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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

TAROUB H. RUSNAK, Plaintiff and Respondent, v. DANIEL LAIKIN, Defendant and Appellant.	B275290 and B282509 (Los Angeles County Super. Ct. No. BC491741)

APPEALS from a judgment and postjudgment order of the Superior Court of Los Angeles County, Gregory W. Alarcon and Mark A. Bornstein, Judges. Affirmed.

David T. Peterson for Defendant and Appellant.

Brown, Gee & Wenger, Michael K. Brown, Katherine F. Wenger and Anna S. Felton, for Plaintiff and Respondent.

Taroub Rusnak sued Janice Salaman and Daniel Laikin, alleging Salaman had fraudulently transferred $1.75 million to a company established by Laikin in an effort to avoid paying a judgment entered against Rusnak. Following a bench trial the court entered judgment against Laikin, awarding Rusnak $1.75 million in compensatory damages, $848,438.36 in prejudgment interest, $1 million in punitive damages and attorney fees of $95,067.50. On appeal Laikin contends the court's ruling was not supported by substantial evidence and challenges the legal bases for certain aspects of its decision. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Rusnak's Claims*

Rusnak filed this lawsuit against Salaman, Laikin and NL Comedy Fund Partners 2, Inc. in September 2012 alleging causes of action for fraudulent transfer (actual fraud), aiding and abetting fraud and fraudulent concealment.[1] Prior to trial default judgments were entered against Salaman and NL Comedy. The court held a three-day bench trial in October 2015.

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[1] Rusnak's operative second amended complaint also alleged causes of action for fraudulent transfer (constructive fraud) and conversion against all defendants, as well as a cause of action for fraud against Salaman. It appears from the record these causes of action were not pursued at trial. The second amended complaint also named as defendants Steven Kaplan (Salaman's brother) and Dennis Abrams (Salaman's boyfriend). Kaplan and Abrams were dismissed from the action without prejudice prior to trial.

2. *Evidence at Trial*

a. *The underlying judgment against Salaman*

In 1987 Rusnak gave Jay Salaman[2] her collection of gold coins to sell. Jay buried the coins in his backyard. Jay's ex-wife learned of the coins, dug them up and took them. To compensate Rusnak for the stolen coins and for other funds she had loaned him to pay divorce costs, Jay executed two promissory notes in favor of Rusnak for a total of $325,000.

When Jay died in 2006, his widow, Janice Salaman, refused to repay the notes. Rusnak sued Salaman in San Francisco County Superior Court. On September 8, 2008, following a nine-day trial, the jury returned a verdict for Rusnak in the amount of $325,000. After the parties briefed the amount of interest owed, the court on December 23, 2008 ordered judgment entered against Salaman for $1,720,135.58.[3] Since its entry the judgment has been amended to add attorney fees incurred during the litigation, as well as fees and costs incurred in seeking to enforce the judgment. As of the time of trial in this case, the total amount due on the judgment, subtracting credits for amounts collected, was more than $3 million.

b. *Rusnak's collection efforts*

Within a few weeks of the entry of judgment in the underlying action, Rusnak served special interrogatories and requests for production of documents on Salaman, seeking

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[2] Because Jay Salaman and Janice Salaman share the same surname, we refer to Jay by his first name for clarity.

[3] Salaman's appeal of the judgment was dismissed due to her failure to comply with court orders and evasion of discovery regarding collection on the judgment.

information necessary to enforce the judgment. Salaman refused to provide information; Rusnak obtained an order compelling responses. Rusnak also sought to have Salaman appear for a debtor examination. In September 2009, after Salaman repeatedly failed to appear for the debtor examination, the trial court issued a bench warrant for her arrest. Salaman's current whereabouts appear to be unknown.

Meanwhile, Rusnak was able to recover small sums from collection efforts directed to financial institutions in which she believed Salaman maintained accounts. In addition, in May 2009 Rusnak was able to learn the name of Salaman's accountant from Salaman's trust and estate attorney. In mid-July 2009 Rusnak served Salaman with notice she intended to subpoena Salaman's financial records from the accountant.[4] The subpoena was served on the accountant shortly thereafter. However, before the accountant complied with the subpoena, Salaman requested he return all of her records, which he did. As a result, in response to the subpoena Rusnak received only a few emails regarding Salaman's finances. The emails identified a TD Ameritrade account held by Salaman that was previously unknown to Rusnak. Rusnak subpoenaed TD Ameritrade seeking records concerning Salaman. In September 2009 TD Ameritrade produced account statements and related items for accounts associated with Salaman. From these documents Rusnak first learned of the transfers at issue in this case.

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[4] Code of Civil Procedure section 1985.3, subdivision (b), requires a party subpoenaing a consumer's personal records from a third party to give notice to the consumer prior to serving the subpoena.

c. *Daniel Laikin, National Lampoon, Inc. and NL Comedy*

National Lampoon is an entertainment company that creates and distributes comedy across various platforms. It is perhaps most famously known for the films National Lampoon's Animal House and National Lampoon's Vacation. In 2008 Laikin was the CEO of National Lampoon, Inc. and its largest shareholder. Laikin is also Salaman's first cousin.

Laikin testified he had made millions of dollars of loans to National Lampoon and related entities. That testimony was corroborated by National Lampoon's form 10-Q for the quarter ending January 31, 2009, filed with the United States Securities and Exchange Commission (SEC), which states, "Historically our principal sources of funds used for operations and working capital have been revenues and loans received from Daniel S. Laikin [and another individual]." The form 10-Q shows outstanding loans to Laikin of approximately $550,000 and indicates $119,000 was paid to Laikin on the loans in the last six months of 2008.

On August 7, 2008 Laikin signed articles of incorporation for NL Comedy. The articles listed Laikin as incorporator and agent for service of process. The articles were not filed with the Office of the Secretary of State until November 10, 2008. On December 1, 2008 a bank account was opened in the name of NL Comedy. The bank's form "Corporate Resolution to Open Account" was signed by Cora Victoriano as secretary of NL Comedy. Laikin testified Victoriano was National Lampoon's office manager. The signature card for the account was signed by Laikin and Victoriano.

Laikin testified NL Comedy was a wholly-owned subsidiary of National Lampoon. However, National Lampoon's form 10-Q

for the quarter ending January 31, 2009 does not list NL Comedy in the section discussing its subsidiaries. Likewise National Lampoon's form 10-Q's for the periods ending October 31, 2008 and April 30, 2009 do not list NL Comedy as a subsidiary.

On December 15, 2008 Laikin was indicted for securities fraud and conspiracy to commit securities fraud related to a scheme to manipulate the stock price of National Lampoon. Laikin was arrested and released on bail the same day. On December 6, 2008 Laikin resigned from his position as CEO of National Lampoon and from all positions he held in related companies, but he continued to serve on the National Lampoon board of directors.[5]

d. *Salaman's $1.75 million transfer to NL Comedy*

On November 26, 2008 Salaman authorized a wire transfer from her TD Ameritrade account to NL Comedy for $1.75 million. Those were the only funds deposited into NL Comedy's bank accounts between December 1, 2008 and June 30, 2009. Laikin testified he knew at the time Salaman had a jury verdict against her, but said he thought it was for an insignificant amount.

Laikin testified Salaman's transfer to NL Comedy was an investment in forthcoming film productions. He said Salaman had told him in 2007 she wanted to invest but did not follow through until November 2008. Although Laikin stated he was present when Salaman had signed a subscription agreement with National Lampoon related to the loan, neither National Lampoon nor NL Comedy produced a subscription agreement with

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[5] In late 2009 Laikin pled guilty to the conspiracy charge pursuant to a plea agreement, and the charge of securities fraud was dropped.

Salaman or any evidence of one in response to Rusnak's document subpoena.

The only loan documentation produced involving Salaman was an agreement dated November 7, 2008 among National Lampoon, 301 Productions, Inc.[6] and Salaman and a promissory note with the same date. According to these documents, Salaman agreed to lend $350,000 to 301 Productions in exchange for a security interest in the property of 301 Productions, including all rights in the film National Lampoon's Legend of Awesomest Maximus. The agreement was signed by Laikin as CEO and President of 301 Productions and as CEO and President of National Lampoon; it contained a signature line for Salaman, but no signature. The promissory note was executed by 301 Productions in favor of Salaman and was signed by Laikin as CEO and President of 301 Productions.

Laikin testified that, after his arrest and resignation, Salaman called and said she did not want to be involved with National Lampoon if he was not running the company. She asked for her money to be returned. Laikin contacted Victoriano and told her to transfer the funds back to Salaman. On December 18, 2008 NL Comedy wired $1.15 million to Salaman's TD Ameritrade account. On December 23, 2008 $1.15 million was wired back to NL Comedy from Salaman's TD Ameritrade account. The next day Laikin and Victoriano signed a check from NL Comedy's account for $1.15 million payable to Salaman. Laikin testified he did not know why the initial wire transfer to

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[6] 301 Productions is a wholly-owned subsidiary of National Lampoon.

Salaman was returned or why the funds were then paid to Salaman by check.

As for the amount sent to Salaman, Laikin said the full $1.75 million could not be returned because $600,000 had already been spent on film production costs. In fact, more than $400,000 had been transferred from NL Comedy to Red Rock Pictures Holdings Inc. during the first two weeks of December 2008.[7] Of that sum, Red Rock had transferred $100,000 to Laikin on December 10, 2008 and $200,000 to National Lampoon prior to December 15, 2008. An additional $30,000 was transferred from Red Rock to National Lampoon on December 30, 2008.

The bulk of the remaining funds received from Salaman ($150,000) was transferred from NL Comedy to Laikin's criminal defense attorneys on December 18, 2008. Laikin testified this payment was pursuant to his employment agreement with National Lampoon, which required he be indemnified for legal expenses. Laikin stated his resignation letter requested legal fees and there would have been National Lampoon board minutes authorizing the payment of his legal fees. Neither Laikin nor National Lampoon produced any such documents.

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[7] Red Rock is a motion picture distributer; Laikin and National Lampoon were two of its shareholders. The affairs of the two companies are closely intertwined. In 2007 Laikin loaned Red Rock $1 million to be used as an advance to National Lampoon for film production costs. Red Rock rented office space from National Lampoon, and the companies had the same chief financial officer during 2008. In addition, the CEO of Red Rock in 2008 later became CEO of National Lampoon. Prior to NL Comedy's transfers in December 2008, Red Rock's bank account had a balance of $20.28.

e. *Salaman's 2009 Transfers to Steven Blum*

In late 2008 Laikin referred Salaman to an attorney, Steven Blum, purportedly to assist Salaman in her appeal of the judgment against her in the underlying case.[8] On February 4, 2009 Salaman transferred almost the entire balance of her TD Ameritrade account ($1.8 million) to a trust account held by Blum. In May and August 2009 Blum, at Salaman's direction, transferred Salaman's funds to overseas accounts that cannot be traced or recovered by Rusnak. Blum testified that Laikin was not involved in telling him to transfer Salaman's funds overseas.

3. *The Trial Court's Decision in Favor of Rusnak*

At the conclusion of trial the court ruled in favor of Rusnak. Following Laikin's request for a statement of decision, the court filed a 16-page statement of decision in January 2016 (adopting Rusnak's proposed statement of decision over Laikin's objections). In its statement of decision the court found Salaman's transfer to NL Comedy in December 2008 was a fraudulent transfer under the California Uniform Fraudulent Transfer Act (UFTA) (Civ. Code, § 3439 et seq.).[9] The court considered several factors and

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[8] Blum and his law firm, Blum Collins LLP, were named as defendants in Rusnak's original complaint. Judgment was entered in favor of Blum and Blum Collins after they successfully moved to strike the causes of action against them pursuant to Code of Civil Procedure section 425.16.

[9] Effective January 1, 2016 the UFTA was superseded by the Uniform Voidable Transactions Act with respect to transfers made on or after the effective date. (Civ. Code, § 3439.14, subd. (a).) Because all transactions at issue in this case occurred prior to 2016, the UFTA applies. All statutory references are to

concluded "overwhelming evidence" established Salaman made the transfers to NL Comedy and Blum to hinder, delay or defraud Rusnak. Thus, pursuant to the UFTA, Rusnak was entitled to judgment against Salaman as well as any transferee or subsequent transferee of the fraudulent transfer, unless such transferee took the funds in good faith and for reasonably equivalent value.

As to Laikin the trial court found he was liable to Rusnak on three independent theories. First, NL Comedy was liable as a transferee, and Laikin was the alter ego of NL Comedy. Second, Laikin was liable as a subsequent transferee because funds were transferred to him through Red Rock and funds were transferred for his benefit to his criminal defense attorneys and to Red Rock, in which he was a large shareholder and creditor. Third, Laikin was liable under an aiding and abetting theory because he had provided substantial assistance to Salaman by forming NL Comedy and opening a bank account in which Salaman could transfer funds to hide from Rusnak.

In its judgment the court awarded Rusnak damages of $1.75 million (the amount of the transfer from Salaman), plus prejudgment interest of $848,438.36, plus $1 million in punitive damages. Laikin moved for a new trial. The motion was denied on May 2, 2016.

Following entry of judgment Rusnak moved for an award of attorney fees and costs pursuant to Code of Civil Procedure section 685.040.[10] On March 21, 2017 the court granted the

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the UFTA in effect at the time of the transfers unless otherwise stated.

[10] "The judgment creditor is entitled to the reasonable and necessary costs of enforcing a judgment. . . . Attorney's fees

motion, awarding Rusnak attorney fees of $95,067.50 against Laikin, NL Comedy and Salaman jointly and severally and an additional $9,539.80 against Salaman.

Laikin filed a timely notice of appeal from the judgment (case No. B275290) and a separate timely appeal from the postjudgment attorney fee order (case No. B282509).

DISCUSSION

Laikin contends Rusnak did not carry her burden to show that Salaman made the transfer to NL Comedy with the intent to hinder, delay or defraud Rusnak, that Laikin was a transferee or subsequent transferee of the funds or that he was the alter ego of NL Comedy. As to the trial court's finding Laikin was liable on an aiding and abetting theory, Laikin contends a nontransferee cannot be liable for aiding and abetting under the UFTA and, even if a nontransferee could be liable, the finding he aided and abetted Salaman was not supported by substantial evidence. Finally, Laikin argues the awards of punitive damages and prejudgment interest were improper.[11]

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incurred in enforcing a judgment are included as costs collectible under this title if the underlying judgment includes an award of attorney's fees to the judgment creditor . . . ." (Code Civ. Proc., § 685.040.) Attorney fees are recoverable under this section against third parties in an action alleging fraudulent transfer. (*Cardinale v. Miller* (2014) 222 Cal.App.4th 1020, 1025-1026.)

[11] In his opening brief on appeal Laikin cites a document that was not an exhibit at trial and is not in the record on appeal. No request for judicial notice or motion to augment the record had been filed. Rusnak's motion to strike all references to the document is granted.

1. *Standard of Review*

"""In general, in reviewing a judgment based upon a statement of decision following a bench trial, 'any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision. [Citations.]' [Citation.] In a substantial evidence challenge to a judgment, the appellate court will 'consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.]' [Citation.] We may not reweigh the evidence and are bound by the trial court's credibility determinations. [Citations.] Moreover, findings of fact are liberally construed to support the judgment."""" (*Tribeca Companies, LLC v. First American Title Ins. Co.* (2015) 239 Cal.App.4th 1088, 1102; accord, *Sav–On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334 ["'questions as to the weight and sufficiency of the evidence, the construction to be put upon it, the inferences to be drawn therefrom, the credibility of witnesses . . . and the determination of [any] conflicts and inconsistencies in their testimony are matters for the trial court to resolve'"]; *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571 ["'[w]hen two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court'"]; *Harry Carian Sales v. Agricultural Labor Relations Bd.* (1985) 39 Cal.3d 209, 220 ["findings based on the credibility of witnesses will not be disturbed unless the testimony is 'incredible or inherently improbable'"]; *Fuentes v. AutoZone, Inc*. (2011) 200 Cal.App.4th 1221, 1233 ["'testimony of a witness offered in support of a judgment may not be rejected on appeal unless it is

physically impossible or inherently improbable and such inherent improbability plainly appears'"].)

We review the trial court's statutory interpretations and legal conclusions de novo. (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 311 [questions of statutory interpretation are pure matters of law that we review de novo]; *Smith v Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1515 [whether facts found by trial court are legally sufficient to support judgment subject to de novo review]; *ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1266 ["'[t]o the extent the trial court drew conclusions of law based upon its findings of fact, we review those conclusions of law de novo'"].)

2. *The Finding Salaman's Payment to NL Comedy Was a Fraudulent Transfer Is Supported by Substantial Evidence*

a. *Governing law*

"The UFTA permits defrauded creditors to reach property in the hands of a transferee." (*Mejia v. Reed* (2003) 31 Cal.4th 657, 663.) "A fraudulent conveyance is a transfer by the debtor of property to a third person undertaken with the intent to prevent a creditor from reaching that interest to satisfy its claim." (*Yaesu Electronics Corp. v. Tamura* (1994) 28 Cal.App.4th 8, 13.) The purpose of the fraudulent transfer statute is "'to prevent debtors from placing property which legitimately should be available for the satisfaction of demands of creditors beyond their reach . . . .'" (*Chichester v. Mason* (1941) 43 Cal.App.2d 577, 584.)

The elements of a fraudulent conveyance are set forth in section 3439.04, subdivision (a): "A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the

obligation was incurred, if the debtor made the transfer or incurred the obligation as follows: [¶] (1) With actual intent to hinder, delay, or defraud any creditor of the debtor. [¶] (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor either: [¶] (A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction. [¶] (B) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due." A creditor who has been damaged by a fraudulent transfer can set the transfer or the subsequent transfer aside or seek other appropriate relief under section 3439.07. (*Monastra v. Konica Business Machines, U.S.A., Inc.* (1996) 43 Cal.App.4th 1628, 1635-1636.)

Whether a transfer was fraudulent is a question of fact, and the burden is on the creditor to establish fraudulence by a preponderance of the evidence. (*Annod Corp. v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1293-1294; *Whitehouse v. Six Corp.* (1995) 40 Cal.App.4th 527, 533.) Because intent is rarely susceptible of direct proof, "'[p]roof of fraudulent intent often consists of "*inferences* from the circumstances surrounding the transaction . . . ."'" (*Annod Corp.,* at p. 1298.) Section 3439.04, subdivision (b), lists 11 factors courts may consider in determining the existence of actual intent to hinder, delay or defraud.[12] However, "these factors do not create a

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[12] Section 3439.04, subdivision (b), states, "In determining actual intent under paragraph (1) of subdivision (a), consideration may be given, among other factors, to any or all of the following: [¶] (1) Whether the transfer or obligation was to

mathematical formula to establish actual intent. There is no minimum number of factors that must be present before the scales tip in favor of [a] finding of actual intent to defraud. This list of factors is meant to provide guidance to the trial court, not to compel a finding one way or the other." (*Filip v. Bucurenciu* (2005) 129 Cal.App.4th 825, 834 (*Filip*).)

b. *There was sufficient evidence Salaman had actual fraudulent intent in transferring funds to NL Comedy*

In finding Salaman intended to hinder, delay or defraud payment to Rusnak by making a transfer to NL Comedy, the trial court considered the first 10 of the 11 factors discussed in section 3439.04, subdivision (b), and concluded each one supported a finding of fraudulent intent. Substantial evidence supports the trial court's conclusion. For example, the court found the funds were transferred to an insider, specifically a

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an insider. [¶] (2) Whether the debtor retained possession or control of the property transferred after the transfer. [¶] (3) Whether the transfer or obligation was disclosed or concealed. [¶] (4) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit. [¶] (5) Whether the transfer was of substantially all the debtor's assets. [¶] (6) Whether the debtor absconded. [¶] (7) Whether the debtor removed or concealed assets. [¶] (8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred. [¶] (9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred. [¶] (10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred. [¶] (11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor."

company controlled by Salaman's cousin. The court also found Salaman retained control of at least part of the money transferred because she was able to secure its return after Laikin was arrested. In addition, the timing and circumstances of the transfer support an inference Salaman intended to defraud Rusnak. Five days after Rusnak filed a posttrial brief seeking more than $2 million in interest on the promissory notes, Laikin filed articles of incorporation for NL Comedy, despite having signed the articles three months earlier. Two weeks later, and three weeks before the hearing on interest calculations, Salaman authorized the wire transfer of $1.75 million to NL Comedy. Laikin then opened a bank account for NL Comedy the same day the wire transfer was received. No other funds were ever deposited into the NL Comedy account. While Laikin testified NL Comedy was a subsidiary of National Lampoon, it was not listed as such in National Lampoon's SEC filings during that period.[13]

Likewise, substantial evidence supports the court's finding there was no consideration or equivalent value for Salaman's payment to NL Comedy. Laikin argues the payment was an investment in forthcoming film productions, as evidenced by the promissory note and loan and security agreement among

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[13] On appeal Laikin argues it is not surprising NL Comedy is not listed as a subsidiary in National Lampoon's form 10-Q for the quarter ending January 31, 2009 given the "chaos that must have ensued with the sudden departure of National Lampoon's CEO." Not only is this an argument regarding the weight of the evidence that should have been addressed to the trial court, but also it defies reason, as the form 10-Q was not filed until October 2009, months after any chaos should have subsided.

National Lampoon, 301 Productions and Salaman. Specifically, Laikin testified $350,000 of Salaman's payment was part of an "intercreditor group" investment in the movie National Lampoon's Legend of Awesomest Maximus. The loan and security agreement signed by Laikin does list four other investors who made loans to 301 Productions "upon terms substantially similar to the terms" of Salaman's agreement. However, while the bank records of 301 Productions show deposits from other members of the intercreditor group, Salaman made no tranfers to 301 Productions and was the only member of the intercreditor group to deposit funds into NL Comedy's account. In addition, all other members of the intercreditor group were listed as creditors in National Lampoon's form 10-Q for the quarter ending January 31, 2009. Salaman was not identified in that filing, or any other SEC filing in the record, despite the testimony of National Lampoon's former CFO that any debt incurred of more than $10,000 would have been included in SEC filings. This evidence undermines Laikin's testimony Salaman's transfer was a legitimate transaction and supports the inference the transfer was fraudulent.

Laikin's argument on appeal consists mainly of disputing the trial court's conclusions on each of the factors considered. For example, Laikin argues the trial court's determination Salaman made the transfer "shortly before or shortly after a substantial debt was incurred" was erroneous because the jury verdict awarded only $325,000 and the judgment had not yet been entered at the time of the transfer. (§ 3439.04, subd. (b)(10).) This argument ignores that, at the time of Salaman's transfer, Rusnak had filed a motion seeking more than $2 million in interest and Salaman was aware she would shortly be facing a

judgment in the case. Laikin's arguments are nothing more than a misplaced effort to reargue the evidence on appeal. (See *Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 398-399 [defendant's "attempt to reargue on appeal those factual issues decided adversely to it at the trial level [is] contrary to established precepts of appellate review"].) Laikin's arguments against each individual finding by the trial court also disregard the UFTA's "list of factors is meant to provide guidance to the trial court, not to compel a finding one way or the other." (*Filip, supra,* 129 Cal.App.4th at p. 834.) The evidence concerning the circumstances of Salaman's transfer to NL Comedy fully supports the trial court's finding of fraudulent intent.

3. *The Trial Court Did Not Err in Finding Laikin Liable for Aiding and Abetting a Fraudulent Transfer*[14]

a. *California law permits aiding and abetting liability for fraudulent transfer against a nontransferee*

Relying on a Florida case, Laikin argues California should not recognize aiding and abetting liability for a nontransferee in a fraudulent transfer action. In *Freeman v. First Union National Bank* (Fla. 2004) 865 So.2d 1272, 1276, the Florida Supreme Court held there "simply is no language in [the Florida UFTA] that suggests the creation of a distinct cause of action for aiding-abetting claims against non-transferees." Laikin has not cited any published California case adopting this reasoning, nor have

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[14] Because we hold the trial court's finding Laikin was liable for aiding and abetting a fraudulent transfer was proper, we need not address whether the trial court erred in finding him liable as a transferee or subsequent transferee or as the alter ego of NL Comedy.

we found one. While we recognize California's UFTA, like Florida's, does not specifically provide a remedy against a nontransferee, well-established principles of California law compel the conclusion that a finding of liability may be upheld against an aider and abettor of a fraudulent transfer.[15]

First, California recognizes liability for aiding and abetting an intentional tort. ""Liability may . . . be imposed on one who aids and abets the commission of an intentional tort if the person (a) knows the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act or (b) gives substantial assistance to the other in accomplishing a tortious result and the person's own conduct, separately considered, constitutes a breach of duty to the third person."" (*Casey v. U.S. Bank Nat. Assn.* (2005) 127 Cal.App.4th 1138, 1144; accord *American Master Lease LLC v. Idanta Partners, Ltd.* (2014) 225 Cal.App.4th 1451, 1477 [individual may be liable for aiding and abetting an intentional tort where he or she "makes "'a conscious decision to participate in tortious activity for the purpose of assisting another in performing a wrongful act'""].) Second, transferring funds for the purpose of evading creditors in violation of the UFTA by definition

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[15] Courts in other jurisdictions have likewise rejected the conclusion in *Freeman*. (See, e.g., *Jurista v. Amerinox Processing, Inc.* (Bankr. D.N.J. 2013) 492 B.R. 707, 765 ["[t]he Court therefore finds that Plaintiff has likewise successfully pled his claim against [nontransferee] for aiding and abetting a facilitation of a fraudulent transfer"]; *In re Restaurant Development Group, Inc.* (Bankr. N.D. Ill. 2008) 397 B.R. 891, 898 ["[r]ecent Illinois case law tends to support a cause of action for aider-abettor liability [for fraudulent transfer] against non-transferees"].)

constitutes an intentional tort. (See *Filip, supra*, 129 Cal.App.4th at p. 837 ["Defendants fail to recognize that a claim under the UFTA in fact involves tortious conduct. In fraudulently transferring property, tortious conduct occurred."]; *Taylor v. S&M Lamp Co.* (1961) 190 Cal.App.2d 700, 705 ["the second cause of action alleges, in essence, the commission of a tort by the judgment debtors, to wit, a concealment of their assets for the purpose of defrauding their principal creditor"].) Thus, it necessarily follows that California common law should recognize liability for aiding and abetting a fraudulent transfer.

The lack of an express remedy against a nontransferee aider and abettor in the UFTA does not preclude this result. Section 3439.10 states, "Unless displaced by the provisions of this chapter, the principles of law and equity, including . . . the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions." In addition, the legislative committee notes to the 1986 amendments to the statute stated the remedies specified in the UFTA were "cumulative" and meant to "give an 'additional optional remedy' and not to 'deprive a creditor of the right, as formerly, to work out his remedy at law.'" (Legis. Com. com., West's Ann. Code (1997 ed.) foll. § 3439.07, p. 341; see also *Macedo v. Bosio* (2001) 86 Cal.App.4th 1044, 1051 ["the UFTA is not the exclusive remedy by which fraudulent conveyances and transfers may be attacked. They may also be attached by, as it were, a common law action."]; *Cortez v. Vogt* (1997) 52 Cal.App.4th 917, 931 ["UFTA makes clear its remedies are cumulative to preexisting remedies for fraudulent conveyances"].) Thus, by its terms the UFTA was intended to supplement, not replace, common law

principles relating to fraud. In the absence of any binding case authority or statute stating the contrary, common law liability for aiding and abetting an intentional tort continues to extend to fraudulent transfers even after enactment of the UFTA. (Cf. *Arluk Medical Center Industrial Group, Inc. v. Dobler* (2004) 116 Cal.App.4th 1324, 1340 ["In any event, nothing in our decision today precludes a creditor from seeking to hold a trustee personally liable for improperly distributing assets to a trust beneficiary knowing, for example, that an order in favor of the creditor has been entered and judgment is imminent, and the assets will be expended or otherwise unavailable to the creditor once distributed. Such a distribution may violate the common law or statutory provisions prohibiting fraudulent conveyances . . . ."].)

Laikin's attempt to distinguish the cases on which the trial court relied is unavailing. In finding Laikin liable for aiding and abetting, the trial court relied on two cases recognizing liability for civil conspiracy to violate the UFTA. Laikin is correct that, although closely related forms of liability, in certain situations the elements of a claim for conspiracy to commit an intentional tort and one for aiding and abetting the tort are different (see, e.g., *American Master Lease LLC v. Idanta Partners, Ltd.*, *supra*, 225 Cal.App.4th at pp. 1473-1477 [civil conspiracy and aiding and abetting a breach of fiduciary duty]). Nonetheless, he does not articulate any reason the analysis in those civil conspiracy cases does not apply equally to aiding and abetting a fraudulent transfer. For example, in *Taylor v. S&M Lamp Co.*, *supra*, 190 Cal.App.2d at page 706, relied on by the trial court, the First District held plaintiff adequately stated a cause of action for conspiracy to commit a fraudulent transfer. The court reasoned

"[c]ivil liability for conspiracy to commit a tort has long been recognized in this state" and, citing the UFTA, stated, it "is contrary to public policy for a debtor to convey or to conceal his property for the purpose of defrauding his creditors." (*Taylor*, at p. 706.) Thus, the court concluded, "a debtor and those who conspire with him to conceal his assets for the purpose of defrauding creditors are guilty of committing a tort and each is liable in damages." (*Ibid.*; see also *Qwest Communications Corp. v. Weisz* (S.D.Cal. 2003) 278 F.Supp.2d 1188, 1192 [rejecting argument conspiracy liability not available because not specifically allowed by the UFTA and stating, even if "direct application of the [UFTA] is limited solely to debtors and transferees, it does not follow that a non-transferee cannot engage in a conspiracy to violate the UFTA"].) Neither of these cases precludes application of aider and abettor liability for a fraudulent transfer. To the contrary, their reasoning supports our conclusion tort remedies for aiding and abetting remain viable despite, and in concert with, the UFTA.

b. *Substantial evidence supports the finding Laikin aided and abetted the fraudulent transfer*

In finding Laikin liable for aiding and abetting the fraudulent transfer, the trial court found Laikin "knew Salaman was fraudulently trying to conceal her assets from Rusnak and hinder, prevent and delay Rusnak from collecting on the Judgment" and "Laikin provided Salaman substantial assistance in doing so by forming NL Comedy and opening a bank account for Salaman to transfer her assets into that would be out of Rusnak's reach."

Laikin argues the trial court's conclusion he had knowledge of Salaman's fraudulent intent was "wishful thinking" and

"speculation."[16] Laikin testified he knew about the verdict against Salaman at the time of the transfer but claimed he never had any conversations with her about concealing assets and she never asked him to help her do so. However, as discussed, the timing and circumstances surrounding the transfer to NL Comedy coupled with Laikin's admitted knowledge of the jury verdict against Salaman support the inference Laikin knew Salaman was attempting to avoid paying the forthcoming judgment. As the exclusive arbiter of credibility, the trial court was entitled to reject Laikin's testimony in favor of a reasonable inference supported by the evidence. (See *Filip*, *supra*, 129 Cal.App.4th at p. 836 ["'[s]o long as the trier of fact does not act arbitrarily and has a rational ground for doing so, it may reject the testimony of a witness even though the witness is uncontradicted'"].)[17]

4. *The Trial Court Did Not Err in Awarding Rusnak $1.75 Million in Damages*

Laikin contends the judgment should be reduced by $1.15 million, the amount NL Comedy returned to Salaman in late December 2008, explaining that the UFTA permits a creditor to recover only the value of the property transferred or the amount needed to satisfy the creditor's claim, whichever is less. (See § 3439.08, subd. (b).) Because NL Comedy returned

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[16] Laikin does not dispute the trial court's finding he provided substantial assistance to Salaman in making the transfer.

[17] In light of our holding Laikin is liable as the aider and abettor of tortious conduct, we need not decide whether liability extends to a non-transferee under the UFTA.

$1.15 million, Laikin argues the actual amount transferred out of Rusnak's reach was only $600,000.

Generally "[t]ort damages are awarded to fully compensate the victim for all the injury suffered. [Citation.] There is no fixed rule for the measure of tort damages . . . . The measure that most appropriately compensates the injured party for the loss sustained should be adopted." (*Santa Barbara Pistachio Ranch v. Chowchilla Water Dist.* (2001) 88 Cal.App.4th 439, 446-447; see also Civ. Code, § 3333 [measure of tort damages is the "amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not"].)

Here, the trial court found Laikin aided and abetted Salaman's initial transfer of $1.75 million to NL Comedy. Then, at approximately the same time as Laikin enabled Salaman's recovery of $1.15 million from NL Comedy, he introduced Salaman to attorney Blum. Shortly thereafter, Salaman transferred those funds to Blum; and Blum transferred the funds overseas. Thus, Laikin's facilitation of the transfer back to Salaman of the $1.15 million and introduction to Blum ultimately resulted in those funds being beyond Rusnak's reach. While Laikin testified he did not know Salaman would use Blum's trust account to hide the money, the trial court was not required to find that testimony credible.[18] (See *Filip*, *supra*, 129 Cal.App.4th at p. 836.)

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[18] There is also evidence Laikin was aware of Salaman's continued efforts to avoid paying the underlying judgment throughout 2009. In July 2009 Laikin submitted a declaration in support of Salaman's motion to quash service of a subpoena for debtor's examination in the underlying case. Laikin stated

The circumstantial evidence supports the inference Laikin knew Salaman sought return of the money so that she could hide it elsewhere. While a different conclusion might be appropriate where an individual returned funds because he or she was attempting to remedy the fraud or wash his or her hands of it, the record here fully justifies the trial court's finding Laikin's actions led to the entire $1.75 million being improperly transferred beyond Rusnak's reach despite the initial return of $1.15 million. (Compare *Hickson v. Thielman* (1956) 147 Cal.App.2d 11, 15 [transferee liable for conspiracy to commit fraudulent transfer even if she returned amount transferred] with *Cohen v. Heavey* (1968) 261 Cal.App.2d 766, 772 [transferee not liable for fraudulent transfer when he returned property and in absence of any finding he knew of creditor's claim or had any fraudulent intent].)

5. *The Trial Court's Decision To Impose Punitive Damages Was Proper*

Laikin argues there was insufficient evidence to support a finding he had engaged in any conduct warranting imposition of punitive damages. He also contends the trial court erred in failing to find a relationship between his financial condition and the amount of the punitive damage award.

Civil Code section 3294, subdivision (a), provides, "In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages

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Salaman had been assisting him in selling his Malibu home and she "may have spent a couple of days there" in mid-June 2009.

for the sake of example and by way of punishing the defendant." Thus, to obtain punitive damages under section 3294, the plaintiff must prove the defendant both breached a noncontractual legal obligation and did so with "malice, oppression or fraud." (See *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 712.)

The trial court did not indicate whether its decision to impose punitive damages was based on evidence of malice, oppression or fraud. However, the record contains clear and convincing evidence supporting a finding Laikin aided and abetted the fraudulent transfer with "malice," which Civil Code section 3294, subdivision (c)(1), defines as "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." The trial court found Laikin knew Salaman intended to transfer funds to NL Comedy for the purpose of concealing them from Rusnak. The trial court further found Laikin knowingly provided Salaman assistance to do so. Thus, the trial court necessarily found Laikin acted with the intent to cause injury to Rusnak, which supports a finding of malice under Civil Code, section 3294. As discussed, the record contains substantial evidence from which the court could reasonably make this finding.

Laikin next argues the trial court erred by "failing to provide any explanation of any relationship between Laikin's financial circumstances and the amount of the punitive damage award." This is, in essence, a claim the punitive damages were excessive, which we review for abuse of discretion. (*Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1689.)

In *Adams v. Murakami* (1991) 54 Cal.3d 105, the Supreme Court explained, "[b]ecause the quintessence of punitive damages is to deter future misconduct by the defendant, the key question before the reviewing court is whether the amount of damages 'exceeds the level necessary to properly punish and deter.'" (*Id.* at p. 110.) A plaintiff seeking punitive damages must introduce meaningful evidence of the defendant's then-current financial condition so an award will be sufficient to deter future misconduct by the defendant without being so disproportionate to the defendant's ability to pay that it is excessive. (*Id.* at pp. 110-112; accord *Simon v. San Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1185 ["defendant's financial condition is an essential factor in fixing the amount that is sufficient to serve these goals without exceeding the necessary level of punishment"].)

Although the defendant's net worth is often the best measure of its ability to pay a punitive damage award, the Supreme Court has "decline[d] . . . to prescribe any rigid standard for measuring a defendant's ability to pay." (*Adams v. Murakami*, *supra*, 54 Cal.3d at p. 116, fn. 7 ["[w]e cannot conclude on the record before us that any particular measure of ability to pay is superior to all others or that a single standard is appropriate in all cases"]; accord, *Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, 74 ["there is no legal requirement that punitive damages must be measured against a defendant's net worth"].) "'[W]hat is required is evidence of the defendant's ability to pay the damage award.'" (*Baxter v. Peterson* (2007) 150 Cal.App.4th 673, 680.)

The record in this case contains sufficient information regarding Laikin's financial condition from which the trial court

could make a finding on Laikin's ability to pay. For example, Red Rock and National Lampoon's SEC filings demonstrate Laikin is owed substantial amounts from both corporations for which he is regularly paid installments. In addition, Laikin testified at the time of trial his home was listed for sale for $10.5 million. While he testified there were encumbrances on the home, the bulk of those were related to a line of credit extended by Laikin's wife. In sum, viewing the evidence in the light most favorable to the judgment, we cannot say the trial court abused its discretion in awarding $1 million in punitive damages.

6. *The Trial Court's Award of Prejudgment Interest Was Proper*

Civil Code section 3287, subdivision (a), provides for the payment of prejudgment interest to every person entitled to receive damages that are certain or capable of being made certain by calculation if the right to receive such damages vested on a particular day. (See *Cassinos v. Union Oil Co.* (1993) 14 Cal.App.4th 1770, 1790 ["[t]he policy underlying authorization of an award of prejudgment interest is to compensate the injured party—to make that party whole for the accrual of wealth which could have been produced during the period of loss"].) "The test for recovery of prejudgment interest under section 3287, subdivision (a) is whether defendant (1) actually knows the amount of damages owed plaintiff, or (2) could have computed that amount from reasonably available information." (*KGM Harvesting Co. v. Fresh Network* (1995) 36 Cal.App.4th 376, 391; accord, *Chesapeake Industries, Inc. v. Togova Enterprises, Inc.* (1983) 149 Cal.App.3d 901, 907.) Prejudgment interest under Civil Code section 3287, subdivision (a), is not available when the amount due depends on a judicial determination based on

conflicting evidence and is not readily ascertainable from the truthful data supplied by the claimant to the debtor. (*Wisper Corp. v. California Commerce Bank* (1996) 49 Cal.App.4th 948, 960.) Absent a factual dispute, we independently determine whether and when the damages were certain or capable of being made certain by calculation for purposes of Civil Code section 3287, subdivision (a). (*Employers Mutual Casualty Co. v. Philadelphia Indemnity Ins. Co.* (2008) 169 Cal.App.4th 340, 346; *KGM Harvesting,* at p. 391, fn. 8.)

Laikin argues prejudgment interest should not have been awarded because Rusnak's damages were not capable of being made certain. However, he fails to articulate any meaningful rationale to support that claim. Rusnak's damages were equal to the amount fraudulently transferred: $1.75 million. Even if Laikin had argued the actual damage amount was uncertain because he sought a set-off of the returned $1.15 million, which he has not, that contention would fail because the amount of the set-off would also have been readily ascertainable. (See *Olson v. Cory* (1983) 35 Cal.3d 390, 402 [prejudgment interest allowed under Civil Code section 3287, subdivision (a), when amount of damages "was either of two readily calculable amounts" and depended only on "[u]ncertainty over . . . legal issues"]; *Uzyel v. Kadisha* (2010) 188 Cal.App.4th 866, 919 ["legal dispute concerning the defendant's liability or uncertainty concerning the measure of damages does not render damages unascertainable"].) The court did not err in awarding prejudgment interest.

7. *The Order Awarding Attorney Fees Is Affirmed*

Although Laikin separately appealed the postjudgment order awarding attorney fees, in his briefs in this court he argues only that, because the judgment against him should be reversed,

the award of attorney fees should also be reversed.[19] In light of our affirmance of the judgment, the attorney fee award is also affirmed.

DISPOSITION

The judgment and postjudgment order awarding attorney fees are affirmed. Rusnak is to recover her costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.

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[19] Any other challenge to the ruling has been forfeited. (See, e.g., *Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4; *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685.)