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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

CHIH WU HSIEH, Plaintiff and Respondent, v. YANNIK HSIEH, Defendant and Appellant.	B283227 (Los Angeles County Super. Ct. No. GC047528)

APPEAL from a judgment of the Superior Court of Los Angeles County, William D. Stewart, Judge. Affirmed.

Early Sullivan Wright Gizer & McRae, Stephen Y. Ma, Diane M. Luczon and Zachary A. Gidding for Defendant and Appellant.

Paoli & Purdy and William M. Paoli for Plaintiff and Respondent.

Yannik Hsieh, also known as Jason Hsieh (Jason),[1] appeals from a judgment in favor of his father, Chih Wu Hsieh (Chih), entered after a court trial in which the court found Jason was obligated to pay over $4 million to Chih as a result of fraudulent transfers of community property to Jason from his mother, Jui Chih Wang Hsieh, also known as Ruth Jui Chih Hsieh (Ruth), who was Chih's former wife.

In the first phase of the bifurcated trial, the trial court found Chih's claims were barred by the four-year statute of limitations under the Uniform Fraudulent Transfer Act (UFTA; Civ. Code, former § 3439 et seq.).[2] Chih appealed, and we reversed. (*Hsieh v. Hsieh* (Mar. 2, 2015, B250938) [nonpub. opn.] (*Hsieh I*).) We concluded the common law statute of limitations for fraudulent conveyances under Code of Civil Procedure section 338, subdivision (d), applied, under which Chih's claims were timely. However, we remanded for the trial court to determine whether Chih's action was barred as to specific transfers by the seven-year limitations period under section 3439.09, subdivision (c). (*Hsieh I, supra*, B250938.)

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[1] Because the members of the family share the same last name, we refer to them by their first names for convenience and clarity.

[2] Further statutory references are to the Civil Code unless otherwise indicated. Effective January 1, 2016 the UFTA was superseded by the Uniform Voidable Transactions Act with respect to transfers made on or after the effective date. (§ 3439.14, subd. (a); see Stats. 2015, ch. 44, § 2.) The UFTA applies to the transfers at issue in this appeal because they all occurred prior to 2016.

On remand, Chih and Jason stipulated that six allegedly fraudulent transfers between 2004 and 2007 were not barred by the seven-year statute of limitations. After hearing testimony from Chih and Jason, the trial court found Chih had met his burden to show the transfers from Ruth to Jason were fraudulent. In reaching its ruling, the court relied on a prior judgment entered in the family court proceeding between Chih and Ruth. On appeal, Jason contends the trial court erred in considering the findings of the court in the family court proceeding because he was not a party or in privity with a party to the proceeding and substantial evidence does not support the judgment. In addition, Jason argues the trial court erred in denying his ex parte application filed two weeks before trial to continue the trial so he could obtain discovery of foreign bank records reflecting the transfers of funds into and out of his bank accounts.

Although Jason is correct the trial court erred in relying on the judgment entered by the family court, the error was harmless in light of the overwhelming evidence at trial showing the transfers were fraudulent, and thus it is not reasonably probable Jason would have achieved a more favorable result had the trial court not relied on the default judgment. Further, the trial court did not abuse its discretion in denying a trial continuance. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Family Law Proceedings*[3]

Chih and Ruth were married in 1966. As of 1997, Chih was living in Taipei and Ruth was living in the United States. On September 22, 1997 Ruth filed a petition for legal separation (1997 separation action), and on November 12, 1998 she filed a petition for dissolution of marriage.

Ruth did not serve Chih with the summons and petition in either the 1997 or 1998 proceedings. As a result, Chih did not appear in either action, and default judgments were entered against him. The default judgments were later set aside, and on August 7, 10, and 11, 2009 the court held an evidentiary trial in the 1997 separation action. Ruth failed to appear at trial, and the family court entered a judgment in favor of Chih on January 7, 2010 (family court judgment). The family court ordered Ruth, pursuant to Family Code section 1101, subdivision (h), to pay Chih 100 percent of the amount of community property funds transferred to Jason, finding the transfers were made in violation of the family court automatic temporary restraining orders (ATRO's) and in breach of Ruth's fiduciary duties. The court also found Ruth's actions were malicious, oppressive, and fraudulent.

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[3] This summary of the family law proceedings is taken from our opinion in *Hsieh I, supra*, B250938. These facts are not in dispute.

B. *The Filing of the Complaint and Statute of Limitations Trial*

Chih filed this action against Ruth, Jason, and John[4] on June 10, 2011, alleging causes of action for fraudulent transfer and conversion. At a case management conference on March 21, 2013, the trial court[5] issued a tentative ruling suggesting Chih had a "statute of limitations issue." At the conference, Jason's attorney objected to Chih using the family court judgment against Jason, arguing the elements of collateral estoppel had not been met. The attorney argued Jason was not a party to the family court proceeding, he was not on notice, "and his interests weren't represented. He didn't know his property rights were being affected . . . ."

By the time of trial, Ruth had been dismissed, and John was in default. The trial court bifurcated the trial as to Jason's statute of limitations defense, which trial was held on April 22, 2013. (*Hsieh I, supra*, B250938.) Both Chih and Jason were represented by counsel at trial. However, neither Chih nor Jason appeared. Instead, the statute of limitations phase of the trial proceeded on stipulated facts.

Jason's attorney argued that under the UFTA, Chih was barred from filing a claim as to any transfers made more than four years before he filed the complaint on June 10, 2011.[6]

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[4] John is Chih and Ruth's son and Jason's brother.

[5] Judge Jan A. Pluim presided over the case through the April 22, 2013 trial and entry of judgment leading up to the filing of an appeal in *Hsieh I*.

[6] Although counsel referred to the June 11, 2011 filing of the complaint, we use the actual June 10 filing date.

Jason's attorney also noted that Chih's attorney in the family court trial prepared the proposed statement of decision on October 6, 2009, which itemized "every single transfer that's the subject of this case." Thus, Chih was aware of the transfers at least as of this date. Jason's attorney argued Chih was therefore barred from filing a claim as to any transfers made before June 10, 2007, and the one-year discovery period did not apply because Chih was aware of the transfers more than one year before he filed the complaint.

After hearing argument of counsel, the trial court invited the parties to make a record of documents they wanted the court to receive into evidence. The trial court marked the family court judgment as exhibit 1 and stated, "I'll have it received into evidence." The following discussion on the record followed:

"[Jason's counsel]: "Your Honor, . . . obviously if this goes to trial, we'll be discussing whether or not we think it's admissible as to any other matters.

"The court: Right. Any objection to this being received?

"[Jason's counsel]: Not for this purpose, no.

"The court: Then the court does take judicial notice. This is plaintiff's 1.

"[Chih's counsel]: Is it for this specific bifurcation trial only, or is it for the entire case?

"The court: No. I thought we were just trying statute of limitations.

"[Chih's counsel]: Great. Thank you."

After admitting additional exhibits, the trial court held Chih's claims were barred by the four-year statute of limitations under section 3439.09. (*Hsieh I, supra*, B250938.) The court concluded the action was barred because all of the alleged

transfers to Jason occurred prior to June 10, 2007 (four years before the filing of the complaint), and Chih had notice of the alleged fraudulent transfers more than one year prior to the filing of the complaint. (*Ibid*.) On June 18, 2013 the court entered judgment in favor of Jason. (*Ibid*.)

C. Hsieh I

In *Hsieh I*, we concluded the four-year statute of limitations under the UFTA, section 3439.09, subdivision (a), did not apply to bar Chih's claims. (*Hsieh I, supra*, B250938.) Instead, Chih could maintain his claim for the common law tort of fraudulent conveyance, as to which the three-year statute of limitations under Code of Civil Procedure section 338, subdivision (d), did not run until three years after Chih obtained the family court judgment against Ruth—on January 7, 2010. Thus, Chih's lawsuit, filed in 2011, was timely. (*Hsieh I, supra*, B250938.) However, we also concluded the seven-year statute of limitations under section 3439.09, subdivision (c), applied to Chih's claims, which barred any fraudulent transfers made more than seven years before the filing of the complaint. (*Hsieh I, supra*, B250938.) We remanded for the trial court to "determine whether any of the alleged fraudulent transfers were made more than seven years prior to the filing of this action." (*Ibid*.)

D. *Phase Two of the Trial on Remand*

On remand, the parties stipulated that Chih's claims as to 10 alleged fraudulent transfers were barred by the statute of limitations because they were made prior to June 10, 2004, and judgment was entered in favor of Jason on those claims. The parties stipulated further that as to six allegedly fraudulent

transfers made after June 10, 2004, the transfers were not barred by the seven-year statute of limitations under section 3439.09, subdivision (c).

On July 21, 2016 Katherine Butts Warwick substituted in as counsel for Jason in place of his former attorney, Mark Warfel, who had represented both Jason and John. Warfel continued to represent John at trial. On July 21 Warwick also filed an ex parte application to continue the trial for six months so she could obtain bank records from the foreign banks into which the transfers of funds from Ruth were deposited. Specifically, she sought "an opportunity to obtain discovery of [Jason's] bank records," which she asserted would show Jason accepted the funds as an agent for Ruth and John. Warwick asserted she substituted in as counsel once it became evident there was a conflict between Jason and John. Further, Jason's prior counsel was not familiar with the procedure for obtaining foreign bank records. Warwick did not file a declaration or other documents supporting the application. Chih opposed the application, arguing a further delay would prejudice him. Chih pointed out the action was filed five years earlier, on June 10, 2011, and discovery closed as to Jason on March 23, 2013. In addition, the parties had already filed their trial briefs, exhibit lists, and witness lists for phase two of the trial. The trial court denied the application.

The trial court held a bench trial on Chih's remaining claims on August 2 and 3, 2016.[7] Chih sought to introduce the family court judgment to prove Ruth's fraudulent intent in

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[7] On remand Judge William D. Stewart presided over the trial. Judge Pluim passed away prior to phase two of the trial.

transferring funds to Jason. Warwick objected to admission of the family court judgment, arguing Jason was not a party to the family court trial, and Ruth did not appear at the trial. Although Warwick did not dispute that Jason received the transfers from Ruth, she argued the transfers were not fraudulent because the transferred funds were principally from sales Jason's company made in the United States, which funds were transferred to Jason in Hong Kong. In response, the trial court commented Chih needed to meet his initial burden to show the transfers were for a fraudulent purpose, and the court "just [doesn't] think this judgment can be admitted for that purpose." Rather, Chih was "going to have to go through each" alleged fraudulent transfer. The court added as to the judgment, "it doesn't affect these folks," referring to Jason and John.

1. *Chih's case*

As part of Chih's case-in-chief, he again requested the trial court admit the family court judgment. The court admitted the judgment, clarifying, "But it's only for the content, the same as judicial notice," and the document was admitted only to show "there was a judgment entered and that Ruth on January 7, 2010, became a debtor . . . ."

Chih called Jason as his first witness.[8] Jason testified he held power of attorney over purchases of property by Ruth and John. As to one transaction, Jason described himself as "[t]he lawful attorney of the purchaser of my mom." However, Jason

[8] Because John is not a party to this appeal, we summarize only the testimony relevant to Chih's claims against Jason.

asserted he never received a benefit from acting as the power of attorney for Ruth and John.

Chih testified he and Ruth owned a community property home at 2014 El Sereno Avenue (El Sereno property).[9] According to the family court judgment, Chih signed a deed Ruth sent him, purporting to transmute the El Sereno property to Ruth's separate property and enabling her to obtain a $650,000 loan secured by a deed of trust on the property. However, Chih testified he never signed a document allowing Ruth to obtain a loan secured by the property and had never seen a deed of trust encumbering the property. Ruth never told Chih she obtained a loan and never gave him money from the sale. Although Jason admitted he received $640,000 from Ruth, Jason's attorney argued this fact did not show the money came from the loan Ruth obtained on the El Sereno property. The trial court agreed, stating, "[W]e don't know that it's this money."

Chih also testified about $3,950,000 in United Commercial Bank stock identified in the family court judgment as liquidated by Ruth during the period from September 13, 2006 through October 17, 2006. During that period, Ruth and Chih each owned 100,000 shares. Each of their three children (Jason, John, and a daughter) also owned 100,000 shares. Ruth held the stock certificates for the shares she and Chih owned, and she sold the shares for between $4 million and $5 million, but she did not tell Chih. Ruth transferred a portion of the proceeds to Jason, another portion to John, and the final portion was "wired back to Taiwan." However, on cross-examination, Chih conceded he had

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[9] The court referred to this property as property owned on Arcadia Street in San Marino, but it appears Chih was testifying about the El Sereno property in Arcadia, California.

no personal knowledge of Ruth selling the stock, where the proceeds from the sale went, or how the proceeds were divided.

Chih learned from his attorney in 2010 that Ruth had transferred money to Jason and John. Chih did not ask Ruth to return the money because he could not find her. He asked Jason and John to return the money, but they did not.

At the end of cross-examination, Chih was asked, "[I]s there anything about any of these transfers or sales that you testified about earlier that you did have personal knowledge with your own eyes or ears about?" Chih responded, "No. No. No." The trial court commented, "It's established that she's a debtor. And that's about where we are in the case." The court added that Chih still needed to establish "[a]ctual intent to delay or defraud or [the transfers were made] without receiving an [*sic*] reasonable equivalent value in exchange for the transfer . . . ."

Before resting, Chih's attorney read into the record Jason's responses to Chih's requests for admissions, in which Jason admitted to receiving six transfers of funds from Ruth into Jason's bank account: (1) a June 29, 2005 transfer of approximately $90,000; (2) a November 10, 2004 transfer of approximately $30,000; (3) a November 26, 2004 transfer of approximately $80,000; (4) an August 21, 2006 transfer of approximately $150,000; (5) an October or November 2006 transfer of approximately $3,330,000; and (6) an April 2006 transfer of approximately $635,000.[10] Jason asserted the transfers were a gift, by denying request No. 21, which asked him

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[10] The trial court admitted exhibit 4, which was Chih's requests for admissions to Jason, and exhibit 6, which was Jason's supplemental response.

to admit the funds "[were] not a gift" to him.[11] Instead, he claimed the "funds transferred were a gift from my mother."[12]

2. *Jason's case*

Starting in 1994 Jason operated a business based in Hong Kong that sold photographic equipment. Jason principally sold the equipment through Sellen International, in which he was a director and owned a 25 percent interest. Customers paid in cash, by check, or by online transfers of funds. Jason, Jason's wife, and Jason's business partner, Joe Yeah, each had personal bank accounts into which the sale proceeds were deposited. In 1997 Jason started selling the equipment through the Internet to customers in the United States. At that time customers paid for the equipment by making online transfers to the bank accounts of Jason or Yeah. Jason had the transfers made to his bank account at the United Commercial Bank because Ruth was a director at the bank.

At some point Ruth started collecting the payments made by customers in the United States because, as a bank director, she received a discount of $20 to $30 for each wire transfer. The November 10, 2004 transfer of $30,000, undated transfer of $80,000, and August 21, 2006 transfer of $150,000 were wire transfers from Ruth to Jason's bank account from the proceeds of Jason's sales of photographic equipment. Jason explained the transfers were made in round numbers because Ruth would

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[11] Jason also denied the funds Ruth transferred to him were "not yours."

[12] Jason stated this in his supplemental response (exhibit 9) to Chih's form interrogatory No. 17.1 (exhibit 7), both of which were admitted into evidence.

"round [the sales amount] up from, let's say, $37 up to a hundred dollars" to "make it a round number." Ruth's rounding up of the transfer amounts was intended as a gift to Jason. Ruth's last wire transfer was in 2006. Jason also stated some documents showed deposits by him into Ruth's account, which were advances for her to use before she received the payments from customers. After Jason received the wire transfers from Ruth, he used the funds to reimburse Sellen International, which paid the manufacturer for the product.

Jason no longer retained records from his equipment sales because, as he explained, "this is 15, 20 years ago." The only documents he retained were two "barely legible" records of deposits he made into Ruth's account at United Commercial Bank from equipment sales. When asked on cross-examination the annual sales for his company in 2001, Jason responded, "It's hard for me to give an estimate even right now, but if going by the transfer receipt, that's about the amount that was sold in [the United States]." The business's income from equipment sales was recorded on the individual tax returns of Jason, his wife, or Yeah.

Around 1990 Chih gave Jason, John, and their sister 100,000 shares each of the First Continental Bank, which later became United Commercial Bank. Jason was 20 years old at the time. Ruth had possession of the share certificates. Jason initially testified Ruth handed him the share certificates, but on cross-examination he clarified that Ruth showed him the certificates, and he had them "for a few hours or few days," but he did not keep them because he was in school, so Ruth placed them in a safe place. Jason's responses to Chih's requests for

admissions and special interrogatories, in which he referenced a gift from Ruth, referred to her gift of the shares of stock.

In October or November 2006 Ruth sold the bank stocks and wired $3,330,000 to Jason's bank account. Jason called Ruth after receiving the funds, and she told him she had sold his shares. Jason's shares were sold for somewhere between $2 million and $2.5 million. Jason kept his own portion of the proceeds and, at Ruth's direction, wired the remaining funds back to her.

E. *Trial Court's Tentative Decision and Entry of Judgment*

After the trial the parties submitted briefs as their closing arguments. On January 6, 2017 the trial court announced its tentative decision in court, which was incorporated into a written minute order. In its tentative decision, the trial court listed the following transfers from Ruth to Jason at issue in the trial, as follows:

$90,000	6/29/2004
$30,000	11/10/2004
$80,000	11/26/2006
$150,000	8/21/2006
$3,330,000	10/16/2006
$645,000	April 2002
$4,295,000	TOTAL

The trial court found Ruth became a debtor to Chih at the time of the family court judgment because the family court had awarded all of the community property to Chih. In addressing the factors set forth in section 3439.04, subdivision (a)(1), for

determining whether a debtor made a transfer with the "actual intent to hinder, delay, or defraud any creditor of the debtor," the court considered the finding in the family court judgment that Ruth had the intent to defraud Chih, which the court found "applies to Jason as well."

The court found, "Jason was present for the bifurcated trial before another judge of this court which resulted in the appeal and decision quoted in part above. The facts in the appeal were taken from the judgment in the legal separation action Ruth filed against Chih[], admitted as [e]xhibit 1 in the bifurcated trial in this action, and the statement of decision filed after trial. Footnote 4 to the opinion of the Second District Court of Appeal determination.[13] These facts referred to above are the facts in the case as to Jason who was present and participated in the earlier (bifurcated statute of limitations issues) trial and who resisted the appeal unsuccessfully. There is no need to examine those facts again as to Jason, except as to such matters which could lead to a more favorable result to him which he did not have the opportunity to litigate previously. Since the facts are thusly established, the court may draw such inferences as are reasonably subject to inference in the premises and based on all the evidence." The trial court concluded, referring to the family court judgment, "The pattern of Ruth was unmistakably clear and found to be part of a scheme which was malicious, oppressive

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13 Footnote 4 of *Hsieh I* provided, "The facts are taken from the judgment in the legal separation action Ruth filed against Chih, admitted as Exhibit 1 in the bifurcated trial in this action, and the statement of decision filed after trial." (*Hsieh I, supra*, B250938.)

and fraudulent as to Chih . . . . This fact, as discussed above, applies to Jason as well."

Although the court relied on the family court judgment, it also made findings based on the evidence presented at trial, concluding, "[T]his court finds factors 1, 3, 6, 7, and 8 [of section 3439.04, subdivision (b),] and thus the evidence shows the clear intent of Ruth, in particular (1), (3) and (6) which constitute overwhelming evidence of Ruth's intent to hinder, delay and defraud Chih . . . ."

The court found Jason's testimony that four of the transfers from Ruth reflected Jason's income from equipment sales was not credible, explaining, "Jason defends the claim with his contention that several of the transfers listed ($90,000.00 on 6/29/2004; $30,000.00 on 11/10/2004; $80,000.00 on 11/26/2006; and $150,000.00 on 8/21/2006) were in fact transfers of funds earned in his business activities. This question is resolved entirely as a matter of credibility. Jason explains that he operated a camera business which sold merchandise in the United States. Jason explains further that the funds in the cited transfers were largely composed of these business funds being transferred back to him. The reason that his mother Ruth made the transfers is that she was an officer of the bank and thus could transfer funds without the fees typically associated with such transfers. Jason additionally explains that the reason that the transfers were all in round figures is that she 'rounded up' the amounts of his business accounts to reach the figures set forth above. [¶] This contention is not credible. It may be true that Ruth could wire moneys without cost, but the further explanations do not ring true and the court finds them not true. While business transactions are typically given a veneer of legitimacy . . . the

transactions in question are anything but regular. First, business amounts are virtually never in exact round numbers; they vary according to the ebb and flow of purchases, sales and costs. If a reasonable and honest person in business were going to arrange a series of transfers of business funds, that person would ordinarily be scrupulously exact and not be involved in any practice such as 'rounding up'. In other contexts, this 'rounding up' practice would be known as money laundering. And Jason is vague and non-specific as to the business portion and the portion 'rounded up'."

The trial court concluded as to these four transfers, "All of the transfers in question as to Jason were made more than four years before the initiation of this matter, but less than seven years before. The court finds that all were fraudulent transfers."

As to the October 16, 2006 transfer of $3.33 million, the trial court rejected Jason's assertion this was a transfer of a gift of bank stock Chih and Ruth previously made, noting "there is a dearth of evidence to support the notion that [Jason or John] obtained possession or control or that there was an actual or symbolic delivery to any of the donees." The court relied on section [1147], which requires "an actual or symbolic delivery" of anything that is the subject of a verbal gift. The court concluded, "[T]hese 'gifts' of stock were mental intentions of Chih . . . and Ruth, but do not qualify as gifts since there is no evidence that Jason obtained possession and control until the fraudulent transfer and there is no evidence of an actual or symbolic delivery of the bank stock. Nor is there a suggestion that either or both Ruth or Chih . . . set up guardianship accounts or any other

means of symbolic delivery. Their retention of total control defeats the characterization as gifts."[14]

The court ordered that judgment should be entered in favor of Chih against Jason for $4,295,000.[15] On January 13, 2017 Jason requested the court's final decision state that counsel for Jason substituted in as counsel on July 21, 2016 based on prior counsel's conflict of interest in representing Jason and John, and that the court denied the request by Jason's new counsel for a continuance to obtain records from the banks involved in the fund transfers at issue in the case.[16] On March 29, 2017 the court made an additional finding that it had denied Jason's request for a continuance because "it was interposed for the purpose of delay inasmuch as Jason and his prior counsel had adequate time to prepare their defense, and no sufficient showing was made to suggest that the records in question were previously unavailable [for] timely preparation of trial. Further, that there was no sufficient showing that the 'records' were likely to influence the matter in Jason's favor." On April 17, 2017 the trial court

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[14] The trial court did not make a specific finding as to the April 2002 transfer of $645,000 to Jason, but found generally all six transfers were fraudulent transfers.

[15] The court ordered entry of judgment against John in the amount of $1,444,811.20.

[16] Jason also requested the court stay the judgment against Jason pending determination of a timely appeal. The trial court granted a stay under Code of Civil Procedure section 918 until May 5, 2017.

entered judgment on the tentative decision.[17] Jason timely appealed.

DISCUSSION

A. *Substantial Evidence Supports the Trial Court's Finding Ruth Made Fraudulent Transfers to Jason*

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;[18] accord, *Sav-On Drug Stores, Inc. v.*

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[17] Although the parties refer to the court's final ruling as its final statement of decision, the trial court stated in the judgment that the court did not prepare a statement of decision because under Code of Civil Procedure section 632, a statement of decision was not required because the trial lasted fewer than eight hours and the parties did not request a statement be prepared.

[18] Although the trial court described its written decision as a "tentative decision" and not a statement of decision, we apply the

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'"]; *Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981 [deferential substantial evidence standard of review applies to trial court's findings of fact in judgment based on statement of decision following bench trial].)

"'In reviewing a judgment based upon a statement of decision following a bench trial, we review questions of law de novo.'" (*Veiseh v. Stapp* (2019) 35 Cal.App.5th 1099, 1104; accord, *Thompson v. Asimos, supra*, 6 Cal.App.5th at p. 981; see *California Building Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1041 [questions of statutory interpretation are matters of law we review de novo].)

2. *Fraudulent transfers under the UFTA*

"The UFTA permits defrauded creditors to reach property in the hands of a transferee." (*Mejia v. Reed* (2003) 31 Cal.4th 657, 663; accord, *Lo v. Lee* (2018) 24 Cal.App.5th 1065, 1071.) "'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.' [Citation.] The transferee "'holds only an apparent title [to the transferred property], a mere cloak under which is hidden the hideous skeleton of deceit, the real owner being the scheming and shifty

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same substantial evidence standard of review to the trial court's written findings, which it referenced in the final judgment.

judgment debtor . . . .'" [Citation.] The purpose of the voidable transactions statute is "'to prevent debtors from placing property which legitimately should be available for the satisfaction of demands of creditors beyond their reach . . . .'"" (*Lo*, at p. 1071.)

"A creditor seeking to set aside a transfer as fraudulent under [former] section 3439.04 may satisfy either section 3439.04, subdivision (a)(1) by showing actual intent, or section 3439.04, subdivision (a)(2) by showing constructive fraud." (*Lo v. Lee, supra*, 24 Cal.App.5th at p. 1071.) Under former section 3439.04, subdivision (a), of the UFTA, "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."

For purposes of the UFTA, a debtor is "a person who is liable on a claim" (former § 3439.01, subd. (e)), and a claim is "a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured,

unmatured, disputed, undisputed, legal, equitable, secured, or unsecured" (*id.*, subd. (b)).[19]

A creditor has the burden of proof to establish the debtor had a fraudulent intent by a preponderance of the evidence. (*Liodas v. Sahadi* (1977) 19 Cal.3d 278, 291-292; *Annod Corp. v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1293; *Whitehouse v. Six Corp.* (1995) 40 Cal.App.4th 527, 533.) "[I]n the fraudulent conveyance context, '[p]roof of fraudulent intent often consists of "'*inferences* from the circumstances surrounding the transaction . . . .'"" (*Annod Corp.*, at p. 1298; accord, *Eddy v. Temkin* (1985) 167 Cal.App.3d 1115, 1122 ["Proof of fraudulent intent often consists of '*inferences* from the circumstances surrounding the transaction, such as secrecy or concealment of the debtor, the relationship of the parties . . . ."'].)

Section 3439.04, subdivision (b), provides that "[i]n determining actual intent . . . , consideration may be given,

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[19] Jason does not contend on appeal Ruth was not a debtor under the UFTA. Although the family court judgment was entered in 2010, under the UFTA "'the relationship of debtor and creditor arises in tort cases the moment the cause of action accrues.'" (*Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1057-1058 [sufficient evidence supported issuance of preliminary injunction under UFTA in pending tort action against defendant convicted of sexual molestation of plaintiff, prohibiting defendant from transferring his assets]; accord, *Weisenburg. v. Cragholm* (1971) 5 Cal.3d 892, 896 [Under predecessor statute to UFTA, "it is no longer necessary that a creditor reduce his claim to judgment before seeking the benefit of the remedy."].) Ruth's 1997 filing of a petition for legal separation and the issuance of ATRO's generally barring Ruth's transfer of any community or separate property created a debtor and creditor relationship between Ruth and Chih.

among other factors, to any or all of the following: [¶] (1) Whether the transfer or obligation was to an insider. [¶] . . . [¶] (3) Whether the transfer or obligation was disclosed or concealed. [¶] . . . [¶] (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."

"[T]hese factors do not create a mathematical formula to establish actual intent. There is no minimum number of factors that must be present before the scales tip in favor of finding of actual intent to defraud. This list of factors is meant to provide guidance to the trial court, not compel a finding one way or the other." (*Filip v. Bucurenciu* (2005) 129 Cal.App.4th 825, 834; accord, *Annod Corp. v. Hamilton & Samuels, supra*, 100 Cal.App.4th at pp. 1298-1299 [rejecting argument certain number of "'badges of fraud'" show fraudulent intent under former § 3439.04].)

3. *The trial court erred in relying on the family court judgment to find Ruth intended to defraud Chih*

Jason contends the trial court erred in relying on the family court judgment to find Ruth had the intent to defraud Chih. Jason is correct that because he was not a party or in privity with a party to the 1997 separation action, he was not bound by the finding in the family court judgment that Ruth intended to defraud Chih. "[I]ssue preclusion applies (1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that

party." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 825; accord, *Samara v. Matar* (2018) 5 Cal.5th 322, 327.)

"'The concept of privity for the purposes of . . . collateral estoppel refers "to a mutual or successive relationship to the same rights of property, or to such an identification in interest of one person with another as to represent the same legal rights [citations] and, more recently, to a relationship between the party to be estopped and the unsuccessful party in the prior litigation which is 'sufficiently close' so as to justify application of the doctrine of collateral estoppel. [Citations.]" [Citations.] "'This requirement of identity of parties or privity is a requirement of due process of law.'"'" (*Rodgers v. Sargent Controls & Aerospace* (2006) 136 Cal.App.4th 82, 90-91; accord, *Nein v. HostPro, Inc.* (2009) 174 Cal.App.4th 833, 845.)

Here, the only evidence Chih presented at trial showing the relationship between Ruth and Jason other than their familial relationship was that they transacted business together and, as to one transaction, Jason acted as Ruth's power of attorney. However, with respect to the 1997 separation action, this evidence did not show Ruth and Jason "represente[ed] the same legal rights" such that Jason should be bound by the family court's findings in the separation proceeding. (*Rodgers v. Sargent Controls & Aerospace, supra*, 136 Cal.App.4th at pp. 90-91.) The trial court did not find Jason was in privity with Ruth, instead relying on footnote 4 of our opinion in *Hsieh I*, in which we stated the facts were taken in part from the family court judgment. (*Hsieh I, supra*, B250938.)

But the recitation of facts in *Hsieh I* was only provided as background for the determination of the statute of limitations issue, not the merits of whether Ruth's transfers to Jason were

fraudulent transfers, which question was not before us in *Hsieh I*. As discussed, during phase one of the trial, Jason objected to admission of the family court judgment, except as to the statute of limitations issue. When Chih's attorney inquired whether admission of the judgment was "for this specific bifurcation trial only, or . . . for the entire case," the trial court responded, "No. I thought we were just trying statute of limitations." In phase two of the trial, the court admitted the family court judgment only to show "there was a judgment entered and that Ruth on January 7, 2010, Ruth became a debtor . . . ." The court ruled, "It'll be received. But it's only for the content, the same as judicial notice."

Chih's contention our recitation of facts in *Hsieh I* was the law of the case also lacks merit. The law of the case "doctrine applies only to an appellate court's decision on a question of law; it does not apply to questions of fact." (*People v. Barragan* (2004) 32 Cal.4th 236, 246; accord, *Investors Equity Life Holding Co. v. Schmidt* (2015) 233 Cal.App.4th 1363, 1377.)

4. *Overwhelming evidence supports the trial court's finding Ruth intended by the six transfers to defraud Chih*

Jason contends there is no substantial evidence to support the trial court's finding Ruth, by making the six transfers to Jason, intended to defraud Chih. Although Jason is correct the court erred to the extent it relied on the family court judgment to support this finding, substantial evidence supported the court's finding factors 1, 3, 6, 7, and 8 of former section 3439.04, subdivision (b), "constitute overwhelming evidence of Ruth's intent to hinder, delay and defraud Chih . . . ."

Any error in admitting the default judgment was therefore harmless error in that it is not "'reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.'" (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800, quoting *People v. Watson* (1956) 46 Cal.2d 818, 836; accord, *Donohue v. AMN Services, LLC* (2018) 29 Cal.App.5th 1068, 1104 ["[B]ecause [appellant] did not meet her burden of establishing prejudice, any error in excluding the evidence is harmless."]; *Kim v. Konad USA Distribution, Inc.* (2014) 226 Cal.App.4th 1336, 1352 ["'[E]rrors in civil trials require that we examine "each individual case to determine whether prejudice actually occurred in light of the entire record."'"]; see Cal. Const., art. VI, § 13 ["No judgment shall be set aside . . . on the ground of . . . the improper admission or rejection of evidence . . . unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."].)

Jason does not dispute the transfers to him were "to an insider." (§ 3439.04, subd. (b)(1).) Neither does he dispute the transfers were not disclosed to Chih. (§ 3439.04, subd. (b)(3).) As to the loan Ruth took on the community property home, Ruth never told Chih she obtained a loan and never gave him money from the sale. Nor had Chih seen the deed of trust encumbering the property. As to the United Commercial Bank stock, Chih had no knowledge Ruth sold the stock or where Ruth sent the proceeds from the sale. With respect to the transfers of money to Jason, Chih learned about the transfers from his attorney in 2010.

As to factor 6, it is undisputed Ruth absconded. (§ 3439.04, subd. (b)(6).) Ruth failed to appear in 2010 at the trial in her 1997 separation action. (*Hsieh I, supra*, B250938.) When Chih learned Ruth had transferred funds to Jason, Chih wanted to contact Ruth, but he could not find her. As to factor 7, "[w]hether the debtor removed or concealed assets," Ruth concealed from Chih that she had him sign a deed purporting to transmute the community property to her separate property. She also concealed from Chih she sold the stock she and Chih owned in United Commercial Bank.

As to factor 8, "[w]hether 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," the trial court admitted Jason's responses to Chih's requests for admissions, in which Jason admitted to receiving the six allegedly fraudulent transfers. In addition, Jason asserted in his interrogatory responses the "funds transferred were a gift from [his] mother."

As the trial court observed, section 1146 defines a gift as a "transfer of personal property, made voluntarily, and without consideration." Further, "[a] verbal gift is not valid, unless the means of obtaining possession and control of the thing are given, nor, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee." (§ 1147.) The trial court found the purported gift of stock from Chih and Ruth to Jason was not an effective gift because "there is no evidence of an actual or symbolic delivery of the bank stock. . . . [Chih and Ruth's] retention of total control defeats the characterization as gifts." Substantial evidence supports this finding. As Jason testified, his parents purported to give him and his siblings gifts

of bank shares when Jason was 20 years old. But Ruth had possession of the share certificates; she showed Jason the certificates, and he had them "for a few hours or few days," but he did not keep them because he was in school, so Ruth placed them in a safe place.

In addition, the trial court found Jason's testimony not credible that he received the transfers of funds from Ruth as part of a business transaction in which Ruth facilitated the transfer of the proceeds from his business's photographic equipment sales in the United States to Hong Kong. The court found Jason's explanation his mother was involved in the transactions to save the costs of wiring funds "do not ring true." Further, the court noted all the transactions were in round numbers. As the court found, in other contexts "this 'rounding up' practice would be known as money laundering."[20]

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[20] Jason contends because Chih never made a prima facie case, the burden should not have shifted to Jason to justify the transactions, citing to Evidence Code section 550, subdivision (b). However, the evidence showing Ruth transferred funds to Jason as an insider; Ruth concealed the transfers from Chih; Ruth absconded; Ruth concealed her encumbrances on the community property home and sale of joint stock; Jason admitted he received all the transfers; and Jason claimed all the transfers were gifts (thus without consideration) support the trial court's implied finding Chih had made a prima facie case of fraudulent transfers. Moreover, Jason did not move for a judgment of nonsuit under Code of Civil Procedure section 581c.

B. *The Trial Court Did Not Abuse Its Discretion in Denying Jason's Motion for a Trial Continuance*

Jason contends the trial court abused its discretion in denying Jason a six-month trial continuance to obtain bank records that were necessary after Jason's prior counsel acknowledged he had a conflict of interest. This contention lacks merit.

"'The decision to grant or deny a continuance is committed to the sound discretion of the trial court.' [¶] . . . [¶] . . . Trial continuances are disfavored and may be granted only on an affirmative showing of good cause." (*Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1126-1127, citations omitted, disapproved on another ground in *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 196, fn. 8; accord, *Hernandez v. Superior Court* (2004) 115 Cal.App.4th 1242, 1246 (*Hernandez*) ["The trial court has discretion in ruling on requests to extend discovery deadlines or continue trial dates."]; see Cal. Rules of Court, rule 3.1332(c) ["Although continuances of trials are disfavored, each request for a continuance must be considered on its own merits. The court may grant a continuance only on an affirmative showing of good cause requiring the continuance."].)

The cases relied on by Jason are distinguishable. In *Hernandez, supra*, 115 Cal.App.4th at page 1246, the Court of Appeal concluded the trial court's denial of a sufficient continuance in light of the terminal illness and death of the plaintiff's attorney was an abuse of discretion. As the *Hernandez* court explained, "'While it is true that a trial judge must have control of the courtroom and its calendar and must have discretion to deny a request for a continuance when there is no good cause for granting one, it is equally true that, absent [a lack of diligence or other abusive] circumstances which are not

present in this case, a request for a continuance supported by a showing of good cause usually ought to be granted.'" (*Id*. at pp. 1246-1247; see *Jurado v. Toys "R" Us, Inc.* (1993) 12 Cal.App.4th 1615, 1617 (*Jurado*) [denial of trial continuance in personal injury case was abuse of discretion where plaintiff's attorney diligently attempted to serve plaintiff's treating physician with a trial subpoena but learned physician was in Europe, and attorney could not proceed without sole medical witness]; *Whalen v. Superior Court* (1960) 184 Cal.App.2d 598, 600-601 (*Whalen*) [trial court abused its discretion in denying continuance to enable defendant to appear at trial where defendant had been commissioned to military duty in Hong Kong].)

In contrast to *Hernandez*, *Jurado*, and *Whalen*, Jason failed to show good cause for his request for a continuance. Jason's only basis for the continuance was a stated desire to obtain discovery of the records of his own bank accounts in Hong Kong into which the allegedly fraudulent transfers were made.[21] But Jason's attorney failed to explain why there was a last-minute need for

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[21] On appeal, Jason also argues he showed good cause for a trial continuance because his new attorney needed time to prepare for trial. But this ground was not asserted in Jason's ex parte application and is forfeited on appeal. (*Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1026 [an argument """"may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it""""]; *Professional Collection Consultants v. Lauron* (2017) 8 Cal.App.5th 958, 972 [""""[I]t is fundamental that a reviewing court will ordinarily not consider claims made for the first time on appeal which could have been but were not presented to the trial court.""""].)

the bank records other than that his attorney had just substituted into the case and his prior attorney was unfamiliar with the procedure for obtaining foreign bank records. Indeed, Jason failed to support his ex parte application with a declaration from his counsel explaining the reason for the late request and counsel's diligence in obtaining discovery prior to that date. In addition, Chih demonstrated a further delay of trial would prejudice him given that the case was filed over five years earlier, in 2011, and the parties had already submitted their trial documents, including their trial briefs, witness lists, and exhibit lists. Under these circumstances the trial court's denial of Jason's ex parte application was not an abuse of discretion. (*Thurman v. Bayshore Transit Management, Inc., supra*, 203 Cal.App.4th at p. 1127.)

DISPOSITION

The judgment is affirmed. Chih is awarded his costs on appeal.

FEUER, J.

WE CONCUR:

PERLUSS, P. J. STONE, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.