

Court Finds No Privilege For Fraternal Execution

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§No, this wasn't a case of Cain and Abel or Romulus and Remus, but it did involve brothers and an execution of sorts. The protagonists in *Chen v. Berenjian*, 2019 Cal. App. LEXIS 275 were Chen and the brothers Berenjian (Shazad and Sharmad). According to the allegations, Shazad sold Chen some goods but failed to deliver, not once but twice. Chen sued after the first default, Chen sued and obtained a judgment against Shazad. Inexplicably, he purchased a second set of goods from Shazad with the same unsatisfactory result. Before he sued Shazad again, Shazad and Sharmad agreed that Sharmad would sue Shazad who would default. When Chen tried to enforce his second judgment, Sharmad levied on his judgment to defeat Chen's claim.

Chen then sued under the Uniform Voidable Transactions Act, Cal. Civ. Code § 3439 *et seq.* (fka Uniform Fraudulent Transfers Act, fka Uniform Fraudulent Conveyance Act). However, the trial court found that the transfers were protected under the litigation privilege. Cal. Civ. Code § 47(b). The Court of Appeal reversed finding:

"[T]he acts causing injury to Chen were the agreement to defraud him and the transfer of the speakers from Shazad to Sharmad by means of executing on the judgment. The acts of filing the sham complaint and agreeing to the stipulated judgment, though communicative in nature, were not the gravamen of Chen's fraudulent transfer cause of action."

The question remains, why did Chen continue to purchase goods from Shazad?

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