NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MERCATOR PROPERTY CONSULTANTS PTY, LTD.,

Plaintiff and Respondent,

v.

ROBBY SUMAMPOW,

Defendant and Appellant.

B227521

(Los Angeles County Super. Ct. No. BC387373)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mary Ann Murphy, Judge. Affirmed.

Law Offices of Jason Y. Lie, Jason Y. Lie; Shioda & Kim, Gene H. Shioda and James A. Kim for Defendant and Appellant.

Russ, August & Kabat, Judith L. Meadow and Nathan D. Meyer for Plaintiff and Respondent.

INTRODUCTION

Plaintiff and respondent Mercator Property Consultants Pty, Ltd. (Mercator) obtained a judgment in Australia against defendant and appellant Robby Sumampow (Sumampow), an Indonesian citizen. When Sumampow failed to pay the Australian judgment, Mercator brought an action for recognition and enforcement of the judgment against properties Sumampow owned in California—a house at 809 North Rexford Drive in Beverly Hills and a condominium at 10590 Wilshire Boulevard, unit 706, in Los Angeles (the California properties). After Sumampow contended in the litigation that he no longer owned the California properties, having transferred them to his daughter Iefenn Sumampow (Iefenn) and son Ievan Sumampow (Ievan), Mercator filed an amended complaint seeking to "avoid" the transfer of the properties on the ground that the transfers were fraudulent. After a court trial, the trial court entered judgment for Mercator. On appeal, Sumampow contends the trial court erred when it excluded his expert witness on Indonesian law, when it found that his children were not necessary and indispensible parties to the fraudulent transfer cause of action, and when it recognized the Australian judgment without a showing that the Australian judgment was final and without providing him an "opportunity to present his case." We affirm.

BACKGROUND[1]

In 1990, deeds were recorded in the Los Angeles County Recorder's Office transferring the California properties to Sumampow. As of the trial in this matter, no deed had been recorded in the Los Angeles County Recorder's Office transferring either of the properties from Sumampow to another person.

Mercator is a property development investment company located in Perth, Western Australia. In 1996, Mercator owned 10 percent of the shares in Christmas Island Resorts Company, a resort and hotel casino development on the Australian territory of

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1 We deny Sumampow's request for judicial notice of the reporter's transcript of the August 12, 2011, hearing on Mercator's successful summary judgment motion in *Iefenn Adrianne Sumampow v. Mercator Property Consultants, Pty, Ltd.* (Case No. SC107790).

Christmas Island. After Sumampow acquired the remaining 90 percent of the shares in Christmas Island Resorts Company, Mercator sold its shares to Sumampow. Sumampow failed to pay Mercator for the shares, and Mercator sued Sumampow in Western Australian for the money owed.

On June 16, 2000, Mercator obtained a judgment for $5,508,065 (Australian), plus interest. Sumampow appealed the judgment and the judgment was stayed. The appeals court affirmed the judgment. The Supreme Court of Western Australian dismissed the appeal and amended the judgment. In its April 5, 2005, dismissal, the court stated, "The appeal be dismissed save that the judgment at first instance be varied so as to read as follows: In return for the production of the transfer and certificates of the shares in proper form by the plaintiff, the defendant pay to the plaintiff the sum of $5,508,065 plus interest at the rate of 10 percent per annum on the amount of $4.5 million or the balance thereof from 16th June 2000 until payment, with liberty to apply to a single judge being reserved generally." Mercator's shares were transferred to Sumampow on January 15, 2007.

Following the transfer of Mercator's share to Sumampow, Sumampow did not pay any amount on the judgment. Some part of the judgment was paid by the liquidator of Christmas Island Resorts Company. Following the sale of Mercator's shares to Sumampow, Christmas Island Resorts Company fell into financial difficulties and was placed in the hands of a court-appointed liquidator. Unable to find any assets of Sumampow in Australia, Mercator "Googled" Sumampow's name and located the California properties. A subsequent title search of those properties confirmed that Sumampow was the record title holder.

Having determined that Sumampow was the record title holder to property in California, Mercator brought its action for recognition and enforcement of the Australian judgment, and served the summons and complaint on Sumampow in Indonesia. Sumampow moved to quash service of the summons and complaint arguing, as relevant here, that the trial court did not have jurisdiction over him because he did not own any property in California. Sumampow stated that he previously owned the California

properties, but transferred them to Iefenn and Ievan on April 30, 2007. Attached to Sumampow's declaration in support of his motion to quash were copies of unsigned, Indonesian-language documents dated April 30, 2007, and their translations that purported to transfer the California properties to Iefenn and Ievan. Each document was entitled "Bequest Agreement."[2]

At the hearing on Sumampow's motion to quash, the trial court stated its intention to deny the motion because Sumampow failed to produce, as required by Civil Code section 1091, a signed copy of the documents purporting to have transferred title to the California properties to his children or even a declaration from Sumampow stating that he signed such documents. The trial court withheld its ruling on the motion to quash, granting Sumampow additional time to produce evidence of a signed transfer of the properties. After the time elapsed for Sumampow to produce evidence that he transferred title to the California properties through a signed document, the trial court denied Sumampow's motion to quash. The trial court also granted Mercator's request for leave to file an amended complaint, and Mercator amended its complaint adding the claim that the purported transfer of the California properties was fraudulent.

With respect to ownership of the Rexford Drive property in Beverly Hills, Iefenn testified at trial that she met in Indonesia with her mother, father, brother, and a "notaris"[3] on April 30, 2007, for the purpose of transferring the property to her. Iefenn testified that she and her father signed a "transfer deed" at the meeting. The document Iefenn described as a "transfer deed" was entitled "Bequest Agreement" and was part of Sumampow's estate plan.[4] According to Iefenn, The notary retained the original signed

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2 At times, each Bequest Agreement apparently refers to itself as the "Deed of Bequest" and "This deed."

3 The witnesses used the terms "notaris" and "notary" interchangeably. We will use the term "notary."

4 Iefenn testified as to the Indonesian-language version of the Bequest Agreement (exhibit number 201) and its English-language translation (exhibit number 203).

document. Iefenn did not receive a copy. Iefenn had participated in other real estate transactions in Indonesia. In her experience, it was normal that the notary retained the original documents and that she did not receive a signed copy. Prior to trial, Iefenn asked the notary for a copy of the Bequest Agreement. Iefenn did not receive a copy. Sumampow's attorney acknowledged that Iefenn had not made a written request for the document. Iefenn testified that she did not pay her father for "the property" and never caused a deed transferring the property from her father to her to be recorded in Los Angeles County.

The trial court found that Iefenn had "significant credibility issues." As to the Bequest Agreement, in its Indonesian-and English-language forms, the trial court stated, "the Court finds that the record does not contain a credible showing of reliability nor does the record contain a credible showing that the documents were effective to do anything. . . . [The documents] are admitted in evidence, but the weight to be given to these documents is slight, if any. The testimony surrounding signatures on these documents is not credible. The documents are not reliable. The testimony vouching for the documents is not credible."

With respect to ownership of the Wilshire Boulevard property in Los Angeles, Ievan testified at trial that his father transferred the property to him on April 3, 2007. Like the transfer to his sister, the transfer to Ievan was made by a document entitled "Bequest Agreement."[5] Sumampow, Ievan, and the notary signed the Bequest Agreement. The notary retained the signed Bequest Agreement. Ievan participated in between 10 and 20 real estate transactions in Indonesia. In those transactions, the notary retained the signed documents. Ievan did not receive a signed copy. Ievan requested verbally and in writing that the notary provide him with a signed copy of the Bequest Agreement. Ievan did not receive a signed copy of the document from the notary. Ievan

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5 Although Ievan testified that his father transferred the property to him on April 3, 2007, the Bequest Agreement is dated April 30, 2007. Ievan testified as to the Indonesian-language version of the Bequest Agreement (exhibit number 200) and its English-language translation (exhibit number 202).

testified that he did not pay his father for the Wilshire Boulevard property and did not record at the Los Angeles County Recorder a copy of a deed transferring the property from his father to him. Ievan was unaware of any document that was submitted to any government agency in Los Angeles that reflected a transfer of title of the Wilshire Boulevard property from his father to him.

Ievan testified about a lease of the Wilshire Boulevard property that he contended was between himself and a tenant. The lease was signed on Ievan's behalf and with his authority by a long time friend who helped him manage the property. Ievan acknowledged that the lease was dated some five years prior to the date he testified his father transferred the Wilshire Boulevard property to him. The trial court found that Ievan had "very significant credibility issues."

DISCUSSION

I. The Trial Court Did Not Abuse Its Discretion In Excluding An Expert Witness On Indonesian Law

Sumampow contends that the trial court abused its discretion when it granted Mercator's motion in limine to exclude Sumampow's expert witness on Indonesian law. Such an expert, Sumampow contends would have "corroborated" Iefenn's and Ievan's testimony that he transferred the California properties to them. The trial court did not err.

A. Standard of Review

We review a trial court's ruling on the admissibility of expert witness testimony for an abuse of discretion. (*Rappaport v. Gelfand* (2011) 197 Cal.App.4th 1213, 1229; *Easterby v. Clark* (2009) 171 Cal.App.4th 772, 778.)

B. Background

Prior to trial, Sumampow designated Yahya Harahap, a former Indonesian Supreme Court justice, as an expert witness on Indonesian law. In his expert witness designation, Sumampow stated that the "general scope" of Harahap's expected testimony

would be on "Indonesian culture and Indonesian family and general civil laws." The designation further stated that the "general substance" of Harahap's expected testimony would address "property rights including but not limited to property transfers, change of ownership, assets in accordance with the Indonesian laws. This expert is also expected to testify on the Indonesian culture behind property transfers. This expert will testify to the above as it relates to liability and damages in the said case."

Mercator moved in limine to exclude Harahap's testimony and any evidence of Indonesian law on the ground that California law governed the transfer of California real property and, thus, Indonesian law was irrelevant to the issue of whether Sumampow transferred his California properties to Iefenn and Ievan. In opposing the motion, Sumampow argued that he transferred the California properties to his children in Indonesia and followed Indonesian law in transferring the properties. Accordingly, Sumampow asserted, under the doctrine of comity, Indonesian should govern any issues concerning the transfer of the California properties and Harahap's testimony was necessary to determine ownership of the properties under Indonesian law. The trial court granted Mercator's motion in limine.

C. Relevant Principles

"A fundamental principal of law universally recognized is that realty is exclusively subject to the *lex loci rei sitae*—to the law of the state within which it is situated. [Citations.]" (*Estate of Patmore* (1956) 141 Cal.App.2d 416, 419.) "'[N]o other laws or courts can affect it by an attempt to create, transfer, or vest title thereto.' [Citation.]" (*Muth v. Educators Security Ins. Co.* (1981) 114 Cal.App.3d 749, 759.) "Real property within [California] is governed by the law of [California], except where the title is in the United States." (Civ. Code, § 755.) It is recognized that even if there were some contention regarding equitable ownership based on a contract or purported transfer in one state, the determination of any ownership of property is made in accordance with the law of the situs of the property. (Rest.2d Conf. of Laws, §§ 225, 235.) In opposing Mercator's motion to exclude his expert on Indonesian law,

Sumampow argued the legal theory that Indonesian law governed the transfer of the California properties because the transfer took place in Indonesia. Because the transfer of real property in California is governed by California law, Sumampow's legal theory was incorrect and, accordingly, the trial court did not abuse its discretion in excluding an expert witness on Indonesian law.

II. Iefenn And Ievan Were Not Necessary And Indispensible Parties To Mercator's Fraudulent Transfer Claim

Sumampow contends that Iefenn and Ievan were necessary and indispensible parties to Mercator's fraudulent transfer claim because they were the asserted transferees of the California properties and their legal rights to the respective properties thus were at issue.[6] Accordingly, Sumampow argues, the trial court erred when it failed to dismiss

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6 Code of Civil Procedure section 389 addresses (section 389) the joinder of necessary and indispensible parties. As relevant here, section 389 provides:

"(a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

"(b) If a person as described in paragraph (1) or (2) of subdivision (a) cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder."

Mercator's fraudulent transfer claim based on Mercator's failure to join his children as parties.

Mercator pleaded its fraudulent transfer cause of action under Civil Code section 3439.04, subdivision (a)(1) which provides, "A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows: [¶] (1) With actual intent to hinder, delay, or defraud any creditor of the debtor." Mercator pleaded a fraudulent transfer cause of action as a means of reaching the California properties to satisfy the Australian judgment in the event that the trial court found that the Bequest Agreements were effective in transferring title of the properties from Sumampow to Iefenn and Ievan.

In support of its ruling that Mercator proved its claim for recognition and enforcement of the Australian judgment against Sumampow, the trial court found that the Bequest Agreements did not transfer title to the California properties from Sumampow to Iefenn and Ievan and that Sumampow remained the record owner of the properties. Sumampow does not challenge those findings on appeal.[7] The trial court's ruling favorable to Mercator that the Bequest Agreements did not transfer title to the California properties also effectively eliminated Mercator's fraudulent transfer claim—i.e., because there was no transfer of title to the California properties, there was no transfer that could have been fraudulent. Sumampow does not, however, challenge the trial court's judgment in Mercator's favor on its fraudulent transfer claim on that ground. Instead, Sumampow challenges the judgment on the ground that Iefenn and Ievan were necessary and indispensible parties to the fraudulent transfer claim because a ruling in Mercator's favor on that claim would affect Iefeen's and Ievan's legal rights to the California properties. Having found that Sumampow did not transfer the California properties to Iefenn and Ievan—and thus, that Iefenn and Ievan had no legal rights to the California

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7 Even if Sumampow's argument that the trial court abused its discretion in excluding his expert witness on Indonesian law might relate to the ultimate issue of who owned the California properties, we rejected that argument above.

properties—the trial court's conclusion that Iefenn and Ievan were not necessary and indispensible parties to Mercator's fraudulent transfer cause of action either was correct or was not prejudicial.

III. The Trial Court Properly Recognized Mercator's Australian Judgment

Sumampow contends that the trial court erred in recognizing Mercator's Australian judgment because Mercator did not call an expert witness on Australian law to testify that its judgment was final, conclusive, and enforceable under Australian law and because he was denied an "opportunity to present his case." The trial court did not err.

The Uniform Foreign-Country Money Judgments Recognition Act (Code Civ. Proc., § 1713 et seq.) applies to foreign-country judgments that grant or deny recovery of a sum of money and are final, conclusive, and enforceable under the laws of the foreign country. (Code Civ. Proc., § 1715, subd. (a)(1) & (2).) California courts are required to recognize foreign-country judgments absent certain disqualifying circumstances. (Code Civ. Proc., § 1716, subds. (a)-(c).) The party seeking recognition of a foreign-country judgment has the burden of establishing that the foreign-country judgment is entitled to recognition. (Code Civ. Proc., § 1715, subd. (c).) "A determination of the law of a foreign nation is a question of law that is made by judicial notice. (Evid. Code, §§ 310, subd. (b); 452, subd. (f).)" (*Societe Civile Succession Richard Guino v. Redstar Corp.* (2007) 153 Cal.App.4th 697, 701.)

Sumampow first contends that Mercator was required to call an expert witness on Australian law to establish that its Australian judgment was final, conclusive, and enforceable under the laws of Australia. Sumampow cites no authority that stands for such a proposition. As stated above, a court determines the law of a foreign nation by judicial notice. (Evid. Code, §§ 310, subd. (b); 452, subd. (f); *Societe Civile Succession Richard Guino v. Redstar Corp., supra,* 153 Cal.App.4th at p. 701.) Here, the trial court properly took judicial notice of certain of Australia's laws governing appeals and based its determination that Mercator's Australian judgment was final, conclusive, and enforceable under those laws. Sumampow does not challenge this conclusion.

Sumampow next contends that trial court erred in recognizing Mercator's Australian judgment because he was deprived of an opportunity to present his case. Although not entirely clear, Sumampow appears to contend that because Mercator made its request for judicial notice of Australian appellate laws at the time of trial, he was not given sufficient notice to allow him to present evidence that would establish that the Australian judgment was not final. The legal basis for Sumampow's contention appears to be Code of Civil Procedure section 1716, subdivision (c)(2) which provides that a court is not required to recognize a foreign-country judgment if "[t]he judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case." That section does not support Sumampow's contention, however, because it concerns deficiencies in the foreign proceeding, not in the proceeding to enforce the foreign-country judgment in California. Moreover, when Sumampow's counsel objected to Mercator's request for judicial notice of certain of Australia's appellate laws on the grounds that he had not been given sufficient notice to respond, the trial court asked counsel how much time he needed. Counsel requested that he be allowed until the following day to respond. The trial court granted counsel's request.

DISPOSITION

The judgment is affirmed. Mercator is awarded its costs on appeal.

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MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.