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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

DENNIS GREEN,

Plaintiff and Appellant,

v.

UNITED FOOTBALL LEAGUE LLC;

Defendant;

WILLIAM R. HAMBRECHT et al.,

Real Parties in Interest and
Respondents.

A145772

(San Francisco City & County
Super. Ct. No. CGC11514925)

Dennis Green was hired in 2009 to coach a football team in the newly-formed United Football League (UFL). He was paid the agreed compensation in 2009 and 2010. But he was not in 2011. So he pursued arbitration against the league and was awarded \$990,000. By the time the award was confirmed and judgment entered, the league was defunct. After Green was unable to collect, he moved to amend the judgment to add two of the league's founders, William Hambrecht and Paul Pelosi, as judgment debtors, claiming they were alter egos of the league. The trial court denied the motion. We affirm.

BACKGROUND

The UFL and Green's Tenure As Coach

The UFL was formed in 2009. Hambrecht was one of the original owners of the league and invested approximately \$40 million. Pelosi was also an initial investor and

owned approximately 2 percent of the league. Pelosi also co-owned Team San Francisco (Team SF), a UFL team based in California.¹

The UFL contracted with Green to serve as head coach of Team SF for the 2009 season. Green had served as a head coach in the National Football League (NFL) for 13 years, first with the Minnesota Vikings, then the Arizona Cardinals. The UFL hired Green as part of a strategy to hire high-profile coaches who had previously coached in the NFL, the belief being these coaches would bring immediate credibility to the new league.

After the 2009 season was completed, the UFL entered into a new two-year contract with Green to continue coaching Team SF. Green was to be paid \$1 million for the 2010 season and \$1.5 million for the 2011 season. The UFL completed its 2010 season and paid Green his full salary. However, the league cut short the 2011 season by two games, and Green claimed he received only a portion of his salary. The UFL shut down its operations the following year as it failed to attract sufficient public interest and generate sufficient revenues to remain viable.

Green's Lawsuit and the Arbitration

Green sued the UFL and Team SF, seeking to recover the allegedly unpaid portion of his salary. The trial court granted the UFL's and Team SF's petitions to compel arbitration.

William Mayer, the UFL commissioner, served as arbitrator pursuant to a provision in Green's contract stating the commissioner would serve as arbitrator of any disputes. Mayer ruled the UFL owed Green \$990,000. He did not issue an award against Team SF, finding it "did not directly negotiate with, pay, or it appears substantively interact with Mr. Green at all until the financial unraveling of the league."

The trial court confirmed the award and entered judgment against the UFL for \$990,000, plus \$590 in costs.

¹ Team SF was first known as the California Redwoods. In 2011, the team changed its name to the Sacramento Mountain Lions.

Motion to Amend the Judgment

After Green was unsuccessful in his efforts to collect on the judgment against the UFL, he filed a motion to add Hambrecht and Pelosi as judgment debtors on the ground they were alter egos of the league. Hambrecht and Pelosi opposed the motion.²

After full briefing and a hearing, the trial court denied Green’s motion, finding he had failed “to demonstrate a unity of interest between the UFL and the non-parties, misuse of the corporate form, that it would be equitable to grant this motion, or that the non-parties controlled the underlying litigation.”³

DISCUSSION

Standard of Review

Code of Civil Procedure section 187 authorizes a trial court to amend a judgment to add additional judgment debtors. (*Hall, Goodhue, Haisley & Barker, Inc. v. Marconi Conf. Center Bd.* (1996) 41 Cal.App.4th 1551, 1554–1555.) “ ‘The ability under section 187 to amend a judgment to add a defendant, thereby imposing liability on the new defendant without trial, requires *both* (1) that the new party be the alter ego of the old party *and* (2) that the new party had controlled the litigation, thereby having had the opportunity to litigate, in order to satisfy due process concerns.’ [Citation.]” (*Toho–Towa Co., Ltd. v. Morgan Creek Productions, Inc.* (2013) 217 Cal.App.4th 1096, 1106 (*Toho-Towa Co.*).

“The trial court’s decision to amend a judgment to add a judgment debtor is reviewed for an abuse of discretion. [Citations.] Factual findings necessary to the court’s

² We discuss the evidence in detail in the next section of this opinion.

³ Approximately one month after oral argument in this matter, it was reported by several media outlets that Green passed away. (See Perez, *Former Vikings, Cardinals coach Dennis Green dies at 67*, USA Today (July 22, 2016) <<http://www.usatoday.com/story/sports/nfl/2016/07/22/dennis-green-dead-minnesota-vikings-arizona-cardinals/87436784/>> [as of Aug. 17, 2016].) We have received no request to abate the appeal as moot, or to effect a substitution. Under these circumstances, we continue to entertain Green’s appeal and have maintained the original title of the case. (See *Konig v. Fair Employment & Housing Com.* (2002) 28 Cal.4th 743, 745, fn. 3.)

decision are reviewed to determine whether they are supported by substantial evidence. [Citations].” (*Carolina Casualty Insurance Company v. L.M. Ross Law Group, LLP* (2012) 212 Cal.App.4th 1181, 1189 (*Carolina Casualty*)).⁴

In large part, Green simply reargues the evidence on appeal, forgetting that the issue before us is not whether a reasonable trial court could have made a different finding on the basis of the evidence presented, but whether the trial court’s finding here of no alter ego liability is supported by any substantial evidence.⁵

Alter Ego Liability

“It is a fundamental rule applicable to cases invoking the alter ego doctrine that the conditions under which the corporate entity may be disregarded necessarily vary

⁴ Green contends the evidence is “undisputed” and therefore we should review the trial court’s order de novo, citing *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523 (*Sonora Diamond*). The issue in *Sonora* was whether personal jurisdiction was proper on three posited bases, one of which was alter ego. The Court of Appeal granted a writ petition overturning the trial court’s denial of a motion to quash, concluding, among other things, there was *no* evidence of abuse of the corporate form and *no* evidence of an inequitable result. Accordingly, jurisdiction could not be predicated on alter ego status. (*Id.* at pp. 536–540.) As we will discuss, the record here has some similarities on these points. Ultimately, however, an order on a motion to add judgment debtors as alter egos is reviewed for abuse of discretion (and where there are factual conflicts or different factual inferences can be drawn, the inquiry is whether any substantial evidence supports the findings). (*Carolina Casualty, supra*, 212 Cal.App.4th at p. 1189; *Toho–Towa Co., supra*, 217 Cal.App.4th at p. 1108; *Misik v. D’Arco* (2011) 197 Cal.App.4th 1065, 1072 (*Misik*)).

⁵ At this juncture, we are compelled to observe that Green’s “Legal Discussion” in his opening brief egregiously violates the Rules of Court requiring that all factual assertions be supported by citations to the record. (Cal. Rules of Court, rule 8.204(a)(1)(C).) Many factual assertions in this part of his brief are unsupported by any reference at all. Other factual assertions are followed by footnote references that cite not to the record, but to prior pages of Green’s “Statement of Facts.” These prior pages of his “Statement of Facts,” in turn, are loaded with factual assertions, and they are followed not by citations to the record, but again by footnote references. In these footnotes one finally finds a record citation. This “style” makes ferreting out Green’s record citations for any particular factual assertion difficult and time consuming. It does not comply with rule 8.204(a)(1)(C), and we urge counsel not to employ it in any future briefs filed in this court.

according to the circumstances of each case inasmuch as the doctrine is essentially an equitable one, and for that reason is particularly within the province of the trial court. [Citations.] The two basic requirements for the application of this doctrine are: (1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow.” (*Auer v. Frank* (1964) 227 Cal.App.2d 396, 407–408, italics omitted.)

“Ordinarily, a corporation is regarded as a legal entity, separate and distinct from its stockholders, officers and directors, with separate and distinct liabilities and obligations. [Citations.] A corporate identity may be disregarded—the ‘corporate veil’ pierced—where an abuse of the corporate privilege justifies holding the equitable ownership of a corporation liable for the actions of the corporation. [Citation.] Under the alter ego doctrine, then, when the corporate form is used to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, the courts will ignore the corporate entity and deem the corporation’s acts to be those of the persons or organizations actually controlling the corporation, in most instances the equitable owners. [Citations.] The alter ego doctrine prevents individuals or other corporations from misusing the corporate laws by the device of a sham corporate entity formed for the purpose of committing fraud or other misdeeds.” (*Sonora Diamond, supra*, 83 Cal.App.4th at p. 538.)

“Among the many factors to be considered in applying the doctrine are one individual’s ownership of all stock in a corporation; use of the same office or business location; commingling of funds and other assets of the individual and the corporation; an individual holding out that he is personally liable for debts of the corporation; identical directors and officers; failure to maintain minutes or adequate corporate records; disregard of corporate formalities; absence of corporate assets and inadequate capitalization; and the use of a corporation as a mere shell, instrumentality or conduit for the business of an individual. [Citation.] This list of factors is not exhaustive, and these enumerated factors may be considered with others under the particular circumstances of

each case. ‘ “No single factor is determinative, and instead a court must examine all the circumstances to determine whether to apply the doctrine.” ’ [Citation.]” (*Misik, supra*, 197 Cal.App.4th at p. 1073.)

Ultimately, “[i]t is the plaintiff’s burden to overcome the presumption of the separate existence of the corporate entity.” (*Mid-Century Insurance Co. v. Gardner* (1992) 9 Cal.App.4th 1205, 1212.) “ ‘[T]he matter is particularly within the province of the trial court. [Citations.] This is because the determination of whether a corporation is an alter ego of an individual is ordinarily a question of fact.’ . . . ‘[S]ince this determination is . . . not a question of law, the conclusion of the trier of fact will not be disturbed if it is supported by substantial evidence.’ ” (*Misik, supra*, 197 Cal.App.4th at pp. 1071–1072.)

Ample evidence supports the trial court’s finding that Hambrecht and Pelosi are not alter egos of the now defunct UFL.

First, the UFL was a functioning sports league and not merely a shell company for Hambrecht’s or Pelosi’s other ventures. The league completed two seasons in 2009 and 2010, and a good portion of a third season in 2011. It entered into its own contracts, maintained its own equipment and supplies, and had its own corporate office in Florida. It employed approximately 68 players and 12 assistant coaches per team, as well as an administrative staff of approximately 30 employees. It even secured a television broadcasts rights agreement with CBS Sports Network. This is in stark contrast with, for example, *Wells Fargo Bank N.A. v. Weinberg* (2014) 227 Cal.App.4th 1, 8–9, which Green cites, in which the Court of Appeal affirmed a finding of alter ego liability where an attorney’s law corporation was a “mere shell,” formalities were “completely lacking,” and on dissolution he paid all the monies to himself and his family.

Second, the UFL was not bereft of capitalization. The type of undercapitalization supporting an alter ego finding occurs when “ ‘the capital is illusory or trifling compared with the business to be done and the risks of loss.’ ” (*Automotriz etc. De California v. Resnick* (1957) 47 Cal.2d 792, 797.) The UFL raised tens of millions of dollars in capital. Hambrecht made loan advances in excess of \$40 million, while Pelosi invested

more than \$3.5 million. The league's funding was sufficient enough for it to play two full seasons and a portion of a third.

While Green emphasizes the amounts Hambrecht and Pelosi poured into the UFL in an effort to make it a viable league, this weighs in favor of capitalization. In fact, Green seemingly tries to have it both ways as to Hambrecht's and Pelosi's economic contributions. On the one hand, he suggests the significant amounts they contributed made them the UFL's treasury, warranting alter ego status. On the other, he complains they did not supply enough financing, leaving the league undercapitalized, and that warrants alter ego liability. In any case, contributing financial resources to a business venture, even substantial resources, without more, does not support imposition of alter ego liability. (See *Sonora Diamond*, *supra*, 83 Cal.App.4th at p. 539 [“misconduct or injustice” warranting alter ego finding “was not proved by the many advances made by Diamond for the benefit of Sonora Mining because none were shown to have been made with a fraudulent or deceptive intent”].)

Third, the UFL sufficiently followed corporate formalities. True, Hambrecht and Pelosi admitted the league's record keeping practices were not ideal. For example, there was no documentation of their investments in the UFL. And while Hambrecht knew the league had a constitution, he did not know if it was finalized or where it could be found. In other respects, however, the UFL followed business formalities. It had its own bank account and separate headquarters in Florida. The league held regular meetings at which Mayer, the former commissioner, took the role as chairman. And, although Hambrecht testified he was unsure of the status of the league's constitution, the league's original commissioner, Michael Huyghue, testified the league was governed by both a constitution and set of bylaws.

Fourth, Hambrecht and Pelosi did not commingle personal funds with UFL funds, or otherwise divert UFL funds for their personal use. The UFL maintained its own bank account, and Green has cited no evidence showing Pelosi or Hambrecht used the same account to store personal funds. The only purported evidence of commingling Green points to are two withdrawals he claims Hambrecht made from the UFL's account

totaling \$82,500. Hambrecht testified, however, that he did not recall receiving any of the money, and Green has cited no evidence showing the withdrawals were made for Hambrecht's personal use instead of UFL-related business. As to Pelosi, Green has cited no evidence showing Pelosi improperly mixed personal funds with those of the UFL. Rather, Pelosi submitted evidence showing he and Team SF maintained bank accounts separate from the UFL's, and that he had no authority to withdraw funds from the UFL's account. Thus, the record in this case is unlike that in *Schoenberg v. Benner* (1967) 251 Cal.App.2d 154, 165–168, which Green cites, in which the appellate court affirmed a finding of alter ego liability where two individuals, husband and wife, owned all stock, the business was undercapitalized, and one spouse had “complete control of the board of directors and of the corporation's business, assets and finances” and used the corporate funds “as if they were his own” personal assets.

Green puts much emphasis on Hambrecht's assurances the UFL would pay its debts and the fact he personally guaranteed certain debts, including \$800,000 owed to another head coach.⁶ It is true that one factor weighing in favor of an alter ego determination is an individual's representation that he or she will be responsible for a company's debts. (*Misik, supra*, 197 Cal.App.4th at p. 1073). But no one factor is determinative, and the trial court could reasonably determine this single consideration did not justify treating Hambrecht as an alter ego given that other factors weighed in favor of maintaining the UFL's separate existence and against an alter ego determination. (See *ibid.* [no single factor determinative in alter ego analysis].) Furthermore, that Hambrecht

⁶ Green argues Hambrecht was the “ultimate guarantor of UFL obligations.” The evidence, however, does not show Hambrecht was a guarantor of all league debts. Rather, the evidence shows all the league's owners, including Hambrecht, agreed in 2011 to invest enough capital to meet league expenses for that year, after the commissioner concluded revenue, alone, would not be sufficient. When the other owners could not collectively contribute enough to meet an obligation, Hambrecht would cover the shortfall. As for Green's contention that Hambrecht personally guaranteed the salary of another coach, it is unclear from the record whether that salary was owed by the UFL or by one of the team's Hambrecht owned. It is also unknown whether the other coach simply negotiated a better deal than Green and insisted on a personal guarantee.

did what he could to see that the UFL paid its debts does not establish the kind of abuse of the corporate form alter ego liability is meant to address. (See *Sonora Diamond*, *supra*, 83 Cal.App.4th at p. 539.)

Green similarly argues Pelosi paid many of Team SF's debts out of his personal funds. To begin with, these arguments have no bearing on whether Pelosi is an alter ego of the UFL. The UFL and Team SF are separate legal entities, and Green did not obtain a judgment against Team SF. Nor has he made any argument that Team SF and the UFL are alter egos of one another. In any case, that Pelosi contributed funds to Team SF to help as much he could with the debts, again, does not establish the kind of abuse of the corporate form which alter ego liability is meant to address. (See *Sonora Diamond*, *supra*, 83 Cal.App.4th at p. 539.)

Green claims "equitable factors demand that [he] have a remedy for his judgment against the UFL, when both Pelosi and Hambrecht played major roles in recruiting Green to the league, assuring him of his continued compensation, and then declining to fund the UFL's debt to him." The evidence, however, does not support his sweeping characterization of Hambrecht's and Pelosi's conduct. Hambrecht declared he "never discussed [Green's] contracts with him" and "Green never asked me to guarantee payment of his UFL salaries." Similarly, Pelosi averred he was not a party or signatory to Green's contracts with the league; instead, they were negotiated and entered into by Huyghue, the original commissioner. Pelosi also denied personally guaranteeing Green's salary.

In any case, "[t]he alter ego doctrine does not guard every unsatisfied creditor of a corporation but instead affords protection where some conduct amounting to bad faith makes it inequitable for the corporate owner to hide behind the corporate form. Difficulty in enforcing a judgment or collecting a debt does not satisfy this standard." (*Sonora Diamond*, *supra*, 83 Cal.App.4th at p. 539.) Thus, "it is not sufficient to merely show that a creditor will remain unsatisfied if the corporate veil is not pierced, and thus set up such an unhappy circumstance as proof of an 'inequitable result.' In almost every instance where a plaintiff has attempted to invoke the doctrine he is an unsatisfied

creditor.” (*Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 842.) In final analysis, that is all Green has shown here with respect to inequity—that he is an unsatisfied creditor of a business venture that ultimately did not work out, despite very substantial investment by the owners. That is not enough. (*Sonora Diamond, supra*, 83 Cal.App.4th at p. 539.)

This case is readily distinguishable from *Toho-Towa Co.*, on which Green relies. In that case, the Court of Appeal affirmed an order allowing the plaintiff to add a third corporation to a judgment obtained against two other corporations owned by the same individual. (*Toho-Towa Co., supra*, 217 Cal.App.4th at p. 1100.) The three entities were all owned by the same person, who was the sole decision maker for each; the three entities exploited the same assets and used the same employees; and money owed to one of the entities was transferred directly to another entity’s lender. (*Id.* at p. 1109.) The appellate court concluded these facts “support[] the trial court’s conclusion that the [three] entities, though formed as separate corporations, were operated with integrated resources in pursuit of a single business purpose,” and that the entity added as a judgment debtor “so dominated the finances, policies and practices” of the other two entities that they had “no separate ‘mind, will or existence’ of their own, but were merely conduits through which [the third entity] conducted its business.” (*Ibid.*) There is no evidence showing the UFL and either Hambrecht or Pelosi possessed the same type of singular identity. Moreover, here the question is whether the trial court abused its discretion in finding no alter ego status (and whether its underlying findings are supported by any substantial evidence).

Zoran Corp. v. Chen (2010) 185 Cal.App.4th 799, on which Green also relies, is also distinguishable. In that case, the Court of Appeal reversed a summary judgment, concluding the plaintiff company had raised a triable issue where the evidence revealed “a businessman with heavy influence on the decisions made by executives of several companies,” who made promises to “use his influence” to see that the plaintiff was paid from the companies, and who “permitted the diversion of money” away from the plaintiff to himself. (*Id.* at p. 815.) The appellate court was careful to point out alter ego liability

was a matter for the trier of fact, and it was not for the appellate court to decide whether the defendant's influence on or control over the various companies compelled the inference " "the separate personalities of the corporation and the individual no longer exist[ed]." ' ' (Id. at p. 814, quoting *Mesler v. Bragg Managemehnt Co.* (1985) 39 Cal.3d 290, 300.) Here, in contrast, the trial court was the trier of fact, and the court found alter ego liability was not warranted.

In sum, the trial court's findings underlying its conclusion that alter ego liability is not warranted are supported by substantial evidence, and Green has not otherwise shown the court's decision amounted to an abuse of discretion.

Having so concluded, we need not, and do not, address whether Hambrecht and Pelosi also controlled the arbitration proceeding that led to the judgment against the UFL. (See *Toho–Towa Co.*, *supra*, 217 Cal.App.4th at p. 1106 [party seeking to amend judgment must show both alter ego status and control of litigation leading to the judgment].)

DISPOSITION

The trial court's order denying Green's motion to impose alter ego liability and amend the judgment to add judgment debtors is affirmed. Respondents to recover costs on appeal.

Banke, J.

We concur:

Humes, P. J.

Margulies, J.

A145772, *Green v. United Football League*