

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PHILIP DODGE et al.,

Plaintiffs and Respondents,

v.

DOLLARSTORE, INC., et al.,

Defendants and Appellants.

G044377

(Super. Ct. No. 30-2008-00102967)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David T. McEachen, Judge. Affirmed in part, reversed in part, and remanded with directions.

Haight Brown & Bonesteel and Rita Gunasekaran for Defendants and Appellants.

The Chugh Firm and Paul S. Saghera for Plaintiffs and Respondents.

* * *

Defendants¹ appeal from a judgment awarding over \$620,000 to plaintiffs.² They contend the court erred by finding unconscionable the “Loan and Security Agreement[s]” under which plaintiffs would lend money to defendant Dollarstore, Inc. (Dollarstore), but which limited their remedies upon default to recovering Dollarstore stock. Defendants further contend the court wrongly found the individual defendants were the alter egos of the corporate defendants, which “operated as a single unit.”

But substantial evidence showed defendants neither repaid the loans nor issued Dollarstore shares to plaintiffs. Thus, even if the limitation of remedies provisions in the “unconscionable” agreements were enforced, defendants would still be liable to plaintiffs for the awarded damages. And substantial evidence showed defendant Rakesh Mehta was the alter ego of the corporate defendants.

On the other hand, the evidence was insufficient to show defendant Reeta Mehta was the alter ego of any corporate defendant. We reverse the judgment only as to Reeta Mehta, and affirm as to the other defendants.

FACTS

Defendant Rakesh Mehta Introduces Plaintiffs Dodge and Sood to Dollarstore

Rakesh “Rex” Mehta (Mehta) founded Dollarstore, Inc. (Dollarstore), and other entities to sell discount merchandise, first online and later through brick-and-mortar locations. Mehta sought to franchise the Dollarstore business.

¹ Defendants are Rakesh Mehta; Dollarstore; Dollarstore Corp.; Dollarstore International, Inc.; Dollarstore.com, Inc.; My Dollarstore, Inc.; My Dollarstore Franchising, Inc.; and Reeta Mehta. The appeal of one original defendant, Rishi Mehta, was dismissed pursuant to a settlement with plaintiffs.

² Plaintiffs are Philip Dodge, Raghav Sood, Nelson Brewart, Martha Brewart, Jeffrey Wilhelm, Susan Wilhelm, and Sukdev Sharma. One original plaintiff, Super Dollarstore, Inc., dismissed its claims before trial.

In July 2001, Mehta negotiated a business transaction with plaintiff Philip Dodge. Dodge gave him \$100,000. In return, Dodge received the option of (1) repayment of the money plus interest in the form of stock, or (2) an interest in Dollarstore's Southern California "Master Franchise." On the same day, Dollarstore executed a promissory note in favor of Dodge payable on September 10, 2001. Mehta told Dodge the state had approved his right to franchise Dollarstore in California, but he "was just waiting for the final documents."

Around the same time, Mehta also negotiated a business transaction with plaintiff Raghav Sood. Sood gave \$50,000 to Mehta to purchase a 20 percent interest in the Dollarstore master franchise for Los Angeles, Orange, and San Diego Counties. Mehta introduced Sood to Dodge, telling them they would be involved in the franchise together. Sood and Dodge began "trying to develop a master franchise while [they] were waiting for the [franchise] agreement to come in."

Dodge did not receive any repayment, stock, or franchise rights on September 10, 2001. Dodge sent an e-mail to Mehta offering "to extend the Note for a period of three weeks (until September 30, 2001). By this time, Dollarstore should be licensed in California, thereby allowing us to negotiate mutually agreeable terms for a Master Franchise in Southern California." But "[u]ntil the Master Franchise agreement is mutually approved and executed between the parties," he stated, "I wish to retain the right to call the \$100,000 loan, plus the interest (stock) we have agreed to." Mehta agreed to "extend the note to Sep[tember] 30th." He assured Dodge: "In the meantime I have spoken to our lawyer Mr. Don Drysdale and he has informed me that Unit franchise agreement for California has been approved and next week we will execute that so that we can go ahead with LLC and lease signing."

Meanwhile, Mehta convinced Dodge and Sood to open "a showroom store so that subfranchisees or franchisees could come and actually witness" an operating Dollarstore business. Mehta "promised that he knew for an absolute fact how to make a

store profitable. He had the right technology, proprietary technology, point-of-sale systems which [Dodge and Sood] had to purchase through his company.” Dollarstore found a “phenomenal” location in Stanton, which Dodge leased in late September 2001. As a “franchise fee,” Dodge and Sood together gave \$30,000 to Mehta. The store did not open until April 2002, and closed in February 2003 without ever being profitable.

Meanwhile, by November 2001, Dodge became convinced he was not going to receive any master franchise rights. Dodge sent a letter to Dollarstore, stating he was ““sorry to learn that the company has been unable to obtain the necessary approvals to sell franchises in the State of California.”” He demanded repayment of his ““\$100,000 note.”” The same month, Sood sent a letter demanding “an immediate refund on the \$50,000.00 investment.” Mehta responded to the repayment demands with additional assurances.

Dollarstore Issues the Notes; Plaintiffs and Dollarstore Execute the Loan Agreements

Mehta told Dodge that Dollarstore’s corporate lawyers at Morrison & Foerster would draft a promissory note to secure the \$180,000 Dodge and Sood had given to it. Dodge had limited direct contact with the lawyers preparing the documents because he was not a Dollarstore officer.³ Dodge thought “so many documents” were necessary

³ At trial, defendants offered some e-mails between Dodge and Morrison and Foerster. In one dated May 9, 2002, a firm attorney described to Dodge, Sood, and Mehta “the different structures we are considering and the issues associated with doing the financing/bridge with one structure as opposed to another.” In another dated May 28, 2002, Dodge gave the firm a list of “convertible loan investors,” describing the other plaintiffs as “investors [who] have already sent in their funds” In another e-mail dated June 25, 2002, Dodge reported Mehta “has received fully executed copies of the Convertible Loan Agreements executed by the three original parties” and promised to send the firm an “executed Option Agreement.” Dodge also described an “excellent meeting today with our new partners in Texas” and asserted “[w]ith sufficient funding, Dollarstore will have a very promising future,” but also urged the law firm to “influence” a potential investor “to invest in the bridge loan. The company desperately needs funding to move forward.”

“because the company was unable to issue shares of stock because of previous litigation or inquiries from the Department of Corporations,” and so Dollarstore’s lawyers “had to devise all types of strange — and in [his] mind — unique ways of . . . providing this type of a bridge document.”

Dollarstore executed a “**CONVERTIBLE PROMISSORY NOTE**” in favor of Dodge and Sood dated March 20, 2002. It provided: “FOR VALUE RECEIVED, Dollarstore, Inc., a California corporation (the ‘Borrower’), hereby promises to pay to the order of Philip Dodge and Raghav Sood (the ‘Lender’), the principal sum of \$180,000 and 00/100 (\$180,000.00) (the ‘Loan’) together with interest thereon from the date of this Note on the unpaid principal balance, each due and payable on the dates and in the manner set forth below.” It further provided: “The rights of Lender set forth herein are subject to the terms and conditions contained in the Loan and Security Agreement.”

The note set forth repayment conditions. It provided: “The Borrower promises to pay interest on the outstanding principal amount hereof from the date hereof until payment in full, which interest shall be payable at the rate of 9.0% per annum” But it further provided: “The outstanding principal amount of the Loan shall be due and payable in full on March 20, 2005 . . . (the ‘Maturity Date’), unless this Note has been converted in accordance with Paragraph 5 below.”

Paragraph No. 5 of the note was entitled “Conversion.” It provided: “The outstanding principal balance and unpaid interest on this Note shall automatically convert into, (i) that series of preferred stock or other equity security sold in the Borrower’s next equity financing (or series of related equity financings) in which it raises gross proceeds of at least \$1 million (a ‘Qualified Financing’) at a conversion price equal to the price per share paid by the investors in the Qualified Financing; or (ii) shares of Borrower’s common stock (the ‘Common Stock’), immediately prior to the closing of, and conditioned upon the closing of, a merger of the Borrower . . . or a sale of substantially

all of the assets of the Borrower (a ‘Change of Control Transaction’) or the first underwritten public offering of shares of the Common Stock (the ‘Initial Public Offering’), at a conversion price equal to the then-applicable price per share of the Common Stock in such transaction, whichever event occurs first (a ‘Mandatory Conversion Event’).”

Also on March 20, 2002, Dodge, Sood, and Dollarstore executed a “LOAN AND SECURITY AGREEMENT.” The agreement identified Dodge and Sood as “**Lender**,” Dodge as “agent for Lender,” and Dollarstore as “**Borrower**.” It provided: “Lender wishes to provide a secured convertible bridge loan of one hundred eighty thousand dollars . . . to Borrower on the terms and conditions contained herein (the ‘**Loan**’).” It further provided: “For the Loan, Borrower will issue a convertible promissory note in favor of Lender . . . and immediately prior to the occurrence of a Mandatory Conversion Event (as defined in the Note), Borrower will issue a warrant to Lender”

The agreement contained a section entitled “Remedies; Limitations.” It provided: “Lender’s sole remedy for a default by Borrower hereunder or under the Note shall be the right to convert the outstanding principal balance under the Note into shares of Borrower’s common stock . . . at a conversion price of \$0.25 per share.”

Dollarstore executed similar “**CONVERTIBLE PROMISSORY NOTES**” in favor of the other plaintiffs. It executed a note in favor of plaintiffs Jeffrey and Susan Wilhelm for \$50,000, plaintiffs Nelson and Martha Brewart for \$75,000, and plaintiff Sharma for \$50,000.⁴ Each plaintiff also entered into a similar “LOAN AND SECURITY AGREEMENT” with Dollarstore.

⁴ At trial, defendants offered a second set of documents they contended were the operative promissory notes. Each was dated June 11, 2002, and entitled “**CONVERTIBLE NOTE**.” They provided, “The outstanding principal balance and unpaid interest on this Note shall automatically convert into, (i) Warrant. Borrower shall issue the Warrant . . . which will entitle Lender to purchase that number of shares

Dodge, Dollarstore, and the other plaintiffs (except Sood) also executed an agency agreement appointing Dodge as the other plaintiffs' agent under the notes and the loan and security agreements. Dodge had no idea what purpose it served, other than making him the "single point of contact" between Dollarstore and the other plaintiffs as he "was working to try to raise additional funds."

Dollarstore's Breach and the Trial

Some of the plaintiffs increased their involvement with Dollarstore. Dodge travelled internationally searching for investors. Sood recruited franchisees in other states. The two men sometimes held themselves out as Dollarstore officers, at Mehta's urging. Mr. Wilhelm worked at the Stanton store; Mrs. Wilhelm did some of its accounting. None of them were paid for their work. All stopped working for Dollarstore by September 2002.

The March 2005 maturity date came and went without Dollarstore repaying plaintiffs. Dodge complained to Mehta, who responded "Dollarstore and My Dollarstore were basically shell companies at this point. And if [Dodge] wanted the companies, [he] could have them." Dollarstore never gave any master franchise rights to Dodge or Sood — it could not obtain approval from the State of California to sell those rights. Dollarstore never repaid plaintiffs or gave them any stock or warrants.

Plaintiffs sued defendants in February 2008. The court conducted a bench trial in July 2010 on causes of action for breach of contract, fraud, negligent misrepresentation, money had and received, and money lent. Mehta testified he issued

Common Stock equal to 80% of the outstanding principal amount of the Note divided by the lesser of (i) \$0.25 or (ii) the price per share (of Common Stock or preferred stock, as the case may be) established by such Mandatory Conversion Event. The exercise price of the Warrant will be equal to the lesser of (a) \$0.25 or (b) the price per share (of Common Stock or preferred stock, as the case may be) established by such Mandatory Conversion Event." It is unclear whether defendants still stand by these alternative notes on appeal.

warrants to purchase Dollarstore stock to all of the plaintiffs in June 2005. He produced copies of the purported warrants, which provided plaintiffs could purchase Dollarstore stock at \$0.10 per share — a rate Mehta claimed Dodge had negotiated.

The court found for plaintiffs on all causes of action, entering judgment “for all Plaintiffs’ against all Defendants, jointly and severally.” It generally found Mehta “was not a credible witness.” It also found the individual defendants, including Mehta, “were the alter egos of the Dollarstore entities which operated as a single unit.” It awarded compensatory damages collectively of \$355,000 and just over \$265,000 in prejudgment interest.⁵

DISCUSSION

Substantial Evidence Shows Dollarstore is Liable to Plaintiffs for the Awarded Damages

Defendants contend the court should have enforced the loan agreements. Specifically, they assert plaintiffs’ remedy for Dollarstore’s defaults on the notes was limited to converting the unpaid debts into Dollarstore stock. Defendants sum up their position in their reply brief: “The record establishes that plaintiffs obtained all that they bargained for, which is a right to receive Dollarstore shares. That right has never been denied.”

Defendants reason step-by-step. The March 2002 promissory notes are not negotiable instruments payable upon demand, contrary to the court’s finding. Rather, each note is conditional because each provides it is “subject to the terms and conditions

⁵ Although the judgment purports to award \$355,000 without segregating among the plaintiffs, the lengthy statement of decision part of the judgment makes clear what damages each plaintiff recovers: “(1) Philip Dodge — \$100,000 [¶] (2) Raghav Sood — \$50,000 [¶] (3) Philip Dodge & Raghav Sood — \$30,000 [¶] (4) Jeff Wilhelm and Susan Wilhelm — \$50,000 [¶] (5) Nelson Brewart and Martha Brewart — \$75,000 [¶] (6) Sukhdev Sharma — \$50,000 [¶] TOTAL = \$355,000.”

contained in the Loan and Security Agreement.” Together, the notes and the loan agreements set forth the parties’ entire deal. Any promises Mehta made to any plaintiffs before March 2002 were superseded by the notes and the loan agreements, which effected a novation. And any representations Mehta made to the plaintiffs outside of the notes and loan agreements are irrelevant parol evidence. The loan agreements are enforceable, not unconscionable as the court found, because plaintiffs were sophisticated investors who used their substantial bargaining power to negotiate unambiguous terms. The loan agreements are clear: if Dollarstore failed to pay off the debt secured by the notes, plaintiffs’ only remedy is “to convert the outstanding principal balance under the Note into shares of [Dollarstore’s] common stock . . . at a conversion price of \$0.25 per share.”

At first blush, defendants seem secure at each step. The March 2002 promissory notes appear to be “subject to or governed by” the loan agreements. (Cal. U. Com. Code, § 3106, subd. (a)(2) [defining conditional promise to pay]; see also *id.*, subd. (a)(3) [instrument not negotiable when “rights or obligations with respect to the promise [to pay] are stated in another writing”].) And the loan agreements, even if one-sided, avoid the hallmarks of procedural unconscionability.⁶ They are not the typical standardized contracts of adhesion, and they draw attention to the limitations on plaintiffs’ remedies with the unsurprising headings, “Remedies; Limitations.” Because the documents govern preexisting loans, one might conclude the parties substituted new agreements with the intent of extinguishing the old ones. (See Civ. Code, § 1531, subd. (1) [defining novation].) Even without an integration clause, the notes and loan agreements seem to represent the parties’ final, entire agreement. (See Code Civ. Proc.,

⁶ “[A] conclusion that a contract contains no element of procedural unconscionability is tantamount to saying that, no matter how one-sided the contract terms, a court will not disturb the contract because of its confidence that the contract was negotiated or chosen freely, that the party subject to a seemingly one-sided term is presumed to have obtained some advantage from conceding the term or that, if one party negotiated poorly, it is not the court’s place to rectify these kinds of errors or asymmetries.” (*Gentry v. Superior Court* (2007) 42 Cal.4th 443, 470.)

§ 1856, subd. (a).) And Mehta’s misrepresentations to the plaintiffs about the terms of the deal are classic inadmissible parol evidence. (*Ibid.*; see also *Banco Do Brasil, S.A. v. Latian, Inc.* (1991) 234 Cal.App.3d 973, 1009 [party cannot offer “parol evidence . . . ‘to show a fraudulent promise directly at variance with the terms of the written agreement’”].)

But we need not analyze the steps of defendant’s reasoning in any depth. We do not reach their merit at all. They are ultimately immaterial. Even if each of defendants’ steps is sound, they simply do not lead where defendants want to go.

Under defendants’ own reading of the documents, Dollarstore is still liable to plaintiffs. Defendants’ concede plaintiffs were entitled to Dollarstore shares upon its failure to pay off the notes — “That right has never been denied.”⁷ Mehta testified the promissory notes “were converted.” He claimed he wrote to Dodge about the warrants, and handed them to him.

But substantial evidence supports the court’s express finding Dollarstore gave the plaintiffs “no shares, no options and no warrants.” Plaintiffs denied receiving Mehta’s letter, any shares, or any warrants. Dodge testified “[t]he issue of warrants never came up” in his “approximately a dozen discussions and meetings with Rex Mehta between 2002 and March 2005.” Mehta never mentioned any warrants “until this lawsuit.” Dodge stated he did not receive Mehta’s letter — “[t]his document, just like a lot of other lies and deceits from Mr. Mehta, is a false document that does not — that never existed and was created subsequent to this lawsuit being prosecuted.” The court was entitled to believe plaintiffs’ testimony and expressly find Mehta “was not a credible

⁷ The documents, however convoluted, bear this out. The notes provided they converted into the right to purchase Dollarstore shares only upon a “Mandatory Conversion Event” — basically, an acquisition or initial public offering. No such event occurred. And so the notes remained promises to repay. But Dollarstore’s failure to repay upon maturity was a breach triggering the loan agreement’s limited remedy — conversion of the debt into Dollarstore stock.

witness.” “Credibility is an issue of fact for the trier of fact to resolve [citation], and the testimony of a single witness, even a party, is sufficient to provide substantial evidence to support a factual finding [citation].” (*Fariba v. Dealer Services Corp.* (2009) 178 Cal.App.4th 156, 170-171.)

Because plaintiffs never received the Dollarstore warrants or shares that defendants concede were due, plaintiffs were entitled to the return of their collective \$355,000. These damages can be viewed as expectation damages on their contract cause of action, representing an unrebutted prima facie showing of the expected value of their Dollarstore shares. Or the damages can be viewed as restitution on their common counts.⁸ It is too late for defendants to challenge the measure of plaintiffs’ damages (or the award of prejudgment interest). They have not raised these issues at trial or on appeal, and we decline to reach them. “It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point . . . we treat the point as waived.” (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) As shown above, the record allows us to affirm both liability and damages — those points that defendants have raised simply do not compel reversal.

⁸ “““A common count is proper whenever the plaintiff claims a sum of money due, either as an indebtedness in a sum certain, or for the reasonable value of services, goods, etc., furnished. It makes no difference in such a case that the proof shows the original transaction to be an express contract, a contract implied in fact, or a quasi-contract.” [Citation.]’ [Citation.] A claim for money had and received can be based upon . . . performance by one party of an express contract.” (*Utility Audit Co., Inc. v. City of Los Angeles* (2003) 112 Cal.App.4th 950, 958.) ““In an action for money had and received it is generally necessary for the plaintiff to prove only his right to the money and the defendant’s possession; and any facts, circumstances or dealings from which it appears that the defendant has in his hands money of the plaintiff which he ought in justice and conscience to pay over to him, are competent evidence to support the action.”” (*County of Santa Cruz v. McLeod* (1961) 189 Cal.App.2d 222, 228-229.)

Substantial Evidence Supports the Alter Ego Finding, Except as to Reeta Mehta

The court found “[t]he evidence at trial was overwhelming that Dollarstore, Inc., Dollarstore International, Inc., My Dollarstore, Inc. and My Dollarstore Franchising, Inc. . . . were all operating as a single unit. In other words, the separateness required to be maintained for the corporate governance of the collective entities was nonexistent.” It concluded “the individual defendants . . . were the alter egos of the Dollarstore entities which operated as a single unit.”⁹

“The alter ego doctrine arises when a plaintiff comes into court claiming that an opposing party is using the corporate form unjustly and in derogation of the plaintiff’s interests. [Citation.] In certain circumstances the court will disregard the corporate entity and will hold the individual shareholders liable for the actions of the corporation: ‘As the separate personality of the corporation is a statutory privilege, it must be used for legitimate business purposes and must not be perverted. When it is abused it will be disregarded’” (*Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 300 (*Mesler*)). “There is no litmus test to determine when the corporate veil will be pierced; rather the result will depend on the circumstances of each particular case. There are, nevertheless, two general requirements: ‘(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.’” (*Ibid.*)

Because the alter ego doctrine is inherently case-specific, any list of applicable factors is necessarily non-exhaustive. Factors may include “the disregard of legal formalities and the failure to maintain arm’s length relationships among related entities,” “the failure to maintain minutes or adequate corporate records,” “the confusion

⁹ The judgment erroneously names the individual defendants as “Rex Mehta, Rakesh Mehta, and Rishi Mehta.” But “Rex” is just Rakesh Mehta’s alias. Reeta Mehta is the third individual defendant.

of the records of the separate entities,” the “failure to segregate funds of the separate entities,” “[c]ommingling of funds and other assets,” “the total absence of corporate assets, and undercapitalization,” the failure “to issue stock,” “sole ownership of all of the stock in a corporation by one individual or the members of a family,” overlapping officers and directors, “the use of the same office or business location,” “the employment of the same employees and/or attorney,” “the unauthorized diversion of corporate funds or assets to other than corporate uses,” “the use of a corporation as a mere shell, instrumentality or conduit,” and “the diversion of assets from a corporation by or to a stockholder.” (*Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 838–840 (*Associated Vendors*).

“The law as to whether courts will pierce the corporate veil is easy to state but difficult to apply.’ [Citation.] Because it is founded on equitable principles, application of the alter ego ‘is not made to depend upon prior decisions involving factual situations which appear to be similar. . . . ‘It is the general rule that the conditions under which a corporate entity may be disregarded vary according to the circumstances of each case.’” [Citations.] Whether the evidence has established that the corporate veil should be ignored is primarily a question of fact which should not be disturbed when supported by substantial evidence.” (*Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220, 1248 (*Las Palmas*).

Substantial evidence showed Dollarstore, Dollarstore International, Inc., and My Dollarstore, Inc., disregarded corporate formalities that would indicate true separation. In deposition testimony admitted at trial, Mehta testified Dollarstore, Inc., had no general ledger, corporate minutes, evidence of shareholder meetings, shareholder ledger, shareholder resolutions, general liability insurance, loan documentation, or dividends. Mehta testified Dollarstore International, Inc., had no general ledger, no documents evidencing capital contributions, no corporate minutes, no shareholder meetings, and no general liability insurance. And he testified My Dollarstore, Inc., had

no general ledger, no shareholder meetings no loan documentation, no general liability insurance, and no dividends.

In addition, substantial evidence showed Mehta and the corporate defendants shared a unity of interest. Mehta owned 5.1 million shares of Dollarstore, Inc., which in turn owned 50 percent of My Dollarstore, Inc. The corporate defendants all operated out of adjoining suites in the same Irvine office building. Mehta was chief executive officer, a director, and the agent for service of process for both Dollarstore, Inc., and My Dollarstore, Inc. Reeta Mehta (Mehta's wife) was chief financial officer, a director at Dollarstore International, Inc., and an employee of Dollarstore, Inc. All defendants had the same trial counsel and same appellate counsel. The corporate defendants issued large checks among themselves. Mehta claimed the checks were used for "marketing" and "refund[s]" and "combined buying" of merchandise, but produced no supporting agreements among the entities. The corporate defendants issued checks to Mehta for "traveling," but did not produce any supporting expense reports. Mehta agreed "the whole purpose of starting Dollarstore International was to protect Dollarstore, Inc."

Finally, substantial evidence showed piercing the corporate veil would be equitable. Dodge testified Mehta had responded to his request for repayment by stating Dollarstore Inc., and My Dollarstore, Inc., were "basically shell companies" and "worthless entities" — "if [Dodge] wanted the companies, [he] could have them," Thus, the record sufficiently shows Mehta and the corporate defendants share such a unified personality that maintaining separate liability would be unjust. (*See Mesler, supra*, 39 Cal.3d at p. 300.)

Defendants' challenges to alter ego liability float on a high level of abstraction. They maintain "common ownership and control of multiple entities is not sufficient to invoke the alter ego doctrine," nor is "[t]he fact that . . . related entities operated in the same business industry and supplied goods or services to the franchisor and its franchisees" — "[i]f it were, every franchisor from McDonalds to Jani-King would be susceptible to an alter ego claim." To be sure, some amount of control and overlap is "to be expected as an incident of the parent's ownership of the subsidiary." (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 542 (*Sonora Diamond*) [discussing agency law]; see also *id.* at pp. 548-549.)

On the other hand, a parent-subsiary relationship is typical when one corporation is found to be the alter ego of another. "Generally, alter ego liability is reserved for the parent-subsiary relationship" when both entities are corporations. (*Las Palmas, supra*, 235 Cal.App.3d at p. 1249.) Moreover, "[t]here is no litmus test to determine when the corporate veil will be pierced; rather the result will depend on the circumstances of each particular case." (*Mesler, supra*, 39 Cal.3d at p. 300.) "No one characteristic governs, but the courts must look at all the circumstances to determine whether the [alter ego] doctrine should be applied." (*Sonora Diamond, supra*, 83 Cal.App.4th at p. 539.)

Thus, it is unconvincing for defendants to muster cases in which some set of factors were found insufficient to support alter ego liability. (*Sonora Diamond, supra*, at pp. 539-540; see also *Mid-Century Ins. Co. v. Gardner* (1992) 9 Cal.App.4th 1205, 1214-1215 [plaintiff failed to show shareholder had disregarded separate nature of corporate entity].) Nor may defendants merely note the absence of some of the many potentially relevant factors.¹⁰ (See *Associated Vendors, supra*, 210 Cal.App.2d at pp.

¹⁰ Defendants contend some alter ego factors are belied by the corporate defendants' tax returns. But despite their representation otherwise, the court excluded the tax returns at their request. After the final witness, the court asked if there was "any

838-840 [listing more than 20 factors].) Taken together, the factors here support the court's determination to pierce the corporate defendants' veils to reach Mehta. (See *Las Palmas*, at p. 1248 [alter ego finding "should not be disturbed when supported by substantial evidence"].)

But the evidence was insufficient to show alter ego liability should extend to Reeta Mehta. Plaintiffs offered no evidence she was a shareholder of any defendant. At most, plaintiffs showed Reeta Mehta may have been an officer and employee of one or more of the corporate defendants. Her liability would "not depend on the same grounds as 'piercing the corporate veil,' . . . but rather on [their] personal participation or specific authorization of the tortious act." (*Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 504.) Plaintiffs cannot rely on alter ego to foist individual liability upon her.

DISPOSITION

The judgment is affirmed as to defendants Dollarstore, Inc., Dollarstore Corporation, Dollarstore International, Inc., Dollarstore.com, Inc., My Dollarstore, Inc., My Dollarstore Franchising, Inc., and Rakesh Mehta. The judgment as to Reeta Mehta is reversed, and the matter is remanded to the court with directions to enter a new judgment in her favor.

objection to any of the exhibits?" Defendants' counsel objected "there was absolutely no discussion with regards to the income tax returns for my client." Plaintiffs' counsel agreed "there is no point [to admitting them]. If we want to remove them for privacy purposes, I don't have a problem." The court ruled "I don't need them. So take the tax returns out." Defendants' counsel replied, "Okay."

Plaintiffs shall recover their costs against defendants Dollarstore, Inc., Dollarstore Corporation, Dollarstore International, Inc., Dollarstore.com, Inc., My Dollarstore, Inc., My Dollarstore Franchising, Inc., and Rakesh Mehta. In the interests of justice, defendant Reeta Mehta shall bear her own costs on appeal.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.