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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

TAMAR RAVID, Plaintiff and Appellant, v. SAMUEL ABRAHAMI, Defendant and Respondent.	B286939 (Los Angeles County Super. Ct. No. BC626030)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mel Red Recana, Judge. Affirmed.

Tamar Ravid, in pro. per., for Plaintiff and Appellant.

Eric D. Bennett for Defendant and Respondent.

Appellant Tamar Ravid sued respondent Samuel Abrahami for fraudulent transfer of real property. Ravid had filed an earlier lawsuit against Ofira Okanon (Okanon) and obtained a default judgment against her. While Okanon was a defendant in that lawsuit, Okanon transferred certain real property to Samuel Abrahami for the stated purpose of satisfying a debt. Abrahami's receipt of that real property from Okanon prompted Ravid's lawsuit against him. Following a bench trial, the trial court found in favor of Abrahami. The court found that Abrahami had proven he was a good faith transferee and Ravid had failed to establish a fraudulent transfer by Okanon. This appeal followed.

Ravid raises four primary contentions on appeal: (1) the trial court erred in finding that Abrahami was a credible witness; (2) the trial court erred in finding Ravid failed to establish that Okanon's conveyance to Abrahami was fraudulent; (3) the trial court erred in excluding her witnesses and documents as a sanction for her trial counsel's late filing and service of witness and exhibit lists; (4) the doctrine of collateral estoppel precludes any claim that Okanon was unaware of Ravid's lawsuit against her, and therefore the trial court erred in permitting such evidence.

The trial court found for Abrahami on two theories, one of which was that Abrahami was a good faith transferee. Abrahami's testimony is substantial evidence to support that finding, and the trial court expressly found that testimony credible. The circumstances under which an appellate court will reverse a credibility finding are narrow, and Ravid has not shown they are present here. Abrahami's good faith transferee status is a complete defense to Ravid's claims. Thus, we need not and do

not consider Ravid's contention that the court erred in finding she failed to prove her claims.

The limited record on appeal does not show that the sanctions imposed by the court adversely affected Ravid's ability to challenge Abrahami's good faith transferee defense. Thus, Ravid has not shown that any abuse of discretion by the trial court in imposing sanctions warrants reversal of the judgment.

Finally, Ravid has not shown that Okanon's actual awareness of the lawsuit was identical to an issue decided in the default judgment proceedings, and so she has not shown that collateral estoppel principles apply. The trial court did not err in admitting evidence of Okanon's actual knowledge. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2009, Ravid filed her first lawsuit for predatory lending against On Time Funding Group (On Time) and others. Okanon was employed by On Time. In October 2009, Ravid amended the complaint to identify Okanon as Doe defendant No. 4. Okanon did not respond to the On Time complaint. In February 2012, a default was entered against Okanon.

In July 2012, Okanon transferred title to her property on Vesper Avenue in Tarzana (Vesper property) to Abrahami.

In April 2013, Ravid obtained a default judgment against Okanon in the amount of $100,500.

In September 2014, the Vesper property was sold to a third party.

In July 2016, Ravid filed the present action against Abrahami, alleging Okanon, to evade her creditors, fraudulently

transferred the Vesper property to him. Abrahami asserted he was a good faith transferee and so not liable to Ravid.

At trial, Okanon explained the events leading up to the transfer of the Vesper property to Abrahami. She testified that in connection with her 2009 move to New York, she and her husband, David Okanon, agreed to divide their real property in California. David was to get sole title to a property on Brewster Drive in Tarzana (Brewster property), which David intended to develop and resell. Okanon was to get sole title to the Vesper property, which had been the couple's residence. The transfer of the Brewster property occurred in September 2009. As part of the transfer, David gave Okanon a trust deed on the Brewster property to secure a $220,000 loan.

In late 2009 or early 2010, David approached Abrahami for a loan to finish construction on the Brewster property. Abrahami had known David and Okanon for about 30 years. Abrahami viewed the property and decided not to make the loan. He did not believe the loan would be repaid. Okanon then asked Abrahami to make the loan so that David could finish the house, sell it, and repay Okanon on the trust deed she had on the Brewster property. Abrahami agreed to make the loan if Okanon would guarantee it. At Abrahami's request, Okanon orally agreed to guarantee the loan. David gave Abrahami a note for $40,000 and also a deed of trust on the Brewster property in the amount of $40,000. The deed of trust was never recorded.

In March 2012, David sold the Brewster property. Okanon received about $79,000 from the proceeds of the sale. Abrahami received nothing. When Abrahami learned of the sale, he demanded David repay the loan. David promised to repay the

loan, but did not do so. Abrahami then looked to Okanon for repayment.

Okanon did not have the liquidity to repay Abrahami. Abrahami did not want a deed of trust on Okanon's property, because he had seen that the deed of trust he had on the Brewster property did not ensure repayment. Okanon agreed to transfer the Vesper property to Abrahami outright so that he would get paid first when Okanon was able to sell it. In 2011, Okanon had previously tried and failed to sell the house for $1,192,000; she was currently renting it to a tenant. Okanon testified the Vesper property was worth about $800,000 to $850,000 in 2012 and had mortgages of $750,000. Abrahami testified the property was worth $800,000 to $850,000 and Okanon owed almost $800,000 on it, leaving about $50,000 in equity.

In July 2012, Okanon formally transferred the Vesper property to Abrahami. The grant deed has a gift stamp on it; another document signed by Okanon in connection with the deed states that Okanon did not receive consideration for the transfer. Both Okanon and Abrahami testified at trial that the transfer of title was intended to be a guarantee of repayment of Abrahami's $40,000 loan to David.

Okanon testified she did not transfer the property to Abrahami in July 2012 to evade her creditors. She was aware On Time had been sued by Ravid, but she did not learn she was a defendant in the lawsuit until the summer of 2016, when the action against Abrahami was filed.

Ravid presented evidence she served Okanon with the summons and the request for default by substituted service at the Brewster property in September 2011, but Okanon had

moved to New York in 2009 and was not living at the Brewster property when substituted service was effectuated.

Abrahami testified he did not know about Ravid's lawsuit against Okanon, and did not have an agreement with Okanon to help her evade her creditors. Abrahami knew Okanon had a son in college and was working three jobs, but he had no idea whether she was able to pay her bills, or if transferring the Vesper property to him made it impossible for her to pay her bills. Abrahami testified under his arrangement with Okanon, she continued to receive the rent from the property.

In 2014, Okanon, through Abrahami, put the Vesper property on the market. In August 2014, David Okanon filed a lawsuit seeking to stop the sale. At that point, a buyer had made an offer on the Vesper property and the buyer threatened to bring a lawsuit as well. In September 2014, Abrahami, Okanon and David agreed that the sale of the property would proceed, and $100,000 of the proceeds would be held back in escrow until the lawsuit was resolved. The property sold for $1,350,000; it had $966,000 in encumbrances. Abrahami received $40,000 from escrow that same month. In early October David died.

In response to a question from the court, Okanon testified that when she sold the Vesper property she did not know that a judgment had been entered against her in the On Time case.

In July 2016, Abrahami was served with process in this case. He called Okanon to find out what the case was about. Okanon called someone at On Time. Okanon testified that she first learned in this phone call that she had been a defendant in the On Time case. Abrahami testified this was the first time he learned of the On Time lawsuit, or any debt owed by Okanon to

Ravid. Ravid agreed she had never spoken or communicated with Abrahami before she filed the action against him.

Following a bench trial, the court found in favor of Abrahami. In its Statement of Decision, the court found Abrahami had loaned David $40,000 to complete construction on the Brewster property; Okanon orally guaranteed that loan; Abrahami did not get paid from the proceeds of the Brewster property sale; Abrahami looked to Okanon to make good on her guarantee; Okanon made good on her guarantee by transferring the Vesper property to Abrahami; and the grant deed was not drafted by Abrahami. The court found Abrahami was credible; he had no knowledge of the On Time case when he received the Vesper property from Okanon; Abrahami took the property in good faith as repayment of his loan; Abrahami acted without fraudulent intent, and without actual knowledge of facts which would show fraudulent intent by Okanon; the transfer was for reasonably equivalent value. The court also found Ravid did not meet her burden of proving Okanon had fraudulently transferred the Vesper property to Abrahami.

DISCUSSION

1. The Trial Court's Finding That Abrahami Is A Good Faith Transferee Is Supported By Substantial Evidence And That Finding Requires Judgment In Favor Of Abrahami.

Ravid contends the trial court erred in finding Abrahami was a credible witness who had proven that he was a good faith transferee. Ravid appears to have sought recovery under Civil

Code[1] sections 3439.04 and 3439.05. The good faith transferee defense of section 3439.08 defeats a creditor's action under both statutes.

Under section 3439.04, subdivision (a), a present or future creditor may seek to void a transfer made by a debtor if the debtor made the transfer (1) with an actual intent to hinder, delay, or defraud any creditor of the debtor or (2) without receiving a reasonably equivalent value for the transfer and the debtor either "[w]as engaged or was about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction" or "[i]ntended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due." (Subd. (a).)

A transfer is not voidable under section 3439.04, subdivision (a) if the transfer is made to a person who takes the transfer in good faith and for a reasonably equivalent value given to the debtor. (§ 3439.08, subd. (a).) " ' "[G]ood faith" means that the transferee acted without actual fraudulent intent and that he or she did not collude with the debtor or otherwise actively participate in the fraudulent scheme of the debtor. The *transferee's knowledge of the transferor's fraudulent intent* may, in combination with other facts, be relevant on the issue of the transferee's good faith of the transferor [*sic*] or of the transferor's insolvency.' (Legis. Com. com., 12A pt. 2 West's Ann. Civ. Code (2016 ed.) foll. § 3439.08, p. 377, italics added.)" (*Nautilus, Inc. v. Yang* (2017) 11 Cal.App.5th 33, 41.) The transferee's knowledge

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[1] Further undesignated statutory references are to the Civil Code.

must be actual knowledge, not constructive knowledge or inquiry notice. (*Id.* at p. 46.) "[A] showing of good faith and reasonably equivalent value is all that is required to defeat a creditor's action based on section 3439.04, subdivision (a)." (*Annod Corp. v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1294.)

Under section 3439.05, a present creditor may seek to void a transfer "if the debtor made the transfer . . . without receiving a reasonably equivalent value in exchange for the transfer . . . and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer . . . ." (Subd. (a).) "If the debtor received reasonably equivalent value, the inquiry ends there." (*Annod Corp. v. Hamilton & Samuels, supra,* 100 Cal.App.4th at p. 1295.)

Under this statutory scheme, even if Ravid had proven that Okanon had a fraudulent intent and was about to become insolvent, the transfer would not be fraudulent under either section 3439.04 or 3439.05 if there is substantial evidence to support the trial court's finding that Abrahami was a good faith transferee, a finding which necessarily includes a finding that reasonably equivalent value was given for the transfer. In the interests of judicial economy, we consider first Ravid's claim that the court erred in finding that Abrahami was credible and that Abrahami was a good faith transferee. Given our conclusion that the court did not err, we need not and do not take up Ravid's second argument that she successfully proved the transfer fraudulent.

Here, the trial court found reasonably equivalent value was given for the transfer of property in the form of repayment of

Abrahami's loan to David, guaranteed by Okanon.[2] The court found Abrahami did not collude with Okanon or otherwise participate in a fraudulent scheme by Okanon to avoid any debt Okanon owed to Ravid; Abrahami did not act with deliberate wrongful conduct and did not have actual knowledge of facts showing that Okanon had a fraudulent intent when she transferred the Vesper property to him.

Ravid contends the court erred in finding Abrahami credible. Ravid attacks Abrahami's credibility directly and indirectly. She claims that at times his testimony contradicted itself or was inconsistent with documentary evidence and at other times his testimony simply did not make any sense.

" ' " 'Although an appellate court will not uphold a judgment or verdict based upon evidence inherently improbable, testimony which merely discloses unusual circumstances does not come within that category. [Citation.] To warrant the rejection of the statements given by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions. [Citations.] Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the

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[2] If a debtor pays the obligation of another in the good faith belief that she is legally responsible for that obligation, there is deemed to be good consideration. (See *Bank of California v. Virtue & Scheck, Inc.* (1983) 140 Cal.App.3d 1026, 1040.) A promise to answer for the debt of another is deemed to be an original obligation of the promisor and need not be in writing if the surety made the promise on any consideration beneficial to the promisor. (§ 2794.)

trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.' " [Citation.]' (*People v. Maciel* (2013) 57 Cal.4th 482, 519.)" (*Bloxham v. Saldinger* (2014) 228 Cal.App.4th 729, 750.)

Ravid argues Abrahami was not credible when he claimed he did not know the transfer of the Vesper property would render Okanon insolvent because he was "a very close insider [who] did indeed have actual knowledge . . . that Ofira Okanon is becoming insolvent when she gave title." To support this contention, Ravid cites to Abrahami's testimony that "She's a friend. I know she is trying to live." This statement was made in response to the question why he did not take a portion of the rent paid on the Vesper property as repayment of the debt. Abrahami continued, "She has a son going to college. She's living in New York. She is working three jobs." The statement shows that Okanon had both expenses and income, but it does not show that Okanon was unable to meet her expenses. Further, the discussion concerned the Vesper rent, a source of income for Okanon which did not cease after Abrahami took title. Thus, this statement cannot be reasonably understood to show either that Okanon would become insolvent upon transferring title or that Abrahami was not credible when he testified that he was unaware of facts showing that Okanon would become insolvent if he took title to the Vesper property.

Ravid also argues Abrahami was not credible when he claimed the Vesper property was transferred to him to ensure he would be repaid for his loan when the property sold. She points to the gift stamp on the quitclaim deed which Okanon used to transfer property to Abrahami in 2012, and Okanon's subsequent 2014 declaration that she received no consideration for the

transfer of the property. These facts could raise suspicion about Abrahami's testimony that he took the property as a guarantee of repayment of the loan. Abrahami was questioned on this topic and explained that he did not believe the property was his, or was a gift to him. He did not prepare the deed and believed his name on the deed meant that he would be the first one to get paid when the property was sold. While Abrahami *may* have violated the law by agreeing to treat the transfer as a gift to avoid transfer taxes,[3] this improper intent alone would not, in this context, destroy his credibility or render the remainder of his testimony incredible. To a degree, it reinforces his testimony that he did not view the property as his. It was for the trial court to decide Abrahami's credibility. (See *Bloxham v. Saldinger, supra*, 228 Cal.App.4th at p. 750.)

Ravid also contends Abrahami's testimony is not credible because although Abrahami described David as an old friend, David filed a lawsuit over sale of the Vesper property in which David described Abrahami as "unknown to him." David's description of Abrahami appears to be in conflict with Abrahami's testimony that he had known David a long time. Nevertheless, nothing required the trial court to believe David and disbelieve Abrahami. Both men had something to gain from being dishonest. The trial court could and did find Abrahami to be the credible witness on this issue.[4] As the reviewing court, we do not

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[3] Abrahami testified he did not recall seeing the deed before this lawsuit began.

[4] David was not alive at the time of trial and thus could not be questioned about this matter. The complaint was marked as exhibit 36 at trial and shown to Okanon. We note that in the

resolve evidentiary conflicts. (*Bloxham v. Saldinger, supra*, 228 Cal.App.4th at p. 750.)

Ravid also claims Abrahami should not have been found credible because his testimony about the value of the Vesper property made no sense. She claims the Vesper property was in default and it was more of a liability than asset to Abrahami. She argues it would not have made any sense for Abrahami to take the property as collateral for his loan. Both Abrahami and Okanon testified the property was worth $800,000 to $850,000 in 2012, with at least $50,000 in equity. Under these facts, the Vesper property did have value as collateral. Ravid did not offer any evidence showing a different lower value.

In an attempt to cast doubt on Abrahami's testimony about the 2012 equity amount, Ravid argues Abrahami's testimony is not credible because the property's equity had increased to $500,000 by 2014. In fact, it was the property's value which increased by $500,000 in that period. As Ravid later acknowledges, there was $384,000 in equity when the property was sold; the debt on the property at that time was $966,000. Ravid appears to contend this $966,000 in debt must have existed in 2012 and that it reinforces her claim that Okanon transferred a liability, not an asset. It is hard to see how this argument

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first cause of action the complaint refers to Okanon giving "an interest in the property to a person unknown" and giving "an interest in the property to a party unknown" while the second cause of action refers to Okanon giving an interest in the property to "Samuel Abrahami who is unknown to Plaintiff." Thus, it is not clear whether the description of Abrahami as unknown was an accidental editing error or a deliberate choice.

assists Ravid, since Ravid would not have been damaged if Okanon had transferred worthless property.

Ravid also appears to argue it is suspicious that the value of the property increased so dramatically in value in a two-year period. Here, Ravid is simply speculating. Although the increase may have been unusual, it is not inherently improbable that it occurred. There could be a number of reasons for the increase, including normal changes in the overall housing market. It is also possible that the neighborhood suddenly became trendy and popular, the 2014 buyer had a subjective personal reason to pay a premium for the property, or removal of the tenant made the property more appealing to investment buyers. We note Ravid contends her "expert witness from Bank of America could have perhaps explained it better. The expert witness from BOA was denied to testify because of the Judge's ruling due to the untimely filing of the witness list." Nothing in the record on appeal suggests that Ravid listed an expert witness on property valuation on her witness list. The only expert appears to have been Mr. Harari.[5]

Ravid has not shown that Abrahami's testimony was inherently improbable or physically impossible. Ravid has shown some conflicts in the testimony and raised some grounds for reasonable suspicion of some of Abrahami's testimony, but that

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[5] As we discuss in section 3 below, the witness list is not part of the record on appeal. Ravid's trial counsel's oral description of the witnesses on that list does not indicate that there was an expert witness from "BOA" on property valuation. Mr. Harari, the apparent expert, was "at Express Judgment."

does not justify the reversal of the judgment. (*Bloxham v. Saldinger, supra*, 228 Cal.App.4th at p. 750.)

2. Appellant Has Not Shown That Preclusive Sanctions Adversely Affected Her Case.

On January 18, 2017, the trial court scheduled the court trial, final status conference, and mandatory settlement conference for July 31, 2017.[6] The court also referred the matter to mediation with a completion date of May 31, 2017.

Respondent filed his trial brief, witness list, and a "joint" exhibit list on July 14, 2017, two weeks before the final status conference. Ravid's counsel acknowledged he did not file or serve a witness list or exhibit list until the July 31, 2017 final status conference. Ravid has not included a copy of the final status conference order in the record on appeal, nor has she included copies of her witness and exhibit lists.

Even on the limited record before us, there can be no dispute that Ravid's counsel filed and served the witness and document lists late. It appears the court's order required the lists to be filed 14 days before the final status conference; even in the

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6 To the extent Ravid contends the trial court erred in imposing sanctions because the trial court set a mandatory settlement conference on the same day as the final status conference, Ravid has not provided legal authority to support this argument, or provided citations to the record showing the lists were not prepared due to the pending settlement conference. Thus, this claim fails. To the extent Ravid contends more broadly that the trial court erred reversibly by failing to hold a settlement conference before trial, she has not supported this contention with legal authority and it too fails.

absence of a specific order by the trial court, Superior Court of Los Angeles County, Local Rules (Local Rules), rule 3.25(f)(1) required the parties to serve and file lists of pre-marked exhibits and a trial witness list at least five days prior to the final status conference.[7] Ravid's counsel did not meet either deadline.

As a sanction for the late filing of the witness and exhibit lists, the trial court limited Ravid's ability to call witnesses. Local Rules, rule 3.25(f)(1) provides that "[f]ailure to exchange and file these [lists] may result in not being able to call witnesses, present exhibits at trial, or have a jury trial." Thus, the trial court's exclusion of witnesses and exhibits was authorized by local rule.

Ravid contends her trial counsel was responsible for the failure to file the lists, and so the trial court should have imposed monetary sanctions on her attorney rather than witness and exhibit preclusion on her as a party.

"Although authorized to impose sanctions for violation of local rules (Code Civ. Proc., § 575.2, subd. (a)), courts ordinarily should avoid treating a curable violation of local procedural rules as the basis for crippling a litigant's ability to present his or her case. . . . [I]n the absence of a demonstrated history of litigation abuse, '[a]n order based upon a curable procedural defect [including failure to file a statement required by local rule], which effectively results in a judgment against a party, is an abuse of discretion.' [Citation.]" (*Elkins v. Superior Court* (2007)

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[7] Local Rules, rule 3.25(g)(3) gives the court discretion to order different trial court preparation procedures, including requiring the submission of trial documents to the court "more than five days before the final status conference."

41 Cal.4th 1337, 1364 [finding trial court abused its discretion in sanctioning petitioner by excluding the bulk of his evidence because he failed, prior to trial, to file a declaration establishing the admissibility of his trial evidence. "The sanction was disproportionate and inconsistent with the policy favoring determination of cases on their merits."].)

Further, the burden of sanctions may generally not be imposed on the client if it was the attorney who violated the rules. (See *Elkins v. Superior Court, supra*, 41 Cal.4th at pp. 1363-1364.) This is particularly true when the sanctions "amount[] to issue sanctions affecting the merits of [the party's] case." (*Id.* at p. 1365, fn. 17.) As Code of Civil Procedure section 575.2, subdivision (b) explains, "It is the intent of the Legislature that if a failure to comply with these rules is the responsibility of counsel and not of the party, any penalty shall be imposed on counsel and shall not adversely affect the party's cause of action or defense thereto."

Trial counsel did say that it was his mistake which led to the nonfiling of the lists. He apologized and stated that he incorrectly assumed the order applied to jury trials only. Here, there is no clear history of prior litigation abuse.[8] Counsel had

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[8] It is possible that the trial court based its exclusion of documents on not merely the failure to file an exhibit list, but on counsel's failure to produce the documents during discovery. Ravid's trial counsel argued that there were no surprises on the lists, but ultimately acknowledged that he produced only one document before trial. He maintained that was all respondent's discovery requests required. The trial court did not expressly rule on the discovery issues, but did state "So that one document can be used by the plaintiff."

copies of the lists and documents with him, and requested a continuance to remedy any lack of notice to defense counsel. Defense counsel objected to a continuance because he had a witness (Okanon) who had come from New York for the trial. The trial court did not appear to consider alternative sanctions, such as requiring counsel to pay for Okanon's airplane ticket. At a minimum, the trial court should have undertaken such consideration before imposing witness and document preclusion sanctions, which had the potential to amount to an issue sanction and adversely affect Ravid's cause of action. In addition, the trial court should have considered whether Ravid herself had any role in the late service of the lists, or whether it was solely her counsel's fault.

Assuming for the sake of argument that the trial court's failure to consider these issues was an abuse of discretion, Ravid has not shown that the potential adverse effects of the sanctions were realized. The trial court's initial order was quite harsh, limiting Ravid to one document and to two witnesses: herself and defendant. However, it soon became apparent that Ravid was not, as a practical matter, so limited in the presentation of her case. The trial court permitted Ravid to use documents in the joint exhibit list filed by the defense, some over defense objections. Ravid called one of her two nonparty witnesses as a rebuttal witness.

Nevertheless, as we explain below, without Ravid's late-filed witness and exhibit lists, it is not possible to know what documents she was actually prevented from introducing or even what witnesses she was actually prevented from calling. Without this information, we cannot determine that the sanctions adversely affected her action.

a. The Record Provides Only a Brief and Unhelpful Description of Ravid's Witnesses and Their Expected Testimony.

Ravid's trial counsel orally identified one of the witnesses he intended to call as "a percipient expert witness. He did the investigation into the property records." Counsel then summarized his witnesses as the "custodian of record[s], the parties and my guy who compiles the documents. He's not a percipient witness. He's an expert witness." Moments later, counsel said, "And again, I have the plaintiff, my expert, and custodian of records." He added, "I'll call the defendant as well." Counsel did not identify his expert by name, but counsel later stated, "The issue of insolvency, . . . which is what Mr. Harari is here to testify about, he never asked. We did give him the name." Thus it appears Mr. Harari was the expert witness.

Ravid was able to testify herself and to call Abrahami as a witness in her case-in-chief. She was given wide latitude in questioning Okanon, who testified as a defense witness.[9] Mr. Harari, the precluded expert, testified in rebuttal, as did Harry Kazakian. The testimony of both men was intended to rebut Okanon's claim that she was unaware she was a defendant in Ravid's lawsuit against On Time and also unaware of the default judgment until well after the transfer of the Vesper property. Mr. Kazakian testified he was a registered process server and private investigator hired by Ravid in July 2011 to

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[9] It is not clear whether Okanon was on Ravid's witness list. It is possible counsel intended to include her when he referred to the parties being witnesses, but it is also possible counsel intended to cross-examine her after she testified as a defense witness.

identify and locate Okanon for service of process. Mr. Harari testified he worked with Ravid's counsel's office to help enforce judgments, and he prepared the documents to enforce Ravid's judgment against Okanon. Ravid does not describe any additional testimony Harari would have provided if he had been permitted to testify in Ravid's case-in-chief, or explain how Harari was precluded from offering relevant testimony on rebuttal concerning Okanon's insolvency.

Based on the record on appeal, the only witness on Ravid's list who did not testify at trial was the custodian of records. Ravid's counsel indicated the sole purpose of that testimony was to authenticate documents, which he did not identify. Neither has Ravid on appeal provided any identification of or information about these documents.

b. The Record Provides Only a Brief and Confusing Description of Ravid's Proposed Exhibits.

Ravid's counsel described the documents he wanted to introduce at trial as follows: "There are documents that I have that are not in [defendant's] list. They consist of documents that will come in through my expert. They are publicly filed documents from the county recorder's office. From the courts themselves, we've got some registers of actions and some documents filed in the underlying action to establish the claims, and that's it. And the custodian of records, bank records."

Defense counsel's statements provide slightly more detail about the documents on Ravid's list. Counsel represented that he had never heard of the following documents before: "Number 1, register of action in the On Time Funding Case. . . . Number 4, the Declaration of Tamir Ravid in Opposition to Motion to Vacate

in the LC case. . . . Number 5, Notice of Default and Election to Sell Under Deed of Trust. . . . Number 7, Notice of Trust Deed Sale reported 9/11/12 . . . . Number 8, the financial records of Chase Bank regarding Ofira Okanon. . . ." Counsel continued, "Number 12, Bank of America records regarding Ofira Okanon. . . . Thirteen, Bank of America records regarding Ofira Okanon . . . . Number 14, the last one, Rose Escrow documents, . . . I subpoenaed all the Rose Escrow documents. They're here, ready to go, per my trial subpoena."

Ravid was able to introduce a number of documents on the joint exhibit list in her case-in-chief and in rebuttal. She was not able to introduce Okanon's bank records, although her trial counsel questioned Okanon about the accounts and Okanon did not dispute the balances in 2012. Ravid introduced substantial testimony and some documents related to the On Time lawsuit. She does not specifically identify other documents on her list that she was precluded from introducing. Nor does she explain their relevance.

c. Ravid Has Not Shown that She Was Precluded from Offering Testimony or Documents Relevant to Abrahami's Credibility or Defense.

There is nothing in the record on appeal to suggest that the trial court's exclusion of the witnesses or documents identified above in any way prevented Ravid from showing that Abrahami was not a good faith transferee. The trial court expressly found Abrahami credible. On appeal, Ravid does not explain how any excluded witness or document would have affected that credibility determination. Based on the record before us, we see nothing relevant to that determination.

As we discuss in more detail above, Abrahami testified about his loan to David and the amount of equity in the Vesper property. This testimony showed that the repayment of the loan constituted a reasonably equivalent value for the Vesper property. None of the excluded documents or witnesses appear to relate to the value of the Vesper property at the time of the 2012 transfer to Abrahami and thus do not cast doubt on Abrahami's testimony about value. Abrahami denied knowing about the On Time lawsuit before this action was filed and further denied colluding with Okanon, knowing she had a fraudulent intent, and being aware of her precise financial situation. This testimony showed that Abrahami took the deed to the Vesper property in good faith. None of the excluded documents or witnesses appear to relate to Abrahami's knowledge of Okanon's intent or of her financial situation.

3. Collateral Estoppel Did Not Preclude Consideration Of Whether Okanon Had Actual Knowledge Of Ravid's Lawsuit.

Ravid contends the evidence shows that the court in the On Time lawsuit ruled "that essentially Ofira Okanon had been properly served" and that res judicata precluded any challenge to this ruling.

Although Ravid refers to the doctrine of res judicata, she relies on a case discussing collateral estoppel (*Lucido v. Superior Court* (1990) 51 Cal.3d 335) and that is the appropriate doctrine to consider.[10] Collateral estoppel applies when several requirements are met: "First, the issue sought to be precluded

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10 Collateral estoppel is in fact an aspect of the doctrine of res judicata. (*Groves v. Peterson* (2002) 100 Cal.App.4th 659, 667.)

from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. [Citations.] The party asserting collateral estoppel bears the burden of establishing these requirements." (*Id.* at p. 341.)

Here, Ravid has not shown that the issues in the default judgment and this case are identical. Ravid maintains proof of proper service was a prerequisite for the entry of the default judgment in the On Time case. Okanon's primary claim in this case was that she did not have actual notice of the On Time lawsuit. These issues are not identical. It is well established that proper service does not always result in actual notice to the party served. (See *Ellard v. Conway* (2001) 94 Cal.App.4th 540, 547; Code Civ. Proc., § 473.5 [permitting default judgment to be set aside when "service of a summons has not resulted in actual notice to a party"].) There is nothing in the record on appeal to indicate that the issue of actual notice was considered or decided by the trial court in the underlying On Time action before the court entered the default judgment.

Ravid testified that Okanon's motion to set aside the default judgment in the On Time action was denied. There is no copy of the court's ruling on the motion in the record on appeal, and the parties disagree about the reason for the denial. Even assuming for the sake of argument that the trial court denied the motion on the ground that Okanon was properly served *and* had actual notice, the denial of a motion to set aside a default

judgment is generally not given collateral estoppel effect. (*Groves v. Peterson, supra,* 100 Cal.App.4th at pp. 667-668.)[11] While there is an exception to this rule, Ravid has not shown that this fact-specific, procedurally based exception applies. (See *ibid*.)

DISPOSITION

The judgment is affirmed. Respondent is awarded costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

STRATTON, J.

We concur:

BIGELOW, P. J.

WILEY, J.

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[11] California does accord collateral estoppel to default judgments. (*Gottleib v. Kest* (2006) 141 Cal.App.4th 110, 149.)