

FILED
Superior Court of California
County of Los Angeles
JUL 20 2015

Sherrri R. Carter, Executive Officer/Clerk
By Paul Solis Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

KAREN DE LA CARRIERE,
Plaintiff,

v.

WILLIAM N. GREENE et al.,
Defendants.

BC493393

TENTATIVE DECISION & STATEMENT
OF DECISION FOLLOWING TRIAL

AND RELATED CROSS-ACTION.

Trial in this case was conducted on April 20 through 23, 2015 in Department 56 of this Court, Judge Michael Johnson presiding. Plaintiff / cross-defendant Karen de la Carriere was represented by Carl Kohlweck. Defendants / cross-complainants William Greene, R&R Trust and California Consulting Group were represented by Kousha Berokim. The parties waived jury and the case was heard in a bench trial, based upon the complaint by Carriere against Greene, R&R Trust and CCG, and the cross-complaint by CCG against Carriere. The Court has considered all testimony and exhibits, the briefs and argument of counsel, and now it issues the following decision.

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1 **FACTS**

2 During the trial Carriere and Greene presented vastly different versions of the facts. The
3 Court has carefully evaluated the content and consistency of their testimony, as well as their
4 demeanor and manner while testifying. The Court has serious reservations about the credibility
5 of both Carriere and Green. The Court has concluded that both parties (and especially Carriere)
6 were untruthful about many aspects of the case – presenting testimony that was false, conflicting,
7 exaggerated and evasive. In making its factual determinations, the Court has accepted credible
8 documents and has accepted and applied the credible parts of the testimony by Greene and (to a
9 lesser extent) Carriere. With that in mind, the Court makes the following factual determinations.

10 **Background**

11 Greene has been a licensed CPA since 1980. Since the late 1980s he has not practiced as
12 a CPA and has been a self-employed management consultant. In that capacity Greene has
13 operated consulting firms which provide management services on a project basis to clients in the
14 United States and foreign countries. One of his firms is CCG.

15 Carriere worked for a religious organization from 1970 to 1990, in various positions from
16 1990 to 1995, and as an administrative assistant and trainer for Greene and his consulting firm
17 CCG from 1995 to 2001. During the time they worked together Carriere and Greene were very
18 close, and for much of the time they had a romantic relationship. After Carriere ended her work
19 with Greene in 2001, she became a self-employed art dealer specializing in the works of Thomas
20 Kinkade. She has continued with that work through the present.

21 Until they developed disagreements over financial matters in April 2012, Carriere and
22 Greene continued to have a very close personal relationship. Carriere described it as a
23 relationship involving “friendship and personal counseling services” that she provided to Greene
24 in return for his financial advice and tax preparation services, and that “it was always understood
25 that we were trading professional services” or engaging in “barter”. [Ex 32] Greene also has said
26 that the two engaged in “fair exchanges” based upon “friendship” and that “our business affairs
27 were conducted for our mutual benefit and fair exchange”. [Ex 43 & 53]
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1 **1998 Note and DOT**

2 While she was working with Greene in late 1997 Carriere became interested in
3 purchasing a house. Carriere located a home at 1935 North Serrano Avenue in Los Angeles, but
4 she did not have enough money to make the down payment that was necessary for financing.
5 Greene agreed to provide money that would enable Carriere to obtain financing and purchase the
6 Serrano property.

7 On June 9, 1998 Carriere executed a promissory note and deed of trust in favor of the
8 R&R Trust (Greene's retirement trust) as beneficiary, and naming CCG (Greene's consulting
9 firm) as trustee. The 1998 Note and DOT was on a printed form with handwritten entries. The
10 DOT portion described a loan of \$175,000 (written numerically) secured by the Serrano
11 property; the promissory note portion stated that the debt was for \$175,000 (written numerically)
12 and one hundred twenty five thousand dollars (written in words). Carriere signed the document
13 with knowledge that her debt would be \$175,000, and with full knowledge of and consent to all
14 of its terms. The note was to be paid in 5 years plus 30 days from the date of execution, with
15 interest from July 1, 1998 at the annual rate of 14.5%. The instrument was recorded on
16 December 28, 1998. [Ex 20]

17 The 1998 Note and DOT operated as a second trust deed, subordinate to a note and deed
18 of trust in favor of Washington Mutual Bank, securing a \$326,250 loan for purchase of the
19 Serrano property.

20 Carriere did not pay any of the principal or interest on the 1998 Note and DOT. On July
21 12, 2000 Greene created a notarized statement which read: "This letter is written to clarify the
22 obligations of Karen C. de la Carriere to the R&R Trust which holds a second trust deed on her
23 home at 1935 N. Serrano, Los Angeles CA. R&R Trust provided a loan so that she could
24 purchase a home in lieu of a retirement plan from my company CCG. In the event of my death or
25 at a time when I am no longer a trustee of the R&R Trust it is my wish and direction that any
26 remaining payments of principal and interest on this second trust deed be cancelled in order to
27 protect her from any foreclosure on her home from this deed in the event she were unable to
28 pay." [Ex 4]

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1 **2003 Note and DOT**

2 By 2003 Carriere had ended her work with Greene and was engaged in her art business.
3 In early 2003 Carriere arranged for refinancing of the first note and deed of trust on her Serrano
4 property. In order to obtain financing, Carriere had to remove the 1998 Note and DOT, and
5 Greene agreed to replace it with a new instrument subordinate to her first note and trust deed.

6 On February 22, 2003 Carriere executed a new promissory note and deed of trust. It was
7 written on the same printed form as the 1998 Note and DOT and it followed the same format. It
8 named Carriere as trustor, CCG as trustee, and the R&R Trust as beneficiary. This time the
9 instrument had consistent provisions about the amount of the debt: the DOT portion and the note
10 portion described a loan of \$175,000 (written both numerically and in words) that was secured
11 by the Serrano property. The note was to be paid in 5 years plus 30 days from the date of
12 execution, with interest from February 22, 2003 at the annual rate of 14.5%. Carriere did not sign
13 on lines located immediately after the promissory note portion, but she did sign on lines located
14 on the final page after both the note and DOT portions of the instrument. Carriere personally
15 signed the document before a notary, with full knowledge of and consent to all of its terms. The
16 2003 Note and DOT was recorded on October 9, 2003. [Ex 23]

17 On February 28, 2003 Greene, on behalf of CCG as trustee, signed a full reconveyance of
18 the 1998 Note and DOT. This was recorded on February 28, 2003. [Ex 22] The lender or escrow
19 company did not like the reconveyance form used for the February 28 instrument. Therefore, on
20 April 17, 2003 Greene signed another full reconveyance of the 1998 Note and DOT on an
21 approved form. This instrument was recorded on April 30, 2003. [Ex 19]

22 Carriere did not pay any of the principal or interest on the 2003 Note and DOT. Under its
23 terms, the 2003 Note and DOT came due on March 23, 2008 – 5 years and 30 days from its
24 execution on February 22, 2003. Greene took no action against Carriere at that time.

25 **Carriere's Art Business**

26 Carriere's business involved buying and selling artwork, principally the works of Thomas
27 Kinkade. She operated the business out of her home at the Serrano property.
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1 Carriere involved Greene in some aspects of her art business. Greene loaned money to
2 Carriere several times for working capital. And the two maintained a joint bank account, which
3 was in the name of "Karen de la Carriere & William Greene, dba California Consulting Group"
4 and "Karen de la Carriere & William Greene." [Ex 8, 18, 25 & 30] The bank records list
5 Carriere's address at the Serrano property for the account. [Id]

6 Greene prepared and filed sales and use tax returns for Carriere's art business [Ex 17].
7 Carriere provided Greene with information about her sales, Greene prepared the returns and filed
8 them in the name of "California Galleries / California Consulting Group"; Greene paid taxes to
9 the State; and then Carriere repaid Greene for the tax payments, with a check payable to him. [Ex
10 17, 28 & 29]

11 Greene also prepared Carriere's personal income tax returns. None of the returns are in
12 evidence, except for a quarterly payment voucher from 2006: The voucher is in Carriere's name,
13 and the taxes are paid with a check drawn on an account for "California Consulting Group" and
14 signed by Greene. [Ex 16]

15 Greene handled various business tasks for Carriere's art business. In April 2012, for
16 example, he wrote emails to two of Carriere's customers, asking for information that was
17 necessary to reconcile a purchase. [Ex 33 & 34]

18 All of Greene's services were provided to Carriere under the "barter" and "fair exchange"
19 relationship between them. As Carriere has described it: "the relationship of the parties had
20 developed over the years into one of barter. I am a highly trained counselor and often provided
21 friendship and counseling to Mr. Greene, who did not submit invoices or otherwise request
22 payment for his services" and "we had developed a relationship involving friendship and
23 personal counseling services that I provided to Mr. Greene. In addition, Mr. Greene also handled
24 all my tax related payments and returns without making any demand for payment of his services;
25 it was always understood that we were trading professional services". [Ex 32]

26 Greene sometimes identified himself as Carriere's "CPA". [Ex 7, 33 & 34] But this was
27 an exaggeration, as there was no credible evidence that Greene ever acted in that capacity or
28 provided accounting services to Carriere or her art business. Greene provided Carriere with

1 advice, occasional loans and financial services, all within the context of the “barter” and “fair
2 exchange” relationship between them.

3 **The Dispute between Carriere and Greene**

4 Thomas Kinkade died on April 6, 2012, and the value of his artwork skyrocketed.
5 Carriere was apparently one of the few sources of Kinkade’s works, so the volume of her
6 business and income dramatically increased. Carriere’s business was hectic in April 2012, and
7 she called upon Greene to help out in various respects.

8 During the period from April through June 2012 there were a number of email exchanges
9 between Carriere and Greene. The email chains in evidence are not complete, but they tell a story
10 that shows a clear disagreement and developing hostility between Carriere and Greene.

11 On April 7, 2012 Greene raised the subject of the 2003 Note and DOT on the Serrano
12 property. He urged Carriere to pay the balance through the “windfall” from her Kinkade art
13 sales, and he made an offer to substantially reduce the amount of her debt – essentially requiring
14 only the payment of principal. [Ex 42]

15 Carriere resisted Greene’s invitation, and on April 27, 2012 Greene withdrew his offer to
16 reduce the debt and demanded the full amount owed. [Ex 7]

17 On May 4, 2012 Carriere responded by denying that she signed the 2003 Note and DOT
18 and challenging the 14.5% interest rate. [Ex 2 & 44]

19 On May 7, 2012 Greene responded that he did not want to foreclose on the Serrano
20 property, but he was no longer willing to defer payment and wanted to be paid for his loan. [Ex 2
21 & 44]

22 On May 19, 2012 Carriere raised the subject of the sales taxes that Greene had paid for
23 her art business, and she requested copies of all returns. [Ex 11 & 45]

24 On May 24, 2012 Greene responded that he would not give Carriere copies of the sales
25 tax returns, because he already provided copies and Carriere had never paid for the financial
26 work that he performed for her. [Ex 11 & 45]
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1 On June 3, 2012 Carriere questioned why Greene had filed the sales tax returns under the
2 name of CCG and took offense at Greene's reference to unpaid services. Carriere stated that "I
3 thought you were not billing me in exchange for the friendship times we had together." [Ex 46]

4 On June 6, 2012 Greene responded that Carriere's "fair exchanges" were promised but
5 not delivered, and he urged her to refinance the Serrano property, pay the debt owed to him, and
6 "wind up our affairs". [Ex 43]

7 Carriere retained an attorney, and on June 28, 2012 her attorney sent a demand letter to
8 Greene. The letter asserted that Carriere's signature on the 2003 Note and DOT had been forged
9 by Greene and was unenforceable, and it demanded that Greene reconvey the 2003 Note and
10 DOT and provide copies of all sales tax returns filed for Carriere's art business. The letter also
11 asserted that Carriere owed no fees to Greene because the parties never entered into a contract
12 for services, and it claimed that Greene may have personally profited from his tax-paying
13 arrangements with Carriere. [Ex 32, attachment 8]

14 On July 22, 2012 Greene sent an email directly to Carriere in response to her attorney's
15 demand letter. Greene denied that her signature had been forged, and he recounted his version of
16 how the 2003 Note and DOT came about. He asserted that "you have chosen your path" and
17 made it clear that their relationship had come to an end. [Ex 53]

18 Carriere sent a complaint about Greene to the California Board of Accountancy on
19 August 1, 2012. The letter recounted Carriere's version of her relationship with Greene, and it
20 accused him of forging her signature on the 2003 Note and DOT and engaging in self-dealing
21 and other financial improprieties in handling her business and personal affairs. [Ex 32]

22 On August 20, 2012 Greene prepared a notice which declared Carriere's default on the
23 1998 Note and DOT. It stated that \$726,926 was due as principal and accrued interest through
24 August 20, 2012, and it threatened foreclosure if the amount was not paid. The notice was
25 recorded on November 6, 2012. [Ex 41]

26 Carriere commenced this action on October 5, 2012, filing a complaint against Greene,
27 R&R Trust, and CCG. Greene responded with a cross-complaint by CCG against Carriere.
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1 **LEGAL ISSUES**

2 **Carriere's Complaint**

3 Carriere's complaint alleges eight causes of action. The 1st 2nd 3rd and 5th COAs seek
4 equitable relief regarding the instruments and title to Carriere's Serrano property; and the 4th 6th
5 7th and 8th COAs seek damages for Greene's conduct.

6 **1. Claims for Equitable Relief**

7 The 1st COA seeks to quiet title in the Serrano property against the claims of the
8 defendants, through entry of a judgment declaring that the defendants have no interest in the
9 property. The 2nd COA seeks cancellation of the 2003 Note and DOT, through entry of a
10 judgment declaring the instrument to be void due to its fraudulent nature and Carriere's forged
11 signature. The 3rd COA seeks a declaratory judgment, declaring that the 2003 Note and DOT is
12 fraudulent and forged, the interest rate is usurious, and Carriere has no obligation to pay
13 principal or interest. The 5th COA seeks to void the 2003 Note and DOT on the ground that it is
14 unconscionable; specifically because Greene violated his professional responsibilities and
15 engaged in self-dealing, and because the instrument was forged and is based on a usurious rate of
16 interest.

17 Carriere has not proven any of these claims and has not established any entitlement to
18 equitable relief.

19 1998 Note and DOT: Carriere has argued that the 1998 Note and DOT is unenforceable
20 because Greene forged or altered its terms without her consent. The instrument does contain
21 inconsistent information: the DOT portion described a loan of \$175,000 (written numerically),
22 and the promissory note portion stated that the debt was for \$175,000 (written numerically) and
23 one hundred twenty five thousand dollars (written in words). [Ex 20] Greene testified that he
24 increased the note to \$175,000 to include an additional \$50,000 that he paid for remodeling
25 expenses, that he forgot to change the amount written in words, and that Carriere signed the note
26 and agreed to its terms after he had increased the numerical terms to \$175,000. This testimony by
27 Greene is credible and has been accepted.

1 Carriere's evidence about alteration of the 1998 Note and DOT is not credible and has
2 been rejected. Among other things, Carriere specifically admitted in her August 1, 2012
3 complaint to the California Board of Accountancy that "Mr. Greene did loan me \$175,000 in
4 1998 to help purchase my private residence and remodel the kitchen. I signed a note at that time
5 and agreed to pay the amount back within five years." [Ex 32] Carriere has tried to back away
6 from this admission, but her testimony is not credible. The Court finds that Carriere signed the
7 1998 Note and DOT with knowledge that her debt would be \$175,000, and with full knowledge
8 of and consent to all of its terms.

9 2003 Note and DOT: Carriere has argued that the 2003 Note and DOT is unenforceable
10 because Greene forged the document, although Carriere's theory of forgery has changed. Before
11 the lawsuit [Ex 44 & 32] and in her complaint [¶11], Carriere asserted that Greene had forged her
12 signature on the instrument. At trial Carriere asserted that Greene had tricked her into signing the
13 instrument, by having her sign papers that were incomplete and reordered. Neither theory has
14 been proven.

15 The Court finds that Carriere signed the 2003 Note and DOT. Greene testified that
16 Carriere signed the instrument, and this aspect of his testimony is credible. Carriere's
17 handwriting expert Bart Baggett testified that in his opinion Carriere signed the instrument. At
18 trial, even Carriere begrudgingly admitted that the signature was hers. Carriere's charge that
19 Greene had forged her signature was reckless and desperate, and it is illustrative of why the
20 Court has so little confidence in what Carriere has said.

21 The Court also finds that Carriere signed the 2003 Note and DOT with full knowledge of
22 and consent to all of its terms. Greene so testified, and this aspect of his testimony is credible.
23 Carriere's evidence to the contrary is not credible or persuasive. Carriere's testimony that she did
24 not sign a complete version of the instrument is not credible. The testimony by Carriere and her
25 husband Jeffrey Augustine that Carriere first learned of the instrument in 2012 is not credible.
26 And the testimony by Carriere's expert Bart Baggett about suspicious staple holes is not
27 persuasive and has been rejected; the presence of multiple staple holes simply indicates that the
28 papers were re-stapled at some point between 2003 and 2012, which is hardly surprising.

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1 14.5% Interest: Carriere has asserted that she did not know of or consent to the 14.5%
2 interest rate specified in the 1998 and 2003 instruments. This is not supported by credible or
3 persuasive evidence. Carriere and Augustine have tried to portray Carriere as naive and
4 inexperienced about real estate, but this is wholly unconvincing. Carriere admitted in cross-
5 examination that during the period between 1990 and 1995 she took a course on deeds of trust,
6 obtained a real estate license, and worked in real estate buying and selling second trust deeds.
7 The Court concludes that Carriere knowingly consented to the 14.5% rate specified in the
8 agreements. While this rate of interest affects the calculation of damages which CCG can recover
9 under the 2003 Note and DOT (as discussed below), it does not entitle Carriere to any
10 affirmative relief.

11 Carriere has not established any of the equitable claims in the 1st 2nd 3rd and 5th COAs.

12 **2. Claims for Damages and Monetary Relief**

13 The 4th COA claims slander of title and seeks damages from Greene's recordation of the
14 1998 and 2003 instruments. The 6th COA claims breach of fiduciary duty and seeks damages
15 from Greene's self-dealing and profit from handling Carriere's business and personal
16 transactions. The 7th COA claims unfair business practices in violation of Bus. Prof. Code
17 §17200 and seeks disgorgement of Greene's profits from handling Carriere's business and
18 personal transactions. The 8th COA claims professional negligence and seeks damages from
19 Greene's failure to exercise reasonable care and skill as a CPA.

20 Carriere has not proven any of these claims.

21 Damages & Gain: Carriere has not proven any damages in connection with these claims.
22 Robert Cohen briefly mentioned that Carriere could have refinanced the Serrano property and
23 saved about \$500 per month if the 2003 Note and DOT had not been recorded, but this goes only
24 to the 4th COA for slander of title. Carriere cannot recover on that claim, because the Court has
25 found that she has not proven the essential element that the 1998 and 2003 instruments were
26 false or invalid.

27 Otherwise Carriere did not offer any evidence of damages or losses that she sustained in
28 connection with her claims in the 6th (breach of fiduciary duty), 7th (unfair business practices)

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1 and 8th (professional negligence) causes of action. By the same token, Carriere offered no
2 evidence that Greene wrongfully gained anything at her (or anyone else's) expense. Carriere
3 suggested that her income tax returns, sales tax returns, and other documents were improperly
4 handled by Greene, but there was no evidence of this at all.

5 For these reasons alone, Carriere has not established essential elements of her claims for
6 damages and monetary relief.

7 Professional / Fiduciary Relationship: Carriere's damage claims in the 6th 7th and 8th
8 COAs are based upon a professional or fiduciary relationship with Greene, and Carriere has not
9 proven such a relationship. Greene did not perform CPA or accounting services for Carriere, and
10 there is no credible evidence of any kind of professional or fiduciary relationship.

11 From 1995 through April 2012, Greene and Carriere both willingly, voluntarily and
12 knowingly participated in a relationship that was personal – not professional. During part of the
13 time they had a romantic relationship, and during the entire period their relationship was based
14 upon friendship and the kind of personal “barter” and “exchange” that both of them have
15 described. This does not support a fiduciary or confidential relationship. See *In re Marriage of*
16 *Dawley* (1976) 17 Cal.3d 342, 355 (“Parties who are not yet married are not presumed to share a
17 confidential relationship”).

18 Carriere has argued that she was naive and gullible, and that Greene took advantage of
19 her at every turn. But Carriere's evidence on this subject is not credible and has been rejected.
20 The Court concludes that Carriere was a knowing, willing and beneficial participant in her
21 transactions with Greene. Carriere received a \$175,000 loan to help purchase and improve her
22 Serrano property, which has appreciated in value; she received several loans for working capital
23 in her art business; she had a joint bank account, with records listing Carriere's address at the
24 Serrano property for the account; she received assistance and was advanced funds for paying
25 sales and use tax for her art business; she received assistance in filing her state and federal
26 income tax returns; she received financial advice and assistance in her personal and business
27 affairs; and she received friendship and affection from Greene. All of this was in return for the
28 “friendship and personal counseling services” that Carriere provided to Greene.

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1 Carriere has correctly pointed out that many aspects of her transactions with Greene were
2 sloppy, filled with shortcuts, and not properly memorialized. But the Court concludes that this
3 was the product of the personal nature of their relationship. Until April 2012 both Carriere and
4 Greene were guided by mutual friendship and trust; and because of that they cut corners,
5 produced sloppy documents, and failed to record their agreements and understandings. In this
6 litigation, the failure to document has operated to the detriment of both Carriere and Greene – it
7 is not one-sided as Carriere has argued.

8 Carriere has not established any of the claims for damages and monetary relief in the 4th
9 6th 7th and 8th COAs.*

10 **CCG's Cross-Complaint**

11 CCG's cross-complaint alleges five causes of action. The 1st COA (breach of contract)
12 and 2nd COA (common count for money lent) are both based on breach of the 2003 Note and
13 DOT, and they seek the unpaid principal and interest on the note. The 3rd COA (judicial
14 foreclosure), 4th COA (quiet title) and 5th COA (declaratory relief) all seek equitable relief
15 regarding the 2003 Note and DOT. In its post-trial brief, CCG stated that it only seeks a
16 determination of the claim for breach of the 2003 Note and a judgment for the balance owed,
17 abandoning the equitable claims. [Brief at p. 19]

18 **1. Breach of the Note**

19 To establish a breach of contract claim, CCG must prove: 1) the existence of a contract
20 with Carriere; 2) CCG's performance of the contract; 3) Carriere's breach of the contract; and 4)
21 CCG's damages caused by the breach. E.g., Reichert v. General Ins. Co. (1968) 68 Cal.2d 822,
22 830; Richman v. Hartley (2014) 224 Cal.App.4th 1182, 1186.

23 CCG has proven all of these elements: 1) on February 22, 2003 Carriere entered into a
24 promissory note and deed of trust in favor of CCG in the amount of \$175,000, to be paid in 5
25 years and 30 days with interest at the annual rate of 14.5% from February 22, 2003; 2) CCG

27 * Carriere's equitable claim in the 5th COA is also based upon breach of fiduciary and
28 professional duties. For the same reasons, she has not proven that aspect of the 5th COA.

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1 performed the agreement by paying Carriere \$175,000 in 1998; 3) Carriere breached the
2 agreement by failing to pay the principal and interest when the note became due on March 23,
3 2008; and 4) CCG suffered damages caused by the breach, because it has not received principal
4 and interest due under the note.

5 Carriere has asserted defenses and arguments against CCG's breach of contract claim, but
6 none of them has any merit.

7 1998 Note and DOT: Carriere has raised defenses related to the 1998 Note and DOT:
8 that the amount of the debt is \$125,000, the note is ambiguous, it should be construed
9 unfavorably toward Greene and CCG, it is a contract of adhesion, and similar arguments. None
10 of this apposite, because CCG is not suing on the 1998 Note and DOT. Paragraph 25 of CCG's
11 cross-complaint expressly alleges breach of the 2003 Note and DOT. In fact CCG has argued
12 that the 2003 Note and DOT was substituted for the 1998 Note and DOT, so that the 1998
13 instrument was extinguished by novation. [Brief at p. 8]

14 Forgery: Carriere has raised defenses based on forgery and other acts of fraud in
15 connection with the 2003 Note and DOT. For the reasons discussed above in connection with
16 Carriere's affirmative claims for relief, the Court has rejected these arguments.

17 No signature: Carriere has argued that the promissory note portion of the 2003 Note and
18 DOT cannot be enforced against her, because she did not sign on the lines located immediately
19 after the promissory note. This argument has no merit.

20 The 2003 Note and DOT is a single integrated document. It is six pages in length, with all
21 pages numbered consecutively (1 of 6, 2 of 6, etc.). On the second page there is a heading which
22 reads "Promissory Note – Straight – Secured by Deed of Trust." First there is promissory note
23 language followed by four lines (that are not identified as signature lines), then there is deed of
24 trust language followed by four more lines (identified as signature lines) and a notary jurat.
25 Carriere signed the instrument once, on the lines located at the end of the instrument where her
26 signature was notarized. [Ex 23]

27 These facts establish Carriere's agreement to all terms of the six page document,
28 including the promissory note. It is well settled that a promissory note and deed of trust, being

1 parts of one transaction, are to be read together. See First-Trust Joint Stock Land v. Meredith
2 (1936) 5 Cal.2d 214, 218; Trinity County Bank v. Haas (1907) 151 Cal. 553, 555; Western Fruit
3 Growers v. Security Title Ins. (1937) 20 Cal.App.2d 150, 154. It is also well settled that the
4 location of a party's signature within a document has no significance: "The name of the party to
5 be charged with execution of a written document satisfies the statutory requirement of
6 'subscription' if it is intended as a signature, i.e., authentication of the document, regardless of
7 where in the writing it appears." Poag v. Winston (1987) 195 Cal.App.3d 1161, 1179 (emphasis
8 added); Rader Co. v. Stone (1986) 178 Cal.App.3d 10, 23 (same holding).

9 No Obligation to Pay: Carriere has argued that she never had any obligation to pay
10 principal or interest, because of an agreement that she reached with Greene. Carriere testified
11 that Greene assured her that she would not have to pay principal or interest on both the 1998
12 Note and DOT and the 2003 Note and DOT, but this testimony is not credible. Among other
13 things Carriere's testimony conflicts with her August 1, 2012 complaint to the California Board
14 of Accountancy, in which she asserted that "I did not agree to pay interest" but that "Mr. Greene
15 did loan me \$175,000 in 1998 to help purchase my private residence and remodel the kitchen. I
16 signed a note at that time and agreed to pay the amount back within five years". [Ex 32]

17 Carriere's argument relies extensively on Greene's July 12, 2000 notarized statement, in
18 which he stated that "R&R Trust provided a loan so that she could purchase a home in lieu of a
19 retirement plan from my company CCG. In the event of my death or at a time when I am no
20 longer a trustee of the R&R Trust it is my wish and direction that any remaining payments of
21 principal and interest on this second trust deed be cancelled in order to protect her from any
22 foreclosure on her home from this deed in the event she were unable to pay." [Ex 4]

23 This 2000 notarized statement does not constitute an assurance that Carriere would never
24 have to pay any principal or interest. In the first place, it refers to a "loan" and not a gift. It
25 contemplates collection on the loan by stating that any "remaining payments" should be
26 cancelled. It also has conditions attached to Greene's forgiveness such as "in the event of my
27 death or at a time when I am no longer a trustee" and "in the event she were unable to pay". Most
28 important, the 2000 statement is in reference to the 1998 Note and DOT – which was superseded

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1 and replaced by the 2003 Note and DOT that contained a new and express agreement for
2 Carriere to pay principal and interest.

3 The most that can be said of the notarized statement and all of Greene's statements to
4 Carriere is that Greene unilaterally said that he would postpone collection of the interest and
5 principal on Carriere's \$175,000 debt. Greene said just that on the annual mortgage statements
6 for 2008, 2009, 2010, 2011 and 2012 which read: "Term is extended indefinitely until loan
7 balance is paid" and "Deferment benefit is extended until notified otherwise." [Ex 3] Greene's
8 unilateral decision to defer collection did not eliminate Carriere's obligation to repay him.
9 Indeed, the 2003 Note and DOT expressly provides that "No delay on the part of Trustee or
10 Beneficiary in enforcing their respective rights or remedies hereunder shall constitute a waiver
11 thereof." [Ex 23 at ¶18]

12 As Carriere stated in her August 1, 2012 complaint to the Board of Accountancy, Greene
13 loaned her \$175,000 in 1998 and she "agreed to pay back the amount back within five years."
14 [Ex 32] Five years later Carriere had not paid anything to Greene, and seventeen years later she
15 still has not paid anything. Carriere was obligated to pay and she has breached her agreement.

16 Statute of Limitations: Carriere has argued that CCR's claims under the 2003 Note are
17 barred by the statute of limitations. Under its terms, the 2003 Note and DOT came due on March
18 23, 2008, which was 5 years and 30 days from its execution on February 22, 2003. Greene took
19 no action against Carriere at that time. The four year statute of limitations for enforcement of a
20 written contract under Code Civ. Proc. §337(1) expired on March 23, 2012, and this action was
21 not filed until October 5, 2012.

22 However, the 2003 Note and DOT contains an express waiver of the statute of
23 limitations, in which Carriere agreed that she "waives the right to assert at any time any statute of
24 limitations as a bar to any action brought to enforce any obligation hereby secured." [Ex 23 at
25 ¶19] A written waiver executed prior to expiration of the governing period of limitations is
26 effective for a period of not more than four years from the date of expiration. See Code Civ.
27 Proc. §360.5; Cal. First Bank v. Braden (1989) 216 Cal.App.3d 672, 676. The waiver therefore
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1 extended the period of limitations to March 23, 2016, and CCG's cross-complaint for
2 enforcement of the 2003 Note and DOT was timely.

3 Unclean hands: Carriere has raised defenses based on unclean hands in connection with
4 Greene's breach of his professional and fiduciary duties toward Carriere. For the reasons
5 discussed above in connection with Carriere's affirmative claims for relief, these claims have not
6 been proven.

7 CCG has established its claim for breach of the 2003 Note and DOT, and Carriere has not
8 established any of her defenses.

9 **2. Damages**

10 Under the terms of the 2003 Note and DOT, Carriere is obligated to pay CCG the
11 principal sum of \$175,000 plus interest on the unpaid principal from February 22, 2003 at the
12 rate of 14.5% per annum. [Ex 23] Carriere has argued that the 14.5% interest rate is usurious,
13 and this has merit. Article XV, Section 1 of the California Constitution makes any rate greater
14 than 10% usurious (subject to alternate calculations), and during trial the parties stipulated that
15 the 14.5% rate in the 2003 Note and DOT exceeds the legal rate of interest under the usury law.

16 The Court therefore finds that the 14.5% interest rate specified in the 2003 Note and DOT
17 was usurious and CCG's damages for breach of the note must be adjusted. It is well settled that
18 an attempt to exact a usurious rate of interest on a note renders the interest provision void and
19 results in a note payable at maturity without the specified interest. See *Epstein v. Frank* (1981)
20 125 Cal.App.3d 111, 122-123. Any usurious interest collected on the note shall be offset against
21 the principal. See *Shirley v. Britt* (1957) 152 Cal.App.2d 666, 669. The principal as adjusted
22 remains due at maturity with prejudgment interest from the date of maturity at the legal rate. See
23 *Mark McDowell Corp v. LSM* (1989) 214 Cal.App.3d 1427, 1432; *Epstein*, supra 125
24 Cal.App.3d at 123-24; *Shirley*, supra 152 Cal.App.2d at 670. The legal rate of prejudgment
25 interest is 10% per annum. See Civ. Code §3289(b).

26 Greene prepared annual mortgage statements in 2008, 2009, 2010, 2011 and 2012. The
27 statements all credit Carriere with payments for interest calculated at the rate of 14.5% for 1998
28 (\$10,875.00), 1999 (\$26,951.88), 2000 (\$24,500.00), and 2001 (\$25,375.00 and \$875.00). There

1 are no interest payments for 2002 through 2012, so the total amount of interest payments credited
2 to Carriere is \$88,576.88. [Ex 3]

3 CCG is therefore entitled to damages calculated as the principal sum of \$175,000,
4 reduced by \$88,576.88 for usurious interest paid by Carriere, with the reduced principal of
5 \$86,423.12 earning prejudgment interest at the rate of 10% per annum from the maturity date of
6 March 23, 2008 through the date of judgment; this is equal to prejudgment interest in the amount
7 of \$8,642.31 per year and \$23.68 per day. This calculation produces total damages of
8 \$149,997.69 through July 31, 2015, as follows:

9	Principal	\$175,000.00
10	Usurious interest	(\$88,576.88)
11	Reduced principal	\$86,423.12
12	Prejudgment interest 3/23/2008 to 7/31/2015	
13	(7 years, 130 days)	\$63,574.57
14	Total damages	\$149,997.69

15 Greene and CCG have made several arguments as to why damages should not be
16 calculated in this manner, but none of the arguments has merit.

17 Good Faith: Greene testified that he selected the 14.5% rate in good faith, based on what
18 he believed was a legal rate that he paid for business loans. This testimony is not credible, and
19 has been rejected. Greene certainly had the training and experience to determine the legal rate of
20 interest for his loan to Carriere, and he has not provided any evidence that he obtained business
21 loans at that rate from any commercial lenders.

22 In all events, good faith is not a defense. The only intent necessary on the part of the
23 lender is to take the amount of interest which he receives; if that amount is more than the law
24 allows, usury has been established. See Ghirardo v. Antonioli (1994) 8 Cal.4th 791, 798; Thomas
25 v. Hunt Mfg. (1954) 42 Cal.2d 734, 740.

26 No Intent to Pay: Citing cases such as Buck v. Dahlgren (1972) 23 Cal.App.3d 779 and
27 Haines v. Commercial Mortgage (1927) 200 Cal. 609, Greene and CCG have argued that the
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1 Court should estop Carriere from asserting the defense of usury because she never intended to
2 pay principal or interest under both the 1998 Note and DOT and the 2003 Note and DOT.

3 Both cases are inapposite and do not support principles applicable to this case. In any
4 event, there is no credible evidence that Carriere never intended to pay principal or interest. As
5 noted earlier, Carriere has stated that she agreed to pay back principal within five years but did
6 not believe that interest was due. [Ex 32] Carriere has made arguments during this litigation as to
7 why Greene and CCG should not collect principal and interest, but her legal arguments are not a
8 basis for estopping her from asserting the defense of usury.

9 Interest Wasn't Paid: Despite the interest payments of \$88,576.88 credited to Carriere in
10 Greene's annual mortgage statements, Greene and CCG have argued that Carriere didn't really
11 pay any interest on her obligation. They have argued that the credits were simply accounting
12 entries which shouldn't be counted. This argument is nonsense.

13 Greene prepared the annual mortgage statements. Each statement has a column for
14 "Interest Due" and another column for "Interest Paid." The latter column credits Carriere with
15 specific amounts of interest paid for the years 1998 through 2001. [Ex 3] There is also evidence
16 of a \$24,500 wire transfer on November 16, 2000 which corresponds with one of the interest
17 payments. [Ex 8] Greene is bound by his own records.

18 Moreover, Greene testified that the interest payments credited to Carriere were derived
19 from her earnings while she was working for him in 1998 through 2001, and the payments were
20 "part of her compensation." While Greene tried to back away from this admission, his effort was
21 not credible and has been rejected. The Court finds that Carriere is entitled to \$88,576.88 for
22 usurious interest paid on her debt.

23 Usury Wasn't Pled: Greene and CCG have argued that Carriere is not entitled to a
24 reduction of her obligation, because she did not plead a cause of action for recovery or setoff of
25 usurious interest payments. This argument is wrong. Carriere's Complaint raises usury in the 3rd
26 COA for declaratory relief, and Carriere's Answer to the Amended Cross-Complaint asserts
27 usury in the 4th defense of illegality and seeks a reduction of damages in the 11th defense of set
28 off and the 13th defense of unjust enrichment.

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1 Statute of Limitations: Greene and CCG have argued that Carriere is not entitled to a
2 reduction of her obligation, because her claim for interest paid for the years 1998 through 2001 is
3 barred by the two year statute of limitations. This argument is wrong, because it is well
4 established that the debtor under a series of related notes can claim an offset for payments of
5 usurious interest, and the statute of limitations does accrue until the entire obligation is paid.

6 In *Westman v. Dye* (1931) 214 Cal. 28, the Supreme Court held that “An original taint of
7 usury attaches to the whole family of consecutive obligations and securities growing out of the
8 original vicious transaction; and none of the descendant obligations, however remote, can be free
9 of the taint if the descent can be fairly traced. Every renewal of a note given for a usurious loan
10 of money is subject to the defense of usury between the original parties and purchaser with
11 notice.” 214 Cal. at 38. And the Supreme Court expressly held that the statute of limitations
12 remains open because “Under this rule, incorporating usurious interest in a renewal note or in a
13 series of renewals, does not start the statute running so long as any part of the original usurious
14 loan remains unpaid.” 214 Cal. at 39. This rule has been consistently followed. See *District Bond*
15 *Co. v. Haley* (1935) 2 Cal.2d 308, 310-11; *Aspeitia v. California Trust* (1958) 158 Cal.App.2d
16 150, 155; *Shirley v. Britt* (1957) 152 Cal.App.2d 666, 670.

17 The Court finds that Carriere is entitled to a reduction of her obligation because of usury,
18 and CCG’s total damages are \$149,997.69 through July 31, 2015, with continuing prejudgment
19 interest at \$23.68 per day through entry of judgment.

20 **Attorney Fees**

21 The 2003 Note and DOT contains an attorney fee clause, and both sides seek an award of
22 fees under Civ. Code §1717. Section §1717(a) provides for recovery of fees “by the party
23 prevailing on the contract,” and §1717(b)(1) states that “the party prevailing on the contract shall
24 be the party who recovered a greater relief in the action on the contract”. Greene, R&R Trust and
25 CCG have met that requirement, because they have defeated Carriere’s claims under the
26 complaint, and CCG has recovered affirmative relief on the cross-complaint. See *Epstein v.*
27 *Frank*, supra 125 Cal.App.3d at 124 (“As a general rule, where claims and counterclaims arise in
28 connection with a contract containing an attorney's fees provision, the party who obtains a

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1 favorable judgment is deemed to be the prevailing party, even though he did not successfully
2 obtain all the relief which he sought in the action.”); accord, Sukut-Coulson v. Allied Canon
3 (1978) 85 Cal.App.3d 648, 656; Western Decor v. Bank of America (1979) 91 Cal.App.3d 293,
4 310-11.

5 Section 1717(b)(1) also states that the court “may also determine that there is no party
6 prevailing on the contract for purposes of this section.” Under that provision, “If neither party
7 achieves a complete victory on all the contract claims, it is within the discretion of the trial court
8 to determine which party prevailed on the contract or whether, on balance, neither party
9 prevailed sufficiently to justify an award of attorney fees. “[I]n deciding whether there is a party
10 prevailing on the contract, the trial court is to compare the relief awarded on the contract claim or
11 claims with the parties’ demands on those same claims and their litigation objectives as disclosed
12 by the pleadings, trial briefs, opening statements, and similar sources.” Scott Co. v. Blount Inc.
13 (1999) 20 Cal.4th 1103, 1109 (quoting Hsu v. Abbara (1995) 9 Cal.4th 863, 876).

14 The Court has considered this option, but remains convinced that Greene, R&R Trust and
15 CCG are the prevailing parties. Carriere commenced this action with a complaint that asserted
16 incendiary claims such as forgery, self-dealing and breach of professional responsibilities. The
17 Defendants have defeated those claims, and CCR has recovered affirmative relief on its cross-
18 complaint. Under those circumstances, the Court rules that Greene, R & R Trust and CCG are
19 the prevailing parties within the meaning of §1717(b)(1).

20 **DISPOSITION**

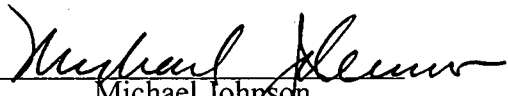
21 On the Complaint, Defendants William N. Greene, R&R Trust and California Consulting
22 Group shall recover judgment in their favor against Plaintiff Karen de la Carriere. All causes of
23 action are dismissed with prejudice, and Defendants shall recover their attorney fees and costs.

24 On the Cross-Complaint, Cross-Complainant California Consulting Group shall recover
25 judgment in its favor against Karen de la Carriere in the total amount of \$149,997.69 through
26 July 31, 2015, with continuing prejudgment interest at \$23.68 per day through entry of judgment.
27 Cross-complainant shall recover its attorney fees and costs.

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Counsel for Defendants / Cross-Complainants shall prepare and submit the judgment.
Pursuant to CRC 3.1590(c)(1) this tentative decision is the Court's statement of decision, subject
to any party's objections under CRC 3.1590(g).

DATED: July 20, 2015


Michael Johnson
Superior Court Judge