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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

TERENCE A. KILKER et al.,

Plaintiffs and Respondents,

v.

FRANK C. STILLMAN,

Defendant and Appellant;

LUIS ARRIAGA, as Trustee, etc.,

Third Party Claimant and Appellant.

G045813

(Super. Ct. No. 30-2008-00106524)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Franz E. Miller, Judge. Affirmed.

Law Offices of Jefford C. Davis and Jefford C. Davis for Defendant and
Appellant and for Third Party Claimant and Appellant.

Rutan & Tucker and Thomas S. Salinger for Plaintiffs and Respondents.

* * *

INTRODUCTION

Plaintiffs Terence A. Kilker and Paula J. Kilker (the Kilkers) attempted to enforce a \$92,500 judgment, which had been entered in their favor and against defendant Frank C. Stillman in connection with their negligence claim against him. The Kilkers executed a levy on real property that had been owned by Stillman. A day or two before the date scheduled for the sheriff's sale of that property, Luis Arriaga, as successor trustee of the Walla Walla Group Trust (WWG), filed a third party claim, asserting that Stillman had conveyed the subject property to WWG years earlier. The Kilkers petitioned the trial court to determine that WWG's third party claim was invalid because the transfer of the subject property was fraudulent within the meaning of the Uniform Fraudulent Transfer Act (UFTA) (Civ. Code, § 3439 et seq.). (All further statutory references are to the Civil Code unless otherwise specified.) The Kilkers also asserted WWG's claim was invalid because Stillman remained the equitable owner of the property as the alter ego of WWG.

Following a bench trial on the Kilkers' petition, the court found WWG's third party claim to the property invalid. On appeal, Stillman and Arriaga, as successor trustee of WWG (collectively, appellants), argue the trial court misinterpreted the UFTA, and insufficient evidence showed Stillman had the actual intent to hinder, delay, or defraud any creditor by transferring the subject property to WWG.

We affirm. "A fraudulent conveyance under the UFTA involves "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."'" (*Filip v. Bucurenciu* (2005) 129 Cal.App.4th 825, 829.) Substantial evidence, most notably Stillman's testimony, showed Stillman transferred the property to WWG with the actual intent to hinder, delay, or defraud any creditor, within the meaning of section 3439.04. Because WWG's third

party claim was invalid based on the application of the UFTA, we do not decide whether the claim was invalid based on an alter ego theory as well.

BACKGROUND

I.

THE KILKERS ATTEMPT TO COLLECT ON THEIR JUDGMENT AGAINST STILLMAN BY LEVYING THE RAILROAD STREET PROPERTY; ARRIAGA FILES A THIRD PARTY CLAIM ON BEHALF OF WWG, CLAIMING OWNERSHIP OF THE RAILROAD STREET PROPERTY; THE KILKERS FILE A PETITION TO ESTABLISH THE INVALIDITY OF THE THIRD PARTY CLAIM.

In 2000, the Kilkers hired Curcies Coordinated Construction, Inc., to build a swimming pool on their property. Curcies hired Stillman to perform soil testing in connection with the pool's construction. Stillman prepared a soils report, and Curcies built the pool. In 2008, the Kilkers sued Curcies, Stillman, and others for damages they sustained due to a separation in the mastic seal of the pool. The Kilkers and Stillman entered into a settlement agreement whereby Stillman agreed to pay \$92,500 to the Kilkers. After Stillman failed to pay the settlement amount by the agreed-upon date, the trial court entered judgment in favor of the Kilkers and against Stillman for the amount of \$92,500.

The Kilkers tried to collect on the judgment by levying on the property referred to as the Railroad Street property. A day or two before the date that had been noticed for the sheriff's sale of the Railroad Street property, Arriaga, as successor trustee of WWG, an irrevocable trust, tendered a third party claim to the sheriff, asserting that WWG owned the Railroad Street property. The sheriff's sale was cancelled.

The Kilkers filed a petition to establish the invalidity of WWG's third party claim (the petition), in which they contended Stillman's transfer of the Railroad Street property to WWB in 2004 constituted a fraudulent conveyance under the UFTA.

II.

THE TRIAL COURT CONCLUDES THE THIRD PARTY CLAIM IS INVALID; JUDGMENT IS ENTERED; APPELLANTS APPEAL.

The trial court held a bench trial on the petition. The parties stipulated that certain portions of Stillman's prior judgment debtor exam and deposition would be admitted into evidence. Stillman was the sole witness at the bench trial.

A.

Summary of Stillman's Trial Testimony

Stillman testified that in 2004, he had formed three trusts: WWG, the Soils and Geology Group,¹ and the Washington Group. He stated he transferred to WWG virtually all of his assets, including four properties, his bank accounts, certificates of deposit, and some vehicles. One of the properties he transferred to WWG was the Railroad Street property, which was an office building on Railroad Street in the City of Industry. Stillman testified that after he made transfers to those trusts, he was "left personally with no assets worth more than \$500." He received no consideration for the transfers. Stillman stated that his intent in transferring the Railroad Street property to WWG was for "[a]sset protection" and so that his "creditors could not go after any equity that [Stillman's] trust, [his] personal trust, owned in that property."

Stillman operated his business out of the Railroad Street property, rent free. Stillman, his 15-year employee, Arriaga, and Arriaga's family lived at another property owned by WWG, rent free.

Stillman has been the managing director of WWG since its inception; he has also been the managing director of the other two trusts. He makes deposits and withdrawals; writes checks; opens bank accounts; buys, sells, and trades real property and other property of WWG; lends or borrows money in the name of WWG; and buys, sells,

¹ Stillman stated he runs his soils and engineering business through the Soils and Geology Group.

and trades stocks and bonds, and performs other securities activities. Stillman selects tenants and signs leases for the rental of the Railroad Street property on WWG's behalf.

The original trustees of WWG worked for the accounting firm that set up that trust; Stillman's brother is the beneficiary. Stillman has not been in contact with WWG's original trustees since 2005. He selected his long-term employee and friend, Arriaga, and another friend to be successor trustees to WWG; Stillman did not seek or obtain any approval from WWG before naming them as successor trustees.

Stillman uses WWG funds to pay his personal expenses, including his cell phone bills, credit card bills, personal attorney fees, XM radio bills, and Los Angeles Times and National Geographic subscriptions.

B.

The Trial Court Issues Minute Order.

Following trial, the court found WWG's third party claim to the Railroad Street property was invalid. The court issued a minute order stating WWB's third party claim was therefore denied because Stillman's transfer of the Railroad Street property constituted a fraudulent transfer within the meaning of the UFTA, and because Stillman was the alter ego of WWG. The court found that Stillman transferred the Railroad Street property with the actual intent to hinder, delay, or defraud any creditor. The court did so on the ground Stillman testified he transferred the Railroad Street property because soils engineers are frequently sued. The court found the Kilkers were reasonably foreseeable as future judgment creditors under the UFTA. The court also found Stillman had the requisite intent because he retained control of the Railroad Street property, transferred assets to WWG, and did not receive any consideration for such transfers (§ 3439.04, subd. (b)).

The trial court also stated it found WWG's third party claim invalid based on the alter ego theory that Stillman was the equitable owner of WWG. No statement of decision was requested by any party or issued by the trial court.

C.

Judgment Is Entered; Appellants Appeal.

Judgment was entered on the petition, which stated in relevant part: “This Court issued its Order as to this petition on June 28, 2011, ruling, *inter alia*, that: (1) the real property commonly known as 17231 Railroad Street, City of Industry, California . . . was fraudulently conveyed by Mr. Stillman to the Walla Walla Group pursuant to the Uniform Fraudulent Transfer Act (Civil Code Sections 3429, *et seq.*); and (2) an alter ego relationship was established between Mr. Stillman and one of the trusts he created, namely the Walla Walla Group; as a consequence, Mr. Stillman should be treated as the equitable owner of the assets held by the Walla Walla Group and/or held by Mr. Arriaga on behalf of the Walla Walla Group. [¶] Based upon these rulings, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that: [¶] (1) The Third Party Claim submitted by Mr. Arriaga, on behalf of the Walla Walla Group, is invalid; and [¶] (2) The Los Angeles County Sheriff’s Department shall proceed with the execution sale of the Railroad Street Property levied upon by [the Kilkers].”

Appellants appealed.

DISCUSSION

I.

STANDARD OF REVIEW

No statement of decision was requested by any party and the trial court’s minute order was not a statement of decision. No party raised any objections to the minute order.

“Without a statement of decision, and timely objections to any ambiguities or omissions in it, the doctrine of implied findings applies.” (*County of Orange v. Barratt American, Inc.* (2007) 150 Cal.App.4th 420, 438.) “The doctrine of implied findings requires the appellate court to infer the trial court made all factual findings

necessary to support the judgment. [Citation.] The doctrine is a natural and logical corollary to three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively providing error. [Citations.]” (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58.)

“We review the trial court’s express factual findings, and any implied findings, for substantial evidence. [Citations.] [¶] We review legal issues, such as statutory interpretation, under a de novo or independent standard. [Citations.] ‘In theory, a determination is one of ultimate fact if it can be reached by logical reasoning from the evidence, but one of law if it can be reached only by the application of legal principles.’ [Citation.]” (*Apex LLC v. Sharing World, Inc.* (2012) 206 Cal.App.4th 999, 1009.)

II.

THE TRIAL COURT DID NOT ERR BY CONCLUDING STILLMAN’S TRANSFER OF THE RAILROAD STREET PROPERTY TO WWG CONSTITUTED A FRAUDULENT CONVEYANCE WITHIN THE MEANING OF THE UFTA.

Appellants contend the trial court erred by finding Stillman’s conveyance of the Railroad Street property to WWG constituted a fraudulent conveyance under the UFTA. They argue (1) the trial court erred in its analysis of “present and future creditors” in considering the application of section 3439.04, subdivision (a); and (2) insufficient evidence supported the court’s finding Stillman transferred the Railroad Street property with the actual intent to “hinder, delay, or defraud any creditor,” within the meaning of section 3439.04, subdivision (a)(1). For the reasons we will explain, appellants’ arguments are without merit.

“In construing statutes, we aim ‘to ascertain the intent of the enacting legislative body so that we may adopt the construction that best effectuates the purpose of the law.’ [Citations.] We look first to the words of the statute, ‘because the statutory

language is generally the most reliable indicator of legislative intent.’ [Citations.] ¶¶
When the statutory text is ambiguous, or it otherwise fails to resolve the question of its intended meaning, courts look to the statute’s legislative history and the historical circumstances behind its enactment. [Citation.] Finally, the court may consider the likely effects of a proposed interpretation because “[w]here uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation.”” (Klein v. United States of America (2010) 50 Cal.4th 68, 77.)

Section 3439.04, subdivision (a) provides: “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.” (Italics added.)

The UFTA defines “Claim” as “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” (§ 3439.01, subd. (b)); “Creditor” as “a person who has a claim, and includes an assignee of a general assignment for the benefit of creditors” (§ 3439.01, subd. (c)); “Debtor” as “a person who is liable on a claim” (§ 3439.01, subd. (e)); and “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)).

Appellants do not challenge the findings that Stillman is a “Debtor,” each of the Kilkers is a “Creditor” with a “Claim,” and that Stillman’s conveyance of the Railroad Street property to WWG constituted a “Transfer,” within the meanings of section 3439.01, subdivisions (b), (c), (e), and (i). Appellants argue “that for fraudulent transfer purposes the world of creditors must be divided into three classes: 1) present creditors, 2) future creditors, and 3) future potential creditors.” They argue: “There is no dispute between the parties or in the evidence presented that the Kilkers were not present creditors in 2004 the year that Mr. Stillman transferred his assets to the trust in question. The question actually turns on whether the Kilkers can be truly considered actual future creditors.” Their argument continues: “A future creditor should be defined as a creditor whose claim arises after the transfer in question, but where there was a foreseeable connection between the creditor and the debtor at the time of the transfer.”

Appellants’ argument is not supported by the language of section 3439.04, subdivision (a). The statute does not include the terms “future creditor” or “future potential creditors.” Section 3439.04, subdivision (a) does not require that, from the debtor’s perspective, a creditor who challenges a transfer as fraudulent under the UFTA to have been reasonably foreseeable as the debtor’s creditor before pursuing remedies under the UFTA. Furthermore, the statute does not require that the debtor intended to hinder, delay, or defraud the specific creditor who challenges a transfer of an asset as violative of the UFTA. On the contrary, section 3439.04, subdivision (a) provides that a current creditor can challenge a transfer as fraudulent, regardless whether that creditor had a claim at the time of the transfer, if that creditor can prove, *inter alia*, the transfer was made to hinder, delay, or defraud *any* creditor.

In *Severance v Knight-Counihan Co.* (1947) 29 Cal.2d 561, 567-568, the California Supreme Court held that a debtor’s future creditors were protected against fraudulent conveyances under former section 3439.7 of the Uniform Fraudulent Conveyance Act (former § 3439 et seq.), stating: “It is clear that under these

circumstances, [the parties] were concerned with the possibility that the sales volume would undergo a further decrease and that additional indebtedness would accumulate so that defendant would be unable to pay the full amount of its indebtedness, which would include the claims of both present and future creditors. Hence, even if it be assumed that the creditors at the time of the agreement could have been satisfied, the agreement would still have been fraudulent as impairing the rights of future creditors. Future creditors as well as present creditors are protected by the legislation relating to fraudulent conveyances. Such protection is extended not only under the Uniform Fraudulent Conveyance Act, which was adopted in this state in 1939 [citation], but under the law as it stood in 1938 when the agreement was made.” Appellants do not cite any legal authority showing the Legislature intended to change this unrestricted interpretation of “future creditors” with the passage of the UFTA in 1986.

Stillman testified during his deposition (as read into the record during the hearing on the petition), that he transferred the Railroad Street property to WWG for the purpose of protecting it from the reach of creditors. During his deposition, when asked whether the transfer was done “[s]o your creditors could not get at any equity that you held in that property,” Stillman answered, “[y]es.” At the hearing on the petition, he was asked whether that part of his deposition testimony was honest. Stillman answered, “[y]eah.” Stillman thus admitted he intended, at a minimum, to hinder creditors from collecting from him, by transferring the Railroad Street property to WWG.

The trial court’s finding Stillman had the requisite actual intent at the time he transferred the Railroad Street property is further supported by substantial evidence of the factors set forth in section 3439.04, subdivision (b). That section provides: “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 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.” (See *Filip v. Bucurenciu*, *supra*, 129 Cal.App.4th at p. 834 [no minimum number of “badges of fraud” set forth in section 3439.04, subdivision (b) is required to support a finding of actual intent].)

Substantial evidence showed that Stillman transferred his real property and almost all of his personal property to WWG. (§ 3439.04, subd. (b)(5).) At the hearing on the petition, Stillman testified he transferred hundreds of thousands of dollars from his personal account to WWG as well as four properties, including the Railroad Street property. He stated he transferred all his assets, including bank accounts, certificates of deposit, and “some vehicles” when WWG was formed. He transferred his soils and engineering business to another trust he formed in 2004. Following those transfers, Stillman had “no assets worth more than \$500.”

Stillman's testimony established that he maintained possession and control of the Railroad Street property that was transferred to WWG, within the meaning of section 3439.04, subdivision (b)(2). Stillman was the managing director of WWG and was fully authorized to make deposits and withdrawals, write checks, and buy and sell real property. Stillman used WWG's funds to pay his personal expenses, including his XM radio bills, newspaper and National Geographic subscriptions, and personal attorney

fees. Stillman conducted his soils and engineering business out of the Railroad Street property, rent free. Stillman, along with one of his employees, and that employee's family, lived at another property owned by WWG, rent free. He chose successor trustees without authority, and he selected tenants for the Railroad Street property without seeking or obtaining authorization from WWG.

Furthermore, Stillman admitted, at the hearing on the petition, that he did not receive any consideration for transferring the Railroad Street property to WWG. (§ 3439.04, subd. (b)(8).)

In sum, the record amply supports the trial court's finding that Stillman's transfer of the Railroad Street property to WWG was a fraudulent transfer in violation of section 3439.04, subdivision (a).

In their opening brief, appellants argue that WWG was formed under Nevada law, which, they assert, authorized the type of transfer at issue in this case. Appellants further assert that Stillman's "reasonable belief" that "he was engaging in lawful ass[e]t protection" by forming WWB "negate[d] the requisite intent for a transfer to defraud creditors."

Nevada, however, "has also enacted the UFTA (Nev. Rev. Stat., § 112.140 et seq.) 'to further the substantive social policy of assuring that the efforts of judgment creditors and others to satisfy their claims will not be defeated by fraudulent transfers.' [Citation.] As part of that statutory scheme, Nevada Revised Statutes section 112.250 provides that the UFTA 'must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.'" (*Filip v. Bucurenciu, supra*, 129 Cal.App.4th at p. 839.)

Nevada Revised Statutes section 112.180(1) generally tracks the language of Civil Code section 3439.04, subdivision (a), and provides: "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: [¶] (a) *With actual intent to hinder, delay or defraud any creditor of the debtor*; or [¶] (b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor: [¶] (1) 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; or [¶] (2) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond his or her ability to pay as they became due.” (Nev. Rev. Stat., § 112.180(1), italics added.)

Thus, Stillman’s argument that the transfer was valid under Nevada law is also without merit. The trial court properly concluded WWG’s claim to the Railroad Street property was invalid because Stillman’s transfer of the Railroad Street property to WWG constituted a fraudulent transfer. Therefore, we do not reach the issue whether the transfer was also invalid on the separate ground that Stillman was the equitable owner of WWG under the alter ego doctrine.

DISPOSITION

The judgment is affirmed. Respondents shall recover costs on appeal.

FYBEL, J.

WE CONCUR:

MOORE, ACTING P. J.

ARONSON, J.