, Parts C-E.) The trial court nevertheless ruled

Scott Kang's purchase was invalid, due to the open but unexercised option. (AA 194.) The trial court was incorrect as a matter of law.

A party can acquire rights to property, even when that property is contractually subject to a second party's rights, if the first party acquired the property through a bona fide purchase. "The elements of [a] bona fide purchase are payment of value, in good faith, and *without actual or constructive notice of another's rights.*" (*Gates Rubber Co. v. Ulman* (1989) 214 Cal.App.3d 356, 364 (*Gates*)). A "bona fide purchaser for value who acquires his interest in real property without notice of another's asserted rights in the property takes the property free of such unknown rights." (*Deutsche Bank National Trust Co. v. Pyle* (2017) 13 Cal.App.5th 513, 521 (*Pyle*)).

The bona fide purchaser doctrine extends to unexercised options: an unrecorded, unexercised option to buy is not enforceable against a subsequent purchaser who had no notice of the option. (See *Utley, supra*, 134 Cal.App.2d at pp. 450-451 [party purchasing property also subject to unexercised, unrecorded option to sell is a "bona fide purchaser[]" with superior rights as long as purchasing party had no notice of the option]; see also 4 Miller & Starr, Cal. Real Estate (4th ed. 2019) Option contracts, § 10:117 ["An unrecorded option is enforceable between the parties but is not enforceable against a bona fide purchaser or encumbrancer who does not have knowledge or notice of the option and who buys the property or receives a lien on the property after the option is given and before it is exercised"] (fn. omitted) (citing *Utley*, at p. 451).)

There is no question that Scott Kang paid for his 50 percent with value (SS 66), in the form of paying Little Cottage’s past-due rent to avoid eviction and providing funds for renovations and operating expenses (AA 317, 322). It is therefore undisputed that Scott Kang satisfied the “ ‘payment of value’ ” prong requirement to be a bona fide purchaser. (*Gates, supra*, 214 Cal.App.3d at p. 364.)

It is also undisputed that Scott Kang satisfied the requirements of acting in good faith, without notice—actual or constructive—of Adie Meiri’s open option to purchase 35 percent of Little Cottage. (See *Gates, supra*, 214 Cal.App.3d at p. 364.) There is no evidence that the option agreement was recorded. Scott Kang testified that he was not aware of any outstanding options to purchase any interest in Little Cottage. (SS 68.) Scott Kang also testified that he did not learn about Adie Meiri’s claim of right until after Adie Meiri filed a Statement of Information on Little Cottage’s behalf, which was in 2016, years after Scott Kang acquired his interest from Vietnam Nguyen. (*Ibid.*; see *ante*, Part J.) Moreover, given Adie Meiri and Shlomo Meiri’s admissions that they were not involved in the business and did not visit the premises in the relevant time period, Scott Kang could not have been on constructive notice of Adie Meiri’s claimed interest. (See, e.g., *Claremont Terrace Homeowners’ Assn.* (1983) 146 Cal.App.3d 398, 408 [constructive notice “may be inferred from an optionee’s possession of the premises”]; SS 83, 85.)

Scott Kang thus satisfied all the requirements of a bona fide purchaser, and therefore acquired 50 percent of Little Cottage in March 2012. (See *Utley, supra*, 134 Cal.App.2d at pp. 450-451.)

To the extent the trial court may have believed that the nonassignment clauses in Adie Meiri's option agreement prevented Scott Kang from acquiring his 50 percent, the court was mistaken. Because Scott Kang had no notice of Adie Meiri's interest in Little Cottage or his unexercised option, Scott Kang's bona fide acquisition is not trumped by the terms of Vietnam Nguyen's agreement. (*Gates, supra*, 214 Cal.App.3d at p. 364.) To the extent Vietnam Nguyen breached the terms of the option agreement with Adie Meiri by selling the interest covered by the option, Adie Meiri's recourse was against *Nguyen* for his breach. Scott Kang's status as a bona fide purchaser, however, eliminated Adie Meiri's rights to the 50 percent as against Scott Kang. (See *Pyle, supra*, 13 Cal.App.5th at p. 521.) The trial court's ruling that Adie Meiri's interest was superior to Scott Kang's interest was therefore wrong as a matter of law.

C. Because Scott Kang properly acquired 50 percent of Little Cottage via a bona fide purchase, the trial court erred as a matter of law in ruling that Tzehou Kung was not a bona fide purchaser and did not own 50 percent of the business.

Once property has been acquired by a bona fide purchaser without knowledge of any prior interests, the bona fide purchaser

may transfer that property “‘free and clear of a prior unknown interest even if the grantee or assignee does not fulfill the requirements of a bona fide purchaser.’” (*Carr, supra*, 238 Cal.App.4th at p. 856, citing *Jones v. Independent Title Co.* (1944) 23 Cal.2d 859, 861; see 4 Miller & Starr, Cal. Real Estate, *supra*, Transfer from a bona fide purchaser or encumbrancer, § 10:58 [“The interest of a bona fide purchaser or encumbrancer would be of little value and unmarketable if it were subject to a prior claim that is not enforceable against the bona fide purchaser but it becomes enforceable against his or her transferee”].)

The sole basis for the trial court’s finding that Tzehou Kung was not a bona fide purchaser was the fact that, at the time Scott Kang purchased 50 percent of Little Cottage from Vietnam Nguyen, Adie Meiri had an unexercised, unrecorded option to buy 35 percent of Little Cottage from Vietnam Nguyen. (See AA 194; see also 2 RT 33.) But, as established above, the trial court erred by ruling that Scott Kang did not acquire 50 percent of Little Cottage from Vietnam Nguyen, because Adie Meiri’s unexercised, unrecorded option is *not* enforceable against Scott Kang as a matter of law.

It is undisputed that, after acquiring 50 percent of Little Cottage from Vietnam Nguyen in March 2012, Scott Kang transferred the whole of his interest to Don Yoo while remaining involved in the business. (See *ante*, Parts D, F-G.) It is also undisputed that, in 2016, Tzehou Kung purchased Scott Kang and Don Yoo’s entire interest in Little Cottage. (See *ante*, Part H.) There is *zero* evidence that Tzehou Kung knew of Adie Meiri’s

claimed interest in Little Cottage (SS 70, 73); what is more, even if Tzehou Kung had been aware of Adie Meiri's claim, that awareness would *not* preclude him from acquiring Scott Kang's 50 percent interest in Little Cottage (*Carr, supra*, 238 Cal.App.4th at p. 856). The trial court's finding that Tzehou Kung was not a bona fide purchaser is therefore legally erroneous.

Because the law compels a ruling that Scott Kang acquired 50 percent of Little Cottage, and that Tzehou Kung acquired Scott Kang's 50 percent interest in Little Cottage free and clear of Adie Meiri's claim of interest, this court should vacate the judgment with directions to find that Tzehou Kung owns 50 percent of Little Cottage.

II. At a minimum, the trial court erred by prohibiting Tzehou Kung from acting as a member of Little Cottage, because the court's ruling did not affect Tzehou Kung's ownership of the remaining 15 percent of Little Cottage.

Even if Adie Meiri's open, unexercised option prevented Scott Kang from acquiring 50 percent of Little Cottage—it did not—the trial court still erred by effectively removing Tzehou Kung as a member of Little Cottage. At the least, Tzehou Kung still owns 15 percent of Little Cottage and therefore remains a member.

The issuance of a permanent injunction is reviewed for abuse of discretion. (*Grail Semiconductor, Inc. v. Mitsubishi Electric & Electronics USA, Inc.* (2014) 225 Cal.App.4th 786, 801.) “[A]n

injunctive order should be limited in scope to the subject of the litigation.” (*City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 415 (*City of Redlands*); see *Watsonville Canning & Frozen Food Co. v. Superior Court* (1986) 178 Cal.App.3d 1242, 1248 [injunction terms beyond the scope of the litigation should be disregarded]; cf. *People v. Toomey* (1984) 157 Cal.App.3d 1, 11 [“‘A judgment that goes beyond the issues litigated is void insofar as it exceeds those issues’”], disapproved in part on other ground in *Adams v. Murakami* (1991) 54 Cal.3d 105, 115-116.)

Adie Meiri never claimed to be the full owner of Little Cottage, and, to that end, Adie Meiri’s cross-complaint did not seek full ownership of Little Cottage. (AA 49-50.) Adie Meiri only ever claimed to own 85 percent of Little Cottage, and asked the trial court to deem him the 85 percent owner. (*Ibid.*)

The trial court admitted that it did not believe the ownership of the 15 percent interest was before it. (2 RT 9-10, 375-377.) The trial court’s statement of decision is, properly, silent on the ownership of the remaining 15 percent interest. (AA 191-194.) Nevertheless, the trial court’s permanent injunction deprived Tzehou Kung of his remaining 15 percent share of, and membership in, Little Cottage, by preventing Tzehou Kung from asserting his status as a Little Cottage member and nullifying all the work Tzehou Kung had done on Little Cottage’s behalf. (AA 214-216.)

The trial court’s injunction, which effectively ripped Tzehou Kung’s 15 percent ownership of Little Cottage away from him, was

outside the scope of Adie Meiri's pleadings. Indeed, even if Adie Meiri had sought to take Tzehou Kung's 15 percent away from him, he would not have standing to do so, seeing as Adie Meiri does not claim the remaining 15 percent for himself. (Code Civ. Proc., § 367 [action must be prosecuted by real party in interest unless statutory exception applies]; *Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1000 ["If we were to conclude that plaintiff did not have standing to maintain the action, not having been personally damaged by the defendants' conduct, then there would be no need to address the merits of her cause'"].) The trial court therefore abused its discretion by issuing a permanent injunction that deprived Tzehou Kung of his 15 percent ownership of, and membership in, Little Cottage. (See *City of Redlands, supra*, 96 Cal.App.4th at p. 415.)

Accordingly, if this court does not hold that Tzehou Kung owns 50 percent of Little Cottage, this court should vacate the judgment and permanent injunction with directions to remove the language depriving Tzehou Kung of his 15 percent membership interest in Little Cottage.

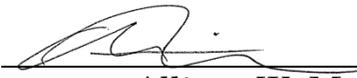
CONCLUSION

For the foregoing reasons, this court should reverse the judgment and remand the case to the trial court with directions to enter a revised judgment indicating that Tzehou Kung is the 50 percent owner of Little Cottage. At a minimum, this court should reverse the judgment with directions to enter a new judgment that does not wrongfully deprive Tzehou Kung of his 15 percent interest.

July 30, 2019

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**CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.204(c)(1).)**

The text of this brief consists of 7,644 words as counted by the Microsoft Word version 2016 word processing program used to generate the brief.

Dated: July 30, 2019



Allison W. Meredith

PROOF OF SERVICE

The Little Cottage Caregivers LLC v. Meiri et al.
Court of Appeal Case No. B294533

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On July 30, 2019, I served true copies of the following document(s) described as **APPELLANT'S OPENING BRIEF** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

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

Executed on July 30, 2019, at Burbank, California.



Raeann Diamond

SERVICE LIST
The Little Cottage Caregivers LLC v. Meiri et al.
Court of Appeal Case No. B294533

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<p>California Supreme Court 350 McAllister Street, Room 1295 San Francisco, CA 94102-4797</p>	<p><i>Electronic Copy</i> (CRC, Rule 8.212(c)(2)) http://www.courts.ca.gov/2dca-efile.htm</p>