

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/23/24 TIME: 1:30 P.M. DEPT: C CASE NO: CV1800005

PRESIDING: HON. JAMES T. CHOU

REPORTER:

CLERK: JANICE AN

PLAINTIFF: TINA YAN

vs.

DEFENDANT: STEVEN R. RHOADS

NATURE OF PROCEEDINGS: MOTION FOR NEW TRIAL – NOTICE OF INTENTION TO MOVE FOR NEW TRIAL AND/OR ALTERNATIVE RELIEF IN NONINJURY TRIAL BY PLAINTIFF

RULING

Plaintiff Tina Yan’s (“Plaintiff”) motion for a new trial is denied.

BACKGROUND

This professional negligence case arises out of an underlying lawsuit over fraudulent transfers. In 2010, Charles Li (not a party to the instant case) sued Demas Yan (“Demas”), Plaintiff’s son, for legal malpractice. (Yan Dec., ¶ 3.) In the course of that dispute, Demas transferred a residential building he owned (“the Property”) to an LLC (“547 23rd Avenue, LLC”) wholly owned by Demas himself, and subsequently transferred his interest in 547 23rd Avenue, LLC to several of his relatives, including Plaintiff, Thai Ming Chiu (“Chiu”), and Kaman Liu (“Liu”). (Plaintiff’s Request for Judicial Notice (“PRJN”),¹ 3, ¶¶ 12-13, 15.) Charles Li won his legal malpractice case against Demas. (Yan Dec., ¶ 3.) Two days later, 547 23rd Avenue, LLC transferred the Property to 547 Investments, LLC using a deed signed by Plaintiff. (PRJN, 3, ¶ 19.) This rendered Charles Li unable to satisfy his judgment against Demas by way of a charging order against 547 23rd Avenue, LLC. (*Id.*, ¶ 20.)

In 2014, Charles Li filed a complaint (the “UVTA Action”) in the Superior Court for the County of San Francisco against Demas, Plaintiff, Chiu, Liu, Cheuk Tin Yan (“Cheuk,” another relative of Plaintiff and Demas), and certain corporate entities. (See PRJN, 3.) The UVTA Action alleged that Plaintiff, Demas, and their relatives were “engaged in a long-running conspiracy to defraud [Charles Li] and other creditors by shifting and secreting assets among themselves.” (*Id.*, ¶ 22.) The complaint stated three causes of action for violation of the Uniform Voidable Transactions Act (Civ. Code, §§ 3439, *et seq.*, the “UVTA”), alleging that the conveyance of the

¹ All of Plaintiff’s requests for judicial notice are granted, as are all of Defendant’s. (Evid. Code, 452, subd. (h).) Plaintiff filed all of the materials for which she seeks judicial notice in a page-numbered packet without exhibit pages, so the Court’s citations to these materials cite them by page number.

Property from Demas to 547 23rd Avenue, LLC; the conveyance of Demas' interest in that LLC to Plaintiff, Liu, and Chiu; and the conveyance of the Property from 547 23rd Avenue, LLC to 547 Investments, LLC were all fraudulent. (*Id.*, ¶¶ 24-44.)

The UTVA Action was tried by a jury and decided in Charles Li's favor. (Yan Dec., ¶ 4.) A First Amended Judgment was entered on December 21, 2016. (PRJN, 28.) Among other relief, a money judgment in the amount of \$824,180.57 was entered against Plaintiff and Cheuk jointly, and all three transfers at issue were declared void to the extent necessary to satisfy Charles Li's judgment against Demas in the legal malpractice case. (*Ibid.*) The First Amended Judgment specified that Charles Li's "aggregate recovery shall not exceed the Underlying Judgment[.]" with that term referring to the judgment entered in favor of Charles Li in his legal malpractice case against Demas. (PRJN, 30, 31.) The court also awarded Charles Li \$802,059.50 in attorneys' fees and \$11,527.19 in costs. (PRJN, 31.)

Plaintiff and her codefendants appealed. The Court of Appeal set aside the award of attorneys' fees as to all defendants other than Demas, but affirmed the judgment in the UVTA Action in all other respects. (PRJN, 53.) On remand, the trial court entered a Second Amended Judgment that deemed attorneys' fees recoverable only from Demas. (PRJN, 58.) The Second Amended Judgment was otherwise the same as the First Amended Judgment, including voiding all three of the fraudulent transfers "to the extent necessary" to satisfy Demas' debt to Charles Li, imposing a money judgment against Plaintiff and Cheuk jointly, and specifying that Charles Li's "aggregate recovery shall not exceed [his] Underlying Judgment." (PRJN, 56-58.)

Plaintiff and her codefendants then moved to set the money judgments against them aside as void. The trial court denied that motion and Plaintiff and her co-defendants appealed a second time, arguing that the Second Amended Judgment "grant[ed] relief beyond what is authorized by the [UVTA]" – specifically, that it "provide[d] 'dual remedies' because it both set[] aside the fraudulent transfer and award[ed] a money judgment." (PRJN, 65.) The Court of Appeals affirmed, reasoning that the appellants had "forfeited their 'dual remedies' argument by failing to raise it in their prior appeal[.]" (PRJN, 66.)

In the instant case, originally filed on January 2, 2018, Plaintiff alleged that she retained Defendant Steven R. Rhoads ("Defendant") to represent her in post-judgment and appeal proceedings in the UTVA Action. (First Amended Complaint ("FAC"), ¶ 4.) However, Defendant allegedly told Plaintiff that he had concluded that the appeal was frivolous and would stop working on the case. (*Id.*, ¶ 8.) Plaintiff hired another attorney to continue the appeal. (*Id.*, ¶ 9.) The FAC set forth a single claim of professional negligence, alleging that Defendant negligently abandoned the appeal and failed to raise the argument that the Second Amended Judgment was void in time to obtain an appellate ruling on that issue.

On October 9, 2023, the parties stipulated that the Court was to bifurcate and determine the issue of whether, under the UTVA, "setting aside transfers and awarding money judgments against the transferees" was within the discretion of the trial court that decided the UVTA Action. (Oct. 9, 2023 Stipulation.) The Court concluded that it was. (Oct. 13, 2023 Final Ruling and Order on Issue One, p. 4 ["[T]he remedies of setting aside of transfers and the awarding of money damages, limited by an aggregate recovery that could not exceed the underlying judgment, were warranted and such relief did not exceed the authority of the [UVTA].".])

The effect of this ruling was to decide the case in Defendant’s favor. (*Ibid.*) On January 17, 2024, the Court entered judgment in favor of Defendant. (See Jan. 17, 2024 Judgment.) After an unsuccessful motion for reconsideration, Plaintiff filed the instant motion requesting a new trial, or, in the alternative, that the court reopen the case pursuant to Code of Civil Procedure, section 662. (Plaintiff’s Notice of Intention to Move for New Trial, p. 2.)

LEGAL STANDARD

Code of Civil Procedure, section 657 provides that a “verdict may be vacated and any other decision may be modified or vacated, in whole or in part, and a new or further trial granted on all or part of the issues, on the application of the party aggrieved, for any of [certain specified] causes, materially affecting the substantial rights” of the movant. The statutory grounds for a new trial include, among other things, “[i]rregularity in the proceedings of the court, jury or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial”; “[i]nsufficiency of the evidence to justify the verdict or other decision, or the verdict or other decision is against law”; and “[e]rror in law, occurring at the trial and excepted to by the [movant].” (Code Civ. Proc., § 657.) If the court grants a motion for a new trial, it must specify the grounds upon which a new trial is granted and the court’s reasoning as to each ground. (Code Civ. Proc., § 657.)

When ruling on a motion for a new trial following a bench trial, the court may, “in lieu of granting a new trial, . . . vacate and set aside the statement of decision and judgment and reopen the case for further proceedings and the introduction of additional evidence with the same effect as if the case had been reopened after the submission thereof and before a decision had been filed or judgment rendered.” (Code Civ. Proc., § 662.)

A motion for a new trial is to be heard and determined by the judge who presided at the trial. (Code Civ. Proc., § 661.) The court’s power to rule on a motion for a new trial expires 75 days after the clerk of court mails the notice of entry of judgment or 75 days after the movant is served with written notice of the entry of judgment, whichever is earlier. (Code Civ. Proc., § 660, subd. (c).) If the motion is not decided within the statutory time period, “the effect shall be a denial of the motion without further order of the court.” (*Ibid.*)

DISCUSSION

The Court will address each of Plaintiff’s stated grounds for relief in turn.

Irregularity in the Proceedings (Code Civ. Proc., § 657(1))

The phrase “irregularity in the proceedings of the court” “refers to conduct *other than* orders and rulings.” (Weil & Brown, Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2023) ¶¶ 18:133 [emphasis in original]; accord *Gay v. Torrance* (1904) 145 Cal. 144, 149.) This ground for a new trial “is intended to refer to matters which appellant cannot fully present by exceptions taken during the progress of the trial, and which must, therefore, appear by affidavits.” (*Gay, supra*, 145 Cal. 144, 149.) “Irregularities” deserving of a new trial “include any departure by the court from the due and orderly method of disposition of an action by which the substantial rights of a party have been materially affected, where such departure is not evidenced by a ruling or order[.]” (*Ibid.*) This might include, for example, juror or judicial misconduct. (See Weil & Brown, *supra*, ¶ 18:133; see, e.g., *Montoya v. Barragan* (2013) 220 Cal.App.4th 1215, 1230 [affirming grant of new trial based on irregularity in the proceedings

where trial court polled the jury in lieu of obtaining a written verdict[.]) Section 657(1) separately provides for a new trial based on “any order of the court or abuse of discretion by which either party was prevented from having a fair trial.” (Weil & Brown, *supra*, ¶ 18:134; see, e.g., *In re Marriage of Carlsson* (2008) 163 Cal.App.4th 281, 294 [vacating judgment and ordering retrial based on finding that trial judge “arbitrarily cut[] off the presentation of evidence, . . . render[ing] the trial fundamentally unfair”].) In summary, Section 657(1)’s ground for a new trial is about procedural deficiencies that render the proceedings unfair, not about the merits of the underlying action.

It is unclear what Plaintiff contends was irregular or unfair about these proceedings. Her brief cites to Code of Civil Procedure, section 576 (Memorandum, p. 16), which permits the court to allow any pleading or pretrial conference order to be amended at its discretion, but she does not explain how that statute relates to the trial of this case. For example, she neither say that she requested permission to amend something pursuant to Section 576 and was unfairly denied nor does she even identify a document she would have amended if given the chance. Plaintiff argues that “there are evidence and material facts that were not made known to the reviewing court in the first appeal and were not considered by this Court in deciding the bifurcated issue” and states that “[w]ithout a trial on evidentiary facts, [she] is denied an opportunity to establish a trial record that the money judgment against her in the underlying UVTA action is not supported by substantial evidence.” (Memorandum, pp. 16-17.) She does not identify what evidence she contends was required to be heard to give her a fair trial, nor does she offer any evidence that she was unfairly precluded from introducing evidence relevant to this case.

The Court concludes Plaintiff might be arguing, in the most oblique manner possible, that the Court improperly considered the bifurcated issue determinative of this action. If that is the case, Plaintiff’s moving papers needed to describe the circumstances surrounding the bifurcation, the Court’s October 13, 2023 order, and the January 17, 2024 judgment (with supporting evidence as necessary) and set forth what she thinks was improper. (See *Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138, 147 [moving party holds burden on motion for new trial].)

Under these circumstances, Plaintiff has not demonstrated that she is entitled to a new trial under Section 657(1).

Insufficiency of the Evidence (Code Civ. Proc., § 657(6))

Plaintiff argues that there was insufficient evidence to support the Court’s judgment on the basis that in the UVTA Action, no evidence was presented to show either that Plaintiff knowingly participated in any of the conveyances at issue with the intention of defrauding Charles Li or that the fraudulently transferred property was unavailable to satisfy the debt. (Memorandum, p. 12.) In order to merit a new trial on the ground of insufficiency of the evidence, Plaintiff must offer evidence as to the content of the proceedings at issue. (See Code Civ. Proc., § 657 [court is required to “weigh[] the evidence[,]” consider “the entire record[,]” and conclude “that the court . . . clearly should have received a different . . . decision” before granting a new trial based on insufficiency of the evidence].) Without such a showing, a court has no basis to conclude that the evidence was insufficient and so cannot grant a new trial on this ground.

Plaintiff's brief attacks the wrong judgment. This is a motion to obtain a new trial of the legal malpractice lawsuit heard before this Court in October 2023, not the UVTA Action. Plaintiff has not offered any evidence, or even argument, as to what was put before the Court *in this case*. The Court was tasked with deciding the bifurcated issue of whether, “[u]nder the circumstances of [the UVTA Action] as described in [certain specified] Court of Appeal decisions . . . was the trial court remedy in [the UVTA Action] setting aside transfers and awarding money judgments against the transferees within the trial court’s discretion under the UVTA?” (Oct. 9, 2023 Stipulation; see also Oct. 13, 2023 Order.) What evidence was presented to the Court to aid its decision as to whether the UVTA Action court’s decision was permissible? Plaintiff’s moving papers do not say. They merely argue that there was insufficient evidence presented *in the UVTA Action* to justify the money judgment against her in that case. This may have been a valid argument had it been made in a motion for a new trial filed before the court that decided the UVTA Action or had it been raised on appeal of that case. But this is not such an appeal and the instant motion is not seeking a new trial of the UVTA Action.

The Court understands that the sufficiency of the evidence presented in the UVTA Action is relevant to whether the money judgment imposed against Plaintiff in that case was valid, which in turn is relevant to whether the money judgment was vulnerable to appeal, which in turn is relevant to Plaintiff’s professional negligence claim against Defendant. But even if it were established that the money judgment against Plaintiff was invalidly imposed absent a finding that she knowingly participated in Demas’ fraud, that would not be a sufficient basis for the Court to grant Plaintiff a new trial of *this legal malpractice case* on insufficiency of the evidence grounds. The Court is statutorily required to weigh the evidence presented in this case before it can grant a new trial on this ground. (Code Civ. Proc., § 657.)

Against Law (Code Civ. Proc., § 657(6))

“[A] decision is ‘against the law’ where the evidence is insufficient in law and without conflict on any material point.” (*In re Marriage of Beilock* (1978) 81 Cal.App.3d 713, 728.) This ground for a new trial differs from the “insufficiency of the evidence” ground “in that there is no weighing of evidence or determining credibility[.]” (Weil & Brown, *supra*, ¶ 18:180.) The “against law” ground applies where the undisputed evidence is insufficient *as a matter of law* to support the verdict or decision. (*Ibid.* [citing *McCown v. Spencer* (1970) 8 CA3d 216, 229].)

In other words, to obtain a new trial on this ground, the movant needs to provide evidence of what was presented at the trial. Otherwise, the court has no basis from which to determine that the undisputed evidence was insufficient as a matter of law. Plaintiff is not entitled to a new trial on this ground for the same reason she is not entitled to a new trial based on insufficiency of the evidence: She has not set forth any information about what was presented in these proceedings.

Error in Law (Code Civ. Proc., § 657(7))

“Dual Remedies” Issue

Plaintiff argues that the Court erroneously concluded that it was within the UVTA Action court’s discretion to simultaneously order the fraudulent transfers void and impose money judgments against the transferees.

In a UVTA case, a creditor may obtain “[a]voidance of the transfer or obligation to the extent necessary to satisfy the creditor’s claim.” (Civ. Code, § 3439.07, subd. (a)(1).) The creditor may further obtain “[a]ny other relief the circumstances may require.” (Civ. Code, § 3439.07, subd. (a)(3)(C).) The remedy of “avoidance of the transfer” consists of “ ‘a declaration that the fraudulent conveyance is void as to the judgment creditor.’ ” (*Renda v. Nevarez* (2014) 223 Cal.App.4th 1231, 1238 [quoting *Miller v. Kaiser* (1967) 164 Colo. 206, 211-212].) The effect is “ ‘to return the property fraudulently conveyed to its prior status of ownership[,] thereby bringing it within reach of the judgment creditor’ ” to satisfy the underlying debt. (*Ibid.*) The UVTA separately provides that “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 . . . [t]he first transferee of the asset or the person for whose benefit the transfer was made.” (Civ. Code, § 3439.08, subd. (b)(1)(A).)

Plaintiff cites *Renda v. Nevarez, supra*, 223 Cal.App.4th 1231, for the proposition that a plaintiff in a UVTA action may not obtain a recovery that puts him in a better position than he was before the fraud, i.e., a plaintiff may not, as a result of his UVTA claim, become entitled to more money than he was as a result of the underlying debt. (223 Cal.App.4th 1231, 1237-1238.) In its October 13 order, this Court ruled that the Second Amended Judgment is consistent with *Renda* because it specifically provides that Charles Li’s “aggregate recovery shall not exceed [his] Underlying Judgment.” (PRJN 58; Oct. 13, 2023 Order, p. 4; see *Renda, supra*, 223 Cal.App.4th 1231, 1238.) Plaintiff’s moving papers do not set forth why she believes the Court’s assessment was erroneous.

Next, Plaintiff invokes legislative history. First, she cites an illustrative example from the National Conference of Commissioners on Uniform State Laws’ (otherwise known as the Uniform Law Commission, or “ULC”) Official Comments to their 2014 model UVTA,² which inspired California’s UVTA. (See Legis. Com. com. (1), West’s Ann. Cal. Civ. Code (2024 ed.) foll. § 3439.07.) For the sake of clarity, the Court has changed the references to the ULC’s model UVTA to the appropriate sections of California’s UVTA:

“For example, suppose that X transfers property to Y in a transfer voidable under this Act, and that Y later transfers the property to Z, who is a good-faith transferee for value. In general, C-1, a creditor of X, would have the right to a money judgment against Y pursuant to [Civil Code, § 3439.08, subd. (b)], but C-1 could not recover under this Act from Z, who would be protected by [Civil Code, § 3439.08, subdivision (b)(1)(B)(i)].”
Unif. Voidable Transactions Act § 8, cmt. 2.

² The ULC drafts model legislation that state legislatures may consider for formal adoption, with or without making their own changes. Nothing the ULC does has binding legal force except to the extent it is adopted by a state legislature. The illustration Plaintiff relies on does not appear in the California State Legislature’s comments to Civil Code, sections 3439.07 or 3439.08. This reduces the illustration’s persuasive value, but does not eliminate it entirely.

Plaintiff asserts that this illustration demonstrates that Civil Code, section 3439.08's "provision for a judgment for the value of the asset transferred" and the UVTA's "primary remedy of avoidance of transfers" are mutually exclusive. (Memorandum, p. 15.) How? The illustration merely indicates that the UVTA provides for money judgments against a transferee under at least some circumstances. To the extent it says anything about when money judgments are *prohibited*, it is only that they are impermissible against a *subsequent* transferee (i.e., one who did not receive the property from the debtor himself, but instead from a downstream recipient) who took the property in "good faith" and "for value." (See Civil Code, § 3439.08, subd. (b)(1)(B)(i).) Plaintiff does not state in her motion that she was a subsequent transferee who took in good faith and for value, nor that she ever made that argument in the UVTA Action. The illustration says nothing about when a court can and cannot order the fraudulent transfers void. The illustration's relevance is unclear and it simply is not authority for the idea that a court cannot both void transfers and impose a money judgment under the UVTA.

Plaintiff next points out that the ULC's model UVTA – and, by the transitive property, Section 3439.08(b) – is modeled after 11 U.S.C. § 550(a), a provision of the federal Bankruptcy Code providing that "to the extent that a transfer is avoided . . . the trustee may recover, for the benefit of the estate, the property transferred, *or*, if the court so orders, the value of such property" (emphasis Plaintiff's). That Section 3439.08(b) "is derived from Bankruptcy Code §§ 550(a), (b)" (Unif. Voidable Transactions Act § 8, cmt. 2) does not establish that it adopted any particular aspect of those provisions, both of which contain other material Plaintiff does not rely on. Both the ULC and California's Legislature elected *not* to adopt the disjunctive element Plaintiff emphasizes.

Nothing in the UVTA itself suggests that a court is prohibited from both voiding the transfers and imposing a money judgment. Plaintiff's alternative authorities are unavailing.

Other Voidness Arguments

To the extent that Plaintiff contends that the Court made an error of law in concluding that the money judgment imposed against her in the UVTA Action was void absent a showing that she knowingly participated in the fraud or that the property was unavailable to satisfy the judgment, the Court is unpersuaded. Plaintiff relies primarily on a single secondary source, a treatise. (See Memorandum, p. 11 [citing 16A Cal.Jur.3d (2024) Creditors' Rights and Remedies, § 401].) It offers two authorities for the proposition that at least one of these findings is required: *Flowers & Sons Development Corp. v. Municipal Court* (1978) 86 Cal.App.3d 818 and *Malaquias v. Novo* (1943) 59 Cal.App.2d 225. (*Ibid.*) Both of these cases predate the 1986 enactment of Civil Code, section 3439.08 in its current form. The UVTA currently in force states that provided a transaction is voidable under the UVTA, the creditor can obtain a money judgment against the "the first transferee of the asset[.]" (Civ. Code, § 3439.08, subd. (b)(1)(A).)

The Second Amended Judgment in the UVTA Action adjudged that "the transfer of Demas Yan's membership interests in 547 23rd Avenue, LLC from defendant Demas Yan to defendants Thai Ming Chiu, Kaman Liu, and Tina Yan" was voidable under the UVTA. (PRJN 57.) In other words, Plaintiff, like Chiu and Liu, was a "first transferee" in Demas' fraudulent conveyance of his LLC interests. That is all Section 3439.08 requires for a money judgment against her to be valid. Plaintiff has not presented, and the Court has not found, legal authority

for the idea that the version of Section 3439.08 currently in force requires a finding that she knowingly participated in her son's fraud before she can be subject to a money judgment.

Plaintiff's only other argument that the money judgment against her was void rests on the idea that in the UVTA Action, Charles Li did not affirmatively show that he had been injured. (See Memorandum, p. 12.) " 'Mere intent to delay or defraud is not sufficient' " for a UVTA claim. (*Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75, 80 [quoting 16 Cal.Jur.3d (1983 rev.) Creditors' Rights and Remedies, § 430, p. 540].) "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.' " (*Ibid.* [alteration in original].) As evidence, Plaintiff argues that during his closing arguments, Charles Li's counsel said of damages: "[Plaintiff] has a judgment. He should be able to collect it. That is harm." (Memorandum, p. 12.) Even assuming that a statement made in a closing argument can constitute proof of what was ultimately found in a case, Plaintiff's brief simply omitted the part of this statement that makes it consistent with *Mehrtash*. What Charles Li's counsel actually said was, "He has a judgment. He should be able to collect it. *He has not been able to collect it.* That is harm." (Yan Dec., Ex. A., 408:5-7 [emphasis added].) This also belies Plaintiff's claim that Charles Li "did not argue to the jury that he has sustained damages." (Memorandum, p. 13.)

The Court is not convinced that its October 13, 2023 order reflects legal error and denies Plaintiff a new trial on this ground. Because Plaintiff has not set forth a valid basis for a new trial, the motion is denied.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are strongly encouraged to appear remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for April, 2024 is as follows:

Zoom link for Probate 160 969 7965 passcode 097034

Meeting ID: 160 969 7965

Passcode: 097034

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marin.courts.ca.gov>