



## Case & Project Experience

### California Court of Appeal Confirms Burden of Proof in Civil Fraud Cases *Korea Data Systems (USA), Inc. v. Yu Chang Chiang et al.*

#### Overview

The California Court of Appeal recently affirmed a finding of fraud by the trial court in the case of *Korea Data Systems (USA), Inc. v. Yu Chang Chiang et al.* (decision filed on 14 March 2008). In upholding the decision of the lower court, the Court of Appeal carefully articulated the level of proof required to create a presumption of fraud in cases where the trail of evidence of fraudulent movements of funds had been left partly cold.

This case was the culmination of a 10-year effort by Korea Data Systems (KDS), a supplier of computer screens, to enforce a judgment against the defendants for breach of contract.

#### Background

In the early 1990s, the defendants operated Aamazing Technologies Inc. ("Aamazing"), which was engaged in the distribution of computer monitors. KDS supplied Aamazing with a substantial amount of equipment without receiving payment. KDS subsequently launched a civil action against the defendants to recover the unpaid amounts.

In 1998, KDS obtained a judgment in California against the two primary defendants. Shortly thereafter the defendants filed for bankruptcy protection.

#### NERA's Role

Unable to collect on this judgment from the original defendants, KDS brought an action alleging that defendants conspired with family members and other entities to prevent KDS from collecting on the original judgment. At trial, KDS relied on the expert evidence of forensic accountant and economic damages expert, NERA Senior Vice President Mark Berenblut, to show that the defendants engaged in a variety

of tactics to conceal funds that were subject to the original judgment. These tactics included the use of front companies and numerous transfers of funds through multiple bank accounts to family members and related companies in Canada, the US, and China, often for no apparent reason and for no consideration.

#### The Result

Finding that, "there was an overarching conspiracy to hinder, delay and defraud plaintiff's collection efforts," the Court held additional family members liable for more than half of the original judgment as a result of these actions. Further actions were subsequently brought in Ontario to enforce the findings of the California Court.

In holding that Mr. Berenblut's expert testimony was "permitted by law," the Court of Appeal reaffirmed the important principle that the burden of proof shifts where it is shown the circumstances, taken as a whole, lead to the reasonable inference that the intent and purpose of the actions of the defendants were fraudulent. The Court specifically adopted the testimony of Mr. Berenblut on this point:

*One of the underpinnings of a forensic financial investigation is that, because the purpose of the work is to recreate other peoples' attempts to hide information, it is very, very rare that every piece of information is available... One of the principles in my profession in the forensic investigation field, is that if you can show a reasonable flow of funds to establish the patterns we are talking about ... it is for the defendants in the case to point out where we have made the error in our thinking.*

One purpose of a forensic accounting investigation in a matter such as this is to determine patterns of events and review behavior and likely motivation of specified individuals within a company as it relates to financial issues by reviewing business records and other available information.<sup>1</sup>

In this case, the pattern and motivation detected by Mr. Berenblut and accepted by the Court was stated in his expert testimony:

*That there was a pattern of behavior in terms of multiple bank accounts, multiple addresses being shared by the same people, power of attorneys being used to give some of the defendants control over bank accounts, which might have been in the hands of non-defendants at the time. And the movement of funds between different continents, different bank accounts, breaking the larger in to smaller pieces, moving them around, putting them back—from more distant bank accounts into—back into the hands of the accounts of those who were defendants at the time. This is obviously, when you look at it as a whole, there is a pattern of behavior that is common in situations where funds are trying to be altered... and are being moved in a way to try to destroy the tracking between each of the successive stages of movements of those funds.*

The Court of Appeal then adopted the testimony of Mr. Berenblut as an explanation of why the evidence of these transactions was sufficient to lead to an inference that they were conducted with fraudulent intent:

“At trial, Berenblut explained why the nature and size of the transactions led inexorably to an inference that they were fraudulent intent:

*When we look at each of these accounts, individually, we see moneys being moved around. When you look at them collectively, I think what you see is movements of funds that go between family members and family entities, often recharacterizing itself as it turns up in different bank accounts under different names, sometimes returning to the person who it started out with, having gone through many different stages along the way... My conclusion is that these transfers may well have been attempts to*

*move money around so that it could not be identified in the hands of the defendants against whom certain actions were being taken for the recovery of funds.”*

For a copy of the reasons of the California Court of Appeal in this case, please email [mark.berenblut@nera.com](mailto:mark.berenblut@nera.com).

## Expert Involved

### Mark L. Berenblut, Senior Vice President

Mr. Berenblut's expertise is in finance, economics, valuation, and dispute resolution. He is qualified, and serves clients, in the US, Canada, and internationally. He has 25 years of experience in major securities and antitrust class actions, securities and business valuation, damage quantification, financial investigation, and complex litigation. Mr. Berenblut is frequently qualified by the courts as an expert witness at trial and arbitration and has been appointed as an arbitrator and as a mediator. He leads teams in the analysis of a variety of economic, business, and financial matters on behalf of law firms, investment banks, public and private companies, government, and not-for-profit entities. Mr. Berenblut is an Accredited Senior Appraiser, a Chartered Accountant, a Chartered Business Valuator, a Certified Mediator, and a Certified Fraud Examiner.

## About NERA

NERA Economic Consulting ([www.nera.com](http://www.nera.com)) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

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<sup>1</sup> See for example, Introduction to 2006 Fraud Examiners' Manual (US), Association of Certified Fraud Examiners, pages 1-17.