Filed 5/19/20 Saxton v. Hip Hop Beverage CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JIMMY SAXTON,

Plaintiff and Appellant,

v.

HIP HOP BEVERAGE CORPORATION,

Defendant and Appellant;

HERBERT HUDSON,

Defendant and Respondent.

B291074

(Los Angeles County Super. Ct. No. BC624909)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joanne B. O'Donnell and Yvette M. Palazuelos, Judges. Reversed in part and affirmed in part.

Cummings & Franck, Lee Franck, Scott O. Cummings and Lindsey M. Crismon for Plaintiff and Appellant.

Rostam Law and Glen H. Mertens for Defendant and Appellant Hip Hop Beverage Corp. and Defendant and Respondent Herbert Hudson.

INTRODUCTION

Jimmy Saxton sued his former employer, Hip Hop Beverage Corp., asserting various claims under the Fair Employment and Housing Act (Gov. Code §§ 12900-12996; FEHA) and the Labor Code. Saxton also sued Herbert Hudson, Hip Hop's sole shareholder and corporate officer. Saxton contended that Hudson was liable for Hip Hop's wrongdoing, arguing that Hudson and Hip Hop were his joint employers or, alternatively, that the alter ego doctrine justified imposing liability on Hudson. The matter proceeded to trial, and after Saxton presented his case-in-chief, the court granted Hudson's motion for a directed verdict on the joint employer claim and granted judgment for Hudson on the alter ego theory. Following trial, the jury found for Saxton on most of his claims (as against Hip Hop alone) and awarded him about $72,000 in compensatory damages and $750,000 in punitive damages.

On appeal, Hip Hop contends there was insufficient evidence of its financial condition at the time of trial to support a punitive damages award. In his cross-appeal,

Saxton challenges the trial court's rulings on his joint employer and alter ego claims as to Hudson. We agree with Hip Hop that the evidence was insufficient to establish its financial condition and therefore reverse the punitive damages award. We find no error in the trial court's rejection of Saxton's alter ego and joint employer claims, and therefore otherwise affirm.

BACKGROUND

A. *The Parties and the Complaint*

From March 2012 to December 2015, Saxton worked for Hip Hop as a sales representative. Throughout this period, Hudson was Hip Hop's sole shareholder, its chief executive officer (CEO), and sole corporate officer.

In 2016, Saxton filed a complaint against Hip Hop, Hudson, and others, alleging discrimination and retaliation under FEHA and wage and hour violations under the Labor Code, among other claims. Saxton alleged that Hudson and Hip Hop were his joint employers, and that Hip Hop was Hudson's alter ego.

B. *Discovery of Hip Hop's Financial Condition*

Saxton did not attempt to conduct pretrial discovery of Hip Hop's financial condition. Instead, shortly before trial, Saxton served Hip Hop with a notice to produce documents at trial under Code of Civil Procedure section 1987, subdivision (c), seeking the company's financial records. After Hip Hop objected, Saxton moved the trial court to

order the production. The court granted Saxton's motion and ordered Hip Hop to produce multiple financial records at trial, including tax returns and income statements for the prior five years and balance sheets for the prior 12 years. The matter proceeded to trial before the Honorable Joanne B. O'Donnell in March 2018. On the first day of trial, Hip Hop provided Saxton with its financial documents, but its 2013-2015 tax returns were apparently unsigned, and it produced no tax return for 2016. Later at trial, Saxton argued the court should not require him to prove Hip Hop's financial condition in order to support a punitive damages award absent verified tax returns for those years. Hip Hop's counsel responded that the company had "produced what existed" and was not required to "go create things." The trial court accepted Hip Hop's argument and told Saxton he would have to prove Hip Hop's ability to pay in order to support punitive damages.

C. *Saxton's Evidence at Trial*[1]

Saxton called Matthew Beck and Penelope Han, who had both worked for Hip Hop, to testify about their work conditions and Hudson's involvement in the company's operations. Beck testified he had been Hip Hop's employee

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[1] Because no party challenges the jury's findings on Saxton's substantive claims, we recount only the evidence relevant to the punitive damages award and Saxton's alter ego and joint employer claims.

for about three years. He claimed that Hudson made most of the company's decisions. According to Beck, although he worked for Hip Hop, Hudson sometimes directed him to work on projects for Hudson's other companies and ventures, unrelated to Hip Hop's business. Beck testified that sometimes when he tried to cash his check from Hip Hop, it would not clear until Hudson was alerted and transferred funds into the company's account. Beck added that he would sometimes receive checks from East Coast Foods, one of Hudson's other companies, as payment for his work for Hip Hop.

Han testified she worked at Hip Hop for several months. Like Beck, Han stated that Hudson made all of Hip Hop's management decisions. And like Beck, Han testified she would sometimes receive checks from East Coast Foods as payment for her work for Hip Hop. Han also believed Hudson once gave her a personal check, either to pay her wages or to reimburse her for work-related expenses.

Saxton also called Hudson as a witness. Hudson confirmed he made all of Hip Hop's financial decisions and was the only one who could approve policies for the company. He explained that the company had ceased operations in January 2017. Responding to Beck's testimony, Hudson denied ever assigning Beck work unrelated to Hip Hop's operations, and testified that Beck was an independent contractor. Hudson further claimed he had no knowledge of any Hip Hop check ever failing to clear due to insufficient

funds. And as to Han's claim that he once gave her a personal check, Hudson claimed this was a personal loan.

Finally, Saxton called Daniel Howard, a forensic accountant, and presented several of Hip Hop's financial documents, including a 2015 balance sheet and a 2016 income statement, as well as a 2018 bankruptcy-related filing from East Coast Foods. According to the 2015 balance sheet, Hip Hop had net equity of about $350,000 at the end of that year, with about $10,000 in liabilities. In response to a question by Saxton's counsel, Howard confirmed that unless "the assets are sold or the equity is taken out of the company," that net equity "should remain in the company." Hip Hop's 2016 income statement showed the company had a net income of about $7,000 that year. Based on that information, Howard estimated Hip Hop's net equity at the end of 2016 was about $355,000, "plus [or] minus whatever the depreciation expense would be" for the company's assets.

East Coast Foods's 2018 bankruptcy filing indicated that Hip Hop owed that company an undisclosed sum, but that those funds were "deemed uncollectible" because Hip Hop was "believed to be no longer in business." To Howard, this seemed "curious" because Hip Hop's 2015 balance sheet listed no debt owed to related entities, and because the company had a net income in 2016, which in Howard's experience meant it should not have had to borrow from related entities during that year. Howard opined that either Hip Hop's 2015 balance sheet or East Coast Foods's 2018 bankruptcy filing was "incorrect or misleading."

D. *The Trial Court's Mid-Trial Rulings on Saxton's Alter Ego and Joint Employer Claims*

Following Saxton's case-in-chief, Hudson moved for judgment under Code of Civil Procedure section 631.8 on Saxton's alter ego claim,[2] and for a directed verdict on Saxton's claim that Hudson was his joint employer. After hearing oral argument from the parties, the trial court granted both motions, thus precluding Hudson's liability. As to the alter ego claim, the court found Saxton had failed to prove either the "unity of interest" or the "inequitable result" elements required for application of the alter ego doctrine. As for the joint employer claim, the court found there was no evidence that Hudson was Saxton's employer. Hip Hop then proceeded to present its defense to Saxton's substantive claims against it.

E. *The Jury's Verdict*

The jury returned a verdict for Saxton on most of his remaining claims and awarded him $72,400 in compensatory damages. The jury further found that an officer, director, or managing agent of Hip Hop engaged in malice, oppression,

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[2] Alter ego is an equitable doctrine "'within the province of the trial court.'" (*Dow Jones Co. v. Avenel* (1984) 151 Cal.App.3d 144, 147.) Under Code of Civil Procedure section 631.8, "a court acting as trier of fact may enter judgment in favor of defendant if the court concludes that plaintiff failed to sustain its burden of proof." (*People ex rel. Dept. of Motor Vehicles v. Cars 4 Causes* (2006) 139 Cal.App.4th 1006, 1012.)

or fraud, and awarded Saxton $750,000 in punitive damages. Following the verdict, the trial court (Hon. Yvette M. Palazuelos) denied the parties' respective motions for partial new trials. In their respective appeals, Hip Hop challenges the jury's punitive damages award, and Saxton challenges the trial court's rulings on his joint employer and alter ego claims.

F. *Saxton's Motion to Take Additional Evidence or Judicial Notice on Appeal*

While this appeal was pending, Saxton filed a motion in this court to take additional evidence or judicial notice of post-judgment evidence. According to the motion, after the trial court entered judgment on the jury's verdict, Saxton conducted a debtor's examination of Hip Hop in furtherance of his attempt to collect on the judgment. Hudson was deposed on Hip Hop's behalf.

At the deposition, Hudson acknowledged that after the judgment, Hip Hop received $525,000 as part of a settlement with another company. He confirmed that Hip Hop then transferred most of that amount to Diego Plate Properties LLC, where he similarly served as the CEO and sole corporate officer. Hudson admitted there was no relationship between Hip Hop and Diego Plate, and he had "no idea" why Hip Hop would make this transfer to Diego Plate.

DISCUSSION

A. *Hip Hop's Challenge to the Punitive Damages Award*

Hip Hop challenges the jury's punitive damages award against it. It contends the award cannot stand because Saxton failed to produce any evidence of its financial condition at the time of trial.

Civil Code section 3294, subdivision (a), permits an award of punitive damages for the breach of non-contractual obligations if "it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice . . . ." The purpose of punitive damages is to punish the defendant for his wrongful conduct and deter the commission of future wrongful acts. (*Adams v. Murakami* (1991) 54 Cal.3d 105, 110 (*Adams*).) "It follows that the wealthier the wrongdoing defendant, the larger the award of exemplary damages need be in order to accomplish the statutory objective." (*Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 65.) "'[O]bviously, the function of deterrence . . . will not be served if the wealth of the defendant allows him to absorb the award with little or no discomfort.'" (*Adams, supra*, at 110.) But the purpose of punitive damages is also not served by an award that exceeds the level necessary to punish and deter. (*Ibid.*) "The ultimately proper level of punitive damages is an amount not so low that the defendant can absorb it with little or no discomfort [citation], nor so high that it destroys, annihilates, or cripples the defendant. [Citations.]" (*Rufo v. Simpson* (2001) 86 Cal.App.4th 573, 621-622.)

Evidence of the defendant's financial condition is therefore a legal precondition to the award of punitive damages. (*Soto v. BorgWarner Morse TEC Inc.* (2015) 239 Cal.App.4th 165, 195 (*Soto*).) "This evidence should reflect the named defendant's financial condition at the time of trial" (*id.* at 192), and it is the plaintiff's burden to produce it (*id.* at 195). We therefore examine the record to determine whether substantial evidence supports the punitive damages award. (*Id.* at 195.) We conclude the award is unsupported and therefore cannot stand.

To prove Hip Hop's financial condition, Saxton presented the testimony of Howard, a forensic accountant, and several of the company's financial documents, including a 2015 balance sheet and a 2016 income statement. Hip Hop's 2015 balance sheet reflected it had a net equity of about $350,000 at the end of that year, with relatively minor liabilities.[3] Howard testified that unless "the assets are sold

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[3] According to the 2015 balance sheet, Hip Hop had assets with a purchase price of about $570,000 and an accumulated depreciation of about $210,000, about $10,000 in liabilities, and shareholders' equity of about $350,000. On appeal, Saxton asserts Hip Hop had a net worth of over $900,000, based on his addition of the company's assets' purchase price to its shareholders' equity. He is mistaken, however, as one cannot calculate a company's net worth by combining the value of its assets (let alone the assets' purchase price) with shareholders' equity; rather, shareholder's equity *is* the company's net worth. (See Investopedia <https://www.investopedia.com/terms/n/

(*Fn. continued on the next page*.)

or the equity is taken out of the company," that net equity "should remain in the company . . . ." Based on the 2016 income statement, which showed a net income of about $7,000, Howard estimated Hip Hop's net equity at the end of that year was about $355,000, "plus [or] minus whatever the depreciation expense would be" for the company's assets. It was undisputed that Hip Hop ceased operations in January 2017.

Viewed in the light most favorable to Saxton, Howard's testimony showed Hip Hop's financial condition at the end of 2016. But neither Howard's testimony nor any other evidence tended to prove the company's financial condition at the time of the March 2018 trial. While Hip Hop apparently ceased operations in January 2017, there was no evidence that it maintained its assets or equity more than a year later. Indeed, Saxton himself asserts that hundreds of thousands of dollars were "siphoned from the company" after it ceased operations. Regardless of whether it is true, this assertion highlights the absence of evidence that Hip Hop maintained its net equity from the end of 2016 to the time of trial. Given this significant evidentiary gap, the punitive damages award cannot stand. (See *Soto*, *supra*, 239 Cal.App.4th at 192, 195; *Kelly v. Haag* (2006) 145

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networth.asp> [as of May 13, 2020] ["In business, net worth is also known as . . . shareholders' equity"]; Investopedia, <https://www.investopedia.com/terms/b/balancesheet.asp> [as of May 13, 2020] [shareholders' equity "is equivalent to the total assets of a company minus its liabilities"].)

Cal.App.4th 910, 917 [evidence of defendant's equity in parcels of real property more than a year before trial was insufficient, absent evidence he owned those properties at time of trial]; cf. *Farmers & Merchants Trust Co. v. Vanetik* (2019) 33 Cal.App.5th 638, 649, 650 [expert testimony about defendant's annual income was "virtually useless" in determining defendant's financial condition at time of trial, in part because testimony was based on records that were "remote[] in time"].)

Saxton argues that Hip Hop's financial records were inaccurate, and that the jury was therefore entitled "to disregard them and to decide that Hip Hop was worth more than the financial records reflected." A jury is certainly entitled to disregard records it finds inaccurate. (Cf. *Rodney F. v. Karen M.* (1998) 61 Cal.App.4th 233, 241 (*Rodney F.*) ["The trier of fact is not required to believe even uncontradicted testimony"].) But absent meaningful evidence of Hip Hop's financial condition at the time of trial, any contention that it had more equity in 2018 than its records reflected for 2015 or 2016 rests on sheer speculation, which cannot support a punitive damages award. (See *Adams*, *supra*, 54 Cal.3d at 114 [punitive damages must not be based on speculation].)

Saxton further argues Hip Hop should be estopped from challenging the sufficiency of the evidence to support the punitive damages award because it failed to comply with the trial court's order to produce its financial records. But while Saxton argued at trial he should not be required to

prove Hip Hop's financial condition because Hip Hop's documents were incomplete or unverified, the trial court found that Hip Hop had provided all it had and was not required to produce more. Saxton assigns no error to the trial court's ruling, and his contention that Hip Hop failed to comply with the court's discovery order is thus unsupported.[4]

In short, we conclude there was insufficient evidence of Hip Hop's financial condition to support a punitive damages award. As Saxton does not contend the trial court deprived him of a full and fair opportunity to present his case for punitive damages, we reverse the award. (See *Soto*, *supra*, 239 Cal.App.4th at 195 [where punitive damages award is infirm and plaintiff had full and fair opportunity to present his case, award should be reversed rather than vacated and remanded].)

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[4] We note that under Civil Code section 3295, subdivision (c), Saxton could have sought pretrial discovery of Hip Hop's financial documents, rather than wait until trial. (See *ibid.* [court may permit pretrial discovery of defendant's financial condition].) Had Saxton discovered pretrial that the records Hip Hop possessed were insufficient, he could have sought additional information through other means -- such as by subpoenaing documents from the company's accountant. Saxton chose not to avail himself of these procedures, and instead demanded production of Hip Hop's documents only at trial. "Whatever merit there might be to that approach in other cases, it was an unfortunate choice in this one." (*Amoco Chemical Co. v. Certain Underwriters at Lloyd's of London* (1995) 34 Cal.App.4th 554, 562 [discussing plaintiff's election to forgo pretrial discovery of defendants' financial worth].)

B. *Saxton's Cross-Appeal*

Saxton challenges the trial court's directed verdict for Hudson on Saxton's claim that Hudson was his joint employer. He further challenges the court's ruling that the alter ego doctrine did not justify holding Hudson liable for Hip Hop's wrongdoing. We address these contentions in turn.

1. *Joint Employer Theory*

"'A directed verdict may be granted, when, disregarding conflicting evidence, and indulging every legitimate inference which may be drawn from the evidence in favor of the party against whom the verdict is directed, it can be said that there is no evidence of sufficient substantiality to support a verdict in favor of such party . . . .'" (*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1119.) We review a trial court's grant of a directed verdict de novo and "will reverse if there was substantial evidence tending to prove appellants' case and the state of the law supports the claim." (*North Counties Engineering, Inc. v. State Farm General Ins. Co.* (2014) 224 Cal.App.4th 902, 920.)

Saxton argues substantial evidence supported that Hudson was his employer based on Hudson's knowledge of Saxton's working conditions and his control over Saxton's employment as Hip Hop's sole shareholder and officer. We disagree. Under Saxton's approach, every sole shareholder and manager of a corporation, who acts within the scope of

his or her corporate roles, would be considered an employer and held liable for the corporation's violations. That is not the law. (See *Martinez v. Combs* (2010) 49 Cal.4th 35, 75 [individual corporate agents acting within scope of their agency are not liable for violations under Labor Code].) Instead it is the alter ego doctrine that determines whether such a person should be liable for the wrongdoing of the corporation. (*Leek v. Cooper* (2011) 194 Cal.App.4th 399, 409 (*Leek*).)

In *Leek*, employees of a corporate-owned car dealership sued the corporation and its sole shareholder, alleging age discrimination under FEHA, among other claims. (*Leek, supra*, 194 Cal.App.4th at 405.) The employees did not properly plead an alter ego theory, but instead alleged that because the defendant shareholder made all business decisions for the company, he was their employer. (*Id.* at 406-407, 409.) Affirming the trial court's grant of summary judgment for the shareholder, the Court of Appeal rejected this contention, holding, "[W]here a third party seeks to hold the sole shareholder liable for the wrongdoing of the corporation, an alter ego theory is the appropriate way to determine whether the shareholder is liable." (*Id.* at 409.)

Like the defendant shareholder in *Leek*, Hudson was not himself the employer of his company's employees merely because he had control over them as the company's

manager.[5] Accordingly, the trial court did not err in granting a directed verdict for Hudson. We consider Saxton's alter ego claim below.

2. *Alter Ego Claim*

Under the alter ego doctrine, "[a] corporate identity may be disregarded -- the 'corporate veil' pierced -- where an abuse of the corporate privilege justifies holding the equitable ownership of a corporation liable for the actions of the corporation." (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.) "[W]hen the corporate form is used to perpetuate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, the courts will ignore the corporate entity and deem the corporation's acts to be those of the persons or organizations actually controlling the corporation, in most instances the

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[5] *Turman v. Superior Court* (2017) 17 Cal.App.5th 969, which Saxton cites, is distinguishable. There, a company's employees sued the company's sole shareholder and president, alleging he was their joint employer. (*Id.* at 973.) Following a bench trial, the trial court found the defendant was not a joint employer, reasoning that he could not be held liable as an employer for actions within the scope of his corporate role. (*Id.* at 978, 986.) The Court of Appeal vacated this finding, noting evidence that the defendant's control over the company's employees exceeded the scope of his role as shareholder and president. (*Id.* at 986-987.) In contrast, Hudson's control over Hip Hop's employees did not exceed the scope of his role as the company's CEO. Saxton does not argue otherwise.

equitable owners. [Citations.] The alter ego doctrine prevents individuals or other corporations from misusing the corporate laws by the device of a sham corporate entity formed for the purpose of committing fraud or other misdeeds. [Citation.]" (*Id.* at 538.) "Alter ego is an extreme remedy, sparingly used." (*Id.* at 539.)

"Two requirements must be met to invoke the alter ego doctrine: (1) '[T]here must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist'; and (2) 'there must be an inequitable result if the acts in question are treated as those of the corporation alone.'" (*Turman v. Superior Court, supra*, 17 Cal.App.5th at 980-981, italics omitted.)

Because they involve questions of fact, we will not disturb the trial court's conclusions if they are supported by substantial evidence. (*Misik v. D'Arco* (2011) 197 Cal.App.4th 1065, 1072.) Where, as here, the party challenging the findings of the trier of fact had the burden of proof at trial, "the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law." (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) "Specifically, the question becomes whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.'" (*Ibid.*)

The trial court permissibly found that Hudson and Hip Hop did not have a sufficient unity of interest and thus that the alter ego doctrine was inapplicable. Courts have identified many relevant factors tending to support the application of the alter ego doctrine, including: one individual's sole ownership of a corporation's stock; disregard of corporate formalities; use of the same offices and employees; failure to maintain minutes or adequate corporate records, and the confusion of the separate entities' records; and commingling of the entities' funds and assets. (*Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 811.) However, "'[n]o single factor is determinative, and instead a court must examine all the circumstances to determine whether to apply the doctrine. [Citation.]'" (*Id.* at 812.)

While Hudson was Hip Hop's sole owner and corporate officer, that alone is insufficient to establish the requisite unity of interest. (See *Mid-Century Ins. Co. v. Gardner* (1992) 9 Cal.App.4th 1205, 1215 ["domination of ownership and control . . . is not significant in isolation"]; see also *Leek*, *supra*, 194 Cal.App.4th at 415 [fact that one person owns all of corporation's stock and makes all management decisions is insufficient to disregard corporate entity].) Much of Saxton's other evidence of unity of interest was contradicted by Hudson. Thus, while Beck testified he was an employee of Hip Hop alone, but that Hudson sometimes assigned him unrelated projects for the benefit of Hudson's other companies, Hudson testified that Beck was an independent contractor and that he never assigned him work unrelated to

Hip Hop. While Beck testified that he would sometimes be unable to cash Hip Hop's checks until Hudson deposited additional funds in the company's bank account, Hudson testified that to his knowledge no Hip Hop check ever failed to clear due to insufficient funds. And while Han testified she believed Hudson once gave her a personal check for her expenses or wages, Hudson testified he gave her this check as a personal loan. The trial court, sitting as the trier of fact, was entitled to accept Hudson's version and reject the testimony of Saxton's witnesses. Han's and Beck's claims that they were sometimes paid for their work with checks from East Coast Foods were not specifically contradicted, but the trial court was not bound to credit even this testimony. (See *Rodney F.*, *supra,* 61 Cal.App.4th at 241; *Bazaure v. Richman* (1959) 169 Cal.App.2d 218, 222 [trial court may disbelieve uncontradicted witnesses based on their interest in result, their motives, and the way they testify].)

Moreover, even if the court believed Hudson occasionally provided funds to pay Beck's and Han's wages, an owner's contribution of funds to assist his or her company in meeting its financial obligations does not support the application of the alter ego doctrine. (See *Sonora Diamond Corp. v. Superior Court*, *supra*, 83 Cal.App.4th at 539 [parent company's contribution of funds to assist subsidiary in meeting financial obligations does not render parent liable for subsidiary's obligations].) To the extent Hudson's occasional direct payments of employees' wages, either personally or through East Coast Foods, suggests Hudson

sometimes failed to adhere strictly to corporate formalities, Saxton has cited no authority for the proposition that such circumstances alone compel a trial court to apply the alter ego doctrine, and we are aware of none.[6]

Saxton contends Hudson siphoned all funds from Hip Hop, relying on Howard's testimony about Hip Hop's net worth based on its 2015 balance sheet, and on East Coast Foods's 2018 bankruptcy filing, which indicated Hip Hop owed that company uncollectible debt. The evidence did not compel such a finding. Howard himself suggested one of the documents -- either the 2015 balance sheet or the 2018 bankruptcy filing -- was "incorrect or misleading," and never suggested they showed Hudson had siphoned funds from Hip Hop.

Overall, Saxton was free to argue before the trial court, and did argue, that the evidence warranted the application of the alter ego doctrine. But the trial court was unpersuaded and permissibly found the doctrine inapplicable. The evidence did not compel a contrary conclusion. (See *In re I.W.*, *supra*, 180 Cal.App.4th at 1528.)

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[6] Saxton argues Hudson "may have provided an off-the-books loan to Hip Hop," apparently relying on East Coast Foods's 2018 bankruptcy filing, which indicated Hip Hop owed funds to that company. This contention is mere speculation, however, as the latest documents Saxton presented regarding Hip Hop's liabilities was the company's 2015 balance sheet -- he presented no similar document for 2016 or 2017.

We deny Saxton's request to take additional evidence on appeal or to take judicial notice of his post-judgment debtor's examination of Hip Hop. "'Although appellate courts are authorized to make findings of fact on appeal by Code of Civil Procedure section 909 and rule 23 of the California Rules of Court, the authority should be exercised sparingly. [Citation.] Absent exceptional circumstances, no such findings should be made. [Citation.]'" (*In re Zeth S.* (2003) 31 Cal.4th 396, 405, italics omitted.) Similarly, only in exceptional circumstances will we take judicial notice of evidence that was not before the trial court at the time it rendered its decision. (*California School Bds. Assn. v. State of California* (2011) 192 Cal.App.4th 770, 803.)

Saxton makes no attempt to establish exceptional circumstances justifying consideration of his new evidence, and we find none.[7] Accordingly, we find no error in the trial court's ruling that the alter ego doctrine was inapplicable.

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[7] As noted, Hip Hop's debtor's examination revealed it transferred large sums to another company Hudson controlled, but Hudson was unable or unwilling to explain this transfer. To the extent this transfer constituted a fraudulent conveyance, Saxton may seek to avoid it and satisfy the judgment with those funds. (See *Kirkeby v. Superior Court* (2004) 33 Cal.4th 642, 648 ["'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'"]; Civ. Code, § 3439.07, subd. (a)(1) [creditor who successfully asserts fraudulent conveyance may obtain "[a]voidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim"].) We have no occasion to consider this issue here.

DISPOSITION

The punitive damages award is reversed. The judgment is otherwise affirmed. Hip Hop is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, P. J.

We concur:

COLLINS, J.

CURREY, J.