



Korea Data Systems

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OPINION

Korea Data Systems (USA), Inc., appeals from a judgment in favor of defendants Nancy Cheng and Eastern Computer, Inc. Systems and Engineering (ECI). The trial court granted Cheng and ECI's motion for summary judgment on a claim for fraudulent conveyance, the sole claim against them.

We agree with the trial court that Cheng and ECI were entitled to summary judgment on the fraudulent conveyance claim because they negated one of the key elements of the cause of action - that the judgment debtors made a transfer of property or other assets. Absent that element, Korea Data Systems could not sustain a claim for fraudulent conveyance against Cheng and ECI. We affirm.

FACTS

In April 1998, Korea Data Systems obtained a judgment in excess of \$9 million in a separate lawsuit against Julius and Jay Chiang. Korea Data Systems then initiated the present lawsuit seeking to enforce its judgment against Julius Chiang, who was alleged to have fraudulently transferred money to make himself judgment proof. Cheng and ECI were among the defendants named in the second lawsuit.

The second lawsuit alleged five causes of action. The first cause of action was the only one against Cheng and ECI. In this cause of action for fraudulent conveyance, defendants were accused of participating in a conspiracy to assist Y. C. Chiang and En-Fu Chiang, the parents of Julius Chiang, in purchasing a house in which Julius and his wife Wen Chiang lived (the Rapallo property), but on which Korea Data Systems could not execute. Cheng and ECI were alleged to have falsely verified ECI's employment of En-Fu Chiang (Julius's mother). Elsewhere in the first amended complaint, Korea Data Systems alleged that En-Fu Chiang, relying on the false employment verification, obtained a loan from a third party to buy the Rapallo property. The alleged false employment verification is the only act allegedly undertaken by Cheng or ECI in furtherance of the alleged conspiracy to commit a fraudulent conveyance.



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The second cause of action alleged that Julius and Wen Chiang fraudulently conveyed a piece of real property (the Dillman property) originally owned by the two of them to other family members, by means of a quitclaim deed from Julius Chiang to Wen Chiang without consideration, a transfer from Wen to a family-owned partnership without value, and another transfer from the partnership to other family members after Korea Data Systems recorded a lis pendens on the Dillman property. Cheng and ECI were not alleged to have had anything to do with this series of transactions.

The third cause of action sought a declaration that all property owned by Wen Chiang was community or quasi-community property subject to execution by Julius Chiang's creditors. This cause of action alleged that Julius and Wen Chiang engaged in a pattern of mislabeling and hiding assets belonging to Julius in order to hinder and delay Julius's creditors. En-Fu and Y. C. Chiang's acquisition of the Rapallo property was not a part of the claim for declaratory relief.

The fourth cause of action sought to cancel the grant deed transferring the Dillman property from the Chiang family partnership to two other relatives on the ground the deed was voidable as a part of the overall conspiracy. The acquisition of the Rapallo property was also not a part of this cause of action.

The fifth cause of action sought to quiet title of the Dillman property against any claims of the current owners, the Chiang family partnership, or Wen Chiang. Again, the acquisition of the Rapallo property was not at issue in this cause of action.

The complaint also included language that all of the named defendants, as well as the Doe defendants, conspired and acted in concert with each other to obstruct Korea Data Systems's collection efforts against Julius Chiang.

Cheng and ECI filed a motion for summary judgment. Cheng and ECI's separate statement of undisputed facts offered evidence that: they had never received a transfer of property from Julius Chiang; the only action by Cheng and ECI in furtherance of the alleged conspiracy was the verification of En-Fu Chiang's employment as part of her attempt to obtain a loan to acquire the Rapallo property; and En-Fu Chiang was retained by ECI as an independent contractor.

In response to the motion for summary judgment, Korea Data Systems admitted Julius Chiang made no transfers of property to Cheng and ECI; disputed that the only action undertaken by Cheng and ECI in furtherance of the alleged conspiracy was the verification of En-Fu Chiang's status as an independent contractor for ECI, but failed to set forth any evidence of facts supporting that position; and disputed that En-Fu Chiang was retained as an independent contractor, citing evidence from which it argued the court could infer she performed no services for ECI.

The trial court granted the motion, stating, "No evidence of any property transferred to moving party by the judgment debtor." The judgment was entered, and this timely appeal followed.



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DISCUSSION

A. Applicable legal standards.

On appeal from a judgment following the grant of a motion for summary judgment, we review the record de novo to determine whether defendants negated a necessary element of the plaintiff's claim. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 767-768.) We view the evidence in the light most favorable to the losing party. (*Id.* at p. 768.)

A defendant can meet his or her "burden of showing that a cause of action has no merit if [he or she] has shown that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to that cause of action. Once the defendant . . . has met that burden, the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The plaintiff . . . may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto." (Code Civ. Proc., § 437c, subd. (p)(2).)

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." (*Yaesu Electronics Corp. v. Tamura* (1994) 28 Cal.App.4th 8, 13; see also Civ. Code, § 3439.04.) Absent a transfer by a judgment debtor, there can be no claim of fraudulent conveyance. "In order to establish a fraudulent conveyance under this section [former version of Civ. Code, § 3439.04], three things or elements must be pleaded and proved: - first, there must be a conveyance or the creation of an obligation; second, the transferor must be, at the time of the conveyance, insolvent or the conveyance must render him insolvent; third, the conveyance must have been made, or the obligation incurred, without a fair consideration." (*Estate of Heigho* (1960) 186 Cal.App.2d 360, 365-366, fn. omitted, italics added.)

"[T]here is no separate tort of civil conspiracy, and there is no civil action for conspiracy to commit a recognized tort unless the wrongful act itself is committed and damage results therefrom." (*Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75, 82.) Thus, if the moving defendants here show no fraudulent transfer occurred, a claim for conspiracy to commit a fraudulent conveyance fails as a matter of law. (*Ibid.*)

B. The undisputed facts showed there was no fraudulent transfer by Julius Chiang with regard to the first cause of action.

Cheng and ECI offered admissible evidence that Julius Chiang never made any transfer of assets to them. Korea Data Systems provided no admissible evidence to the contrary. Indeed, Korea Data Systems conceded in its motion papers and in oral argument that Julius Chiang did not transfer money or other assets to the moving defendants.



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Korea Data Systems argues on appeal that Julius Chiang fraudulently conveyed some unidentified property to some unidentified person or entity other than Cheng or ECI, and Cheng and ECI were part of the broad conspiracy that allowed that fraudulent conveyance to occur. In its opposition to the motion for summary judgment, however, Korea Data Systems did not offer any admissible evidence of any fraudulent transfer of any assets by Julius Chiang to Cheng and ECI, or anyone else.

The Uniform Fraudulent Transfer Act (Civ. Code, §§ 3439 et seq.) only permits a defrauded creditor to recover from the judgment debtor or a transferee of the property in question. "Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under paragraph (1) of subdivision (a) of Section 3439.07, the creditor may recover judgment for the value of the asset transferred, as adjusted under subdivision (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against the following: [¶] (1) The first transferee of the asset or the person for whose benefit the transfer was made. [¶] (2) Any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee." (Civ. Code, § 3439.08, subd. (b).) No provision is made for recovery from others outside the chain of possession. Cheng and ECI offered evidence that they were not transferees of any property from Julius Chiang, which evidence was un rebutted. Indeed, Korea Data Systems failed to even address this argument in its summary judgment opposition. Cheng and ECI were therefore entitled to summary judgment on Korea Data Systems's first cause of action for fraudulent conveyance.

In this case, there was an alleged transfer to, not from, Julius Chiang. A transfer by Julius of an interest in his own home to avoid his creditors might properly be the subject of a fraudulent conveyance claim; our opinion does not address the merits of Korea Data Systems's other causes of action which do allege fraudulent transfers by Julius Chiang. But the claim in the first cause of action, in which Cheng and ECI are named, is that Julius's parents transferred assets to him by buying him the Rapallo property in which he and his wife could live. The parents' largesse, whether by buying a home in which Julius and his wife could live, providing a room in their own home rent free, or otherwise, is not a fraudulent conveyance. Cheng and ECI's verification of En-Fu Chiang's consulting position in the processing of the purchase of the Rapallo property by Julius's parents, which is yet another step removed, did not subject Cheng and ECI to a fraudulent conveyance claim. The trial court did not err in granting summary judgment in their favor.

Monastra v. Konica Business Machines, U.S.A., Inc. (1996) 43 Cal.App.4th 1628, which Korea Data Systems cites, is distinguishable. In that case, the judgment debtor transferred all of its assets to Digitec, a wholly owned subsidiary of Konica. (Id. at p. 1633.) The judgment debtor presented evidence that Konica knew about the transfer of assets to its subsidiary and assisted in the transfer and concealment of the assets. (Id. at p. 1645.) Although Konica itself never received any assets, the court found that a trier of fact could determine Konica was jointly liable with its subsidiary. (Ibid.) Here, in the first cause of action, there is no evidence of a fraudulent conveyance from Julius Chiang to anyone, much less evidence of Cheng or ECI's knowledge of or assistance in a fraudulent



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conveyance.

Korea Data Systems notes that money was transferred from the Chiangs to Crystalview Technology Corp., an entity owned by Julius Chiang's sister Frances, and from Crystalview to ECI. But there is neither a nexus between those two separate paper trails nor evidence that such payments were part of a fraudulent transfer. Speculation is insufficient to raise a triable issue of fact.

C. Korea Data Systems failed to rebut Cheng and ECI's evidence that they did nothing more than verify En-Fu Chiang's status as an independent contractor as a part of the alleged conspiracy.

In support of their motion for summary judgment, Cheng and ECI offered evidence that they were only alleged to have provided verification of En-Fu Chiang's work for ECI as an independent contractor, as part of the global conspiracy of members of the Chiang family. Korea Data Systems disputed this fact as follows: "See paragraph 20 of First Amended Complaint - Plaintiff contends that ECI and NANCY CHENG knowingly jointed [sic] the conspiracy as fully set forth in paragraph 20 and as fully set forth in Section X of the Opposition." A plaintiff cannot defeat summary judgment by relying on the allegations of his or her own complaint. (Code Civ. Proc., § 437c, subd. (p)(2).) Even assuming that a party may cross-reference entire portions of a legal brief into his or her response to a separate statement, Section X of Korea Data Systems's opposition to the summary judgment motion addresses only the claim that En-Fu Chiang's consulting agreement with ECI was a sham because she was paid to do very little. Korea Data Systems failed to demonstrate the existence of a triable issue of material fact, and thus failed to defeat Cheng and ECI's motion for summary judgment.

D. Undisputed material facts showed En-Fu Chiang was retained as an independent contractor by ECI.

Korea Data Systems also focuses heavily on En-Fu Chiang's retention by ECI, and claims there was evidence from which it could be inferred that En-Fu was not actually an independent contractor for ECI. The moving parties submitted declarations from Nancy and Raymond Cheng, in which both confirmed En-Fu Chiang was retained by ECI as an independent contractor. Korea Data Systems provided no evidence to counter those declarations, and did not object to them.

Korea Data Systems relies instead on inferences it claims could be drawn from deposition testimony. First, Korea Data Systems points to Frances Chiang's testimony that she could not recall whether her mother, En-Fu Chiang, had worked at ECI. Frances Chiang herself did not work at ECI, and we can draw no legitimate inference about En-Fu Chiang's employment from Frances's lack of knowledge about it. Second, Korea Data Systems points to En-Fu Chiang's deposition testimony in the underlying action as an admission that she never worked for ECI. Korea Data Systems's interpretation of the record is unsupportable. In response to the question, "[w]hat was the first job you ever had in the states?" En-Fu Chiang replied, "My first job I went to my son's company to work. No other work." This testimony does not support an inference that En-Fu Chiang never worked



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elsewhere, and particularly does not support an inference that En-Fu Chiang never worked for ECI.

Korea Data Systems also argues Cheng and ECI confirmed En-Fu Chiang earned \$5,900 per month as part of the employment verification for the loan on the Rapallo property, when in fact she earned only \$4,000. The evidence does not support this argument. The form on which the bank verified En-Fu Chiang's retention by ECI as an independent contractor does not mention a salary or compensation; there is nothing in the record supporting an inference that ECI was ever asked how much money En-Fu Chiang earned, much less that Cheng and ECI lied to the bank about the amount.

Finally, even if we accept Korea Data Systems's claim that En- Fu Chiang was not a good or productive independent contractor for ECI, there was un rebutted evidence that she was retained by ECI as an independent contractor. The quality and quantity of En-Fu Chiang's work product is irrelevant to the question of whether she was an independent contractor for ECI.

DISPOSITION

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

WE CONCUR:

MOORE, ACTING P. J.

ARONSON, J.

