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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CITY NATIONAL BANK, Plaintiff and Respondent, v. CHIK WONG et al., Defendants and Appellants.	A145015 (Alameda County Super. Ct. No. HG11609599)

Defendants appeal from a summary judgment granted to City National Bank on the bank's complaint for breach of loan guarantees and fraudulent conveyances. Defendants contend the bank failed to prove its damages for breach of the guarantees and that there are triable issues of material fact with respect to defendant's sham guarantee defense and the bank's fraudulent conveyance claims. We shall affirm the judgment.

Statement of Facts

Chik Wong and Biyu Liao, also known as Mary Wong, (the Wongs) are husband and wife. They and another couple, Raymond and Doujia He (the Hes), formed two Texas limited liability companies to invest in and manage Texas real estate: United Venture Partners, LLC (United) and Bay REIC Services, LLC (REIC). The Wongs and Hes (collectively, defendants) are California residents.

United and REIC obtained two loans from Imperial Capital Bank (Imperial) based in Glendale, California. In March 2007, Imperial extended separate loans to United evidenced by promissory notes signed by Chik Wong as a United managing member. The loans, in the principal amounts of $704,000 and $936,000, were cross-collateralized and

secured by two separate deeds of trust on properties located in Dallas, Texas. In August 2007, Imperial made a third loan, for $1.22 million, to REIC, secured by a deed of trust on other property in Dallas. The promissory note was signed by Biyu Liao (Mary Wong) and Raymond He as REIC managing members. Defendants personally guaranteed the three loans.

In December 2009, the Federal Deposit Insurance Corporation (FDIC) placed Imperial in receivership and City National Bank (City Bank) acquired Imperial's assets. City Bank is a California corporation with its principal place of business in Los Angeles.

United and REIC defaulted on the loans. City Bank sold two of the properties securing the loans and the third property was put into receivership and sold. The sale proceeds were less than the amounts due on the loans.

In December 2011, City Bank initiated this California action against defendants. City Bank alleged breach of the guarantees and sought to recover the deficiency balance due on the loans to United and REIC. City Bank also alleged that defendants had fraudulently conveyed their residences to prevent City Bank from levying on the properties and sought to set aside the conveyances. Those who received the conveyances were joined in the action and their defaults were entered in 2013.[1]

In August 2014, City Bank moved for summary judgment and submitted extensive evidence on the loan transactions, amounts due under the loans, and the allegedly fraudulent transfer of interests in defendants' residences. Defendants, appearing in propria persona, opposed the motion. They argued that the guarantees are unenforceable as sham guarantees used by Imperial to circumvent California's antideficiency statutes by listing United and REIC as the borrowers when they, as individuals, were the actual borrowers. They also argued that the sham guarantee defense renders the fraudulent conveyance claims moot because defendants "never owed [City Bank] any personal obligations or deficiencies and were therefore free to enter into new loan commitments at

[1] The parties filed separate motions to augment the record with additional documents filed in this case. We grant the motions with respect to documents filed before judgment was entered and we take judicial notice of later-filed documents.

their own discretion." Defendants filed a joint declaration in support of their sham guarantee defense. City Bank objected to most assertions in the declaration as lacking foundation. The trial court sustained many of the objections and granted summary judgment, finding no "admissible evidence in support of any defense to any of [City Bank's] claims for breach of the guaranties or fraudulent conveyances."

Defendants retained counsel and moved for reconsideration. Counsel acknowledged that defendants' original declaration lacked foundation and proffered "a new declaration that cures this problem" and "alleges new facts not presented in the prior declaration" to support the sham guarantee defense. The trial court denied the motion, finding "no new facts or law that would warrant reconsideration of the order" granting summary judgment. In March 2015, the court issued an amended judgment awarding City Bank $3.9 million and, sometime later, entered judgment against the recipients of the fraudulent conveyances, declaring the conveyances void and setting them aside. Defendants resumed self-representation and timely filed notice of appeal. They later retained new counsel on appeal.

Discussion

1. *Summary judgment review standards.*

"A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).)" (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.) A plaintiff moving for summary judgment must prove each element of each cause of action. (Code Civ. Proc., § 437c, subd. (p)(1).) If the moving plaintiff satisfies this initial burden, the burden shifts to the defendant to set forth "specific facts" showing that a triable issue of material fact exists as to a cause of action or a defense. (*Ibid.*) "We review the trial court's decision de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports." (*Merrill*, *supra*, at p. 476.)

2. *California law applies to the guarantees*

The guarantees expressly provide they "shall be governed by and interpreted in accordance with the laws of the State of California." The parties do not dispute that California has a substantial relationship to the parties and their transaction and that California law properly applies here. (See *Nedlloyed Lines BV v. Superior Court* (1992) 3 Cal.4th 459, 464-466 [stating choice of law principles].)

3. *City Bank proved its damages for breach of the guarantees.*

The elements of a cause of action for breach of guarantee are (1) a guarantee contract; (2) default by the borrower; (3) notice to the guarantor of the default; (4) nonpayment of the debt by the guarantor; and (5) resulting damages. (*Gray1 CPB, LLC v. Kolokotronis* (2011) 202 Cal.App.4th 480, 486; *Torrey Pines Bank v. Superior Court* (1989) 216 Cal.App.3d 813, 819.) Defendants contend City Bank failed to present adequate evidence of the damages element because it relied upon a bank officer's declaration summarizing the amounts due under the loans rather than submitting all of the supporting loan records.

A bank officer, Sandra Weil, submitted a declaration stating she personally reviewed City Bank business records and attesting to their authenticity. To her declaration she attached copies of numerous bank records, including the promissory notes, deeds of trust, guarantees, and trustee deeds and receivership documents issued following sale of the properties. She stated the exact amount due under each of the three notes and explained: "I based my calculations on the information generated by [City Bank's] computer system, including review of computer generated loan histories, information regarding the sale prices for the respective real property collateral derived from my review of the trustee's deeds and receivership documents [attached as exhibits], and the expense reports that are in [City Bank's] computer system that tracks expense items for [Imperial] loans acquired by [City Bank]."[2]

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[2] Weil also said she "prepared a spread sheet showing the deficiency amounts due" and attached the spread sheet as an exhibit to her declaration. The referenced exhibit is not

Defendants argue that the bank officer's statement of the amounts due under the loans is "conclusory and lack[s] any foundation" because all source materials used to make the calculation were not introduced. They maintain that City Bank was required to submit the computer-generated loan histories showing the date and amount of each loan payment, the allocation of each payment to principal and interest, and the rate and method of interest calculations over the life of the loans. City Bank responds that defendants' objections were untimely and in improper form, as well as lacking merit.

We do not reach the procedural claims as we agree that defendants' objection fails on the merits. Evidence Code section 1523, subdivision (d) expressly authorizes introduction of testimony to summarize the results of voluminous records. In *Vanguard Recording Society, Inc. v. Fantasy Records, Inc.* (1972) 24 Cal.App.3d 410, 418-419, the court rejected the contention that it was necessary to introduce 50,000 musical record sale invoices to prove the amount of record sales and relied upon a sales summary. The court held that "a summary of business records consisting of numerous accounts or other writings that cannot be examined in court without great loss of time, is admissible in evidence upon a showing that the actual business records are entitled to admission in evidence . . . ." (*Ibid*.) "A person who directs or supervises the preparation of a summary may testify to its contents, and the summary may be received in evidence." (*Id.* at p. 419.)

The debt summary here was based on bank records, themselves admissible as business records and thus a proper basis for the summary. The summary is not based on inadmissible hearsay and proffered without a proper foundation, as in the case relied on by defendants, *Pajaro Valley Water Management Agency v. McGrath* (2005) 128 Cal.App.4th 1093 (*Pajaro*). There, the plaintiff sued the defendant for unpaid charges for water extracted from a well. (*Id.* at p. 1097.) On its motion for summary judgment, the plaintiff submitted its general manager's declaration averring that he reviewed bills sent to the defendant over a three-year period and that the defendant owed a particular

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attached to the copy of the declaration included in the record on appeal and, thus, will be disregarded in our assessment of the evidence.

amount. (*Id.* at pp. 1099, 1106.) The appellate court sustained a hearsay objection to the summary calculation of damages, noting that the plaintiff failed to establish admissibility of the referenced source materials, the bills. (*Id.* at pp. 1107-1108.) *Pajaro* is inapplicable here. The foundation for Weil's summary was well established. She declared that she was custodian of City Bank records made in the regular course of business "created contemporaneously with the events" they describe, "personally worked on and reviewed" those records and attached many of them as authenticated exhibits. The source materials were admissible as business records (Evid. Code, § 1271) and, therefore, a permitted basis for her calculations and summary.

City Bank satisfied its initial burden of presenting competent evidence to prove damages (Code Civ. Proc., § 437c, subd. (p)(1)) so that the burden shifted to defendants to set forth "specific facts" showing that a triable issue of material fact exists as to that element. (*Ibid.*) Defendants failed to do so. They presented no evidence disputing the accuracy of City Bank's calculation of the amount owed on the three loans. The trial court properly found that City Bank established the element of damages on its causes of action for breach of guarantee.

4. *Defendants failed to establish a triable issue of fact on their sham guarantee defense.*

Defendants claim each of their three guarantees is an unenforceable sham because they were not true guarantors but borrowers entitled to protection under California's anti-deficiency statutes. "Under California law, a lender may not pursue a deficiency judgment against a borrower where the sale of property securing a debt produces proceeds insufficient to cover the amount of the debt." (*CADC/RADC Venture 2011-1 LLC v. Bradley* (2015) 235 Cal.App.4th 775, 780 (*Bradley*).) "California's antideficiency statutes are codified at Code of Civil Procedure sections 580a through 580d and 726.3. In relevant part, the statutes provide: '[N]o deficiency judgment shall be rendered for a deficiency on a note secured by a deed of trust or mortgage on real property . . . in any case in which the real property . . . has been sold by the mortgagee or trustee under power of sale contained in the mortgage or deed of trust.' ([Code of Civil Proc.,] § 580d, subd.

(a).) These protections cannot be avoided by artifice or waived through a private agreement." (*Bradley, supra,* at p. 783.)

A guarantor is "one who promises to answer for the debt, default, or miscarriage of another." (Civ. Code, § 2787.) A guarantor, unlike a borrower, may waive anti-deficiency protections. The guarantee contracts here contain waivers of all anti-deficiency protections. "[A] lender may recover a deficiency judgment from a guarantor who waives his or her antideficiency protections, even though the antideficiency statutes would bar the lender from recovering that same deficiency from the primary borrower. [Citation.] 'However, to collect a deficiency from a guarantor, he must be a true guarantor and not merely the principal debtor under a different name.' " (*Bradley, supra,* 235 Cal. App. 4th at p. 784.) "Where the borrower and the guarantor are the same, . . . the guaranty is considered an unenforceable sham." (*Id.* at p. 780.)

"To determine whether [the defendants'] guaranties are sham guarantees we must look to the purpose and effect of the parties' agreement to determine whether the guaranties constitute an attempt to circumvent the antideficiency law and recover deficiency judgments when those judgments otherwise would be prohibited. [Citations.] This requires us to examine whether the legal relationship between the guarantor and the purported primary obligor truly separated the guarantor from the principal underlying obligation, and whether the lender required or structured the transaction in a manner designed to cast a primary obligor in the appearance of a guarantor." (*California Bank & Trust v. Lawlor* (2013) 222 Cal.App.4th 625, 638 (*Lawlor*).) The sham guarantee defense presents questions of fact but may be decided on a motion for summary judgment if the opposing parties fail to present sufficient evidence to create a triable issue. (*Id.* at p. 640.)

City Bank contends there is no evidence to support the defense here.[3] In assessing the evidence, we first examine "whether the legal relationship between the guarantor and

[3] City Bank also argued in its respondent's brief that the sham guarantee defense is inapplicable against an assignee of the FDIC. (*D'Oench, Duhme & Co. v. FDIC* (1942) 315 U.S. 447; 12 U.S.C. § 1823(e).) City Bank did not make that contention in the trial court and has since withdrawn it from our consideration.

the purported primary obligor truly separated the guarantor from the principal underlying obligation." (*Lawlor, supra,* 222 Cal.App.4th at p. 638.) "A guaranty is an unenforceable sham where the guarantor is the [true] principal obligor on the debt. This is the case where either (1) the guarantor personally executes underlying loan agreements or a deed of trust, or (2) the guarantor is, in reality, the principal obligor under a different name by operation of trust or corporate law or some other applicable legal principle." (*Bradley, supra,* 235 Cal.App.4th at pp. 786-787.)

In *Valinda Builders, Inc. v. Bissner* (1964) 230 Cal.App.2d 106, 107-109, individuals personally executed the underlying loan agreements and later formed a corporation to perform their obligations. The individuals' guarantee of the corporate obligation was held to be a sham because they remained the legally obligated borrowers on loans undertaken before formation of the corporation. (*Ibid*.) A sham guarantee was also found where individuals executed a loan agreement on behalf of a separate legal entity but the individuals remained liable on the debt due to operation of law. (*Torrey Pines Bank v. Hoffman* (1991) 231 Cal.App.3d 308, 320-321.) There, a married couple guaranteed a loan to their revocable living trust and were found not to be separated from the underlying obligation because the law operative at the time made them, as trustees, personally liable for the contracts they executed on the trust's behalf. "[T]he supposed guarantors" were "nothing more than the principal obligors under another name." (*Id.* at p. 320.)

It is undisputed that defendants here did not execute the promissory notes or deeds of trust as individuals but as members of limited liability companies. The companies, not defendants, were the principal obligors and nothing in the operation of corporate law made defendants the principal obligors. Quite the opposite. A limited liability company shields its members from the "debts, obligations, or other liabilities" of the company. (Corp. Code, § 17703.04, subd. (a)(1).) *Talbott v. Hustwit* (2008) 164 Cal.App.4th 148, is instructive. There, a married couple established a trust using a limited liability company as trustee, thus limiting their personal liability for the trust's obligations. (*Id.* at p. 153.) The court rejected the couple's claim that their guarantee of a loan to the trust was a

sham, finding them "true guarantors" because their trust arrangement using a limited liability company removed them from the status of debtors. (*Ibid.*)

Even closer to the facts here is *Lawlor, supra,* 222 Cal.App.4th at pages 628-629, where several individuals formed limited liability companies to develop real estate and personally guaranteed loans made to those companies. The court affirmed summary adjudication of the lender's breach of guarantee claims, rejecting a sham guarantee defense upon finding that the limited liability companies created separation between borrowers and guarantors and were the primary obligors on the loans. (*Id.* at pp. 638-641.)

While corporate law generally frees the members of a limited liability company from the company's debts and obligations, defendants assert that United and REIC are merely shells and their collective alter ego, so that the guarantees of the companies' loans are a sham. They rely upon their joint declaration averring that the companies were inadequately capitalized at the time of the loans and that defendants "failed to respect corporate formalities" in operating the companies "including the failure to keep minutes or adequate records, hold meetings, or draft an operating agreement." City Bank objected to this evidence and the trial court sustained some, but not all, of the objections. Although on appeal the parties dispute the admissibility of the proffered evidence, we need not consider the evidentiary issues because, in all events, the alter ego doctrine has no application here.

The alter ego doctrine, properly understood, "arises when a plaintiff comes into court claiming that an opposing party is using the corporate form unjustly and in derogation of the plaintiff's interests. [Citation.] In certain circumstances the court will disregard the corporate entity and will hold the individual shareholders liable for the actions of the corporation: 'As the separate personality of the corporation is a statutory privilege, it must be used for legitimate business purposes and must not be perverted. When it is abused it will be disregarded and the corporation looked at as a collection or association of individuals, so that the corporation will be liable for acts of the stockholders or the stockholders liable for acts done in the name of the corporation.' "

(*Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 300.) "There is no litmus test to determine when the corporate veil will be pierced; rather the result will depend on the circumstances of each particular case. There are, nevertheless, two general requirements: '(1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow.' " (*Ibid.*)

There is no basis for offensive use of the alter ego doctrine by a member of a limited liability company or shareholder of a corporation. The doctrine is an equitable principle that imposes liability on individuals where necessary to avoid an injustice; it does not provide a defense to individuals who abuse the corporate form. (*Communist Party v. 522 Valencia, Inc.* (1995) 35 Cal.App.4th 980, 993-994.) Defendants may not establish a company and, when it serves their interests, point to their failure to fund and operate the company properly to avoid their guarantee of the company's obligations.

Factors relevant to the alter ego doctrine may be relevant to a sham guarantee defense as evidence that the lender was complicit in the creation of a corporate form to circumvent the anti-deficiency laws. A lender may not structure "the transaction in a manner designed to cast a primary obligor in the appearance of a guarantor." (*Lawlor, supra,* 222 Cal.App.4th at p. 638.) A sham guarantee was found "[i]n *River Bank* [*America v. Diller* (1995) 38 Cal.App.4th 1400], [where] the evidence showed the bank required the developer to form a new entity to act as the borrower so the developer and his corporation could be characterized as guarantors who were unprotected by the antideficiency law. (*River Bank*, pp. 1421-1423.) Similarly, in *Union Bank* [*v. Brummell* (1969) 269 Cal.App.2d 836, 837-838], the lender required the individual to use a corporation as the borrower so the individual could be characterized as a guarantor who was unshielded by the antideficiency law." (*Lawlor, supra,* at p. 639.) In these cases, the corporate borrower was a "shell," without substantial capital or assets, and wholly-owned by the individual guarantors. (*River Bank America, supra,* at p. 1421.)

But an individual's guarantee of a loan to a wholly-owned, under-capitalized limited liability company does not establish a sham guarantee defense "[w]ithout some

evidence to show [the lender] had a role in structuring the transactions to make Defendants appear as guarantors rather than primary obligors." (*Lawlor, supra*, 222 Cal.App.4th at pp. 639-640.) There must be evidence that the lender "requested, required, or otherwise had . . . involvement in selecting the entities, or the form of the entities, that were the borrowers." (*Id.* at p. 639.) Defendants failed to present evidence that Imperial, City Bank's predecessor, had any role in the formation of United and REIC or otherwise structured the loans to evade the antideficiency law. The undisputed facts show that defendants formed United in May 2006, 10 months before the first Imperial loan in March 2007. Liao testified that defendants formed United to conduct a rental business. United purchased Texas real estate and was managing that property months before approaching Imperial for a loan to purchase additional real estate. Unlike United, REIC was formed shortly before obtaining an Imperial loan but there is no evidence Imperial dictated the formation of REIC. Liao testified that defendants formed REIC to hold title to Texas real estate, as they had formed United and other companies when acquiring property.

Defendants argue that Imperial's "thorough and extensive inquiry" into their individual financial records shows the lender relied on them as the primary obligors. Similar claims have been rejected. "There is nothing unusual about a bank asking for financial information from a person or entity that is guaranteeing a loan." (*Lawlor, supra*, 222 Cal.App.4th at p. 640.) Defendants concede that the lender also reviewed the companies' financial records, although they dismiss the review as "cursory." Defendants' conclusory characterization, unsupported by any evidence, fails to raise a triable issue of fact on their contention that the lender looked to them, not the companies, as the primary obligors. Similarly unavailing is proffered evidence that defendants submitted financial statements in which they checked a box identifying themselves as borrowers rather than guarantors. The unsigned forms are unauthenticated. It is not clear that these forms were submitted to the lender and, if submitted, that they were not superseded by later submissions. In any event, this singular reference to defendants as borrowers, made by defendants themselves at some unstated stage of the application process, does not show

that *the lender* considered defendants the primary borrowers and dictated the formation of limited liability companies to evade antideficiency laws.

As in *Lawlor, supra,* 222 Cal.App.4th at pages 639-640, the evidence submitted on the motion for summary judgment shows that defendants formed United and REIC "for their own purposes independent of the loans" to protect themselves from the entities' liabilities. "Individuals may structure their own business dealings to limit their personal liability, but they must accept the risks that accompany the benefits of incorporation." (*Id.* at p. 639.) "In now arguing we should disregard the legal separation those entities provided, Defendants seek to obtain the benefits of a course of action they did not follow." (*Id.* at p. 640.) Guarantors cannot "disclaim their antideficiency waivers if they decide to borrow through a shell entity for their own purposes." (*Bradley, supra,* 235 Cal.App.4th at p. 792.) "Where individuals purposely take advantage of the benefits of borrowing through a corporate entity, they must also assume the risks that come with it." (*Ibid.*)

5. *City Bank proved its claims of fraudulent conveyances.*

City Bank alleged that defendants, "with the intent to hide and shield" assets from their creditors, granted liens against their residences on purported loans that were, in fact, fictitious. The court granted summary judgment. The court found that defendants made fraudulent conveyances to defraud creditors, and, in subsequent proceedings, set aside the conveyances. Defendants assert that summary judgment was improperly granted because they raised triable issues of fact to support a finding that the loans and liens are valid.

Defendants contend they transferred interests in their residences for adequate consideration. "A fraudulent conveyance is a transfer by the debtor of property to a third person undertaken with the intent to prevent a creditor from reaching that interest to satisfy its claim." (*Yaesu Electronics Corp. v. Tamura* (1994) 28 Cal.App.4th 8, 13.) A transfer of assets is voidable if the transfer was made "[w]ith actual intent to hinder, delay, or defraud any creditor" or "[w]ithout receiving a reasonably equivalent value in exchange for the transfer or obligation" if one was engaged "in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the

business or transaction" or incurred debts "beyond the debtor's ability to pay as they became due." (Civ. Code § 3439.04, subd. (a).)

The Wong residence

In August 2011, the Wongs granted a deed of trust on their Saratoga residence to CJ Brothers LLC (CJ Brothers) to secure the repayment of an alleged loan in the amount of $950,000. City Bank asserts that CJ Brothers is a company owned and controlled by the Wongs, and the alleged loan from CJ Brothers to the Wongs is fraudulent. On its motion for summary judgment, the bank submitted documentary evidence showing that the articles of organization of CJ Brothers were filed in California by Mary Wong and that she is listed as the organizer and agent for service of process. The articles list the company's business address as Harbor Way in San Leandro, which is Mrs. Wong's business address. The alleged loan from CJ Brothers to the Wongs was funded by a cashier's check. Bank records show that Mrs. Wong wired money into CJ Brother's checking account just days before Mr. Wong withdrew funds from CJ Brother's account to issue the check to himself and his wife.

Defendants did not explain or rebut this evidence in their opposition to the summary judgment motion. They argued only that the fraudulent conveyance claims were moot because defendants "never owed [City Bank] any personal obligations or deficiencies and were therefore free to enter into new loan commitments at their own discretion." The only responses in their separate statement to the bank's evidence concerning CJ Brothers were evidentiary objections that were overruled, which rulings defendants do not challenge on appeal. Their contention on appeal — not advanced in the trial court — is that Mr. Wong's deposition testimony, portions of which were submitted by City Bank, create a triable issue of fact as to the separate existence of CJ Brothers.

Chik Wong testified that CJ Brothers is not a "traditional bank" but a "hard money lender[]" funded by "overseas money." Mr. Wong said CJ Brothers is a "foreign" company, "like Hong Kong, China type deal." He testified that he obtained the loan by calling a friend, Kaihong Lee, and submitting a prior real estate appraisal and unspecified documents over the Internet. No loan application was submitted. Mr. Wong testified that

he does "not know that much about CJ Brothers." He does not know Lee's role at CJ Brothers, nor where the company is physically located.

This testimony, newly highlighted on appeal, fails to preclude summary judgment. Defendants were required to submit a separate statement of facts "that responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts that the opposing party contends are disputed." (Code Civ. Proc., § 437c, subd. (b)(3).) One may not ignore this dictate and then, on appeal, unearth from a voluminous record a previously unremarked piece of evidence to overturn summary judgment. (*North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 30-32.) When an asserted fact "is not mentioned in the separate statement, it is irrelevant that such fact might be buried in the mound of paperwork filed with the court." (*Id.* at p. 31.)

Even if Mr. Wong's testimony is considered, it fails to raise a triable issue of material fact. City Bank met its burden of producing evidence sufficient to establish a fraudulent conveyance, so that the burden shifted to defendants to show a triable issue of material fact. Mr. Wong's vague testimony that CJ Brothers is a "foreign" company, "like Hong Kong, China type deal" with an unknown physical location does not create a triable issue of fact. The testimony provides no explanation for the documented fact that CJ Brothers' articles of organization were filed in California by Mrs. Wong, that she is listed as the organizer and agent for service of process, and that her San Leandro office is listed as the company's business address. Defendants failed to controvert City Bank's evidence that CJ Brothers is a related entity under the Wongs' control.

<u>The He residence</u>

In September 2011, the Hes granted a deed of trust on their residence to Hongjie Ho to secure a purported loan of $250,000. Ho is Raymond He's sister. City Bank asserts there is no loan and proffered Mr. He's testimony as proof that the loan is specious.

Mr. He testified that the loan was made years earlier, "around 2008." He did not receive $250,000 in a lump sum but in several different disbursements: "I would say five

times, something like that." He received "about $50,000" each time, two by check and the rest in cash. He did not keep copies of the checks. He could not recall the dates of the disbursements and recalled only that his sister would loan him money "whenever" he needed it for his real estate operations. There is no written loan agreement, no interest rate, and no repayment schedule. Mr. He testified that he never discussed terms with his sister: "We really didn't really talk about it because it's between family members. . . . [T]here's no particular interest . . . no payment terms, we don't have all this. Just, when I have money, I return to her."

This evidence supports the inference that Mr. He was under no obligation to repay any money that he may have received from his sister. Mr. He acknowledged that he made no promise to repay any certain amount by any certain date. Defendants offered no controverting evidence to support their claim of a valid loan. Mr. He's bare assertion that he borrowed money from his sister is insufficient to create a triable issue of fact as to the existence and validity of the loan.

Disposition

The judgment is affirmed.

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Pollak, Acting P.J.

We concur:

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Siggins, J.

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Jenkins, J.