

NOT FOR PUBLICATION

NO. 23126

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

DIANE L. GRAYBEHL, as the Personal Representative
of the Estate of Lonnie Vaughn Graybehl aka
L. Vaughn Graybehl, Plaintiff-Appellant, v.
CORDULA, INC. and JOHN LLANES, Defendants-Appellees,
and

GORDON W. RICE; MICHAEL SHIPSEY a.k.a. GEORGE MICHAEL
SHIPSEY; TRI-STAR INTERNATIONAL DEVELOPMENT, INC., a Nevada
corporation; JOHN DOES 2-5; JANE DOES 1-5; DOE PARTNERSHIPS
1-5; DOE JOINT VENTURES 1-5; DOE CORPORATIONS 2-5;
DOE ENTITIES 1-5; DOE GOVERNMENT ENTITIES 1-5, Defendants

APPEAL FROM THE THIRD CIRCUIT COURT
(CIVIL NO. 95-166K)

MEMORANDUM OPINION

(By: Burns, C.J., Watanabe and Foley, JJ.)

Plaintiff-Appellant Diane L. Graybehl, as the Personal Representative of the Estate of Lonnie Vaughn Graybehl, aka L. Vaughn Graybehl, (Graybehl) appeals from the January 4, 2000 Amended Final Judgment of the Circuit Court of the Third Circuit¹ (circuit court) in favor of Defendants-Appellees John Llanes (Llanes) and Cordula, Incorporated (Cordula).

On appeal, Graybehl raises four arguments: (1) the circuit court's May 11, 1999 Findings of Fact and Conclusions of

¹/The Honorable Ronald Ibarra presided.

Law were wrong under Hawai'i Rules of Evidence (HRE) Rule 201² and the doctrine of collateral estoppel; (2) the circuit court's refusal to admit as exhibits depositions taken in Nevada violated Hawai'i Rules of Civil Procedure (HRCP) Rule 32; (3) the circuit court's refusal to take judicial notice of or admit as evidence a prior Hawai'i judgment was error under the doctrines of res judicata or collateral estoppel; and (4) the circuit court's findings regarding Michael Shipsey's interests and the court's conclusion that only corporate stockholders have an interest in a corporation were clearly erroneous.

In their answering brief, Llanes and Cordula argue that (1) Graybehl did not establish that a fraudulent transfer

²/Hawai'i Rules of Evidence (HRE) Rule 201 reads in relevant part as follows:

Rule 201 Judicial notice of adjudicative facts. (a) Scope of rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. A court may take judicial notice, whether requested or not.

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

occurred, and (2) the circuit court's finding that there was adequate consideration is not challenged on appeal.

We conclude that the circuit court erred by failing to apply the doctrine of judicial notice to preclude relitigation of issues resolved by earlier final judgments. Therefore, we vacate the Amended Final Judgment and remand this case to the circuit court to determine Llanes's and Cordula's liabilities, if any, under Hawai'i's Uniform Fraudulent Transfer Act, Hawaii Revised Statutes (HRS) Chapter 651C.³

I. BACKGROUND

On March 6, 1995, a California court entered a default judgment in favor of Graybehl and against Michael Shipsey (Shipsey) in the amount of \$1,868,166.64. Graybehl used the California judgment to obtain a Hawai'i judgment⁴ pursuant to the Uniform Enforcement of Foreign Judgments Act, HRS Chapter 636C⁵ (Hawai'i 636C Judgment).

³/See section III.B., infra.

⁴/S.P. No. 95-022K in the Third Circuit Court, State of Hawai'i.

⁵/Hawaii Revised Statutes (HRS) § 636C-3 (1993) reads as follows:

§636C-3 Filing and status of foreign judgments. A copy of any exemplified foreign judgment may be filed in the office of the clerk of the appropriate court of this State. The clerk shall treat the foreign judgment in the same manner as a judgment of a court of this State. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a court of this State, including establishing a lien, and may be enforced or satisfied in like manner.

On June 30, 1995, Graybehl filed a Complaint⁶ in the circuit court seeking to, *inter alia*, attach the 48-foot Sportfisher vessel "Terminator" (Terminator), allegedly owned by Shipsey, that was then berthed at Honokohau Harbor.

On April 21, 1998, the circuit court entered a Final Judgment against Defendants Gordon W. Rice (Rice), Shipsey, and Tri-Star International Development, Inc., a Nevada corporation, (Tri-Star) as follows:

1. Plaintiff Graybehl is awarded judgment in favor of Plaintiff Graybehl against Defendants Rice, Shipsey, and Tri-Star that:

a. Defendant Shipsey is the person against whom Plaintiff Graybehl has judgment in the amount of \$1,868,166.64.00 [sic] in the State of California, filed March 6, 1995, rendered to Hawaii Judgment in L. Vaughn Graybehl v. Michael Shipsey, S.P. No 95-022K in the Third Circuit Court for the State of Hawaii, Kona Division, and;

b. Defendant Tri-Star and its former and present assets are and have always been the sole personal property of Defendant Shipsey, no other person or entity having any right, title or interest therein, and;

c. Pursuant to the Uniform Fraudulent Conveyances Act, §651C Hawaii Revised Statutes, Plaintiff Graybehl is entitled to execute against any and all former or present assets of Defendant Tri-Star as if held in the name of Defendant Shipsey personally, wherever located, subject only to valid rights, if any, of subsequent transferees as defined under the said Act, such assets specifically to include; [sic]

(1) the vessel "Terminator", being a 46' [sic] Sportfisher, Federally registered and documented as # 653479 berthed at Honokohau Harbor, together with all of its electronics, tackle, and gear, and;

(2) the Hawaii corporation "Cordula, Inc.", specifically to include all its corporate stock, shares,

⁶/A First Amended Complaint was filed on July 7, 1995 (added Tri-Star International Development, Inc., as a defendant), and a Second Amended Complaint was filed on April 24, 1996 (added a more specific allegation that Tri-Star was Shipsey's alter ego).

corporate name, and other assets specifically to include its' [sic] permits, and;

(3) such other real or personal property whenever and wherever located, and;

c. That subsequent transferee/Defendant Rice has never had and does not now have any right, title, or interest in any former or present assets of Defendant Tri-Star, and;

d. The conveyance of any and all assets from Defendant Shipsey and/or his alter ego Defendant Tri-Star to subsequent transferee/Defendant Rice is hereby set aside and annulled[.]

2. That Plaintiff Graybehl . . . is hereby entitled to proceed with execution against all funds, monies, or property held on behalf of, for the benefit of, or owed to Defendant Shipsey and/or Defendant Tri-Star, where ever [sic] located, for seizure and sale upon execution as provided by law[.]

. . . .

4. All claims, if any, by Defendants Shipsey, Rice and/or Defendant Tri-Star against Plaintiff Graybehl are hereby dismissed with prejudice in accordance with the Findings of Fact, and Conclusions of Law and the foregoing provisions of this Final Judgment.

5. Plaintiff Graybehl's remaining claims against the remaining Defendants/subsequent transferees Llanes, Cordula, Inc. and Hayward under the Uniform Fraudulent Conveyances Act, §651C H.R.S., are to avoid the claims, if any, of the said Defendants/subsequent transferees Llanes, Cordula, Inc. and Hayward so that Plaintiff Graybehl may levy upon the said transferred assets, involve those remaining defendants only. Plaintiff's said remaining claims against those defendants are thus completely severable and apart from this final judgment against Defendants Shipsey, Rice, and Tri-Star. Therefore, pursuant to the requirements of Haw. Rules Civ. Proc. 54(b), this Court expressly finds that there is no just reason to delay the requested entry of final judgment as to Defendants Shipsey, Rice, and Tri-Star.

In its Findings of Fact and Conclusions of Law entered on April 21, 1998, the circuit court further explained in greater detail why it had ruled in favor of Graybehl:

14. The clear and convincing evidence of record, particularly in light of Defendant Shipsey and Defendant Rice's defaults together with Defendants Tri-Star and Hayward's said refusals to comply with Court discovery

orders herein directly concerning the fundamental issues of this case leaves this Court with no other choice but to find, by clear and convincing evidence that, from 1993, the date Defendant Tri-Star was incorporated in Nevada, to date:

a. Defendant Shipsey and Shirley Hayward were engaged in a [sic] extremely close "girlfriend-boyfriend" relationship wherein Shipsey had such entire and complete domination and control of Shirley Hayward as to create a confidential relationship, and;

b. Shirley Hayward, individually and on behalf of Defendant Tri-Star orally promised to convey upon command or request from Defendant Shipsey, any and all Defendant Tri-Star assets to Defendant Shipsey, and;

c. Pursuant to the said confidential relationship and promise, Defendant Shipsey and Defendant Hayward deposited at least \$90,000 in start-up capital from Defendant Shipsey's own personal funds into Defendant Tri-Star's Nevada State Bank operational account. The said Defendant Shipsey funds were in the form of checks written from a third party to Defendant Shipsey for Defendant Shipsey's "management fees" from that third party, and;

. . . .

f. Such property or assets as Defendant Tri-Star has earned or otherwise acquired through its' [sic] business dealings from its' [sic] inception to date has been the sole product of Defendant Shipsey's capital assets, financial expertise, entrepreneurship, management and business knowledge and acumen, and has in no way resulted from any beneficial activity by Defendant Hayward. Defendant Shipsey is the trustor of Defendant Tri-Star and its assets.

15. The foregoing clear and convincing evidence of record, particularly in light of the Defendants' above-referenced defaults directly concerning the fundamental issues of this case leaves this Court with no other choice but further to find, by clear and convincing evidence that:

a. Although Defendant Hayward claims to be the sole shareholder of Defendant Tri-Star and its sole officer of record, and although she claims to have permitted Defendant Shipsey to act as "agent" for Defendant Tri-Star pursuant to explicit written authority, Defendant Hayward has repeatedly failed to provide the said Court-ordered discovery to substantiate the same. In light of all the foregoing and ensuing findings of fact herein, this Court finds that Defendant Hayward held possession and ownership of Defendant Tri-Star and its' [sic] assets in name only, and solely for the beneficial use and benefit of Defendant Shipsey. Defendant Hayward is the constructive trustee of Defendant Tri-Star and its assets for Defendant Shipsey, and;

b. Defendant Shipsey relied on his confidential relationship with his said significant other, Defendant

Hayward, to entrust all his interest, including inter alia, all the shares of Defendant Tri-Star to Defendant Hayward in order for Defendant Shipsey to enjoy the benefits of the corporate form while shielding assets from creditors, including Plaintiff, and;

c. Defendant Shipsey repeatedly identified himself as the "President" of Defendant Tri-Star in the presence of and with the complete acquiescence of Defendant Hayward for corporate financial gain, and;

d. Defendant Shipsey repeatedly admitted in the presence of and with the complete acquiescence of Defendant Hayward that Defendant Tri-Star was "his" corporation designed to hold assets in Defendant Hayward's name so that he could elude creditors, and;

e. Defendant Shipsey repeatedly and consistently treated the vessel "Terminator" as his own personal vessel in the presence of and with the complete agreement and acquiescence of Defendant Hayward, and;

f. From the time Defendant Tri-Star was created in 1993, Defendant Shipsey has used his said entire and complete domination and control of Defendant Tri-Star and Defendant Hayward to acquire and conceal Defendant Shipsey's assets and to frustrate the efforts of Plaintiff to locate and execute upon those Defendant Shipsey assets. Defendant Shipsey's concealment included, inter alia, not only the said creation of Defendant Tri-Star in Defendant Hayward's name, but also the concealment of Defendant Tri-Star assets in the name of Defendant Rice, and by further concealment of Defendant Shipsey's complete ownership of Defendant Tri-Star and its' [sic] assets by failing and refusing to appear and defend so he would not be obligated to respond to discovery. Defendant Hayward aided and abetted Defendant Shipsey's said concealment by acting as his "alter ego" to conceal Defendant Shipsey's complete ownership of Defendant Tri-Star and its' [sic] assets, and further attempted to conceal Defendant Shipsey's ownership by her said failures and refusals to obey Court-ordered discovery of documents and deposition testimony to identify the true owner, and;

g. Defendant Tri-Star's assets have included and/or do include, but are not limited to (1) certain real property in the state of Nevada and/or interests therein, and; (2) the vessel "Terminator", together with all of its electronics, tackle, and gear located in the state of Hawaii, and; (3) the Hawaii corporation Defendant "Cordula, Inc.", specifically to include all its corporate stock, shares, corporate name and other assets specifically to include its' [sic] permits, and;

h. Defendant Shipsey is the equitable owner of and entitled to the value of Defendant Tri-Star and its assets, subject to the claims of Plaintiff, and;

i. Plaintiff stands in the shoes of Defendant Shipsey as Defendant Shipsey's judgment creditor. Defendant [sic] is therefore entitled to execute against Defendant Tri-Star and all its assets as judgment creditor of Defendant Shipsey, and;

j. The vessel "Terminator" . . . was purchased entirely with Defendant Tri-Star funds which were equitably owned by Defendant Shipsey only, and;

k. All funds subsequently used to upgrade, maintain, and operate the vessel "Terminator", and purchase its electronics, tackle, and gear, were provided entirely by Defendant Tri-Star funds equitably owned by Defendant Shipsey only, and;

l. Defendant Shipsey and Defendant Rice entered into a confidential relationship and oral agreement whereby Defendant Shipsey, through his "alter ego" and constructive trustee Defendant Tri-Star, would transfer the vessel "Terminator", its electronics, tackle, and gear, to Defendant Rice for no monetary consideration whatsoever. Under the said relationship and agreement, Defendant Rice would be the titled legal owner of the vessel "Terminator" while Defendant Shipsey would retain entire and complete domination and control of the vessel "Terminator" through the retention of a \$500,000 promissory note and Mortgage of Vessel to Defendant Tri-Star, payable upon demand, which required Rice to make no payments under the said Mortgage or Note whatsoever, and;

m. Defendant Rice orally promised to convey the vessel "Terminator", its electronics, tackle, and gear, to Defendants Shipsey, Tri-Star, or Defendant Shipsey's designee upon command or request from Defendant Shipsey, and upon command or request from Defendant Shipsey in accordance with the foregoing confidential relationship and oral promise, Defendant Rice subsequently transferred the vessel "Terminator", its electronics, tackle, and gear to Defendant Llanes, without any monetary or other legal consideration whatsoever, and;

n. On June 3, 1996, for no consideration Defendant Tri-Star transferred \$60,000 of Defendant Tri-Star funds to Defendant Llanes to purchase Defendant Cordula, Inc. which possesses the right to use a boat slip at Honokohau Harbor, such in fact being the property of Defendant Shipsey as the equitable owner of Defendant Tri-Star, and;

o. With knowledge of Plaintiff's claims, Defendant Llanes then transferred title to the vessel "Terminator" to Defendant Cordula, Inc., having invested no money whatsoever in either vessel purchase or in the purchase of Defendant Cordula, Inc., and;

p. Defendant Cordula, Inc., together with all of its' [sic] assets and permits, specifically to include the vessel "Terminator", is the property in fact of Defendant

Shipsey, subject to valid claims, if any, by Defendant Llanes and/or Defendant Cordula, Inc. to be determined in subsequent proceedings, and;

q. Defendant Shipsey's creation and use of Defendant Tri-Star as his "alter ego" and Defendant Shipsey and Defendant Hayward's acts of manipulation and deception was in fraud of Plaintiff to hinder or delay the collection efforts of Plaintiff. Defendants Shipsey and Tri-Star's said acts constitute nothing less than the classic deception known as a "shell game", calculated to defraud Plaintiff from collection of those amounts to which he is entitled against Defendant Shipsey under the said existing judgment. In addition, to complicate the scheme, Defendant Shipsey created layer after layer of transferees, first Defendant Rice, then Defendant Llanes and then Defendant Cordula, Inc., in an attempt to conceal the fraud upon Plaintiff. The record is clear that Defendants Tri-Star, Hayward and Rice were totally controlled by Defendant Shipsey and that there was such a unity of interest between Defendant Shipsey and the subsequent transferees with respect to Defendant Tri-Star assets, each receiving his or her interest without payment of value, that the findings of this Court must be binding upon all of the parties to the fraud. Although the law will ordinarily treat corporations such as Defendant Tri-Star as entities distinct from their owners, whenever it is necessary to relieve a fraud the individual corporate entities shall be disregarded. Defendants Tri-Star, Hayward and Rice are merely the alter ego of Defendant Shipsey and were used as a front or mere conduit by Defendant Shipsey to carry out Defendant Shipsey's fraudulent scheme.

r. Defendants Tri-Star and Rice did not take their interests in Defendant Tri-Star assets in good faith and for a reasonably equivalent value, and have failed to provide any evidence whatsoever that they have any defenses, liability limitations, or entitlement to protection under §651C-8 HRS, or otherwise.

II.
CONCLUSIONS OF LAW

. . . .

3. Defendants Shipsey and Rice were properly defaulted under Hawaii law for failure to appear and defend.

4. Defendant Tri-Star was properly defaulted as a sanction under Haw. Rules Civ. Proc. 37 for repeated and persistent failures and refusals to comply with specific orders requiring Defendant Tri-Star to provide reasonable discovery concerning all the matters alleged in Plaintiff's Second Amended Complaint. Moreover, the said default is further warranted due to (1) Defendant Tri-Star's entire failure to comply in any respect with this Court's Pretrial Order, in violation of Haw. Circuit Court Rules [sic] 12.1, and; (2) entire failure, following the withdrawal of its' [sic] former counsel . . . , to appear and defend through an attorney licensed to practice in the State of Hawaii as

required by Hawaii Supreme Court Rule 1.9. Section 605-14 HRS; Oahu Plumbing & Sheet Metal v. Kona Construction, Inc., 60 Haw. 372, 590 P.2d 570 (1979).

5. Accordingly, and in conformity of the evidence of record, which this Court finds to be clear and convincing, the Court concludes as follows:

6. Defendant Shipsey being the constructive trustor of Defendant Tri-Star and its assets, and Defendant Hayward being the constructive trustee of Defendant Tri-Star and its assets, Defendant Shipsey is the equitable owner of and entitled to the value of Defendant Tri-Star and its assets. Plaintiff stands in the shoes of Michael Shipsey as Defendant Shipsey's judgment creditor. Defendants Tri-Star and Hayward and/or Shipsey will be unjustly enriched at the expense of Plaintiff if they are permitted to retain Defendant Tri-Star's assets. Accordingly, a constructive trust should be and is hereby imposed nunc pro tunc, in accordance with Counts I and II of the Second Amended Complaint, upon Tri-Star and its assets from the 1993 date of Tri-Star's original incorporation in the State of Nevada henceforth, for the benefit of Defendant Shipsey, subject to Plaintiff's right to execute thereupon in accordance with Plaintiff's Hawaii Judgment in S.P. No. 95-022K in the Third Circuit Court for the State of Hawaii, Kona Division. Maria v. Freitas, 73 H. [sic] 266, 832 P.2d 259 (1992); Small v. Badenhop, 67 H. [sic] 626, 701 P.2d 647 (1985); In Re Sergio, Inc., 16 B.R. 898 (Bkrtcy. D. Hawaii 1981). There being no remedy at law, thus the assets and property obtained as a result of the fraud against Plaintiff can be and hereby are impressed with a constructive trust to effectuate a remedy in equity. In Re: Daniel H. Overmyer, Debtor, 52 B.R. 111 (S.D. 1985); In re: D.H. Overmeyer Telecasting Co., Inc. 53 B.R. 963, 984 (D.C. 1984).

7. The defaults and clear and convincing evidence of record demonstrating that (1) Defendant Shipsey "influenced and governed" Defendant Tri-Star and its' [sic] assets, and that (2) there exists "such unity of interest and ownership" between Defendants Shipsey and Tri-Star "that one is inseparable from the other", and that (3) Defendants Shipsey and Hayward concealed the corporation's ownership by failing and refusing to obey Court-ordered discovery of documents identifying the true owner, and that (4) Defendant Shipsey admitted that Defendant Tri-Star was "his" corporation designed to hold assets in Defendant Hayward's name so that he could elude creditors, this Court concludes that "adherence to the fiction of separate entity would, under the circumstances, sanction a fraud or promote injustice." Plaintiff is accordingly entitled to judgment that Defendant Tri-Star is and was the "alter ego" of Defendant Shipsey and at all times relevant hereto. Defendant Shipsey through his "alter ego" Defendant Tri-Star, and not Defendant Rice, was the true owner of the vessel "Terminator", under the guidelines of Hawaii law and North Arlington Medical Bldg. Inc. v. Sanchez Const. Co., 471 P.2d 240, 243 (Nev. 1970).

8. Defendant Shipsey being the equitable owner and owner in fact of Defendant Tri-Star as constructive trustor, and Defendant Shipsey having from its' [sic] inception created and operated Tri-Star as his "alter ego", the Defendant Tri-Star funds used to purchase, improve, maintain, and operate the vessel Terminator and Defendant Cordula, Inc., together with any increase or profit therefrom, were and are the property of Defendant Shipsey, and subject to execution by Plaintiff, subject to valid claims if any by subsequent transferees, as fraudulent transfers in violation of §651C H.R.S., as amended, and with intent to hinder, delay and defraud creditors, including Plaintiff.

9. Defendants Tri-Star and Rice did not take their interests in Defendant Tri-Star assets in good faith and for a reasonably equivalent value, and have failed to provide any evidence whatsoever that they have any defenses, liability limitations, or entitlement to protection under §651C-8 HRS, or otherwise.

10. Plaintiff is accordingly entitled to and hereby receives judgment that the vessel Terminator and of Defendant Cordula, Inc. are the property of Defendant Shipsey, subject to valid claims, if any, by the subsequent transferees Defendants Hayward, Llanes, or Cordula, Inc. under §651C H.R.S. which shall be determined in subsequent proceedings between Plaintiff and Defendants Llanes and Cordula, Inc.

11. Subject to the said subsequent proceedings, Plaintiff is entitled to seize and sell Defendant Shipsey's interest in the vessel Terminator and of Defendant Cordula, Inc. upon execution as provided by law to satisfy Defendant Shipsey's obligation to Plaintiff under the Hawaii Judgment in S.P. No 95-022K in the Third Circuit Court for the State of Hawaii, Kona Division.

12. In addition to the foregoing amounts, under collection, Plaintiff is further entitled to judgment for costs and attorneys fees in this case under §607.14.7 [sic], to be determined in S.P. No 95-022K in the Third Circuit Court for the State of Hawaii, Kona Division.

13. This judgment finally adjudicates all claims between Plaintiff and Defendants Shipsey[,], Rice, and Tri-Star as to its' [sic] assets/former assets, the vessel Terminator and of Defendant Cordula, Inc.

14. Based upon the foregoing Findings and Conclusions, this Court expressly finds and concludes pursuant to the requirements of Haw. Rules Civ. Proc. 54(b) that there is no just reason to delay the requested entry of judgment against Defendants Shipsey[,], Rice, and Tri-Star. Plaintiff's remaining claims, to avoid the claims of subsequent transferees Defendants Llanes, Cordula, Inc. and Hayward, are factually and legally severable from the judgment herein, and are most appropriately addressed in

subsequent proceedings between Plaintiff and these parties to determine said Defendants' rights, if any, as subsequent transferees under §651C H.R.S.

(Citations to the record omitted.)

On August 25, 1998, the circuit court entered its Findings of Fact and Conclusions of Law against Shirley Hayward. The circuit court concluded, among other things, that (1) Hayward was properly defaulted for failure to appear and defend; (2) Graybehl's requested relief (for judgment that Hayward had no right, title, or interest in the said Hawai'i assets) was justified by Hayward's default and her deliberate and repeated failure and refusal to comply with subpoenas to testify and to produce corporate documents, despite court orders to do so; (3) Hayward's interest in the Hawai'i assets (Terminator and Tri-Star) was in her corporate capacity only and there was no evidence that she had any individual interest in the assets; and (4) Hayward and Tri-Star were at all relevant times the "alter ego" of Shipsey.

On December 29, 1998, a jury-waived trial addressed the issue of Llanes's and Cordula's liability to Graybehl. During the submission of Graybehl's exhibits, Llanes's and Cordula's counsel (Defendants' Counsel) objected to the admission of certain exhibits. The following exchange occurred between the circuit court and counsel:

THE COURT: Well, . . . why not stipulate to [sic] that this Court can take judicial notice of the record and file in this case, including its rulings?

[Defendants' Counsel]: Thank you, your Honor.

THE COURT: Would that address your concern?

[Defendants' Counsel]: It would address my concern, yes.

THE COURT: So Exhibit 70 will be received, like all other exhibits that this Court has ruled on.

[Defendants' Counsel]: Is it received in evidence, or is it simply --

THE COURT: Take judicial notice.

[Defendants' Counsel]: Very well. So it's not in evidence --

THE COURT: Yes. But you may cite it in your arguments. You may cite any legal documents or findings pertaining to this case which this Court had ruled on as an order, or finding, or judgment --

[Graybehl's Counsel]: Your Honor --

THE COURT: -- without being received. But when you cite it, you cite it -- you may cite the title and the date filed.

[Graybehl's Counsel]: Your Honor, I'm not sure there's at this point a distinction, but I just wanted to make clear that your Honor is not denying the motion to admit it, but rather your Honor will take judicial notice --

THE COURT: Of the entire file. Judicial notice of fact and law of the case, to make clear, as law of the case and as fact established, provided that you cite the order and the file date.

An Amended Final Judgment⁷ was entered in favor of Llanes and Cordula on January 4, 2000 in accordance with the circuit court's May 11, 1999 Findings of Fact and Conclusions of Law. Those Findings of Fact and Conclusions of Law stated in part:

⁷Judge Ibarra entered both the April 21, 1998 Final Judgment (against Shipsey, Rice, and Tri-Star) and the January 4, 2000 Amended Final Judgment.

FINDINGS OF FACT

. . . .

20. Michael Shipsey, [Graybehl's] judgment debtor was never an owner of nor had an interest in *Terminator*. (Testimony of Bornhorst; Defendant's [sic] Exhibit "2")

. . . .

24. Michael Shipsey, [Graybehl's] judgment debtor, never had an ownership interest in Tri-Star.

CONCLUSIONS OF LAW

. . . .

3. Tri-Star International Corporation facilitated the purchase of the vessel by Rice, and facilitated the transfer from Rice to Llanes.

4. Without facilitating the transfers identified above, Tri-Star could not have moored *Terminator* at Honokohau Harbor. Thus, there was adequate *quid pro quo* for said transfers.

5. Based on the foregoing, beneficial title to the vessel now rests with Cordula, Incorporated, subject to the commitments made by Cordula through Llanes:

- (a) to allow Hayward and/or designee reasonable use of the vessel when it has not been chartered for sports fishing purposes; and
- (b) to teach Hayward's children how to fish.

6. [Graybehl] has no grounds for objecting to the adequacy of the consideration for the transfer of the vessel to Llanes (Cordula), which the Court has found to be adequate, unless and until [Graybehl] can prove that this judgment debtor, Shipsey, had an interest in *Terminator*, directly or through Tri-Star. A corporation is the same as a separate and distinct natural person in the eyes of the law. (California Book of Approved Jury Instructions (B.A.J.I.), (I.O.B.).

7. There is no evidence that Michael Shipsey was, at any time, an owner of *Terminator*, nor is there evidence that he possessed any interest therein.

8. There is no evidence that Michael Shipsey was an owner (stockholder) of Tri-Star.

9. If one is not an owner of a corporation, an alter ego relationship cannot exist between the individual and the corporation. Evanston Ins. Co. v. Luko, 7 Haw. App. 520, 783 P.2d 293 (1983); Minnesota Mining & Mgt. Corp. v. Superior Court (Schwartz) 206 Cal. App. 3d 1025, 253 Cal. Rptr. 908 (Cal. App. 3d 1988).

10. Based on the uncontradicted evidence, there was no alter-ego relationship between Shipsey and Tri-Star, and Shipsey had no interest directly or indirectly, in *Terminator* which [Graybehl] could have attached had there been a fraudulent transfer of said vessel.

Graybehl appealed the January 4, 2000 Amended Final Judgment on January 26, 2000.

II. STANDARDS OF REVIEW

A. Rules of Evidence

Different standards of review must be applied to trial court decisions regarding the admissibility of evidence, depending on the requirements of the particular rule of evidence at issue. When application of a particular evidentiary rule can yield only one correct result, the proper standard for appellate review is the right/wrong standard.

Shanghai Inv. Co., Inc. v. Alteka Co., Ltd., 92 Hawai'i 482, 492, 993 P.2d 516, 526 (2000) (brackets omitted) (quoting Tabieros v. Clark Equip. Co., 85 Hawai'i 336, 350, 944 P.2d 1279, 1293 (1997)).

B. Hawai'i Rules of Civil Procedure Rule 32

"The admissibility of depositions at trial is reviewable under the abuse of discretion standard. A trial court's exercise of discretion in ruling on the admissibility of depositions will be upheld unless an abuse of discretion is manifest." Aga v. Hundahl, 78 Hawai'i 230, 241, 891 P.2d 1022, 1033 (1995) (internal quotation marks omitted).

C. Questions of Law

The application of collateral estoppel is a question of law. "Questions of law are reviewable de novo under the

right/wrong standard of review." Best Place, Inc. v. Penn Am. Ins. Co., 82 Hawai'i 120, 123, 920 P.2d 334, 337 (1996).

D. Questions of Fact

We review a trial court's findings of fact under the clearly erroneous standard.

A finding of fact is clearly erroneous when, despite evidence to support the finding, the appellate court is left with the definite and firm conviction in reviewing the entire evidence that a mistake has been committed.

Beneficial Hawaii, Inc. v. Kida, 96 Hawai'i 289, 305, 30 P.3d 895, 911 (2001) (internal quotation marks and brackets omitted). The application of the Uniform Fraudulent Transfer Act to the facts of this case will be reviewed for clear error.

III. DISCUSSION

A. The May 11, 1999 Findings of Fact and Conclusions of Law

In Graybehl's first point of error, Graybehl contends that the May 11, 1999 Findings of Fact and Conclusions of Law are wrong because they directly contradict the adjudicative facts contained in the April 21, 1998 Findings of Fact and Conclusions of Law and the April 21, 1998 judgment against Shipsey, Rice and Tri-Star, and the August 25, 1998 Findings of Fact and Conclusions of Law and judgment against Hayward (collectively, 1998 Rulings).

1. Judicial Notice

During trial, the circuit court took judicial notice of the entire record and file in this case, including the 1998

Rulings. Graybehl does not contend the circuit court erred in taking judicial notice, rather Graybehl argues that the court ruled as if it had not taken judicial notice of the 1998 Rulings.

The circuit court properly took judicial notice of the findings of fact, conclusions of law, and judgments as to Shipsey, Rice, Tri-Star, and Hayward. Fujii v. Osborne, 67 Haw. 322, 329, 687 P.2d 1333, 1338-39 (1984); State v. Kotis, 91 Hawai'i, 319, 341-42, 984 P.2d 78, 100-01 (1999). The 1998 Rulings specifically found that "Tri-Star is and was the 'alter ego' of Defendant Shipsey" at all times relevant hereto, and that:

10. [Graybehl] is accordingly entitled to and hereby receives judgment that the vessel Terminator and of Defendant Cordula, Inc. are the property of Defendant Shipsey, subject to valid claims, if any, by the subsequent transferees Defendants Hayward, Llanes, or Cordula, Inc. under §651C H.R.S. which shall be determined in subsequent proceedings between [Graybehl] and Defendants Llanes and Cordula, Inc.

Thus, the purpose of the December 29, 1998 jury-waived trial was solely to determine the rights of Llanes and Cordula as transferees under HRS § 651C-5 (1993), Transfers Fraudulent as to Present Creditors.⁸ The circuit court nevertheless ignored its 1998 Rulings and found, in its May 11, 1999 Conclusion of Law number 7, that "[t]here is no evidence that Michael Shipsey was, at any time, an owner of the Terminator, nor is there evidence that he possessed any interest therein." Conclusion of Law

⁸/See p. 19 infra.

number 8 stated that "[t]here is no evidence that Michael Shipsey was an owner (stockholder) of Tri-Star."

2. Collateral Estoppel

[C]laim preclusion [res judicata] prohibits a party from relitigating a previously adjudicated cause of action. Issue preclusion, or collateral estoppel, on the other hand, applies to a subsequent suit between the parties or their privies on a different cause of action and prevents the parties or their privies from relitigating any issue that was actually litigated and finally decided in the earlier action.

Dorrance v. Lee, 90 Hawai'i 143, 148, 976 P.2d 904, 909 (1999) (emphases in original).

Collateral estoppel does not apply to the 1998 Rulings because the rulings are part of this same case, not a prior suit.

3. The Circuit Court's Findings Regarding Shipsey's Ownership Interests

Given our conclusion that the April 21, 1998 Final Judgment conclusively determined that Shipsey was the true owner of Tri-Star, it is not necessary for us to address Graybehl's contention that the circuit court erred in its May 11, 1999 finding on the merits that there was "no evidence that Michael Shipsey was an owner (stockholder) of Tri-Star."

We nevertheless note that, under Hawai'i law, "because control is determined by the actual relationship of the parties, formal stock ownership is not dispositive." Robert's Hawaii Sch. Bus v. Laupahoehoe Transp. Co., Inc., 91 Hawai'i 224, 243, 982 P.2d 853, 872 (1999). The circuit court's May 11, 1999 Conclusion of Law number 9 ("If one is not an owner of a

corporation, an alter ego relationship cannot exist between the individual and the corporation.") is therefore incorrect, and the circuit court's other conclusions based upon this erroneous statement of the law are erroneous.

B. Fraudulent Transfer

Hawai'i's Uniform Fraudulent Transfer Act (UFTA), HRS Chapter 651C, states in relevant part:

§651C-4 [1993] Transfers fraudulent as to present and future creditors. (a) 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:

- (1) With actual intent to hinder, delay, or defraud any creditor of the debtor[.]

§651C-5 [1993] Transfers fraudulent as to present creditors. (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor becomes insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for other than a present, reasonably equivalent value, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

A litigant accused of receiving fraudulently transferred property has defenses available under HRS § 651C-8 (1993), which states in relevant part:

§651C-8 Defenses, liability, and protection of transferee.

.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor

under section 651C-7(a)(1),^{9]} the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

- (1) The first transferee of the asset or the person for whose benefit the transfer was made; or
- (2) Any subsequent transferee other than a good-faith transferee who took for value from any subsequent transferee.

(c) If the judgment under subsection (b) is based upon the value of the asset transferred, the judgment must 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.

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

- (1) A lien on or a right to retain any interest in the asset transferred;
- (2) Enforcement of any obligation incurred; or
- (3) A reduction in the amount of the liability on the judgment.

The circuit court had already determined that Shipsey was the true owner of the boat -- at least until its transfer to Llanes. The trial that is the subject of this appeal was limited to determining whether Llanes or Cordula had any valid claims "under § 651C HRS." Conclusion of Law number 10 of the April 21, 1998 Findings of Fact and Conclusions of Law. On remand, the

²/HRS § 651C-7(a)(1) (1993) reads as follows:

§651C-7 Remedies of creditors. (a) In any action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations provided in section 651C-8, may obtain:

- (1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim[.]

circuit court must determine whether that transfer was fraudulent pursuant to the relevant sections of UFTA, HRS §§ 651C-4 and 651C-5. Assuming that the circuit court finds the transfer to have been fraudulently made, Llanes and Cordula may attempt to defend themselves using the provisions of HRS § 651C-8.

C. Depositions

Graybehl contends the circuit court violated HRCP Rule 32 when the court refused to admit five¹⁰ depositions taken in March 1996 in the State of Nevada (Nevada depositions).

Hawai'i Rules of Civil Procedure Rule 32 provides in pertinent part:

(a) *Use of depositions.* At the trial . . . any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

. . . .

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: . . . (B) that the witness resides on an island other than that of the place of trial or hearing, or is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition[.]

Llanes became involved in this case as early as April 3, 1996 when he filed his Motion to Substitute as Real

¹⁰/During trial, Graybehl asked the circuit court to admit five depositions, Exhibits Nos. 10, 13, 17, 19, and 84, as evidence. The court asked Graybehl to file a written memorandum regarding the admissibility of these depositions. However, in Graybehl's written memorandum, Graybehl asked the circuit court to admit only Exhibits Nos. 10, 17, 19, and 84. The circuit court denied the admission of these four exhibits. On appeal, Graybehl is raising all five depositions as an issue.

Party in Interest for Rice. Llanes's motion was denied on April 30, 1996. On July 11, 1996, Llanes and Cordula were named as Defendants pursuant to Graybehl's Ex Parte Motion for Order to Proceed Against Unidentified Doe Defendants. Thus, the Nevada depositions offered by Graybehl were taken before Llanes and Cordula became parties to this case. The circuit court did not abuse its discretion in refusing to admit the Nevada depositions against Llanes and Cordula.

D. The Nevada Case - Exhibits 75 and 76

Graybehl requested the circuit court to take judicial notice of and/or admit, under the doctrine of collateral estoppel, Exhibits 75 and 76. Exhibit 75 was a Nevada judgment adjudicating the identity of Tri-Star and Hayward as the constructive trustees, fraudulent trustees, or alter egos of Shipsey, which judgment had been filed in the Third Circuit Court under the Hawai'i Uniform Foreign Judgments Act. Exhibit 76 was the complaint underlying the Nevada judgment. The circuit court did not commit error when it failed to admit the two exhibits as evidence because these exhibits were only relevant to show that Tri-Star was an "alter ego" of Shipsey, and that issue had been resolved in Graybehl's favor on April 21, 1998.

IV. CONCLUSION

Accordingly, the Amended Final Judgment filed January 4, 2000 and Findings of Fact 20 and 24 and Conclusions of

Law 3 through 10 of the May 11, 1999 Findings of Fact and Conclusions of Law are vacated, and this case is remanded for further proceedings.

DATED: Honolulu, Hawai'i, September 30, 2003.

On the briefs:

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Chief Judge

Michael R. Goodhart
for defendants-appellees
Cordula, Inc. and John
Llanes.

Associate Judge

Associate Judge