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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

BEIJING YUANCHUN MEDIA  
COMPANY, LTD.,

Plaintiff and Appellant,

v.

5 CONTINENTS TV CORPORATION  
et al.,

Defendants and Respondents.

B236911

(Los Angeles County  
Super. Ct. No. BC428902)

APPEAL from a judgment of the Superior Court of Los Angeles County, Debre K. Weintraub, Judge. Affirmed.

Kenner Law Group and Jason J.L. Yang for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

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Plaintiff and appellant Beijing Yuanchun Media Company, Ltd. (Beijing) prevailed at trial on its contract claims against defendants 5 Continents TV Corporation (5CTV) and Ken Liu to recover the contract price for episodes of a television series entitled “Discover China” that Beijing produced and delivered to 5CTV.<sup>1</sup> Beijing appeals from the uncontested bench trial in which the court concluded that Beijing did not present sufficient evidence to establish its fraudulent conveyance claim against 5CTV, Liu, and Liu’s wife Xiao Jing Lin. Beijing contends Liu’s admissions conclusively established that he transferred assets to Lin, but we agree with the trial court that these admissions do not compel a finding in Beijing’s favor as a matter of law. Thus, we affirm.

## BACKGROUND<sup>2</sup>

Beijing entered into an original collaboration agreement with 5CTV to produce a television series entitled “Discover China.” When 5CTV did not make payments according to the terms of the original collaboration agreement, the parties entered into a written memorandum agreement attempting to resolve the contract dispute. Liu also signed a personal guaranty. 5CTV and Liu both defaulted on these obligations. Beijing filed suit, alleging breach of contract, breach of the guaranty agreement, and fraudulent conveyance. Because the sole issue on appeal relates to the fraudulent conveyance cause of action, our review of the record focuses on the admissions offered into evidence at trial to prove that claim.<sup>3</sup>

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<sup>1</sup> Ken Liu is also known as Gang Liu and Yan Jun Liu.

<sup>2</sup> Respondents Liu and his wife Xiao Jing Lin did not file a brief. We do not, however, treat respondents’ failure to file a brief as a default or admission of error. (*Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197, 1203.) Beijing has the burden to show prejudicial error whether or not the respondents’ brief has been filed. (*In re Marriage of Davies* (1983) 143 Cal.App.3d 851, 854.)

<sup>3</sup> Before proceeding with the uncontested bench trial, the trial court struck 5CTV’s answer and entered default against the corporation. Following the bench trial, the court held a default prove-up hearing.

### *1. Admissions Related to Fraudulent Conveyance Cause of Action*

Before trial, Beijing obtained discovery sanctions that its requests for admissions propounded on Liu were deemed admitted. Beijing submitted into evidence at trial the admissions to establish its fraudulent conveyance cause of action.

Liu “transferred assets, including cash, inventory and other property to co-defendant Yan Jun Liu” and “Xiao Jing Lin between 2008 and the present date.” (Capitalization omitted.) Each of these transfers was made “for no consideration or nominal consideration.” At the time Liu made the transfers, he had “insufficient assets to pay [his] debts and obligations as they became due.” Liu intended to use these transfers to delay, hinder, and frustrate Beijing’s ability to collect the monies due under the guaranty agreement.

### *2. Trial Court Concluded Beijing Did Not Prove Fraudulent Conveyance*

After reciting the admissions noted above, the trial court concluded that Beijing did not meet its burden of proof. These admissions did not identify any “particular transfer which defendant Lin should be ordered to make available for the benefit of plaintiff as a creditor,” or the value of any transferred assets.

Beijing’s counsel objected to the trial court’s characterization of the evidence, arguing that the “assets” in question were the proceeds from the television series sold in the U.S. that Liu gave to his wife to pay the mortgage. The court acknowledged Beijing’s argument, but reiterated that no evidence was presented with respect to any specific asset transferred to Lin. The trial court, however, gave Beijing an opportunity to brief the issue. Although this brief was filed in the trial court, the record on appeal does not contain a copy. The trial court apparently was not persuaded, however, and entered judgment. Beijing timely filed a notice of appeal.

## DISCUSSION

### *1. Scope of Appellate Review*

As a preliminary matter, we must determine whether the scope of our appellate review includes issues related to the uncontested bench trial. An appellate court’s review

is limited in scope to the judgment or order specified in the notice of appeal. (*Soldate v. Fidelity National Financial, Inc.* (1998) 62 Cal.App.4th 1069, 1073.) We liberally construe the notice of appeal. “The notice is sufficient if it identifies the particular judgment or order being appealed. . . .” (Cal. Rules of Court, rule 8.100(a)(2).)

Here, the notice of appeal states the appeal is taken from the default judgment, not the judgment entered after the uncontested bench trial. The judgment entered in this action, however, includes both 5CTV’s liability following the default prove-up hearing, and Liu’s and Lin’s liability following the uncontested bench trial. Thus, the notice of appeal sufficiently identifies the judgment, although Beijing also should have noted that the appeal is taken from a judgment entered following a court trial. Accordingly, the scope of our review includes issues raised in the bench trial pertaining to Liu and Lin.

## 2. *The Admissions Did Not Identify Any Specific Transferred Assets*

Beijing contends that the trial court erred in concluding the company did not meet its burden of proof on its fraudulent conveyance cause of action because Liu’s admissions establish that he fraudulently transferred property, and his intent was to hinder, delay or defraud Beijing. We disagree.

### a. *Standard of Review*

Although Beijing states that we review the trial court’s order for substantial evidence, the issue on appeal turns on the failure of proof at trial. “[T]here is a conceptual and substantive distinction within the substantial evidence analysis depending on who has the burden of proof on a particular issue, which party prevailed on that issue and who appealed.” (*Valero v. Board of Retirement of Tulare County Employees’ Assn.* (2012) 205 Cal.App.4th 960, 965.) Because Beijing had the burden of proof at trial and appeals, the question for this court to resolve is whether the evidence compels a finding in favor of Beijing as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528, citing *Roesch v. De Mota* (1944) 24 Cal.2d 563, 570-571; *Caron v. Andrew* (1955) 133 Cal.App.2d 402, 409.) “Specifically, the question becomes whether the appellant’s evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and

weight as to leave no room for a judicial determination that it was insufficient to support a finding.’ ” (*In re I.W.*, at p. 1528.) Our resolution of this multi-part question is that while the evidence was not contested, it is insufficient to support a finding in Beijing’s favor.

b. *Fraudulent Conveyance Claim Requires Identifying the Specific Property*

The Uniform Fraudulent Transfer Act (UFTA), Civil Code section 3439 et seq.,<sup>4</sup> 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 of an asset or interest by the debtor to a third person undertaken with the intent to prevent a creditor from reaching the transferred asset to satisfy its claim. (*Yaesu Electronics Corp. v. Tamura* (1994) 28 Cal.App.4th 8, 13.) A transfer is fraudulent as to a creditor, whether the creditor’s claim arose before or after the transfer, if the debtor made the transfer with the actual intent to hinder, delay, or defraud any creditor of the debtor. (§ 3439.04, subd. (a)(1).) Absent actual intent, a transfer may be deemed fraudulent as to a creditor whose claim arose before the transfer if the debtor did not receive a reasonable equivalent value in exchange for the transfer at a time when the debtor was insolvent or became insolvent at the time of the transfer. (§ 3439.05.)

For a fraudulent transfer to have occurred, there must be a transfer of an asset. (§ 3439.01, subd. (a); *Fidelity National Title Ins. Co. v. Schroeder* (2009) 179 Cal.App.4th 834, 841.) The UFTA defines “transfer,” as “every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.” (§ 3439.01, subd. (i).) The creditor that is, Beijing, has the burden of proving the elements of a fraudulent transfer by a preponderance of the evidence. (See *Whitehouse v. Six Corp.* (1995) 40 Cal.App.4th 527, 533-535.)

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<sup>4</sup> Undesignated statutory references are to the Civil Code.

The admissions Beijing relied on did not identify any specific assets that were transferred from 5CTV to Liu, or from Liu to Lin, which is essential to establish a fraudulent conveyance. The UFTA permits a defrauded creditor to recover from the judgment debtor or a transferee of the property in question. To the extent the transfer is voidable in an action by the creditor, the creditor may recover judgment for the value of the asset transferred, or the amount necessary to satisfy the creditor's claim, whichever is less. (§ 3439.08. subd. (b).) The admission of an unidentifiable transfer of assets is not sufficient evidence as a matter of law to recover under the UFTA. There was no prejudicial error.

DISPOSITION

The judgment is affirmed. Because no respondents' brief was filed, Beijing bears its own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.