

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

AMERICAN MANUFACTURERS  
MUTUAL INSURANCE COMPANY,  
etc.,

Plaintiff and Appellant,

v.

EUGENE G. ABBADESSA et al.,

Defendants and Respondents.

G050770

(Super. Ct. No. 30-2012-00584875)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Affirmed.

Booth, Mitchel & Strange, Craig E. Guenther and James G. Stanley for Plaintiff and Appellant.

Cottone & Moon, Edwin R. Cottone and Priscilla K. Moon for Defendants and Respondents.

\* \* \*

Plaintiff and appellant American Manufacturers Mutual Insurance Company, in liquidation (American), holds a \$400,000 judgment against defendant and respondent Eugene G. Abbadessa (Eugene).<sup>1</sup> Believing Eugene illegally thwarted its ability to collect on the judgment, American sued Eugene and defendants and respondents Lois J. Abbadessa (Lois), individually and as trustee of the Eugene G. Abbadessa Trust, dated April 10, 2005 (Trust), Brian Abbadessa (Brian), and Todd Abbadessa (Todd; collectively, Abbadessas) under the Uniform Fraudulent Transfer Act (Civ. Code, § 3439 et seq.; Act).<sup>2</sup> According to American, Eugene was one of the founders and original owners of GT Beverage Company, LLC (GT Beverage), but he transferred his interest to the Trust one day before stipulating to American's judgment against him. American seeks to set aside that transfer as one made with the intent to prevent creditors from reaching Eugene's interest in GT Beverage.

The trial court entered judgment in the Abbadessas' favor, finding American failed to establish Eugene held an ownership interest in GT Beverage that he transferred to the Trust. Instead, the court found the Trust held an ownership interest in GT Beverage from the company's inception and Eugene merely was an employee who also managed the Trust's interest in the company as a specially-appointed trustee. American appeals, arguing the record lacks substantial evidence to support the court's judgment.

We affirm. As appellant, American bore the burden to summarize all evidence, both favorable and unfavorable, and explain why the evidence was insufficient to support the judgment as a matter of law. American's briefs, however, summarize the

---

<sup>1</sup> We refer to the members of the Abbadessa family by their first names to avoid confusion.

<sup>2</sup> Effective January 1, 2016, the Legislature changed the Act's name to the Uniform Voidable Transactions Act. (Civ. Code, § 3439; Stats. 2015, ch. 44 § 3.)

evidence favorable to its position without addressing much of the evidence supporting the trial court's judgment. American therefore forfeited its challenge to the sufficiency of the evidence. Nonetheless, as explained below, we also conclude the record contains substantial evidence supporting the trial court's judgment.

## I

### FACTS AND PROCEDURAL HISTORY

Eugene's mother, Yolanda M. Abbadessa, established the Trust in April 2005. The Trust is an irrevocable spendthrift trust that names Eugene as the initial life beneficiary, his wife, Lois, as the successor life beneficiary should Eugene predecease her, and their adult children, Brian and Todd, as the remainder beneficiaries upon Lois's death. The Trust instructs the trustee to use the Trust's assets for Eugene's benefit during his lifetime, but prevents voluntary or involuntary transfers of Eugene's interest in the Trust's assets. The trustee also has discretion to make distributions to Brian and Todd during Eugene's lifetime. Eugene served as the initial trustee for the Trust, but he resigned in October 2005 because he viewed himself as a "tainted trustee" based upon two unpaid judgments against him totaling roughly \$1 million. Lois succeeded Eugene as trustee.

American is the assignee of a third \$400,000 judgment against Eugene to which he stipulated in August 2008. The judgment arises out of Eugene's breach of fiduciary duty while serving as the trustee for an unrelated trust.

In May 2008, Eugene and Tom Weiss formed GT Beverage to make sports beverage bottles. Weiss contributed the patent he held on the bottles and Eugene contributed "the business acumen to run the business." Eugene received a salary for his services; he did not invest any capital in the business and had no equity in the company.

Eugene used an online document preparation service to prepare the articles of organization and register GT Beverage as a Nevada limited liability company. In

doing so, he stated the company would be managed by its members and then identified himself, Weiss, and Lee Lorenzen as the company's "Managers or Managing Members." Eugene testified he did not understand the legal distinction between a manager and a member of a limited liability company; he thought they both were employees or part of the company and failed to realize a member was defined as an owner under Nevada law. Lorenzen worked for GT Beverage, but he did not hold an ownership interest in the company even though Eugene identified him as a managing member.

At GT Beverage's formation, the Trust invested \$100,000 through a series of checks that were not produced at trial. As trustee, Lois made the decision for the Trust to invest in the company because she thought it was a good investment and also would provide Eugene, Brian, and Todd with full-time jobs. At the time, Eugene had been unemployed since 2004, and neither Brian nor Todd held a full-time job. When the Trust invested in GT Beverage, Lois created and executed a document to "appoint Eugene . . . as a special trustee to represent the interests of the . . . Trust with respect to its investment in GT Beverage Company" because she did not know how to run the company and wanted Eugene to do so on the Trust's behalf.

To help GT Beverage start its business, Marty Kubicki loaned the company \$295,000 in exchange for a three percent ownership interest. He made the loan in installments between June and August 2008 as he sold other assets to obtain the necessary cash. GT Beverage waited until Kubicki completed his loan before it issued any membership certificates documenting each member's ownership interest. In August 2008, the company issued three membership certificates, one to Weiss for his 48.5 percent interest, one to the Trust for its 48.5 percent interest, and one to Kubicki for his three percent interest.

GT Beverage's members never executed an operating agreement to memorialize their rights and interests in the company, but the record includes three unsigned operating agreements. One dated May 2008, identifies Weiss and the Trust as

the only managing members. A second dated August 2008, identifies Weiss and the Trust as managing members and Kubicki as a member, but has signature lines for Weiss, Eugene, and Kubicki. A third agreement dated January 2009, identifies Weiss and the Trust as members, and Weiss and Eugene as managers. Each agreement specified the percentage of ownership each member held, but none of the agreements identified Eugene as holding any specific ownership interest.

Eugene undertook a variety of tasks to establish and operate GT Beverage, but in doing so he failed to consistently identify his role and interest in the company. For example, in October 2008 he filed a fictitious business name statement with the County of Orange to register the business name "GT Beverage Company." On the statement, Eugene identified himself as the registered owner and stated the business was conducted by an individual rather than a limited liability company. Eugene testified he did not read the statement carefully and simply completed it to reserve the business name, not to claim any ownership in GT Beverage.

In November 2008, Eugene opened a bank account for GT Beverage, but opened it in the name of "Eugene G. Abbadessa dba GT Beverage Company" and identified the company as a sole proprietorship rather than a limited liability company. Eugene testified he opened the account as a sole proprietorship because he did not have the documents necessary to open the account as a limited liability company and he needed to deposit some checks and start paying bills. He also testified Weiss was at the bank with him and they specifically discussed opening the account in Eugene's name. Weiss also signed the paperwork as an additional signatory for the account.

In March 2009, Eugene filed an "Initial List of Manager or Managing Members" with the State of Nevada identifying himself as both a "Manager" and a "Managing Member" for GT Beverage, and seven months later he filed an "Annual List of Manager or Managing Members" identifying himself as a "Managing Member" only. In August 2009, Eugene signed an office lease on GT Beverage's behalf as a "Managing

Partner,” and roughly 18 months later he signed another lease for the company as a “Managing Member.”

GT Beverage hired a certified public accountant to prepare its tax documents for 2008 through 2011. For each year, the accountant prepared a schedule K-1 documenting each owner’s interest in GT Beverage and their share of the company’s income, deductions, and other matters. Each of these documents identified the Trust as the owner of an interest in GT Beverage, but then used Eugene’s social security number and stated the owner was an individual rather than a trust or other entity. The accountant testified this was the appropriate way to complete the forms because income and other tax information for a family trust “is reported to the social security [number] of the primary family member.”

The company turned out to be a successful venture, and in July 2011, the Trust sold its interest in GT Beverage for approximately \$2 million. A year later, American filed this action against the Abbadessas to collect its judgment against Eugene from those sale proceeds. The operative complaint asserts a single claim under the Act, alleging American is one of Eugene’s creditors based on the \$400,000 judgment another creditor assigned to it, and Eugene transferred to the Trust his ownership interest in GT Beverage to prevent American from executing on that interest. According to American, Eugene was one of the founders and original owners of GT Beverage, but he transferred his ownership interest to the Trust in August 2008, just one day before he stipulated to the judgment American now holds against him. American claims Eugene fraudulently transferred his ownership interest by having GT Beverage issue his membership certificate in the name of the Trust.

After conducting a bench trial on American’s claim, the trial court entered judgment for the Abbadessas against American. In its statement of decision, the court found American failed to prove Eugene held an ownership interest in GT Beverage that he transferred to the Trust, and assuming American met that burden, it nonetheless failed

to show that either (1) Eugene made the transfer with the actual intent to defraud creditors, or (2) the transfer was constructively fraudulent in that Eugene did not receive reasonably equivalent value and the transfer left him unable to pay his debts as they became due.

American timely appealed from the trial court's judgment.

## II

### DISCUSSION

#### A. *Governing Legal Principles Regarding Fraudulent Transfers*

The Act “declares rights and provides remedies for unsecured creditors against transfers that impede them in the collection of their claims.” (Legis. Com. com., 12A West’s Ann. Civ. Code (1997 ed.) foll. § 3439.01, p. 272.) A creditor who is damaged by a transfer shown to be fraudulent may set aside the transfer to the extent necessary to satisfy the creditor’s claim or seek other relief as appropriate, such as a writ of attachment against the transferred property or its proceeds, an injunction preventing further transfer, and appointment of a receiver. (Civ. Code, § 3439.07, subd. (a); *Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 122 (*Hasso*); see *Mejia v. Reed* (2003) 31 Cal.4th 657, 663 [Act “permits defrauded creditors to reach property in the hands of a transferee”].)

“A fraudulent conveyance under the [Act] 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 (*Filip*).) A debtor’s transfer of assets is fraudulent as to present and future creditors if the debtor made the transfer (1) with an actual intent to hinder, delay, or defraud any creditor, or (2) without receiving reasonably equivalent value, and either the debtor (a) was engaged in or about to engage in a business or transaction for which his or her remaining assets were unreasonably small, or (b) intended to incur, or reasonably

should have believed he or she would incur, debts beyond his or her ability to pay as they became due. (Civ. Code, § 3439.04, subd. (a)(1) & (2); *Hasso, supra*, 227 Cal.App.4th at pp. 121-122.) A debtor’s transfer also is fraudulent as to present creditors if the debtor made the transfer (1) without receiving reasonably equivalent value, and (2) the debtor was insolvent at the time or became insolvent as a result of the transfer. (Civ. Code, § 3439.05; *Hasso*, at p. 122.) “A transfer described in Civil Code section 3439.04, subdivision (a)(1) is characterized as actual fraud, and a transfer described in either Civil Code section 3439.04, subdivision (a)(2) or Civil Code section 3439.05 is characterized as constructive fraud.” (*Hasso*, at p. 122.)

B. *American Failed to Establish the Trial Court Erred in Finding Eugene Never Held an Ownership Interest in GT Beverage*

1. Standard of Review and American’s Burden

The parties agree we review the trial court’s determination on whether a fraudulent transfer occurred under the substantial evidence standard. (See *Filip, supra*, 129 Cal.App.4th at pp. 833-834; *Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632 [“When the trial court has resolved a disputed factual issue, the appellate courts review the ruling according to the substantial evidence rule”].)

“The gist of the “substantial evidence” rule is: [¶] “When a trial court’s factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination . . . .” [Citations.] [¶] ‘So long as there is “substantial evidence,” the appellate court *must affirm* . . . even if the reviewing justices personally would have ruled differently had they presided over the proceedings below, and even if other substantial evidence would have supported a different result. Stated another way, when there is substantial evidence in support of the trial court’s

decision, the reviewing court has *no power to substitute its deductions.*” (*Rupf v. Yan* (2000) 85 Cal.App.4th 411, 429-430, fn. 5.)

“We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor . . . .” (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053, abrogated by statute on another point as noted in *DeBerard Properties, Ltd. v. Lim* (1999) 20 Cal.4th 659, 668-669.) “[E]ven if the judgment of the trial court is against the weight of the evidence, we are bound to uphold it so long as the record is free from prejudicial error and the judgment is supported by evidence which is ‘substantial,’ that is, of “ponderable legal significance,” “reasonable in nature, credible, and of solid value . . . .”” (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.)

“An appellant challenging the sufficiency of the evidence to support the judgment must cite the evidence in the record supporting the judgment and explain why such evidence is insufficient as a matter of law. [Citations.] An appellant who fails to cite and discuss the evidence supporting the judgment cannot demonstrate that such evidence is insufficient. The fact that there was substantial evidence in the record to support a contrary finding does not compel the conclusion that there was no substantial evidence to support the judgment. An appellant . . . who cites and discusses only evidence in her favor fails to demonstrate any error and waives the contention that the evidence is insufficient to support the judgment.” (*Rayii v. Garcia* (2013) 218 Cal.App.4th 1402, 1408; *Arechiga v. Dolores Press, Inc.* (2011) 192 Cal.App.4th 567, 572, overturned by statute on other grounds, Stats. 2012, ch. 820, § 1, p. 6511; [appellant’s “failure to discuss evidence supporting the court’s findings and judgment excuses us from any need to address his contention of insufficient evidence, and we therefore deem the contention abandoned”]; *Stewart v. Union Carbide Corp.* (2010) 190 Cal.App.4th 23, 34; *Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218.)

2. American Forfeited Its Sufficiency of the Evidence Challenge By Failing to Address the Evidence Supporting the Trial Court's Judgment

American contends the trial court erred in concluding Eugene never held an ownership interest in GT Beverage that he transferred to the Trust. According to American, "the evidence at trial conclusively established that [Eugene] initially held the interest in GT [Beverage] as an individual before transferring that interest to the Trust." (Some capitalization omitted.) In making this contention, American ignores substantial evidence supporting the trial court's contrary conclusion, and therefore forfeited any challenge to the sufficiency of the evidence.

Substantial evidence shows the Trust received an ownership interest in GT Beverage because it directly invested \$100,000 in the company, not because Eugene transferred any interest he held to the Trust. Each of the Abbadessas testified the Trust invested \$100,000 in GT Beverage when the company was formed in May 2008. At that time, Lois, as the Trust's trustee, created and executed a document appointing Eugene as a special trustee to represent the Trust's interests in GT Beverage. Consistent with that appointment, Eugene helped form and run the company and received a salary for his services. There is no evidence showing Eugene invested any of his own money in GT Beverage or that he received any equity or other interest in the company for his services.

In August 2008, GT Beverage issued the Trust a membership certificate documenting the Trust's ownership interest based on its investment. American contends this certificate shows Eugene transferred his ownership interest to the Trust to protect the interest from his creditors because the membership certificate is dated one day before Eugene stipulated to the judgment American holds against Eugene. As the trial court pointed out, however, the certificate does not purport to transfer Eugene's or any other interest in GT Beverage to the Trust. Instead, the certificate merely documents the ownership interest the Trust already held and it was issued at the same time as the

membership certificates documenting Weiss's and Kubicki's interests in GT Beverage. Moreover, Lois's testimony explained GT Beverage did not issue membership certificates when the Trust originally invested in May 2008 because the company was waiting for Kubicki to pay the final installment on his loan to GT Beverage so it could issue the certificates at the same time.

Without addressing this evidence, American contends Eugene necessarily held an ownership interest in GT Beverage because (1) the company's articles of organization and other documents Eugene submitted to the State of Nevada identified him as one of the company's managing members; (2) a fictitious business name statement Eugene filed and documents he completed to open the company's bank account identified Eugene as the owner of GT Beverage and the company as a sole proprietorship; (3) Eugene signed two leases as GT Beverage's "Managing Partner" and "Managing Member"; and (4) the K-1 tax schedules used Eugene's social security number to identify the Trust as an owner of GT Beverage. American, however, ignores not only the testimony explaining why these documents do not establish Eugene held an ownership interest, but also the trial court's finding that these documents were not sufficient to meet American's burden of proof.

Eugene testified he did not intend to claim an ownership interest in GT Beverage when he completed the articles of organization or any other documents identifying him as a managing member. Rather, he mistakenly assumed anyone managing the company was a managing member because he did not understand the legal distinction between a limited liability company member and manager, and he completed the documents online without receiving any legal advice. This testimony is consistent with how Eugene completed the articles of organization because the articles also identify Lee Lorenzen as a managing member and it is undisputed Lorenzen was merely a manager without any ownership interest in GT Beverage.

Eugene also testified he did not intend to claim an ownership interest in GT Beverage when he identified himself as an owner in the fictitious business name statement or when he opened the company's bank account in his name doing business as GT Beverage. Eugene explained he did not read the fictitious business filing carefully and simply completed it to reserve the GT Beverage name. Similarly, he explained he opened the bank account as he did because he did not have the documentation necessary to open an account in GT Beverage's name as a limited liability company, and the company needed the account so it could start depositing checks and paying bills. Moreover, Eugene testified Weiss was present when he opened the account, the two discussed opening it in Eugene's name, and Weiss signed the documents opening the account.

As for the K-1 tax schedules, they specifically identified the Trust as the owner of an interest in GT Beverage, but then used Eugene's social security number as the Trust's tax identification number and identified the owner as an individual. The accountant who prepared the schedules explained when an ownership interest is held by a family trust the social security number of the principal family member associated with the trust typically is used to report taxes.

In its statement of decision, the trial court acknowledged the articles of organization and other documents American identified were evidence that Eugene held an ownership interest as a member of GT Beverage, but when all of the evidence was considered together the court concluded American failed to meet its burden to show Eugene held an ownership interest. Although the documents on which American relied were suspicious, the court explained the totality of the evidence showed Eugene "was incredibly poor at record-keeping and business documentation" and that the Trust held its own interest in GT Beverage based on its investment.

In sum, American forfeited any challenge to the sufficiency of the evidence by failing to summarize all the evidence and explain why it was not sufficient to support

the trial court's judgment. Even if we ignore American's forfeiture, substantial evidence supports the trial court's conclusion Eugene never held an equity interest in GT Beverage that he transferred to the Trust. Given that no transfer occurred, we need not address the trial court's additional finding that American also failed to show Eugene was guilty of actual or constructive fraud in making the transfer.

## II

### DISPOSITION

The judgment is affirmed. The Abbadessas shall recover their costs on appeal.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.