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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

FILED

Court of Appeal-First App. Dist.

OCT 28 2003

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BY _____ DEPUTY

KHANM KIM LUC,
Plaintiff and Respondent,
v.
KEVIN CHIEN,
Defendant and Appellant.

A098616

(San Francisco County
Super. Ct. No. 314060)

Appellant Kevin Chien (Chien) received title to real property from Donald Chiu (Chiu). Chien and Chiu developed the property, and Chien sold it. Chiu became a judgment debtor to respondent Khanm Kim Luc (Luc). Luc then obtained a judgment against Chien for the profit he realized from the sale, on the ground Chiu's conveyance of the property to him was fraudulent and he held the proceeds in constructive trust for Chiu's creditors. Chien contends the trial court erred in so ruling, because: (1) Chien was found liable based on the fraudulent intent of Chiu; (2) the fraudulent conveyance did not cause injury to Luc; and (3) damages were miscalculated. We will affirm the judgment.

I. FACTS AND PROCEDURAL HISTORY

We are familiar with the background of this litigation from prior appeals.¹ In essence, Chiu evicted Luc from property on 41st Avenue in San Francisco (41st Avenue

¹ In *Luc v. Chiu* (Mar. 2001, A091936 [nonpub. opn.]), we affirmed a judgment Luc obtained against Chiu for wrongful eviction. In *Luc v. Chiu, et al.* (Oct. 2001, A093519 [nonpub. opn.]), we affirmed an order imposing monetary sanctions against Chiu and his

EXHIBIT E

Property) and transferred title to the property to Chien. After Chien developed and sold the property, Luc obtained judgment against Chiu for wrongful eviction. Thereafter, in the litigation before us, Luc attempted to satisfy the judgment from the proceeds of the sale of the 41st Avenue Property, based on Chiu's and Chien's prior title. In particular, Luc's amended complaint alleged that Chiu's conveyance of the 41st Avenue Property to Chien was fraudulent, and that Chiu and Chien had conspired to place the property out of Luc's reach as a judgment creditor. Luc sought, among other things, an order vacating the conveyance of the 41st Avenue Property and monetary damages in an amount sufficient to satisfy her judgment against Chiu. The matter proceeded to a bench trial, which included the following evidence.

A. EVIDENCE AT TRIAL

Chien became friends with Chiu in 1995. On a number of occasions, he helped Chiu obtain money by taking out loans in his own name on property Chiu owned or temporarily deeded to Chien. In 1997, for example, Chien helped Chiu obtain refinancing on a condominium Chiu's mother purportedly owned (although title was in Chiu's name) on 25th Avenue in San Francisco (the 25th Avenue Condo). To take advantage of Chien's good credit, Chiu deeded title to the condominium to Chien on April 25, 1997. Chien signed the loan papers, and three days later deeded the property back to Chiu's mother.²

On May 1, 1997, one day after the close of the condominium refinancing, Chiu purchased the 41st Avenue Property, which consisted of a bedroom apartment atop a garage. Chiu financed \$160,000 of the \$230,000 purchase price with a mortgage. The following November, he commenced to evict Luc from the property. Luc vacated the premises in February 1998, pursuant to a settlement agreement by which she agreed to move out and, in exchange for a partial waiver of rent and payment of \$1,000, granted

former attorney in connection with Luc's post-judgment efforts to obtain information on Chiu's assets.

² It appears the deed was not recorded until March 2000.

Chiu a general release.

In late 1997, Chiu began making arrangements for the development of the 41st Avenue Property, but his credit was insufficient to obtain the requisite financing. Chiu again turned to Chien. In meetings among Chiu, Chien, and a mortgage broker, Chiu represented in Cantonese that Chien was his partner and they jointly submitted loan applications. Chien did not deny this assertion, although there was evidence he did not speak Cantonese.

On March 13, 1998, Chiu conveyed title to the 41st Avenue Property to Chien for no consideration. Chien then secured a loan to repay the existing indebtedness on the property, and subsequently obtained additional financing, secured by the property, for the renovation.

In November 1998, as the 41st Avenue Property was being renovated, Luc sued Chiu for wrongful eviction. The renovation was completed in late 1999.

In February 2000, with the wrongful eviction case still pending, Chien sold the 41st Avenue Property to a bona fide purchaser for \$1,010,000. According to Chien's testimony, he was unaware of Luc's litigation at the time. Based on the trial court's calculation of the construction and financing costs in acquiring and developing the property, the sale netted a profit of about \$160,000, which the court attributed to Chien. Of this amount, Chien actually received only about \$100, with the rest apparently given to or siphoned off by Chiu from the proceeds of loans taken against the property.

On March 13, 2000, the day Chiu's deposition was taken in Luc's wrongful eviction action, the April 1997 deed to the 25th Avenue Condo, executed by Chien in favor of Chiu's mother, was recorded.

On April 28, 2000, Luc obtained a judgment against Chiu for about \$635,000. (As described in our opinion in appeal No. A091936, Chiu's settlement agreement with Luc was unenforceable because his representation that induced her to enter into the settlement—that his brother was going to live in the property—was fraudulent.) Chien claimed he first found out about Luc's litigation against Chiu in April or May of 2000, after he had sold the 41st Avenue Property, and did not know she had obtained a

judgment. The present litigation against Chiu, Chiu's wife, and Chien was filed the following August. Chiu has apparently absconded to Hong Kong.

B. TRIAL COURT'S RULING

The trial court ruled that Chien was liable for the \$160,000 in profits generated by the sale of the 41st Avenue Property. In part, the court stated: "The conveyance in March 1998 of the [41st Avenue Property] by [Chiu] to [Chien] was with the intent to hinder, delay and defraud by [Chiu] of [Luc]. As a result of her ouster, much less the prior unlawful eviction proceedings, [Luc] became a creditor of both [Chiu] and [Chien]. [¶] . . . The conveyance of the [41st Avenue Property] is therefore a fraudulent conveyance under Civil Code Section 3439.04(a), and in which the court would otherwise set aside the conveyance if the property was still in the name of [Chien]. However, the property has been sold to a bona fide purchaser for \$1,010,000. Since the conveyance of the [41st Avenue Property] to [Chien] is to be set aside as void as a fraudulent conveyance, but given that the property has been sold, the measure of damages would be the profit enjoyed by [Chien], in his capacity as holding the proceeds in trust for the creditors of [Chiu]. . . . The proceeds from the sale of the rental, and the refinance proceeds, were all in the form of checks and drafts payable to the order of [Chien] and deposited to his bank account at Commercial Bank in which he testified that he was an account holder and signed the signature card. [¶] . . . [¶] The measure of damages is the net profits from the sale of the [41st Avenue Property] which is calculated in the sum of \$160,000."

Judgment was entered against Chien for \$160,000. This appeal followed.

II. DISCUSSION

As mentioned, Chien contends: (1) the court erred by relying on Chiu's fraudulent intent to establish liability; (2) the fraudulent conveyance did not cause injury to Luc; and (3) the court erred in calculating damages, by failing to determine the fair market value of the 41st Avenue Property at the time of Chiu's transfer. We address each issue in turn.

A. SUFFICIENCY OF CHIU'S FRAUDULENT INTENT TO IMPOSE LIABILITY ON CHIEN

Chien's primary argument is that the court erred by relying exclusively on evidence of Chiu's fraudulent intent to establish Chien's liability. Chien's characterization of the ruling is imprecise, because the court considered not only Chiu's fraudulent intent, but also Chien's failure to establish that he was a good faith purchaser for value. Chien's point appears to be that he cannot be liable without proof that he possessed a fraudulent intent when he received the 41st Avenue Property from Chiu.

Fraudulent conveyances are addressed in Civil Code sections 3439.04 et seq.³ Under section 3439.04, a transfer is fraudulent as to a creditor if the debtor made the transfer with the actual intent to hinder, delay, or defraud any of his creditors. (§ 3439.04, subd. (a).) Generally, the creditor may obtain avoidance of a fraudulent transfer to the extent necessary to satisfy his claim. (§ 3439.07, subd. (a)(1).) Under section 3439.08, subdivision (a), however, a transfer is not voidable on this ground against a person who took the property in good faith and for a reasonably equivalent value (or against any of his subsequent transferees or obligees). While the parties have tended to lump these statutory provisions together, clarity may be gained by considering each of them separately. We will then turn to the remedies for a fraudulent conveyance, including the money judgment imposed by the trial court.

1. Fraudulent Conveyance (§ 3439.04)

First to be examined is whether Chiu's transfer to Chien was fraudulent. As mentioned, a transfer is fraudulent as to a creditor if the debtor made the transfer with the actual intent to hinder, delay, or defraud a creditor. (§ 3439.04, subd. (a).) The trial court found: "The conveyance in March 1998 of the [41st Avenue Property] by [Chiu] to [Chien] was with the intent to hinder, delay and defraud by [Chiu] of [Luc]. As a result of her ouster, much less the prior unlawful eviction proceedings, [Luc] became a creditor of both [Chiu] and [Chien]. [¶] . . . The conveyance of the [41st Avenue Property] is

³ All further section references are to the Civil Code.

therefore a fraudulent conveyance under Civil Code Section 3439.04(a)”

Substantial evidence supports this conclusion. A fraudulent conveyance may be shown by the debtor’s retaining possession or control of the property after the transfer, accepting less than reasonably equivalent consideration, or being sued or threatened with litigation before the transfer. (See *Wyzard v. Goller* (1994) 23 Cal.App.4th 1183, 1189-1191 & fn. 4 (*Wyzard*)). Chiu transferred the 41st Avenue Property to Chien without consideration. He nevertheless retained control of the property, working with Chien to obtain loan proceeds for both the property development and for himself. In addition, although Luc had not yet sued Chiu in the litigation that later led to her judgment against him, she had challenged Chiu’s attempt to evict her (November 1997-February 1998).

Chien correctly points out that, as of the time of Chiu’s conveyance to him (March 1998), Chiu had obtained a stipulation by which Luc agreed to vacate the property and release him of liability. Although this agreement was set aside in the subsequent wrongful eviction litigation in April 2000, Chien argues there was no evidence that Chiu anticipated this event, intended to defraud Luc by transferring the property, or hid the property from any creditor. To the contrary, he contends, the 41st Avenue Property was transferred to Chien merely to obtain financing to renovate the property.

We disagree there was no evidence Chiu anticipated the settlement agreement would be set aside. The agreement with Luc was set aside due to Chiu’s false representations. Chiu obviously knew his representations, which induced Luc to execute the settlement agreement, were false, and therefore was aware that the settlement agreement was voidable and would not preclude litigation on any wrongful eviction claim Luc might assert. The foregoing constitutes substantial evidence of Chiu’s intention to defraud Luc when he conveyed the 41st Avenue Property to Chien. The court did not err in concluding that the transfer was fraudulent.

2. Good Faith Defense (§ 3439.08, subd. (a))

Under section 3439.08, subdivision (a), a fraudulent transfer is not voidable against a person who took the property in good faith and for a reasonably equivalent

value. "Good faith" in this context means that the transferee did not actively participate in a fraudulent scheme with the debtor or collude with the debtor. (See Notes of Decisions, West's Ann. Civ. Code, § 3439.08 (2002 supp.) p. 19.) It is the defendant's burden to prove the defense of good faith. (*In re Cohen* (Bankr. 9th Cir. 1996) 199 B.R. 709, 718-719.)

Here, the trial court ruled: "[Chien] is not entitled to the benefits of Civil Code Section 3439.08(a) in that he has not proven, 'good faith.' Furthermore, [Chien] has not shown that he paid fair and equivalent value for the [41st Avenue Property] in that he has not shown that he was the true purchaser of the [41st Avenue Property]." Chien does not challenge the court's findings in this regard.

Because substantial evidence supports the court's finding that the conveyance from Chiu to Chien was fraudulent, and Chien was not insulated from liability as a bona fide purchaser, we next consider whether Luc has any remedies against Chien: in particular, avoidance of the transfer from Chiu to Chien, or a money judgment against Chien based on his temporary ownership of the 41st Avenue Property.

3. Avoidance of Transfer (§ 3439.07, subd. (a)(1))

The remedy of avoidance of a fraudulent transfer is set forth in section 3439.07, subdivision (a)(1): "In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitation in Section 3439.08 [the good faith exemption, discussed *ante*], may obtain: [¶] (1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim."

There is, however, an obvious assumption in section 3439.07, subdivision (a): the property that was fraudulently set aside must still be in the possession of the defendant, if the defendant is to be ordered to return it.

Instructive in this regard is *Flowers & Sons Development Corp. v. Municipal Court* (1978) 86 Cal.App.3d 818 (*Flowers & Sons*). At issue there was whether an amendment to a complaint, asserting relief under the Uniform Fraudulent Conveyance Act (then codified at §§ 3439-3440.1) (UFCA), had ousted the municipal court of

jurisdiction.⁴ In analyzing the issue, the Court of Appeal considered the potential remedies under the UFCA. First, the court observed, former Civil Code section 3439.09 permitted a creditor to set aside or disregard a fraudulent conveyance and attach or levy execution upon the conveyed property, as against any person except a purchaser or encumbrancer for fair consideration without knowledge of the fraud at the time of the purchase (or his successor). (*Flowers & Sons, supra*, at p. 824.) Second, case law recognized that the creditor may obtain a personal judgment against the transferee, if the property is no longer available and the transferee had knowingly participated in the fraudulent conveyance with the intention of defrauding creditors. (*Id.* at p. 825.) Because the appellants in *Flowers & Sons* no longer had a possessory interest in the property, the court ruled that the respondents *could not obtain* the set-aside remedy under former section 3439.09 (and thus the municipal court retained jurisdiction). (*Flowers & Sons, supra*, at p. 825.) If appellants still held the property, the court noted, the remedy of a money judgment would not have been available, but the statutory set-aside remedy would be. (*Id.* at p. 825, fn. 3.)

Flowers & Sons therefore stands for the proposition that, if the defendant no longer has a possessory interest in the fraudulently-conveyed property, the plaintiff creditor cannot obtain the set-aside remedy provided under section 3439.07, subdivision (a)(1). Because the 41st Avenue Property was sold by Chien to an innocent third party, the earlier fraudulent conveyance of the property from Chiu to Chien cannot be set aside.

In this regard, the trial court was again correct, ruling as follows: "the court would otherwise set aside the conveyance if the property was still in the name of [Chien]. However, the property has been sold to a bona fide purchaser for \$1,010,000."

⁴ Sections 3439 through 3440.1 were repealed in 1986 and recodified substantially the same, but with different code section numbers, in 1987. (See Stats. 1986, ch. 383, § 1; *Wyzard, supra*, 23 Cal.App.4th at p. 1189.) The UFCA was renamed the Uniform Fraudulent Transfer Act. (*Wyzard, supra*, at p. 1189.)

4. Money Judgment (Constructive Trust)

Next we turn, as did the trial court, to whether a money judgment may be imposed against Chien for some or all of Chiu's judgment debt. (See *Flowers & Sons, supra*, 86 Cal.App.3d at p. 825; § 3439.08, subd. (b) [if transfer is voidable under § 3439.07, subd. (a), creditor may recover judgment for the *value* of the asset transferred].)

The trial court ruled that the profits Chien received from the sale of the 41st Avenue Property were held in constructive trust for Chiu's creditors. Luc's theory, which the court essentially adopted, was that Luc had a claim against Chien when Chien obtained title to the 41st Avenue Property because the conveyance was fraudulent, and Chien was therefore holding the property in trust for Luc. The court concluded "the measure of damages would be the profit enjoyed by [Chien], in his capacity as holding the proceeds in trust for the creditors of [Chiu]. . . . [¶] . . . [¶] . . . [Chien] held the proceeds from the sale of the [41st Avenue Property] in trust in that the checks from the sale of the property, along with the refinance proceeds, were all payable to his order, and deposited in a bank account under his name and apparent control."

A constructive trust is a remedy used to compel a person who has property, to which he is not justly entitled, to transfer the property to the person entitled to it. (*Monastra v. Konica Business Machines, U.S.A., Inc.* (1996) 43 Cal.App.4th 1628, 1645 [constructive trust available under § 3439.07, subd. (a)(3)].) Section 2223 provides: "One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner." Section 2224 reads: "One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he or she has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it." These code sections set forth general principles, and the propriety of imposing a constructive trust to do equity rests in the sound discretion of the trial court. (*David Welch Co. v. Erskine & Tulley* (1988) 203 Cal.App.3d 884, 894 (*Welch*).)

A constructive trust is created by operation of law, arising due to and at the time of the actions of the parties. (See § 2217.) If a constructive trust arose when Chien acquired

title by way of Chiu's fraudulent conveyance, he would be responsible for the res of the trust (the 41st Avenue Property) or the fruits of its disposition (the sale proceeds). And even if a constructive trust did not arise upon the acquisition of the property, one could have arisen during his possession. Thus, for example, if Chien later learned the 41st Avenue Property was subject to Luc's claim and he had no right to the property, yet he nevertheless sold it or disposed of the sale proceeds, his failure to preserve the property or the sale proceeds could subject him to liability.

We therefore examine whether Chien *wrongfully* obtained or retained the 41st Avenue Property or its sale proceeds. In this regard, wrongfulness encompasses fraud, mistake, forgery, theft, undue influence, breach of fiduciary duty (e.g. constructive fraud) or other wrongdoing. (See § 2224.) "All that must be shown is that the acquisition of the property was wrongful and that the keeping of the property by the defendant would constitute unjust enrichment." (*Calistoga Civic Club v. City of Calistoga* (1983) 143 Cal.App.3d 111, 116.) In applying these principles, we remain mindful that the purpose of a constructive trust is to do equity. We review the trial court's factual findings for substantial evidence, and review the court's selection of the constructive trust remedy for abuse of discretion. (See *Welch, supra*, 203 Cal.App.3d at p. 894.)

There is no *direct* evidence Chien intended to defraud Luc. When he acquired the property, Luc was not a judgment creditor and had not yet filed her wrongful eviction action. When he sold the property, he conveyed it to a good faith purchaser, without knowing about Luc's wrongful eviction action. Moreover, title to the property was in *Chien's* name, and there is no evidence *he* was threatened with any litigation, or knew Luc was inclined to satisfy her anticipated judgment with the 41st Avenue Property, when he sold it in February 2000. Likewise, there is no direct evidence Chien wrongfully handled the \$160,000 profit: the "profit" was apparently never received by Chien himself, but paid off loans secured by the property, the proceeds of which had gone to Chiu.

Nevertheless, Chien obtained the property, and its sale proceeds, as part of his ongoing participation in Chiu's broad scheme to defraud lenders and creditors and

conceal his assets. Chien and Chiu worked together, by Chien lending his good name (and creditworthiness) to obtain financing and pecuniary benefit for Chiu, which Chiu could not have obtained himself. Chien admitted signing deeds of trusts on properties he did not own. And as the trial court observed, he lied on loan applications and signed affidavits to take out loans on property he did not occupy. Although these transactions did not pertain specifically to the 41st Avenue Property, they confirm Chien's complicity in Chiu's schemes and Chien's willingness to defraud.⁵

Furthermore, Chien was integral to Chiu's plan to profit off of the 41st Avenue Property in particular, while hiding it from Luc's reach. Chien refinanced the 41st Avenue Property, and Chiu received through Chien's bank account \$400,000 in refinance proceeds. Chien thus facilitated Chiu's perpetration of an ongoing fraud against Luc. In addition, as the trial court found, Chiu represented to their mortgage broker in Cantonese that Chien was his "partner." Although there was some question whether Chien understood this representation, he did not deny it.

Moreover, the trial court concluded that Chien acted wrongfully, even if he did not act with a fraudulent intent. At the hearing on the statement of decision, the court explained: "I don't think that Mr. Chien is without some responsibility. I said it before and I will say it again. Mr. Chien allowed himself to be used. I'm sorry, Mr. Chien. That's how I see it. . . . I don't think that Mr. Chien is involved in any active fraud, in any active willful or malicious conduct. I wouldn't find that he is, you know, if there were an issue of punitive damages here, which there isn't, that he was subject to that.

[¶] I think in essence *his wrongdoing is having been complicit in a scheme of events that*

⁵ Luc also points out that on the day Chiu's deposition was taken in Luc's wrongful eviction action (Mar. 13, 2000), the deed to the 25th Avenue Condo, purportedly executed by Chien in favor of Chiu's mother in 1997, was recorded. Luc's theory in this regard is as follows: Chien fraudulently conveyed the property to Chiu's mother because (1) he thought Luc was going to get a judgment against Chiu in her wrongful eviction case, and (2) Luc, knowing that Chiu's transfer of the 41st Avenue Property to Chien was voidable, but that Chien had already sold it, would pursue the 25th Avenue Condo that was then in Chien's name.

allowed Mr. Chiu to use this property to extract from the [41st Avenue Property] significant profits, to build it up and then thereafter to sell it and leave. . . . [¶] . . . I don't see any way to exonerate Mr. Chien. I said I think Mr. Chien's conduct is relatively minimal, but he allowed his good name to be used under circumstances which prevented Ms. Luc from being able to have access to the property to discharge a debt that Mr. Chiu owed to her. And consequently Mr. Chiu was able to extract all the money from the property, so that at a point in time when the property is ultimately sold by Mr. Chien as the record titleholder, all the funds are disbursed. They are all committed to lienholders. That's the bottom line." (Italics added.)

In sum, Chien was instrumental in a scheme that ultimately deprived Luc of access to an asset from which she could satisfy her judgment. While he might not have had malicious intent, his acquisition of the property was the product of a voidable, fraudulent transaction, leaving him no equitable right to deprive a good faith creditor access to the property or its sale proceeds. On this record, we cannot say the trial court abused its discretion in imposing a constructive trust: it was neither arbitrary nor irrational to conclude that equity required Chien to account for the profit he earned in disposing of property he received by a fraudulent conveyance. Chien held the property in constructive trust, and he is responsible to Luc for the profit from the sale.

Chien's reliance on *Cohen v. Heavey* (1968) 261 Cal.App.2d 766 (*Heavey*), is misplaced. There, plaintiff creditors had obtained a judgment against a debtor. Allegedly intending to defraud those creditors, the debtor sold a parcel of property to an alter ego corporation, which in turn sold it to third-party Heavey, without consideration. After obtaining loans on the property and disbursing those proceeds to other creditors of the debtor, Heavey conveyed the property back to the debtor's alter ego. The property was later sold. The creditors sued Heavey, seeking *inter alia* a personal judgment against Heavey in an amount sufficient to satisfy the original judgment against the debtor. The trial court imposed a monetary judgment against Heavey in the amount of the debtor's judgment debt, on the ground that Heavey benefited from the transaction in controlling and directing the distribution of the proceeds. (*Id.* at pp. 767, 769.)

The Court of Appeal ruled this was error. Whether or not the debtor-grantor committed fraud, there was no evidence Heavey intended to defraud the creditors or even knew of them. (*Heavey, supra*, 261 Cal.App.2d at p. 770.) Nor had he failed to account for anything he received, since he returned the property to the debtor's alter ego and kept none of the loan proceeds for himself. (*Ibid.*) The court concluded: "In the absence of a finding that Heavey acted with fraudulent intent or that he failed to account for the proceeds of the loan, and in the absence of evidence that he benefited from the transaction in any amount, the judgment cannot be permitted to stand." (*Id.* at p. 772.)

Heavey is unhelpful to our analysis, since it did not consider the remedy of a constructive trust. It is also factually distinguishable. Heavey received property, obtained loans on it, disbursed the loan proceeds to other creditors of the debtor, and returned the property. He was not the debtor's partner and acted as a free agent in the transaction. (*Heavey, supra*, 261 Cal.App.2d at p. 768.) Here, by contrast, Chien received property, worked closely with the debtor to develop it, encumbered it with loans and funneled the proceeds to the debtor, and then instead of returning the property to the debtor (where a creditor could attach it), *sold it* such that it was beyond the reach of creditors. Furthermore, in *Heavey* the trial court had held Heavey liable on the *sole* ground that he derived a "benefit" from the transaction by his mere control and direction of the assets. The Court of Appeal found however, no support in the record for the finding of any benefit. (*Id.* at pp. 769-770.) Here, on the other hand, the trial court based Chien's liability on the benefit he received (\$160,000 profit, \$100 of which he netted for himself) *and* his *wrongful* actions, and both of these findings *are* supported by substantial evidence in the record.⁶

⁶ The other cases on which Chien relies are distinguishable on this point as well. (See *Flowers & Sons, supra*, 86 Cal.App.3d at p. 825 [creditor may obtain judgment against transferee who disposed of fraudulently-transferred property, if the transferee knowingly participated in the fraudulent conveyance with the intention of defrauding creditors]; *Malaquias v. Novo* (1943) 59 Cal.App.2d 225, 232 ["When the vendee knowingly participates in the fraudulent conveyance with the purpose or intention of defrauding creditors, or he wrongfully sells or disposes of the property, or refuses to

Chien contends the rule as applied by the trial court works an injustice for innocent grantees. By illustration, he points to parents who help their child obtain a home by purchasing it and taking a loan in their own names. Under the trial court's ruling, Chien claims the parents would be subject to virtually unlimited liability to unknown third parties if their child had a hidden intent to defraud creditors. Not so. In the scenario Chien posits, the child would not be the grantor of the property, so the child's intent would not give rise to a fraudulent conveyance. At any rate, the parent—or any grantee—could assert a defense as a good faith purchaser for value. (§ 3439.08.)

It is contrary to public policy for a debtor to conceal or convey property to avoid his creditors. As to one who facilitates such a fraud, whether intentionally or not, at the expense of an innocent judgment creditor who is deprived of an asset with which to satisfy her judgment, we choose not to insulate him from the consequences of his actions. The trial court did not err in imposing liability against Chien on this basis.

B. CAUSATION: INJURY TO LUC

Chien next argues that he cannot be liable to Luc, because his acquisition of title to the 41st Avenue Property did not harm her. If the transfer had not occurred, he asserts, the property would not have been renovated and any sale would not have yielded the profit on which the court's judgment was based. In addition, Chien contends, it made no difference that he obtained title temporarily, because the property was sold before Luc attempted to attach Chiu's assets.

To recover for a fraudulent conveyance, a creditor must show that property

surrender possession thereof to the creditor, after the sale has been declared void, a personal judgment may be rendered against the vendee to compensate the creditor for the loss sustained thereby.”]; *Pedro v. Soares* (1937) 18 Cal.App.2d 600, 604 [“When the grantee with knowledge of such fraudulent conveyance sells the property and converts the proceeds to his own use, he will be held liable to the creditor for the amount received therefrom to the extent of the creditor's claim.”].) Those cases did not hold that a wrongful acquisition like Chien's would not suffice for imposition of a constructive trust. To the contrary, a constructive trust does *not* require a finding of fraud on the part of the transferee; wrongdoing will suffice. (§ 2223-2224.)

otherwise available for payment of the debt was placed beyond her reach. (*Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75, 80 [“A transfer in fraud of creditors may be attacked only by one who is injured thereby. Mere intent to delay or defraud is not sufficient; injury to the creditor must be shown affirmatively. In other words, prejudice to the plaintiff is essential. It cannot be said that a creditor has been injured unless the transfer puts beyond [her] reach property [she] otherwise would be able to subject to the payment of [her] debt.”].)

Chien’s actions placed the 41st Avenue Property beyond Luc’s reach. As Chien acknowledges, if he had not agreed to hold title, the financing for the renovations would not have been obtained and the renovations would not have been made. There was no evidence that, without these renovations, Chiu would have sold the property. Thus, on this record, the property would still have been in Chiu’s name when she obtained her judgment against him, and it still would have been available for purposes of satisfying the judgment. Luc was therefore injured by Chien’s acquisition and sale of the property.

Chien also argues that he did not hinder Luc’s satisfaction of her judgment by holding title to the 41st Avenue Property, because Luc did not start that process until after the property was sold. Regardless of when Luc started the process, however, Chien’s acquisition and sale of the property rendered it unavailable for satisfaction of Luc’s judgment.

At bottom, the transfer to Chien put beyond her reach property she otherwise would have been able to pursue for the satisfaction of her debt. Chien has not established error in this regard.

C. DETERMINATION OF FAIR MARKET VALUE

Under section 3439.08, subdivision (c), a judgment based upon the value of the asset transferred under section 3439.08, subdivision (b), “shall be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.” Chien contends that the court erred in failing to determine the net value of the 41st Avenue Property “at the time of the transfer” from Chiu to Chien. (§ 3439.08, subd. (c).)

The trial court found that, based on the Fabro appraisal and other evidence, the “property had a potential value in the amount of about \$745,000, given its full potential.” It was this value the court used in calculating the profit attributed to Chien. Chien argues the \$745,000 value was not the fair market value of the property when it was conveyed to him in March 1998, but merely the “potential value” of what it could sell for after the construction work was done. Because the trial court found the construction costs to be at least \$580,000, he asserts, the Fabro appraisal of \$745,000 would indicate a value in March 1998 of \$165,000—less than the initial loan Chien assumed.

But section 3439.08, subdivision (c), permits the court to adjust the value of the asset at the time of the transfer *according to the equities of the case*. In the matter before us, Chien (and Chiu) developed the 41st Avenue Property while Chien was constructive trustee. It is equitable for Chien to account to Luc for the profit he made on the sale of property he held in trust for her. Chien has failed to establish error in the calculation of damages.

III. DISPOSITION

The judgment is affirmed.

STEVENS, J.

We concur.

JONES, P.J.

GEMELLO, J.

(A098616)