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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

VANHANH NGUYEN,  
Plaintiff and Appellant,

v.

MINH LUONG, et al.,  
Defendants and Respondents.

A141895

(Alameda County  
Super. Ct. No. HG10-548160)

MINH LUONG,  
Plaintiff and Respondent,

v.

VANHANH NGUYEN,  
Defendant and Appellant.

(Alameda County  
Super. Ct. No. RG12-617372)

This appeal is taken from judgments in two cases. In Alameda County case number HG10-548160, Vanhanh Nguyen sued Eric Leung, Leung's brother, Minh Luong, and Yen Linh to collect a debt owed to Nguyen by Leung, asserting causes of action for fraudulent conveyance and constructive trust. In Alameda County case number RG12-617372, Luong sued Nguyen to quiet title to property at 3995-3999 San Leandro Avenue in Oakland (San Leandro Ave.). The cases were tried jointly to the court, and the court ruled against Nguyen in both. On appeal, Nguyen essentially reargues the facts, citing evidence that could have supported decisions in her favor. Nguyen has not established that the evidence, as a matter of law, dictated that she prevail. We affirm the judgments.

## I. BACKGROUND

### A. San Leandro Ave., the Loan to Leung, and the Judgment Against Leung

The court's statement of decision indicates that Luong purchased San Leandro Ave. for \$650,000 in September 2005, with title solely in his name. Luong testified that he made the down payment, and the balance of the purchase price was a \$500,000 promissory note secured by a deed of trust on the property. "[Nguyen] testified that she believed that Leung was the joint owner in fact of the San Leandro Ave. property because Leung told her he was going to buy the property. [Nguyen] cited escrow instructions generated by her business, Mekong Realty (Exhibit 8), and a cashier's check for \$175,371.16 drawn on a joint account held by [Luong] and Leung (Exhibit 9)." However, "[Luong] and Leung testified that the account was solely [Luong's]. [Nguyen] acknowledged that when escrow closed on the property, [Luong] was the sole buyer and Leung had 'dropped out.' "

The note secured by San Leandro Ave. was payable 50 percent to Nguyen and her husband Long H. Nguyen, and 50 percent to Cao T. Nguyen and Dao T. Anh Nguyen. Nguyen and her husband assigned their 50 percent interest in the note and deed of trust to Kim Hicks. Luong testified that "he alone made all the payments on the loan as evidenced by cancelled checks and receipts for payments to Kim [H]icks and Cao Nguyen."

Luong testified that in May 2006 he refinanced another property in Oakland in order to pay off the \$500,000 loan on San Leandro Ave, and mailed cashier's checks of \$250,000 each to Hicks and Cao Nguyen. According to the statement of decision, "[t]he checks indicate that . . . Lueng purchased the checks but [Luong] and Lueng testified that they purchased the checks together and put Leung's name on the checks as the purchaser." Luong received a May 26, 2006 letter, written on behalf of Hicks by Kim Luong, thanking him for the \$250,000 payoff of the loan, but stating that an additional \$1,835 in interest and a \$100 reconveyance fee were required to satisfy the obligation.

"[Nguyen] testified that in May, 2006, Leung came to her office with the two cashier's checks and told [Nguyen] that he had checks to pay off the loan on the San

Leandro Ave. property. [Nguyen] told Leung that the payments were to be made to Kim Hicks and Cao Nguyen.

“[Nguyen] testified that a week after her conversation with Leung, Leung returned to her office and told [Nguyen] that he needed money and had changed his mind about paying off the full loan. [Nguyen] testified that Leung wanted to pay off the \$250,000 loan to Cao Nguyen but pay interest only to Kim Hicks. [Nguyen] said she then called Kim Hicks and told her they should return ‘the loan money’ to Leung. A check dated June 15, 2006, for \$244,270 to Leung, drawn on the account of Mekong Realty and Mortgage, Inc. was given to Leung, according to [Nguyen]. (Exhibit 12). The check carries a notation that states ‘Loan proceed on 3995 San Leandro.’ [Nguyen] testified that she assured Kim Hicks that it was fine to loan Leung the money. [Nguyen] testified that no new documents were executed when the check was cut, because she thought the loan was secured by the San Leandro Ave. property. [Nguyen] never discussed the matter with [Luong].

“ . . . Luong testified that he did not know about the loan to Leung.

“[¶] . . . [¶]

“Leung testified that he talked to [Nguyen] about a loan for \$250,000, with [Nguyen] becoming a partner in his restaurant business. [Nguyen] denied that she agreed to be a partner with Leung. Leung testified that the money went to support his restaurant business.”

In July 2008, Luong attempted to pay off the balance owed to Hicks on the 2005 loan by sending her a check for \$2,600. “[Luong] testified that he took a long time to send the remaining money owed because he was busy and ‘forgot.’ [Luong] then received back the \$2,600 check with a letter dated July 22, 2008 from Kim Luong on behalf of Kim Hicks directing [Luong] to contact California Trust Deeds to pay off the final amount. (Exhibit 33).”

In August 2008, Hicks executed an assignment of her interest in the deed of trust on San Leandro Ave. to Nguyen.

In October 2008, Nguyen sued Luong and Leung for the balance of the debt owed to Hicks. In July 2010, a default judgment was entered against Leung only for \$341,978.

#### B. The Alleged Fraudulent Conveyances

In November 2010, Nguyen commenced her action alleging fraudulent conveyance and seeking to impose a constructive trust against Luong, Leung, and Yen Linh, who, according to the first amended complaint, acted as Leung's attorney-in-fact in effecting the conveyances. The causes of action centered upon transfers of properties at 2383 East 24th Avenue (24th Ave.) and 5700 International Boulevard (International Blvd.) in Oakland from Leung to Luong for no consideration.

Leung had left the United States to reside in China in 2007. In 2008, Leung transferred title to 24th Ave. and International Blvd. Although Leung held record title to both properties, Luong testified that he was the actual purchaser of the properties in 1988 and 1991, and paid off their mortgages. In 2008, Luong replaced Leung in Bureau of Automotive Repair (B.A.R.) records as the owner of a business called Discount Auto Repair (Discount Auto).<sup>1</sup> Although Lueng had been listed as the owner of Discount Auto, Luong testified that he purchased the business in 1991 and was its actual owner. “[Nguyen] testified that she prepared tax returns for both [Luong] and Leung and that Leung reported the business’ income on his tax return. She also testified that [Luong] received W2s each year from the business.”

Luong said Leung was identified as the owner of the properties and the business “to make sure title for the properties or business would stay in the family because he worked in a dangerous area and ‘could go any time.’ [Luong] also admitted that the arrangement allowed him and his family to continue to qualify for Medi-Cal benefits.”

#### C. The Court’s Decisions

The court rejected Nguyen’s fraudulent conveyance claims, stating with respect to 24th Ave. and International Blvd. “[Luong] and Leung testified that [Luong] purchased

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<sup>1</sup> Both sides’ briefs indicate that Discount Auto is located at the International Blvd. property, and Luong’s brief states that 24th Ave. has been his family home since he purchased it.

the properties. . . . [Luong] testified that he made all the payments on the 24th Ave. property, and there was no evidence presented contradicting that. Leung testified that he never made any payments and that [Luong] was the true owner. Similarly, [Luong] purchased the International Blvd. property in 1991, and made all the payments on the property, notwithstanding the fact that Leung's name was on the title. No evidence was presented contradicting that. Leung testified that all payments were made by [Luong] and that [Luong] was the true owner. [¶] As a result, the Court finds that Defendant Luong was the true owner of the properties at 24th Ave. and International Blvd. at all times. As such, there was not a true transfer of property in violation of either Civil Code sections 3439.04 or 3439.05. [¶] Additionally, because Leung invested nothing of monetary value in the properties, the transfer of title from Leung to Defendant Luong for no money was an exchange of 'equivalent value' pursuant to Civil Code section 3439.05.<sup>2</sup> The court recognized that Evidence Code section 662 states that "[t]he owner of legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof." But the court found the evidence of true ownership was sufficient to overcome the presumption.

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<sup>2</sup> Civil Code section 3439.04, subdivision (a) provides in part: "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. . . ." The statute lists various factors that may be considered in determining the debtor's actual intent, including "[w]hether the debtor absconded," "[w]hether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred," and "[w]hether the debtor was insolvent or became insolvent shortly after the transfer was made." (Civ. Code, § 3439.04, subds. (b)(6), (b)(8), (b)(9).)

Civil Code section 3439.05 provides: "A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation."

The court found with regard to “the transfer of the Discount Auto ownership title, [Luong] purchased the business and operated it. [Luong] was the licensed mechanic whereas Leung had little to do with any of the operations. As a result, the fact that the ownership designation was changed from Leung to [Luong] did not constitute a passing of title in violation of Civil Code sections 3439.04 or 3439.05 because [Luong] was the true owner.”

The court further found that “evidence of Leung’s total debts versus his total assets was not shown. Indeed, transfer of the property alone, which had no real value to Leung, did not materially (*sic*) Leung’s financial status. [Nguyen] failed to present sufficient evidence to support a claim for constructive fraudulent transfer, pursuant to Civil Code section 3439.05, because she did not show that Leung was ‘insolvent at that time (of the property transfer) or . . . became insolvent as a result of the transfer or obligation.’ [¶] The Court also notes that [Nguyen] was not assigned the Deed of Trust from Kim Hicks, which is the basis for her action, until August 18, 2008, which was after the property title transfers had already occurred. Therefore the court concludes that [Nguyen] was not harmed by the transfer of titles from Leung to [Luong].”

The court ruled for Luong on his quiet title claim as follows:

“In June 2006, Kim Hicks made a loan to Leung, which was subsequently assigned to [Nguyen]. [Nguyen] asserts that the loan to Leung was a reinstatement of a loan made to [Luong] secured by the San Leandro Ave. property. [Nguyen], however, assumed Leung was a co-owner of the property, even though she knew that Leung had ‘dropped out’ as a potential co-owner before escrow closed. [Nguyen] never contacted [Luong] about the loan to Leung, nor were any documents executed related to the loan to Leung.

“The evidence also established that Defendant Luong mailed cashier’s checks to both Cao Nguyen and Kim Hicks covering the original \$500,000 loan on the San Leandro Ave. property. Although he waited two years to do so, [Luong] also paid an additional \$2,600 to Hicks in additional interest and fees.

“The Court finds that the loan made by Kim Hicks and assigned to [Nguyen] was a loan to Leung alone, unrelated to the San Leandro property. Notwithstanding [Nguyen’s] mistaken belief that Leung was co-owner of the property, the evidence suggests otherwise. Therefore, [Nguyen] has no continuing interest in the San Leandro property.”

## II. DISCUSSION

### A. Fraudulent Conveyance Case

Nguyen’s threshold argument seeking to reverse the judgment on her fraudulent conveyance claim is that Luong was judicially estopped from claiming to own 24th Ave. and International Blvd. because he had “represented to the State of California over the years that he did not own [these properties] to receive Medi-Cal benefits . . . .” However, the purpose of judicial estoppel “is to protect the integrity of the judicial process” (*International Engine Parts, Inc. v. Feddersen & Co.* (1998) 64 Cal.App.4th 345, 350), and the doctrine applies only when a party has taken inconsistent positions in judicial or quasi-judicial administrative proceedings (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 422). Nguyen identifies no such proceeding contesting or involving Luong’s eligibility for Medi-Cal benefits. Accordingly, judicial estoppel is inapplicable.

The rest of Nguyen’s fraudulent conveyance arguments are primarily focused on evidence that could have supported a finding of actual or constructive fraud on the part of Leung. Nguyen observes that Leung depleted his bank accounts, and borrowed against properties, including International Blvd., which he actually or apparently owned, before departing for China and defaulting on his United States obligations. But the court took those withdrawals and loans into account in its statement of decision.

Nguyen argues that there was no clear and convincing evidence to overcome the Evidence Code section 662 presumption that Leung’s record title to 24th Ave. and International Blvd. was correct. She notes that Leung represented to lenders and the Internal Revenue Service that he owned the properties. However, his misrepresentations were apparently conceded at trial. To quote the statement of decision, “Evidence and

testimony was offered that Leung signed Deeds of Trust in 1991 and 1998 representing that he was the owner of 24th Ave. (Exhibits 20 and 22). [Luong] acknowledged that Leung lied to the banks in 1991 and 1998 in order to obtain loans.” There was no dispute that Leung was falsely held out to be the owner of the properties. Nguyen argues that Luong’s “self serving” testimony about his payments for the properties was “clearly not sufficient” to overcome the presumption of title, but the weight to be given Luong’s testimony was for the trial court to determine. (*City of Glendale v. Marcus Cable Associates, LLC* (2014) 231 Cal.App.4th 1359, 1385 [“ ‘[a]n appellate court does not reweigh the evidence’ ”].)

In a similar vein, Nguyen observes that Leung represented to the B.A.R. and IRS that he owned Discount Auto, and she submits that “[i]f Luong was in fact the true owner of Discount Auto Repair, there was no reason for him to wait 19 years until the B.A.R. suspended Leung’s license to change ownership.”<sup>3</sup> But the timing of the transfer did not conclusively establish that Discount Auto was in fact Leung’s business. The court wrote: “[B]oth [Luong] and Leung testified that [Luong] was the actual owner of Discount Auto, and that [Luong] was the qualified mechanic for licensing purposes. Both Leung and [Luong] testified that [Luong] handled all correspondence with the B.A.R., and that Leung never actually worked at Discount Auto after 1993 and had no involvement with the business.” Thus, the court had substantial evidence from which to find that the business belonged to Luong.

The court rejected Nguyen’s case for constructive fraud under Civil Code section 3439.05 on multiple grounds, finding that her claim did not arise before the allegedly fraudulent transfers, that Leung received equivalent value for the properties and business transferred, and that Nguyen failed to prove that Leung was insolvent after the transfers. Nguyen contends that all of these findings were erroneous, arguing among other things that the court failed to apply the Civil Code section 3439.02, subdivision (c)

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<sup>3</sup> According to Nguyen’s brief, the B.A.R. permanently revoked Leung’s business license in January 2008 after finding that he had committed multiple infractions including issuance of false smog certificates.

presumption that a debtor “who is generally not paying his or her debts as they become due” is insolvent. Even if all of Nguyen’s arguments are correct, Civil Code section 3439.05 requires that a “transfer” must have occurred, and the court found that the transactions at issue were not in substance transfers because Luong already owned the properties and the business. This finding rested on the trial court’s assessment of Luong’s and Leung’s credibility, and thus cannot be overturned on appeal. (*Powerhouse Motorsports Group, Inc. v. Yamaha Motor Corp., U.S.A.* (2013) 221 Cal.App.4th 867, 877 [appellate courts do not “redetermine credibility”].)

#### B. The Quiet Title Case

Nguyen cites no law in her challenges to the judgment in the quiet title action. Her contentions are devoted entirely to rearguing the evidence. The arguments are unavailing.

The question presented in the case was whether, as Nguyen claimed, the loan to Leung was secured by San Leandro Ave., or, as Leung claimed, was an unsecured investment in his restaurant. The evidence set forth in the statement of decision was sharply conflicting. Luong testified that he made the down payment on the property, and arrangements to pay off the loan for the balance of the purchase price. Leung testified that the loan he discussed with Nguyen was for a partnership in his restaurant business. However, Nguyen testified that Leung told her he wanted to pay off only half of the debt secured by the property, and she thought Leung was a co-owner.

There were reasons to either believe or disbelieve Nguyen. On the one hand, as the statement of decision acknowledged, Leung’s name was on the \$250,000 cashier’s checks that were tendered to pay off the loan for the property, and Luong waited almost two years before following up with Hicks on a reconveyance. Moreover, as Nguyen’s brief observes, some of the checks Leung wrote to pay off what he said was an unsecured investment in his restaurant bore the notation “San Leandro” (Exhibit 44). On the other hand, Hicks wrote Luong thanking him for the \$250,000 payment, indicating that she received the cashier’s check for the disputed portion of the secured loan. Moreover, Nguyen admitted knowing that Leung had “dropped out” of purchasing the property,

there was no evidence that Leung ever held record title, and Nguyen was well-positioned to know who owned the property because her company apparently handled the escrow for its purchase. Under these disputable circumstances, the court was not obliged to credit Nguyen's version of the transaction. (*City of Glendale v. Marcus Cable Associates, LLC*, *supra*, 231 Cal.App.4th at p. 1385; *Powerhouse Motorsports Group, Inc. v. Yamaha Motor*, *supra*, 221 Cal.App.4th at p. 877.)

### III. DISPOSITION

The judgment is affirmed.

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Siggins, J.

We concur:

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Pollak, Acting P.J.

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Jenkins, J.