

FILED: October 1, 2014

IN THE COURT OF APPEALS OF THE STATE OF OREGON

KENNETH R. NORRIS,
Plaintiff-Respondent,

v.

R & T MANUFACTURING, LLC, an Oregon limited liability company,
Defendant-Appellant.

Multnomah County Circuit Court
101116202

A150859

David F. Rees, Judge.

Argued and submitted on November 07, 2013.

Helen C. Tompkins argued the cause and filed the briefs for appellant.

Conrad E. Yunker argued the cause for respondent. With him on the brief was Gary Abbott Parks and Northwest WageLaw, LLC.

Before Sercombe, Presiding Judge, and Hadlock, Judge, and De Muniz, Senior Judge.

HADLOCK, J.

Affirmed.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

- No costs allowed.
 Costs allowed, payable by Appellant.
 Costs allowed, to abide the outcome on remand, payable by
-

1 HADLOCK, J.

2 Defendant R & T Manufacturing, LLC (R & T), a limited liability company
3 organized under ORS chapter 63, appeals from a general judgment for plaintiff in this
4 action for damages under the Uniform Fraudulent Transfers Act (UFTA), ORS 95.200 to
5 95.310. The trial court found that R & T's principals and only members, Robert and
6 Thomas Laney, dissolved Action Accessories, LLC (Action) and transferred its business
7 and assets to R & T for the purpose of avoiding a judgment that Action owed to plaintiff.
8 As a remedy, the court imposed a judgment against R & T in the amount of plaintiff's
9 outstanding claim against Action. On appeal, R & T contends for several reasons that the
10 trial court erred. We affirm.

11 I. BACKGROUND

12 A. *Plaintiff's suit against Action, the dissolution of that company, and the*
13 *formation of R & T.*

14 We summarize the facts as set forth in the trial court's findings, as
15 supplemented by the largely undisputed facts in the record, including the trial testimony.
16 Action, doing business as "Action Accessories," manufactured truck accessories for
17 pickup trucks, including hitch caps, trailer hitch parts, steps, mud flaps, and bike and ski
18 racks. Thomas Laney testified that Action was responsive to the market and could
19 change its product line depending "on what might be hot at the time in that industry or
20 what the Chinese might not have been building." Plaintiff worked for Action until his
21 employment terminated in July 2007.

22 In February 2009, plaintiff filed a claim against Action, and Thomas and

1 Robert Laney personally, for unpaid wages, penalties, and attorney fees. ORS
2 652.610(3); ORS 652.150. On December 16, 2009, plaintiff prevailed on his claims in
3 court-annexed arbitration. A week later (and as will be further discussed), the Laney
4 dissolved Action and formed R & T. The Laney and Action appealed the arbitration
5 award to the circuit court. The circuit court dismissed the Laney as defendants,¹ but
6 Action (which by that time had been dissolved) did not put on a defense because it was
7 not represented by counsel. In May 2010, plaintiff obtained a default judgment for
8 damages against Action in the amount of \$3,937, and, in July 2010, the court entered a
9 supplemental judgment for attorney fees and costs in the amount of \$59,725. Plaintiff
10 appealed the judgment for damages, which we affirmed without opinion. *Norris v.*
11 *Laney*, 247 Or App 353, 271 P3d 154 (2011).

12 Three days after the supplemental judgment was entered, plaintiff sought to
13 garnish the amount of his judgment from Action's bank account, but Key Bank reported
14 that there were "no funds." In the meantime, as noted, the Laney had dissolved Action
15 in December 2009 and formed R & T, which had begun doing business immediately
16 upon its formation, in the same location, under the same management, with the same
17 equipment and personnel, but under, as Thomas Laney testified, a different business plan.
18 Indeed, R & T made its first sale five days after the arbitrator's award in December 2009.

¹ Action was a limited liability company. Under ORS 63.165(1), "[a] member or manager [of a limited liability company] is not personally liable for a debt, obligation or liability of the limited liability company solely by reason of being or acting as a member or manager."

1 At trial, Thomas Laney described the Laney's position on why they had
2 formed a new business entity. Thomas asserted that Action "could not make a profit.
3 The company was losing money, and [he and Robert] wanted to go in a different
4 direction. And this whole change has only to do with that." Laney explained that R & T
5 has a different and more competitive business model than Action. In contrast to Action,
6 which had manufactured its own line of finished consumer products, R & T is a "machine
7 shop," or a "job shop." It does not have its own product line; rather, it fabricates
8 component parts or custom-finished products for its customers.

9 Thomas explained that the name change to R & T Manufacturing was a part
10 of the Laney's marketing strategy. Thomas testified that, unlike the name "Action
11 Accessories," the company name "R & T Manufacturing" signifies to prospective
12 customers like Boeing that R & T is in the business of custom manufacturing or
13 fabricating rather than merely carrying its own line of products. Thomas also testified
14 that Action had poor credit and that part of the reason for dissolving Action and creating
15 R & T was to permit R & T to build new credit so that it could acquire new machinery.

16 B. *The asset transfer*

17 Action had operated in part based on a \$50,000 line of credit that it had
18 obtained from Key Bank, which held a perfected security interest on all of Action's
19 assets, including its inventory, equipment, goodwill, and accounts receivable. After
20 Action dissolved in December 2009, it transferred control of its assets to R & T, but
21 continued to own all of the manufacturing equipment for more than one year, subject to

1 Key Bank's security interest.² In February 2011, R & T purchased all of Action's tangible
2 assets, with the exception of its receivables, at an estimated value of \$38,805 and
3 assumed Action's debt of \$49,799 to Key Bank.

4 R & T also acquired additional manufacturing equipment, at no cost, from
5 the Laneys' father, who worked for the company. Robert and Thomas began doing more
6 fabricating work because they could provide skilled labor for R & T's new products. But
7 otherwise, much about R & T's business remained the same as Action's: R & T's capital
8 structure and business practices are the same as Action's. R & T carries on business with
9 many of the same suppliers, the same employees and much of the same equipment, from
10 the same leased space, using the same telephone and fax numbers, the same credit card
11 machine, and under the same assumed business name, "Action Accessories."

12 C. *The UFTA and this litigation*

13 As context for our discussion of the trial-court litigation in this case, we
14 briefly address the legal context for the issues raised on appeal. ORS 95.230(1) describes
15 circumstances in which a transfer of assets can give rise to a fraudulent transfer, "whether
16 the creditor's claim arose before or after the transfer was made[.]" The statute provides,

² Thomas testified that R & T leased the equipment from Action, but the record includes no evidence of a written lease. We note that ORS 63.625 permits a dissolved limited liability company to continue to own its assets after dissolution and during the winding up of the company. Moreover, the dissolution of a limited liability company does not effect a transfer of the company's property, ORS 63.637(2)(a), and a dissolved limited liability company continues its existence for purpose of winding up and liquidating its business, ORS 63.637(1), including disposing of "known claims" against it. ORS 63.641.

1 in relevant part:

2 "A transfer made or obligation incurred by a debtor is fraudulent as
3 to a creditor, whether the creditor's claim arose before or after the transfer
4 was made or the obligation was incurred, if the debtor made the transfer or
5 incurred the obligation:

6 "(a) With actual intent to hinder, delay, or defraud any creditor of the
7 debtor[.]"³

8 To establish a fraudulent transfer under that statute, a plaintiff must prove,
9 by a preponderance of the evidence, that the debtor made a "transfer," that the plaintiff
10 has a claim as a creditor that arose before or after the transfer was made, and that the
11 transfer was made "with actual intent to hinder, delay, or defraud" the plaintiff. *Fadel v.*
12 *El-Tobgy*, 245 Or App 696, 707, 264 P3d 150 (2011), *rev den*, 351 Or 675 (2012)
13 (describing elements); *Preferred Funding, Inc. v. Jackson*, 185 Or App 693, 699, 61 P3d
14 939 (2003); *Morris v. Nance*, 132 Or App 216, 223, 888 P2d 571 (1994), *rev den*, 321 Or
15 340 (1995) (stating preponderance of evidence standard). ORS 95.200(12) defines a
16 "transfer" in broad terms as "every mode, direct or indirect, absolute or conditional,
17 voluntary or involuntary, of disposing of or parting with an asset[.]" An "asset," in turn,
18 is defined as "property of a debtor," but does not include "[p]roperty to the extent that it is
19 encumbered by a valid lien." ORS 95.200(2). Finally, "property" is defined as "anything
20 that may be the subject of ownership." ORS 95.200(10).

³ ORS 95.240 describes additional circumstances that constitute a fraudulent transfer "as to a creditor whose claim arose before the transfer[.]" Plaintiff pleaded counts under both ORS 95.230(1)(a) and ORS 95.240, but the trial court based its judgment only on ORS 95.230(1)(a), and plaintiff does not challenge that ruling. Accordingly, we confine our discussion to the legal context for a claim under ORS 95.230(1)(a).

1 In determining whether a transfer was made with "actual intent to hinder,
2 delay, or defraud," as that phrase is used in ORS 95.230(1)(a), the court may consider,
3 among other factors, those set out in ORS 95.230(2), which courts have described as
4 "badges of fraud." *See Morris*, 132 Or App at 219 n 4 (explaining historical origins of
5 "badges of fraud"). The statutory factors include whether:

6 (a) The transfer or obligation was to an insider;

7 (b) The debtor had retained possession or control of the property
8 transferred after the transfer;

9 (c) The transfer or obligation was disclosed or concealed;

10 (d) Before the transfer was made or obligation was incurred, the
11 debtor was sued or threatened with suit;

12 (e) The transfer was of substantially all the debtor's assets;

13 (f) The debtor had absconded;

14 (g) The debtor had removed or concealed assets;

15 (h) The value of the consideration received by the debtor was
16 reasonably equivalent to the value of the asset transferred or the amount of
17 the obligation incurred;

18 (i) The debtor was insolvent or became insolvent shortly after the
19 transfer was made or the obligation was incurred;

20 (j) The transfer had occurred shortly before or shortly after a
21 substantial debt was incurred; and

22 (k) The debtor had transferred the essential assets of the business to
23 a lienor who had transferred the assets to an insider of the debtor."

24 ORS 95.230(2). However, a transfer "is not voidable under ORS 95.230(1)(a) as against
25 a person who took in good faith and for a reasonably equivalent value[.]" ORS

1 95.270(1).

2 Plaintiff's first amended complaint included a UFTA claim, in which
3 plaintiff alleged that the transfer of assets from Action to R & T was fraudulent under
4 ORS 95.230(1)(a) because it was made "with actual intent to hinder, delay, and defraud"
5 plaintiff's collection of his judgment against Action.⁴ The case was tried to the court.
6 Plaintiff put on evidence directed to proving that R & T either acquired through purchase
7 or otherwise took control of all of Action's business, including its assets and obligations,
8 with the exception of Action's debt to plaintiff. Plaintiff contended that the evidence
9 showed that the Laneys had no legitimate business reason to dissolve Action and form R
10 & T, except to avoid plaintiff's judgment. Plaintiff's position was, in essence, that the
11 change in business entity, along with R & T's assumption of control of Action's business,
12 effected a fraudulent transfer of *all* of Action's assets to R & T.

13 R & T took the position that the Laneys had good-faith business reasons for
14 dissolving Action and creating R & T that had nothing to do with avoiding plaintiff's
15 judgment. Further, R & T asserted, the only business assets that Action transferred and

⁴ Plaintiff's first amended complaint alleged five claims. In the first three claims, plaintiff sought to hold R & T liable either as a successor employer of Action, for Action's alleged violations of Oregon's wage and hour laws, ORS 652.610; ORS 652.615, for payment of the judgment against Action, and for attorney fees. ORS 652.200. In his fourth claim, plaintiff asserted that R & T is a "mere continuation" of Action and, citing ORS 652.310, asserted that he is entitled to a declaration awarding him damages in the amount of the judgment against Action, as well as his costs and attorney fees. In his fifth claim--the one that we address in this opinion--plaintiff asserted that Action's dissolution and R & T's creation effected a fraudulent transfer in violation of the UFTA. The trial court granted R & T's motion to dismiss the first four claims and entered a limited judgment to that effect. Plaintiff did not appeal the limited judgment.

1 that R & T acquired were its equipment and inventory, for which it paid "reasonably
2 equivalent value" through the assumption of Action's debt to Key Bank. Moreover, R &
3 T argued, any assets transferred were fully encumbered by Key Bank's security interest
4 and for that reason could not form the basis for a fraudulent-transfer claim.

5 The trial court made extensive findings that reflected its rejection of R &
6 T's explanation for the change in business entity and its acceptance of plaintiff's position.
7 The court found that, although Thomas testified that he and Robert had decided to
8 dissolve Action and form R & T in order to change their business model and become
9 more competitive, there was "no reason for Action to change its business entity to begin
10 targeting a new line of business or to buy new or different equipment." Thus, the court
11 determined, "[t]he only significant advantage derived from abandoning the Action LLC
12 and forming the new R & T LLC was the elimination of the obligation to [plaintiff]."⁵

⁵ The trial court explained its skepticism:

"THE COURT: * * * I heard your client's explanation * * * --
maybe you can explain it better.

"[R & T's COUNSEL]: Okay.

"THE COURT: * * * So they want to get in a new business space.
They want to move away from truck accessories to more specialized
products. They want to stop competing with the Chinese.

"[R & T's COUNSEL]: Yes.

"THE COURT: Why can't they do that simply as the same LLC?
There's no reason to change business entities. Businesses change their
focus all the time without changing--going through the difficult process of
reorganizing their entity. They have the same capital structure; they have
the same debt; they have the same phone number; they have the same

location. Everything remains the same--

"[R & T's COUNSEL]: Right.

"THE COURT: --except for the name, which could have been done with a simple registration of a DBA or even changing the name of the LLC, which can be done with a small fee.

"[R & T's COUNSEL]: Right.

"THE COURT: I cannot, sitting here, frankly--and I'll--maybe you can convince me otherwise.

"[R & T's COUNSEL]: Sure.

"THE COURT: I cannot conceive of any reason for this change in business formation except to get around this debt."

And again:

"THE COURT: What purpose did changing entities serve--

"[R & T's COUNSEL]: Because--

"THE COURT: --other than avoiding [plaintiff's judgment]?

"[R & T's COUNSEL]: Because R & T Manufacturing was a job shop, and it took on a different business model.

"THE COURT: People change business models every day without changing their business entity.

"[R & T's COUNSEL]: And other people open up new businesses every day to start new companies that have different business models.

"THE COURT: But they usually don't operate with the exact same equipment at the same location with the same phone number and the--

"[R & T's COUNSEL]: No

"THE COURT: --same website."

1 The trial court also rejected R & T's assertion that the assets it acquired
2 from Action had a negative value because of Key Bank's security interest. It found that R
3 & T had acquired not only Action's tangible assets (which R & T's witness valued at
4 \$38,805) but had actually acquired the entirety of Action's business, including Action's
5 relationships with its suppliers and customers, Action's brand name, its skilled
6 employees, and its business goodwill. The court found that those intangible assets
7 themselves had value--value that R & T acquired when the assets were transferred from
8 Action. In making that determination, the court cited evidence that in 2009, Action had
9 income of \$46,781, after payment of expenses and guaranteed payments of \$100,000 to
10 partners. The court also observed that, after its formation, R & T continued to earn
11 sufficient income to pay its expenses, and the court reasoned that R & T's ability to
12 generate that level of income reflected that the business had a value exceeding that of the
13 tangible assets alone:

14 "The book value or value of tangible assets is only one factor to
15 consider in valuing a business. A much more important consideration is the
16 ability of the business to generate income for its owners. Here, the
17 evidence established that Action was generating substantial income for its
18 owners. Thomas Laney testified that R & T essentially picked up where
19 Action left off, and continues to generate substantial income for its owners.

20 "I conclude that the value of the assets purchased by R & T was in
21 excess of \$90,000. This value is confirmed by applying a very conservative
22 33% capital rate (a 3 times multiple) to Action's 2009 reported taxable
23 income of \$46,781 (after deducting substantial payments to partners,
24 interest and depreciation), which leads to a value of \$140,343. From this
25 amount, the outstanding debt of Action that was assumed by R & T should
26 be subtracted. This value is also confirmed by the fact that in 2009, Action
27 generated \$46,781 in pretax income, plus \$61,768 in guaranteed payments
28 to its owners, and \$40,000 in cash distributions to its owners."

1 As we understand the trial court's reasoning, based on evidence of Action's income and
2 distributions for 2009 and evidence that R & T continued to earn income sufficient to pay
3 its expenses, including salaries to Thomas and Robert Laney, the court conservatively
4 estimated that the value of the business transferred from Action to R & T exceeded Key
5 Bank's security interest on Action's debt of \$49,499 and was approximately \$90,000.
6 Accordingly, the court concluded, R & T had "substantially undervalued" the assets it
7 acquired from Action, "as it placed no value on Action's income producing capability,
8 which derived from Action's business goodwill, its relationship with skilled employees,
9 suppliers and customers and its brand recognition, all of which were effectively
10 transferred to R & T."

11 The trial court then considered the factors described in ORS 95.230(2) to
12 determine whether Action transferred its assets to R & T "[w]ith actual intent to hinder,
13 delay, or defraud" its creditors, including plaintiff, in a way that would make the transfer
14 fraudulent under ORS 95.230(1)(a). The court found that the transfer was between
15 insiders (ORS 95.230(2)(a)); that it effected a transfer of all of Action's assets that had
16 any value (ORS 95.230(2)(e)); that the transfer occurred soon after Action had received
17 an underlying adverse ruling in plaintiff's underlying lawsuit (ORS 95.230(2)(d), (j)); that
18 the transfer made Action insolvent and unable to answer for plaintiff's judgment (ORS
19 95.230(2)(i)); and that the transaction substantially undervalued the assets purchased by
20 R & T (ORS 95.230(2)(h)). The court concluded that the transfer of assets from Action
21 to R & T was a fraudulent transfer under ORS 95.230(1)(a), made for the purpose of

1 avoiding the obligation to plaintiff that was subsequently reduced to judgment.

2 As a remedy, the court ordered that the judgment debt owed by Action to
3 plaintiff be "applied to R & T." Thus, the court awarded plaintiff a judgment against R &
4 T in the amount of plaintiff's outstanding judgments against Action.

5 II. ANALYSIS

6 On appeal, R & T asserts that the trial court erred in entering judgment for
7 plaintiff for several reasons. First, R & T argues that UFTA does not apply to the
8 challenged transaction, because the only property transferred to R & T--Action's
9 equipment and inventory--was not an "asset" under ORS 95.230(2)(a), as it was fully
10 encumbered by Key Bank's security interest. Second, citing ORS 95.270(1), R & T
11 contends that the transfer cannot be avoided "as against" R & T because it paid "a
12 reasonably equivalent value" for the transferred property. Third, R & T argues that the
13 remedy imposed by the trial court was excessive and not authorized by ORS 95.260 and
14 ORS 95.270(2). Fourth, noting that the trial court had previously dismissed four of
15 plaintiff's claims that were based on a "continuation" theory--and relying on "law of the
16 case" principles--R & T asserts that the court erroneously relied on that same
17 "continuation" theory as a basis for its judgment for plaintiff. Finally, R & T argues that
18 certain of the trial court's findings are not supported by legally sufficient evidence. We
19 address each of those arguments below.

20 Formerly, we reviewed UFTA cases *de novo*. *Morris*, 132 Or App at 218.
21 Although we retain discretion to apply that standard of review, ORS 19.415(3)(b), we no

1 longer do so as a matter of course. Neither party has requested that we review *de novo*
2 and, in any event, this is not an exceptional case in which we would exercise our
3 discretion to do so. *See* ORAP 5.40(8)(c). Accordingly, we review the trial court's legal
4 conclusions for errors of law and its findings of fact for legally sufficient evidence.

5 As noted, R & T first contends that the trial court erred in entering
6 judgment for plaintiff because the record shows that the \$38,805 worth of equipment and
7 inventory that Action transferred to R & T were fully encumbered by Key Bank's security
8 interest and, therefore, were not "assets" subject to UFTA. *See* ORS 95.200.⁶ Plaintiff
9 contends that R & T did not preserve that argument for appeal because it never argued in
10 the trial court that encumbered assets are not "assets" within the meaning of the UFTA.

11 Plaintiff is correct that at trial R & T did not make the precise argument that
12 it now raises. Although R & T contended that the equipment and inventory had zero
13 value because they were fully encumbered, it did not argue to the trial court that a fully
14 encumbered asset is not an "asset" for purposes of the UFTA. R & T contends that we
15 can, nevertheless, address the argument for the first time on appeal based on our holding
16 in *Kellstrom Bros. Painting v. Carriage Works, Inc.*, 117 Or App 276, 844 P3d 221,
17 (1992), *rev den*, 317 Or 162 (1993), in which we addressed precisely the same kind of
18 UFTA "asset" argument even though it had not been raised in the trial court.

⁶ ORS 95.200(2) provides:

 "Asset' means property of a debtor but does not include:

 "(a) Property to the extent that it is encumbered by a valid lien[.]"

1 We need not decide whether, under *Kellstrom*, the question raised by R & T
2 is one that we must address despite the lack of preservation, as we readily conclude that,
3 in all events, the argument lacks merit. R & T's argument is limited and is based entirely
4 on its contention that "[t]he only transfer attacked by plaintiff was the transfer of
5 equipment and inventory." Thus, R & T argues only that, "because the equipment and
6 inventory purchased by defendant was less than \$49,799 [the amount of Key Bank's
7 security interest,] there was no 'asset' transfer and the UFTA does not apply to this case."

8 The foundation on which that argument rests is contradicted by the trial
9 court's factual findings. Plaintiff argued at trial that R & T acquired Action's entire
10 *business*, not merely its tangible assets:

11 "Essentially what's happened here is that R & T Manufacturing LLC is
12 merely a new hat for an old business. The principals of Action
13 Accessories, having received an adverse ruling in the arbitration in the
14 Action Accessories case, decided to form a new corporation, a new
15 company to strip off [plaintiff's] claim against Action Accessories and then
16 go on and do business as usual otherwise."

17 Accordingly, plaintiff's trial evidence focused on the identity of operations of Action and
18 R & T. And, in ruling for plaintiff, the trial court found that the transfer encompassed all
19 of Action's business over which R & T had assumed control, including Action's
20 intangible assets. The record supports that finding.

21 The record also supports the trial court's finding that the value of Action's
22 business--including the intangible assets transferred to R & T--exceeded the amount of
23 Key Bank's security interest. "[V]aluation is a fact-based analysis necessarily taken on a
24 case-by-case basis." *Tofte and Tofte*, 134 Or App 449, 457 n 5, 895 P2d 1387 (1995).

1 Although a trial court's valuation of a business asset most commonly includes
2 consideration of expert testimony, *see Salgado and Salgado*, 258 Or App 557, 310 P3d
3 731 (2013), that is not always the case. Unlike in *Salgado*, which we remanded to the
4 trial court for reconsideration of business valuation because the trial court's valuation
5 method was not supported by any evidence in the record, 258 Or App at 564, this is not a
6 case in which no credible evidence supports the trial court's determination that the value
7 of the transferred assets exceeded the amount of Key Bank's encumbrance. To the
8 contrary, the trial court extensively questioned witnesses regarding the finances of Action
9 and R & T and determined, based on all of the evidence presented at trial, that the value
10 of the property transferred to R & T exceeded the amount of Key Bank's encumbrance.
11 That evidence includes Action's 2009 federal income-tax return, showing Action had a
12 "gross profit" of \$325,818 that year, and, after payment of salaries and guaranteed
13 payments to partners and other expenses and deductions, business income of \$46,781 and
14 net assets of \$13,624. Laney testified that Action had other assets that were not
15 transferred to R & T, including accounts receivable that Action continued to collect. In
16 January 2010, Action received payments of \$18,013.50 and, as of the time of trial in June
17 2011, still had receivables in the amount of \$3,000.00 to \$4,000.00. Laney testified that,
18 after a few months of struggling, R & T was building up its business and was generating
19 enough income to allow payment of expenses, including salaries to the partners. That
20 evidence is sufficient to establish that the value of Action's business that was transferred
21 to R & T, including the tangibles worth more than \$38,000, exceeded Key Bank's

1 \$49,799 security interest. Thus, at least *some* of the transferred assets were "assets" for
2 purposes of UFTA. See ORS 95.200(2)(a) (an "asset" does not include "[p]roperty *to the*
3 *extent that* it is encumbered by a valid lien" (emphasis added)); *Oregon Account Systems,*
4 *Inc. v. Greer*, 165 Or App 738, 745, 996 P2d 1025 (2000) ("[E]quity in excess of the
5 amount of the encumbering lien(s) is an 'asset' under UFTA."). Accordingly, the trial
6 court did not err by not *sua sponte* entering judgment for R & T on the ground that *no*
7 UFTA asset had been transferred, as R & T contends.

8 R & T also argues that, even if plaintiff might otherwise have a UFTA
9 claim, R & T paid "reasonably equivalent value" for the assets it acquired from Action by
10 assuming Action's obligation to Key Bank. Accordingly, R & T concludes, the asset
11 transfer cannot be voided as against it. See ORS 95.270(1) ("A transfer or obligation is
12 not voidable under ORS 95.230(1)(a) as against a person who took in good faith and for a
13 reasonably equivalent value[.]"). Again, however, R & T's argument is premised entirely
14 on the notion that it acquired *only* Action's tangible assets. As explained above, the trial
15 court found otherwise and determined that the transferred assets, including Action's
16 business and intangibles, exceeded Key Bank's lien. Because the record includes
17 evidence supporting that finding, the trial court did not err in concluding that R & T had
18 not paid "reasonably equivalent value" for Action's assets.

19 In its third assignment of error, R & T asserts that the remedy imposed by
20 the trial court--a judgment against R & T for the full amount of plaintiff's judgment
21 against Action--is excessive under ORS 95.260 and 95.270, which describe a creditor's

1 remedies for a fraudulent transfer. Under ORS 95.260, the available remedies include
2 avoidance of the transfer, ORS 95.260(1)(a), or "[a]ny other relief the circumstances may
3 require." Under ORS 95.270(2), a creditor who establishes a voidable transfer may
4 recover judgment against the transferee "for the value of the asset transferred * * * or the
5 amount necessary to satisfy the creditor's claim, whichever is less." ORS 95.270(2)(a),
6 (b). R & T's argument that the trial court's remedy is excessive, like its other arguments,
7 depends on its contention that the only assets transferred were tangible assets having a
8 value less than Key Bank's security interest. We already have affirmed the trial court's
9 rejection of that contention, and we therefore also reject R & T's third assignment of
10 error.

11 In discussing the appropriate remedy and deciding to impose on R & T a
12 judgment for the amount of plaintiff's judgment against Action, the trial court stated that
13 "it is clear that R & T is simply a continuation of Action." In its fourth assignment of
14 error, R & T contends that the trial court thereby violated the "law of the case" doctrine
15 by adopting a "mere continuation" theory of liability under ORS 652.310, despite the
16 court having earlier rejected that theory in dismissing four of plaintiff's claims, which
17 plaintiff had brought not under the UFTA, but under different statutes. We reject R & T's
18 contention that the trial court's statement constituted an adoption of a "mere continuation"
19 theory of liability. The trial court's letter opinion leaves no doubt that it based R & T's
20 liability on a fraudulent-transfer theory under ORS 95.230(1)(a), not on a "mere
21 continuation" theory under another statute. The court characterized R & T's operations as

1 a "mere continuation" in its letter opinion only to explain why it entered judgment against
2 R & T as the transferee of the asset; that characterization did not mean that the trial court
3 was adopting a legal theory that it had previously rejected.

4 In its fifth assignment of error, R & T describes several findings for which
5 it claims there is no evidentiary support, including the trial court's finding of "actual
6 intent" and the finding as to the value of the assets transferred.⁷ We have previously
7 concluded that the evidence supports the trial court's finding of actual intent and also
8 supports the finding that the value of the assets transferred exceeded Key Bank's security
9 interest. Nonetheless, R & T asserts that the evidence does not support the trial court's
10 *specific* finding regarding the value of the transferred assets--*i.e.*, that they were worth
11 more than \$90,000. R & T asserts, further, that in the absence of expert evidence of
12 value, the trial court erred in applying a capitalization rate of 33 percent to determine
13 Action's value at the time the business operations were transferred to R & T. Plaintiff
14 responds that at no time during the trial did R & T contend that the evidence was
15 insufficient to support the trial court's findings as to the value of the business and that the
16 issue therefore is not preserved.

17 We pause to consider whether there is any practical significance to the trial
18 court's determination that the transferred assets had value exceeding \$90,000. R & T
19 does not explain how the trial court's allegedly incorrect valuation of the business renders

⁷ The entire assignment of error consists of the statement, "The trial court's findings of fact are not supported by the evidence."

1 its judgment for plaintiff erroneous; rather, it merely argues that the trial court's findings
2 are unsupported without identifying any flawed legal conclusion that is premised on those
3 findings.

4 We decline to provide a legal rationale or conclusion that R & T has not
5 provided itself. Had R & T not relied entirely on the notion that the *only* assets
6 transferred were Action's equipment and inventory, it might have been able to argue that
7 the amount by which the transferred assets--*including the intangibles*--exceeded Key
8 Bank's security interest was relevant to the remedy to which plaintiff was entitled. As
9 noted, under ORS 95.270(2), in an action seeking to avoid an asset transfer to the extent
10 necessary to satisfy a creditor's claim, "the creditor may recover judgment for the value of
11 the asset transferred * * * or the amount necessary to satisfy the creditor's claim,
12 whichever is less." Thus, the value of the property fraudulently transferred--in this case,
13 as the trial court found, Action's business--potentially could have been relevant to the
14 determination of plaintiff's remedy, had R & T contended that its business value was
15 something less than the amount of plaintiff's claim.

16 But R & T never asserted that the business was worth less than plaintiff's
17 claim. Because R & T was inexorably focused at trial (and on appeal) on its assertion
18 that only the equipment and inventory were transferred and that it paid reasonably
19 equivalent value for those assets, it never seriously addressed plaintiff's position--which
20 the trial court accepted--that Action's *business*, including intangibles, was transferred to R

1 & T.⁸ R & T also never asserted that the business operation was worth something less
2 than plaintiff's judgment against Action, even after the trial court indicated that it was
3 inclined to find that the entire business was transferred. In light of the limited focus of R
4 & T's arguments, the trial court had no reason to consider whether plaintiff's award
5 should be something less than the full amount of his judgment. Accordingly, the trial
6 court's finding as to the specific value of the business was, essentially, superfluous. Put
7 differently, R & T has not established that it was prejudiced by any error associated with
8 that finding. Consequently, R & T's fifth assignment of error presents no basis for
9 disturbing the trial court's judgment.

10 Affirmed.

⁸ Notably, even in its third assignment, in which R & T explicitly argues that the trial court imposed an excessive remedy under ORS 95.260 and 95.270, R & T does not argue that, assuming the trial court correctly found that the entire business operation was transferred, the amount of plaintiff's claim exceeded the value of the business.