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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

HOWARD HERMAN,
Plaintiff and Respondent,

v.

AL ANOLIK,

Defendant;

**ALEXANDER ANOLIK, A
PROFESSIONAL LAW
CORPORATION,**

Objector and Appellant.

A131927

**(Sonoma County Super. Ct. Nos.
SCV-240423 and SCV-243304)**

Objector Alexander Anolik, a Professional Law Corporation (appellant), appeals an amended judgment in favor of plaintiff Howard Herman (respondent) adding appellant as a judgment debtor under an alter ego theory. Appellant contends the trial court improperly granted respondent's motion and denied appellant's request for a statement of decision. Appellant also contends respondent failed to notify appellant that he sought amendment of the judgment under Code of Civil Procedure section 187 in violation of appellant's right to due process.

BACKGROUND

Between 2007 and 2010, respondent and Alexander Anolik (Anolik) engaged in extensive litigation regarding the use and maintenance of an access road between their neighboring properties on Lakeville Road in Petaluma. In March 2007, respondent filed an action against Anolik alleging unfair competition, unjust enrichment, and nuisance. Respondent asserted that Anolik owns and operates a commercial horse stable and, in violation of local, state and federal law, erected residential and commercial units and a hay barn thereon.

Anolik filed a first amended cross-complaint against respondent alleging declaratory relief, equitable indemnity, unjust enrichment, trespass, unfair business practices, accounting, nuisance, waste, and intentional interference with economic advantage. Anolik alleged that he owns the Anolik Ranch on Lakeville Road and respondent owns the adjoining property known as the Riverside Equestrian Center.

In August 2008, respondent and plaintiff Burgundy Farms, doing business as Riverside Equestrian Center,¹ filed a related action against Anolik alleging slander and interference with economic relations. In December 2008, the two actions were consolidated.

In April 2010, following a jury trial on the consolidated actions, a judgment issued requiring Anolik to pay respondent \$151,980.75 in damages and attorney fees. Thereafter, Anolik and respondent reached a settlement agreement regarding the total

¹ Burgundy Farms is not a party to this appeal.

amount of attorney fees, costs, and interest for enforcement of the settlement agreement. In June, judgment was entered confirming the settlement.

Motion to Amend the Judgment

In December 2010, pursuant to Code of Civil Procedure section 473,² respondent filed a motion to amend the judgment against Anolik to add appellant, a law corporation, as a judgment debtor under an alter ego theory. Respondent argued that Anolik's representations that the funds of appellant were exempt from levy were disingenuous and devised to avoid payment of the judgment/settlement. Respondent also argued that Anolik improperly commingled personal and corporate funds in an attempt to protect his assets from levy. Respondent sought \$8,875 in attorney fees and costs incurred in attempting to secure payment for the judgment and settlement. The supporting declaration of respondent's counsel, Julie Rogers, stated the following:

After the settlement was confirmed, respondent received intermittent payments from Anolik from two Citibank accounts. Then, without explanation, the payments stopped. On December 8, 2010, Anolik's counsel informed Rogers that Anolik's payments had stopped because Anolik "does not have the money." Thereafter, respondent obtained a writ of execution and levied the two bank accounts from which he had received past payments for the Anolik judgment. Anolik then filed a claim of exemption, maintaining that the two bank accounts were not his personal accounts, but were appellant's corporate accounts. Rogers submitted documents establishing that Anolik and appellant shared the same Tiburon address and Anolik used appellant's letterhead for personal correspondence "unrelated to any pending legal matters in his corporate legal office."

The declaration of Jonathan Harriman submitted in opposition to respondent's motion to amend the judgment stated the following: Appellant is a professional law corporation focusing on the law of the travel industry. It has been registered with the California Secretary of State since 1973 and employs multiple attorneys and staff

² All undesignated section references are to the Code of Civil Procedure.

members. It uses letterhead, business cards and e-mail signatures which identify it as appellant. All of the shares of appellant are owned by its president, Anolik. For almost 40 years, appellant maintained a physical address in San Francisco separate from Anolik's residence. On October 1, 2010, appellant moved to Anolik's address in Tiburon. Appellant now occupies a building separate from Anolik's residence and pays monthly rent and utilities. During the litigation between respondent and Anolik, appellant acted as counsel to Anolik. Appellant was not a party to the action and did not engage in any of the activity alleged in respondent's complaints. Appellant has never owned or operated Anolik's personal ranch on Lakeville Road.

Harriman also declared the following: On April 23, 2010, Anolik paid the \$10,000 "defamation award" with a check from his insurance company, American Bankers Insurance Company (American Bankers). On April 15 he paid the first installment of \$7,000 under the settlement with a check from American Bankers. On May 15, he paid \$3,436.46 of the \$7,000 installment due with a check from American Bankers and \$3,563.54 with a check from appellant. On June 15, Anolik paid the \$7,000 due with a check from appellant. It is appellant's ordinary practice to make payments on behalf of clients who agree to fund and/or reimburse appellant for case-related costs. Anolik personally funded each of the payments from appellant. In July, Anolik did not have the resources to fund the payments to respondent so appellant did not issue any additional installment payments for the remaining judgment of \$120,980. Respondent took no action to enforce his judgment until late November, when he levied the bank accounts of Anolik and appellant. Respondent successfully obtained funds from Anolik's personal bank account; thereafter, appellant filed a notice of third party claim of ownership preventing the levy of its account.

In opposing the motion to amend, appellant argued, in reliance on *Postal Instant Press, Inc. v. Kaswa Corporation* (2008) 162 Cal.App.4th 1512 (*Postal Instant Press*), that reverse piercing of the corporate veil is not permitted in California. Appellant noted that respondent is attempting to amend the judgment to add appellant, a third party, as a judgment debtor in order to satisfy the outstanding debt of appellant's shareholder,

Anolik, an individual. At the hearing on the motion, appellant also argued respondent erroneously sought to amend the judgment pursuant to section 473 rather than section 187.³

In reply, Rogers's supplemental declaration stated that Anolik: (1) "owns at least two revenue-generating rental properties in Sausalito and/or Tiburon"; (2) owns a " 'personal get-away' in Petaluma from which he collects rent and horse boarding fees"; (3) owns a 10-bedroom, 6000-square-foot residence/commercial office in Tiburon being marketed for almost \$13 million; and (4) filed for bankruptcy on January 9, 2011. Respondent argued that *Postal Instant Press* is factually distinguishable from this case,⁴ some courts have rejected the holding in *Postal Instant Press*, there is an undisputed unity of interest between Anolik and appellant and an inequitable result will occur if the court did not permit reverse piercing.

Motion to Amend Hearing

At the outset of the hearing on the motion to amend the judgment, the court stated, "The court, I think, could clarify in a further ruling as to exactly how [*Postal Instant Press*] was used with respect to the court's interpretation here. But suffice it to say for purposes of this determination, the reverse piercing, . . . is appropriate under the circumstances of this case, this particular professional corporation, this particular defendant. It's . . . distinguishable from [*Postal Instant Press*] on the mere facts of the

³ Appellant did not raise this argument in his memorandum of points and authorities in opposition to respondent's motion to amend the judgment, but only at the hearing on that motion.

⁴ Respondent argued the following distinguishing facts: (1) Anolik is the sole shareholder and officer in the corporation; (2) appellant is the only party affected by the motion to amend and there has been no transfer of ownership; (3) respondent could not have been expected to secure his interest by obtaining a guaranty or seeking collateral in advance of obtaining the judgment against Anolik; (4) no known fraudulent conveyances occurred here; (5) respondent tried several methods of securing payment on his judgment against Anolik; and (6) respondent is unaware of any other creditors who might be harmed by reverse piercing.

cases themselves, especially in light of the individual nature of your client’s status versus the corporate status imposed [in *Postal Instant Press*].”

At the conclusion of the hearing, the court granted respondent’s motion to amend the judgment, making appellant liable for the judgment as an alter ego. The court also awarded respondent \$8,875 in attorney fees. In response to Harriman’s request for a statement of decision the court stated, “The order is going to be the only writing that the court will be providing at this point.” The court’s order granting respondent’s motion to amend the judgment stated, “[appellant] is liable for the judgment by [respondent] as alter ego.”

Five days later, appellant filed a written request for a written statement of decision (§ 632), including findings of fact and conclusions of law on the following issues: (1) the finding of a “unity of interest” between appellant and Anolik; (2) the finding that an “inequitable result” would occur if Anolik were solely responsible for payment of the judgment; (3) the inapplicability of *Postal Instant Press*; (4) how *Postal Instant Press* is factually distinguishable; (5) the denial of appellant’s request to stay the court’s decision based on the possibility of irreparable harm; (6) the decision that respondent is entitled to \$8,875 in attorney fees and costs; (7) the denial of appellant’s request to challenge the amount of fees and costs requested by respondent; and (8) the finding that respondent was entitled to amend the judgment to include appellant as a debtor under section [473] as opposed to section 187. No statement of decision issued. Appellant filed a timely notice of appeal.

DISCUSSION

Appellant contends the order granting respondent’s motion to amend the judgment to include appellant as an alter ego defendant is erroneous on the following four grounds and must be reversed: (1) the order violated the binding precedent set forth in *Postal Instant Press*; (2) respondent failed to present sufficient evidence establishing the “inequitable result” element necessary to pierce the corporate veil; (3) respondent improperly sought to amend the judgment under inapplicable statutes and failed to seek

to amend under section 187; and (4) the court erred in denying appellant's timely request for a statement of decision.

I. *Respondent's Failure to Seek to Amend the Judgment Under Section 187*

Appellant contends, and respondent concedes, that respondent erred in relying upon section 473,⁵ rather than section 187,⁶ in moving to amend the judgment. For the first time on appeal, appellant argues that respondent's failure to provide notice that he was seeking to amend under section 187 violated appellant's right to due process. Since appellant's due process claim is raised for the first time on appeal and is unsupported by any legal authority we need not consider it. (*Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 799; *Dabney v. Dabney* (2002) 104 Cal.App.4th 379, 384.)

Appellant's waiver notwithstanding, it has failed to establish any prejudice. Respondent's points and authorities memorandum in support of his motion to amend the judgment solely sought to amend the judgment to include appellant as an additional judgment debtor under an alter ego theory. Although respondent erroneously failed to cite section 187 as authority for the motion, he cited *Wollersheim v. Church of Scientology* (1999) 64 Cal.App.4th 1012, 1013-1015, which concerned a trial court's amendment of a judgment to add two additional judgment debtors on an alter ego theory. Appellant's written opposition to the motion addressed the motion on the merits; it did not address respondent's error in seeking to amend the judgment under section 473 instead of section 187. At the hearing on the motion, appellant argued that respondent's

⁵ In part, section 473 provides for the amendment of a pleading or proceeding based on mistake.

⁶ Section 187 provides: "When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code." Section 187 authorizes a trial court to amend a judgment to add additional judgment debtors on the ground they are the alter egos of the original judgment debtor. (*McClellan v. Northridge Park Townhome Owners Assn.* (2001) 89 Cal.App.4th 746, 752; *Hall, Goodhue, Haisley & Barker, Inc. v. Marconi Conf. Center Bd.* (1996) 41 Cal.App.4th 1551, 1554-1555.)

moving papers failed to cite or rely on section 187. However, appellant did not assert it was unaware that respondent sought to amend the judgment to add appellant under an alter ego theory. Consequently, no due process error is shown.

II. *The Court Erred in Failing to Issue a Statement of Decision*

Appellant contends the court erred in denying appellant's requests for a statement of decision. Respondent does not dispute this but notes that the case "may" be remanded for issuance of a statement of decision.⁷

Section 632 provides, in part: "In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision. . . ."

The general rule is that a trial court is not required to issue a statement of decision after granting or denying a motion, even if the motion involves extensive evidentiary hearings and the resulting order is appealable. (*Gruendl v. Oewel Partnership, Inc.* (1997) 55 Cal.App.4th 654, 660 (*Gruendl*), and cases cited therein.)

However, in *Gruendl*, this court determined that the general rule is not absolute, and declined to apply it to a trial court's decision granting a motion to amend a judgment to add judgment debtors on an alter ego theory. (*Gruendl, supra*, 55 Cal.App.4th at pp. 660-661.) We concluded that the trial court should have issued a statement of decision for the following reasons: First, the alter ego issue involved questions of fact that were "necessarily 'tried.'" (*Id.* at p. 661.) Second, the trial court's decision resulted in the

⁷ For the first time at oral argument, respondent argued that a statement of decision is not required here because substantial evidence supports the trial court's order. We will not consider arguments raised for the first time at oral argument. (*Palp, Inc. v. Williamsburg National Ins. Co.* (2011) 200 Cal.App.4th 282, 291, fn. 2.)

imposition of liability on the appellant for a substantial monetary judgment upon the trial of a case in which the appellant was not named or served as a defendant. Third, had the alter ego allegations been asserted in the respondent's complaint, the issue would have been tried and the trial court would have been obligated to set forth its findings on the alter ego issue in a statement of decision. Finally, the absence of factual findings impacted the ability of the proposed judgment debtors to challenge the trial court's decision on appeal. (*Ibid.*) *Gruendl* stated, "One of the primary purposes of a statement of decision is to facilitate appellate review. [Citation.]" (*Ibid.*)⁸ It also noted that the failure to issue a statement of decision in response to a timely request therefor is reversible error. (*Id.* at pp. 659-660.)

The reasons given in *Gruendl* for reversing the judgment and remanding the case for the trial court's preparation of a statement of decision apply here. Appellant's oral request for a statement of decision was made at the hearing on the motion to amend the judgment and prior to submission of the matter for decision. Under section 632, the request was timely.

In both its opening and reply briefs, appellant argues that the trial court's denial of its request for a statement of decision is in "direct conflict" with the holding in *Gruendl*, and compels reversal of the judgment. However, in its reply brief, appellant argues that remand for a statement of decision without ruling on the propriety of reverse piercing of the corporate veil "would serve no beneficial purpose" because "[r]egardless of the trial court's reasoning, outside reverse piercing of the corporate veil is strictly prohibited by *Postal Instant Press* without exception."

In *Postal Instant Press, supra*, 162 Cal.App.4th 1510, the Fourth District explained that traditionally the alter ego doctrine is applied to pierce the veil of a corporation so that a corporate shareholder may be held liable for the corporation's debts or conduct. Outside or third party reverse piercing occurs when a third party seeks to

⁸ In *Gruendl*, the trial court did not expressly rule on the question of whether the respondent was estopped from asserting an alter ego theory of liability against the appellant.

reach the assets of a corporation in order to satisfy the third party's claims against an individual shareholder. (*Id.* at p. 1518.) *Postal Instant Press* noted that the California Supreme Court has not weighed in on the issue of outside reverse piercing of the corporate veil. (*Ibid.*) In a case of first impression, the Fourth District agreed with the reasoning and analysis of cases from other jurisdictions which have rejected outside reverse piercing of the corporate veil, and found the reasoning in cases permitting the doctrine to be unpersuasive and flawed. (*Id.* at pp. 1519-1522.) *Postal Instant Press* emphasized four major points. First, although the traditional alter ego doctrine and reverse piercing have similar goals, they advance those goals by addressing very different concerns. (*Id.* at p. 1522.) "When a judgment debtor is a corporation, the judgment creditor cannot reach the assets of the individual shareholders due to limitations on liability imposed by corporate law. Traditional piercing of the corporate veil is justified as an equitable remedy when the shareholders have abused the corporate form to evade individual liability, circumvent a statute or accomplish a wrongful purpose. [Citations.]" (*Ibid.*) However, when the judgment debtor is the shareholder, "the corporate form is not being used to evade a shareholder's personal liability, because the shareholder did not incur the debt through the corporate guise and misuse that guise to escape personal liability for the debt." (*Ibid.*) Second, the judgment creditor "can enforce the judgment against the shareholder's assets, including shares in the corporation. Upon acquiring the shares, the judgment debtor will have whatever rights the shareholder had in the corporation." (*Ibid.*) Third, the goal of outside reverse piercing, i.e., to protect the judgment creditor from the shareholder's fraudulent transfer of assets to the corporation, can be accomplished by the less invasive, adequate, traditional theories of conversion, fraudulent conveyance of assets, and respondeat superior. (*Id.* at pp. 1523-1524.) Fourth, reverse piercing may harm innocent shareholders and creditors. The court concluded that existing judgment collection procedures offer judgment creditors adequate protection against attempts to shield assets from creditors through the improper or fraudulent transfer of such assets to a corporation. (*Id.* at p. 1524.)

Postal Instant Press held that “a third party creditor may not pierce the corporate veil to reach corporate assets to satisfy a shareholder’s personal liability.” (*Postal Instant Press, supra*, 162 Cal.App.4th at pp. 1512-1513.) The court alternatively held that, even if outside reverse piercing of the corporate veil was possible, the judgment creditor in that case failed to meet the requirements for its application. (*Id.* at p 1524.) The alternate holding, based on the merits of the reverse piercing doctrine and on the particular facts of *Postal Instant Press*, belie appellant’s assertion that outside reverse piercing “is strictly prohibited by *Postal Instant Press* without exception.”

In this case, at the hearing on the motion to amend the judgment, in response to appellant’s assertion that *Postal Instant Press* “is binding California precedent, which absolutely prohibits reverse piercing of the corporate veil,” the trial court stated, without sufficient explanation, that *Postal Instant Press* is factually distinguishable from the instant case. Under these circumstances, the matter must be reversed and remanded for the court’s issuance of a statement of decision.⁹ In the statement of decision, among other things, if the trial court determines that *Postal Instant Press* does not govern, it shall set out the reasons why.

DISPOSITION

The judgment is reversed. The matter is remanded with directions to the trial court to issue a statement of decision on the issues requested by appellant and thereupon to render a new judgment. The parties shall bear their own costs on appeal.

⁹ In light of our conclusion that appellant was not prejudiced by respondent’s moving to amend the judgment under section 473 instead of section 187, no statement of decision on that issue is necessary.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.