NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

D.R.S. TRADING COMPANY, INC.,	
Plaintiff and Respondent,	G045466
v.	(Super. Ct. No. 30-2008-00101469)
VAUGHN BARNES et al.,	O P I N I O N
Defendants and Appellants.	

Appeal from a judgment of the Superior Court of Orange County, David R. Chaffee, Judge. Affirmed.

Law Offices of Steven R. Young and Jim P. Mahacek for Defendants and Appellants.

Pestonik & Gold, and Russell A. Gold; Luce, Forward, Hamilton & Scripps, and Charles A. Bird, for Plaintiff and Respondent.

Vaughn and Elsa Barnes appeal from a judgment which holds Vaughn[1] personally liable for fraud he engaged in on behalf of his corporation, MPV, Inc., and holds both of them liable as alter egos of MPV. Appellants' primary contention is that the law does not impose any obligation on the recipient of a loan to disclose to its lender that the "res" underlying an "unsecured loan" – in this case, shipments of frozen shrimp – had been sold, and thus there is no basis to conclude that Vaughn's affirmative concealment of that fact from D.R.S. in this case – for a year – is sufficient to support the imposition of fraud liability.

Whatever the merits of that contention, however, we need not address it in this case. Despite appellants' attempt to characterize the key relationship here as one between a debtor and creditor, what the court concluded was substantially different. The court determined the business relationship between MPV and plaintiff D.R.S. Trading Company, Inc., was "similar to a partnership," and the evidence is more than sufficient to support that conclusion. A partnership relationship, being fiduciary in nature, imposes an affirmative duty to disclose material information, and to account for funds received, on the participants. Vaughn's acknowledged failure to do that in this case provided a sufficient basis to impose fraud liability upon him.

We are likewise unpersuaded by appellants' assertion that D.R.S. could not have been harmed by its reliance on MPV's duty to disclose. Again, appellants' contention rests on the assumption D.R.S. was merely an unsecured creditor, with no right to assert any claim to the shrimp while unsold, or to the specific proceeds of its sale. The trial court did not see it that way, however, and as a participant in a joint venture which both purchased and sold the shrimp, D.R.S. did have those rights.

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[1] Because appellants share the same last name, we refer to each by their first name herein, solely for the sake of clarity. No disrespect is intended.

Appellants' challenge to the alter ego finding fares no better. Contrary to their assertion, a non-shareholder of a corporation (in this case, Elsa) can be held liable as an alter ego. The question does not turn on technical shareholder status – which can be easily manipulated in a very closely-held corporation – but on an evaluation of whether the circumstances as a whole demonstrate the alleged alter ego exercised such a degree of control over the corporation or its finances that treating the corporation as a legally separate entity would work an injustice on its creditors. And in this case, the evidence is more than sufficient to demonstrate that both Elsa and Vaughn treated the assets of MPV as simply an aspect of their own personal finances. Its separateness, while well-maintained technically, was just that – technical. The court did not err in concluding this was a proper case in which to pierce the corporate veil.

Finally, we grant D.R.S.'s motion to strike portions of the appellants' appendix. As appellants themselves acknowledge, none of these documents are pertinent to the issues on appeal, and we did not find it necessary to consider them in our evaluation of those issues.

FACTS

MPV is a corporation formed in 2000. Although no stock certificates were apparently issued, its corporate documents reflect that Vaughn was the sole shareholder, director and officer of MPV. MPV was in the business of importing and selling seafood in Mexico, and ceased doing business in 2007 or 2008. MPV was originally capitalized with $10,000 or less, although Vaughn could not recall whether the number was $5,000 or $10,000. Vaughn claimed he invested additional capital into MPV "on an ongoing basis," and that at some point in the period from 2003-2005, MPV had about $250,000 to $300,000 in capital, which it used for "purchasing seafoods, general operations." MPV never owned any assets "other than seafood it may have had possession of." Vaughn testified he kept all the business records of MPV on a notebook computer, and that computer was stolen in November of 2007. As a consequence, there exists scant evidence of how MPV conducted its business.[2]

Although Elsa was never an employee of MPV, and performed no services on behalf of the corporation, she was authorized to write checks "on behalf of MPV," and during the period from 2005 through 2007, she routinely wrote checks from the MPV account, made out either to herself or to cash, and deposited them into the personal account she shared with Vaughn. Elsa also signed off on checks written to Vaughn from the MPV account, and Vaughn cashed those checks. The address which appeared on the pre-printed MPV checks was not the office address for MPV, but was instead the personal residence shared by Elsa and Vaughn. Vaughn acknowledged that "from time to time M.P.V. transferred money between the M.P.V. account and [his] personal bank account." He emphasized the financial transfers between those accounts went "both directions."

When MPV ceased doing business in 2007 or 2008, it filed no formal paperwork with the Secretary of State's office, and did not undergo any bankruptcy proceeding or other formal winding-up process. In 2006 or 2007, Vaughn established a separate corporation, PVM, which he acknowledged was merely a rearrangement of the letters in MPV, and which occupies the same office space that previously belonged to MPV. He continues to do business in the seafood industry through PVM.

In 2005, MPV entered into an agreement with D.R.S., whereby D.R.S. would provide financing for the purchase of shrimp for import and a contemplated quick sale in Mexico, and MPV took responsibility for handling the purchase, transport and sale of the shrimp to buyers with whom it had pre-existing relationships. The parties agreed they would evenly split the net proceeds from the shrimp's sale between them.

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2 For example, Vaughn testified he had no records of the expenses he allegedly incurred in connection with the transport, storage and sale of the eight containers of Ecuadorian shrimp at issue in this case. He acknowledged he never made any attempt to get duplicate copies of those records from any of the other participants in those arrangements.

The parties completed several such transactions – primarily involving shrimp purchased in India – and while D.R.S. was apparently reimbursed for its financial outlay in connection with those transactions, it did not always receive any payment of net profits. In 2006, the parties entered into a similar agreement for the purchase of eight additional containers of shrimp – this time from Ecuador – again for import and a quick sale to pre-designated buyers in Mexico. D.R.S. financed the purchase of the Ecuadorian shrimp at a price of $700,000.

Unfortunately, this venture turned out very badly – at least for D.R.S. As the court found in its statement of decision: "Vaughn Barnes took possession and complete control of all eight containers of frozen Ecuadorian shrimp that are at issue in this case. Between March 2006 and May 2006, these eight containers of shrimp were delivered to a warehouse in Mexico. Mr. Barnes personally controlled the warehousing and sale of this shrimp in Mexico. For approximately one year, between May 2006 and June 2007, Mr. Barnes deliberately and willfully misled DRS' President Don Simon about the disposition of the frozen shrimp in Mexico. Mr. Barnes told Mr. Simon that the market was bad, he could not sell the shrimp, and all eight containers of frozen shrimp remained unsold and stored in a warehouse in Tijuana, Mexico. These representations were deliberately false and misleading because by June 2007, Mr. Barnes had already sold or disposed of all eight containers of the shrimp in Mexico either directly or, according to his own testimony, by consignment. Further, Mr. Barnes' testimony confirms that he obtained money from the sale of this shrimp."

The court went on to explain: "Mr. Barnes admitted that he sold all eight containers of Ecuador shrimp after its arrival in Mexico, but he concealed this fact from Mr. Simon for approximately a year.[3] Mr. Barnes also admitted concealing the fact that

3 The court's statement of decision does not make clear exactly when any of the eight containers of shrimp was sold, only that all eight had been sold prior to June of 2007, and that Barnes "deliberately and willfully misled" D.R.S. for "approximately one year," by telling him all of the containers remained unsold and stored in a warehouse in Mexico. D.R.S.'s president, Don Simon, testified that Vaughn admitted to him in June of 2007 that

he had received money from the sale or consignment of the shrimp, but instead of paying DRS, Mr. Barnes kept the money for himself and purportedly used it to pay others."

The court found "that Mr. Barnes had a duty to disclose to DRS all material facts concerning the disposition of the Ecuadoran shrimp purchased with DRS' funds that Mr. Barnes controlled in Mexico. . . . [T]he nature of this business venture was similar to a partnership. . . . [¶] Accordingly, Mr. Barnes had a duty to disclose to DRS that the shrimp had been sold, and Mr. Barnes had a duty to account for any of the monies obtained from such a sale. Mr. Barnes failed to do so. Mr. Barnes' intentional misrepresentations and concealment of material facts that he had a duty to disclose constitutes a misrepresentation of material fact supporting fraud."

The court also found D.R.S. "justifiably relied" on Vaughn's assurances about the status of the shrimp, and that as a consequence, D.R.S. made no effort to pursue MPV for immediate payment when the first of the Ecuadoran shrimp was sold, or to make its own arrangements to sell the remaining shrimp to recoup its investment in the venture. The court awarded D.R.S. approximately $1 million in damages, comprised of the cost of the shrimp, D.R.S.' promised share of the profits from the venture, and pre-judgment interest.

The court also concluded that both Vaughn and Elsa were alter egos of MPV, noting that MPV "did not operate as a legitimate business entity," and was instead more akin to "a Ponzi scheme," and also that both Vaughn and Elsa "used MPV's bank account as their own personal piggy bank . . . without any form of accounting."

I

Appellants' first argument is that there is no basis in law for the imposition of fraud liability on a debtor, based solely upon the debtor's failure to disclose to an

six of the eight containers had been sold "almost immediately, upon their arrival in Tijuana," and that the last two "took a little longer, but they were all sold before the end of 2006." Vaughn did not contradict this claim when he testified, and instead claimed he could not remember exactly when the containers were sold. He acknowledged that all the containers may have been "spoken for" as of June of 2007, but stated "I can't swear that they had been sold."

unsecured creditor that it had sold the property purchased with the loaned funds. That may be true. But we need not concern ourselves with the issue, since that is not at all consistent with what the trial court found to have occurred in this case.

Although Vaughn did testify at trial that the parties' agreement with regard to the Ecuadorian shrimp had changed from their prior profit-splitting arrangement with the Indian shrimp, and that D.R.S. itself "converted" the relationship into one of debtor creditor when it invoiced MPV for the expense of purchasing the shrimp, the court was not obligated to interpret things that way – and it did not. Instead, the court explicitly stated that the relationship between the parties was "similar to a partnership." Vaughn and Elsa simply ignore, rather than challenge, that conclusion.

This same tactic was attempted in *Baize v. Eastridge Companies, LLC* (2006) 142 Cal.App.4th 293, in which the appellants contended the court's finding of alter ego liability was based upon evidence of a single fact – an allegedly insufficient basis to support the determination – when the record demonstrated the court's ruling was expressly supported by several additional facts. In that case, the appellate court flatly rejected the attempt: "As [appellants] do not raise a substantial evidence challenge, and instead manufacture an unsupportable argument by misstating the record on appeal and mischaracterizing the basis for the trial court's ruling, we conclude they have failed in their burden as appellants to present a basis for reversal." (*Id.* at pp. 303-304, fn. omitted.)

We reach the same conclusion in this case.

Appellants' second challenge to the fraud liability suffers from the same flaw. Relying on the fiction that D.R.S. was merely an unsecured creditor of MPV, they argue it had no legal right to lay claim to either the unsold shrimp or the funds generated by the early sale of some of the containers. In appellants' view, it didn't matter what D.R.S. knew or when it knew it – it's only right was to receive payment when MPV chose to make it. And without any legal rights to assert, D.R.S.' failure to take action could not be construed as detrimental *reliance* on Vaughn's false assurances that the shrimp remained unsold, and safely stored in a warehouse.

But again, that is not consistent with the trial court's evaluation of the evidence. The court viewed D.R.S. and MPV as joint venturers (*Nelson v. Abraham* (1947) 29 Cal.2d 745, 749 [the essential element of a joint venture is the undertaking by two or more persons to carry out a single business enterprise jointly for profit]), and joint venturers owe each other the same fiduciary duties as are owed between the members of a long-term partnership. (*Pelligrini v. Weiss* (2008) 165 Cal.App.4th 515, 525, quoting *Boyd v. Bevilacqua* (1966) 247 Cal.App.2d 272, 288 ["The rights and liabilities of joint adventurers, as between themselves, are governed by the same rules which apply to partnerships."].)

In this case, as joint participants in the Ecuadorian shrimp venture, D.R.S. and MPV owed each other reciprocal fiduciary obligations, and had equal rights to claim ownership of the joint venture's sole asset; i.e., the shrimp. Both parties had an obligation to account to each other for the disposition of both the shrimp and its proceeds. As soon as D.R.S. became aware that MPV had sold any of the shrimp – and if MPV were fulfilling its fiduciary obligations, that should have occurred as soon as the sale agreement was formed – D.R.S. had a claim to the proceeds of that sale, and a right to take legal action to preclude MPV from simply choosing to use the money for some other purpose.[4] However, because D.R.S. relied on Vaughn's false representations that the shrimp remained unsold, it did no such thing. That was detrimental reliance, and the trial court did not err in so concluding.

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[4] The agreement that the parties would evenly split the "net proceeds" from the sale of the shrimp certainly implies two things: First, the money received from any sale of the shrimp (i.e., the gross proceeds) was intended to be used to first pay the expenses of the transaction – the process by which the parties would establish the amount of *net* proceeds to be divided from the transaction; and second that MPV had no right to claim, or retain, any portion of the sale price that did not represent *its half* of those net proceeds.

II

Appellants next argue there is insufficient evidence to sustain the court's determination they were both alter egos of MPV. Again, we are unpersuaded.

"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 and the corporation looked at as a collection or association of individuals, so that the corporation will be liable for acts of the stockholders or the stockholders liable for acts done in the name of the corporation.' [Citation.]" (*Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 300.)

Appellants' first challenge to the court's imposition of alter ego liability is specific to Elsa. They contend there is no evidence she was a *shareholder* of MPV, so there is no basis to conclude she was its alter ego.

We reject the contention. There is no requirement that a person found to be an alter ego of a corporation be a shareholder of the corporation. (See *Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799 [court finds triable issue of fact on alter ego allegation where evidence suggests non-shareholder exercised near complete control over corporation through a corporate officer]; *Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220 [court finds sister corporation to be alter ego of corporate defendant, despite the fact it was not a shareholder, based upon other factors showing interrelation of finances].) Instead, the test is generally expressed as a requirement that there be a "unity of interest and ownership" between the corporation and the person or entity alleged to be its alter ego (*Mesler v. Bragg Management Co.*, *supra*, 39 Cal.3d at p. 300), which unity can be established without regard to technical shareholder status.

In *Riddle v. Leuschner* (1959) 51 Cal.2d. 574, which Elsa relies upon in support of her assertion, the Supreme Court did not impose any specific rule that ownership of stock in a corporation is required before an individual can be held liable as its alter ego. Instead, what the court actually said was that the individual in that case could not be adjudicated the alter ego of the two corporate defendants because he *both* owned no shares *and* failed to exercise any improper degree of control over the affairs of either entity. As the Supreme Court put it: "he held none of the stock, *and there is no evidence that he had any interest as an owner in the business operated by either of the two corporations or that he had a right to share in any profits they might make*. Instead, he received a monthly salary. *Under all the circumstances,* he is to be regarded as having been a managing employee of the two companies, and *his control over their affairs must be treated as that which would be exercised by a managing agent rather than that of a shareholder or owner.* It follows that there was not such unity of 'interest and ownership' between [the individual] and the corporations that the separate personalities of the corporations and the individual no longer existed, within the meaning of the rule set forth above." (*Id.* at p. 580, italics added.)

Indeed, the court in *Las Palmas Associates v. Las Palmas Center Associates, supra*, 235 Cal.App.3d 1220, recognized that *Riddle* does not stand for the proposition that lack of shareholder status, or any one single factor, can be relied upon as a barrier to imposition of alter ego liability, but instead requires courts to focus on whether imposition of such liability is fair in light of all the circumstances of a particular case. Thus, the *Las Palmas* court did not end its own inquiry with the acknowledgment that the proposed alter ego defendant in that case had ceased being a shareholder of the corporate defendant prior to the events which gave rise to the liability at issue – rather, it considered other factors before ultimately concluding that "under the facts of this case, it would be . . . unfair to permit Hahn Inc. to escape liability for the unperformed guaranties simply because it earlier had transferred ownership of Devcorp to, among others, a sister corporation . . . ." (*Las Palmas Associates v. Las Palmas Center Associates*, *supra*, 235 Cal.App.3d at p. 1249.)

In fact, a rule precluding alter ego liability for one who is not a shareholder of the corporate entity would obviously be vulnerable to easy manipulation. In this case, for example, Vaughn is the sole officer and director of MPV, and he alone signed all of its corporate documents – including the one which made himself the corporation's sole shareholder. It is clear he could just as easily have issued the stock to Elsa, or to their minor child if they had one, to his elderly mother, or to anyone else he felt like designating. And if the rule were as appellants propose, that unilateral move would have effectively immunized Vaughn himself from potential alter ego liability, no matter what he otherwise did with the corporation or its assets. That is not the law.

Instead, what our Supreme Court has said is "[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 v. Bragg Management Co., supra*, 39 Cal.3d at p. 300.)

We now turn to the question of whether the circumstances of this case are sufficient to support the trial court's determination that both Elsa and Vaughn were the alter egos of MPV. In doing so, we keep in mind that while "[a]lter ego is a limited doctrine, invoked only where recognition of the corporate form would work an injustice to a third person[]" (*Tomaselli v. Transamerica Ins. Co*. (1994) 25 Cal.App.4th 1269, 1285), "[t]he essence of the alter ego doctrine is that justice be done." (*Mesler v. Bragg Management Co., supra*, 39 Cal.3d at p. 301.) Additionally, "since this determination is primarily one for the trial court and is not a question of law, the conclusion of the trier of fact will not be disturbed if it is supported by substantial evidence." (*Alexander v. Abbey of the Chimes* (1980) 104 Cal.App.3d 39, 47; *Las Palmas Associates v. Las Palmas*

Center Associates, supra, 235 Cal.App.3d at p. 1248; *NEC Electronics Inc. v. Hurt* (1989) 208 Cal.App.3d 772, 777.)

Finally, as with any substantial evidence review, "'"[w]e must resolve all evidentiary conflicts and draw all legitimate and reasonable inferences in favor of the trial court's decision. [Citations.] Where the evidence supports more than one inference, we may not substitute our deductions for the trial court's. [Citation.] We may overturn the trial court's factual findings only if the evidence before the trial court is insufficient as a matter of law to sustain those findings. [Citation.]"' [Citations.]" (*Lake v. Reed* (1997) 16 Cal.4th 448, 457.)

There are two general requirements for disregarding the corporate entity: first, as we have already discussed, there must be a sufficient unity of interest and ownership between the corporation and the individual that the separate personalities of the individual and the corporation could be said to no longer exist; and second, that treating the acts as those of the corporation alone will sanction a fraud, promote injustice, or cause an inequitable result. (*Webber v. Inland Empire Investments, Inc.* (1999) 74 Cal.App.4th 884, 900.)

In assessing whether those requirements have been met, the court may consider "'a host of factors: "[1] [c]ommingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses . . . ; [2] the treatment by an individual of the assets of the corporation as his own . . . ; [3] the failure to obtain authority to issue stock or to subscribe to or issue the same ...; [4] the holding out by an individual that he is personally liable for the debts of the corporation . . . ; the failure to maintain minutes or adequate corporate records, and the confusion of the records of the separate entities . . . ; [5] the identical equitable ownership in the two entities; the identification of the equitable owners thereof with the domination and control of the two entities; identification of the directors and officers of the two entities in the responsible supervision and management; sole ownership of all of the stock in a corporation by one individual or the members of a family . . . ; [6] the use of the same office or business location; the employment of the same employees and/or attorney . . . ; [7] the failure to adequately capitalize a corporation; the total absence of corporate assets, and undercapitalization . . . ; [8] the use of a corporation as a mere shell, instrumentality or conduit for a single venture or the business of an individual or another corporation . . . ; [9] the concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities . . . ; [10] the disregard of legal formalities and the failure to maintain arm's length relationships among related entities . . . ; [11] the use of the corporate entity to procure labor, services or merchandise for another person or entity . . . ; [12] the diversion of assets from a corporation by or to a stockholder or other person or entity, to the detriment of creditors, or the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another . . . ; [13] the contracting with another with intent to avoid performance by use of a corporate entity as a shield against personal liability, or the use of a corporation as a subterfuge of illegal transactions . . . ; [14] and the formation and use of a corporation to transfer to it the existing liability of another person or entity." . . . [¶] This long list of factors is not exhaustive. The enumerated factors may be considered "[a]mong" 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.]" (*Zoran Corp. v. Chen, supra,* 185 Cal.App.4th at pp. 811-812.)

In this case, Vaughn and Elsa have launched a two-prong attack on the court's alter ego finding: first, they place great emphasis on the fact that MPV observed basic corporate formalities – it was properly incorporated, adopted bylaws, properly elected a board of directors and officers, held a shareholder meeting, and its shareholder "regularly reviewed the corporation . . . and ratified the corporation's conduct during the preceding year." The observance of such formalities is not, however, sufficient in and of itself to ward off alter ego liability – particularly where all the roles are fulfilled by one person. The fact that Vaughn the shareholder annually approved his own conduct as the officer[s] and director[s] of MPV does little to establish that alter ego liability would not be appropriate.

Vaughn and Elsa's second argument is to assert that other factors which might have supported alter ego liability were not *conclusively* established to be true. For example, they seem to contend that because D.R.S. had the burden of proof on the alter ego issue, it was incumbent upon it to prove – without resort to inference – that Vaughn and Elsa's commingling of their funds with those of MPV cannot be explained or interpreted other than as their treatment of MPV's assets as their own. Thus, while they acknowledge there was "some limited evidence that M.P.V. paid some monies to [them]," they suggest that evidence was insufficient to support an alter ego determination, since D.R.S. "produced no evidence that such payments *were not* appropriate reimbursements for expenses that [Vaughn] had advanced for M.P.V., nor unrepaid loans, nor payroll expenses." (Italics added.)

However, D.R.S. was not obligated to recreate MPV's entire financial history in an effort to affirmatively demonstrate that the money Elsa and Vaughn paid *to themselves* out of MPV's account was not attributable to some legitimate corporate obligation or expense. That inference was one which could be easily drawn from the evidence – particularly the fact that Elsa, who was not an employee of MPV and performed no services for the corporation – and would thus presumably have no role in managing its financial affairs, was nonetheless an authorized signatory on its bank account, and personally wrote many of the checks at issue.

Since Elsa had no role in the corporation, the inference is clear that she did so as part of handling her own and Vaughn's *personal finances*, and that she often treated the corporate account as a resource in managing those finances. That evidence was sufficient to support that conclusion that Vaughn and Elsa treated the assets of MPV as their own.

Additionally, Vaughn's claim that the funds ran both ways between their personal account and the MPV account does not help their case. Without any formal documentation of these purported capital investments into MPV, there is nothing to distinguish that practice from a situation where money just flows back and forth between corporate and personal accounts, depending strictly on where the need is most acute. And that situation does not reflect any maintenance of corporate "formalities."

Moreover, the uncontradicted evidence that "M.P.V. annually reviewed and approved" the checks written by Elsa and Vaughn to themselves in no way compellingly suggests those expenses must have been legitimate. Vaughn was the only person doing any annual review and approval of MPV's financial dealings. The fact he had no problem with Elsa making out checks to "cash" from its corporate account – without any apparent attempt to document the purpose of those payments – demonstrates he was not observing any *meaningful* corporate formality.

We note that Vaughn and Elsa also challenge the propriety of any inference that MPV was undercapitalized, although their portrayal of the record on this point is not entirely accurate. For example, they first claim the evidence demonstrated Vaughn initially capitalized MPV with $10,000 - $20,000, when his actual testimony was that the capitalization "was probably 5 or 10 when it was initiated." They also claim that MPV's capital had continued to increase after formation, such that "by 2003 it had approximately $300,000 in its own capital accounts," when Vaughn's testimony was not nearly so definitive: "In around 2003, -4. -5, in through there, I think MPV had about $250, $300,000 in its own capital."

At any rate, none of that evidence suggests MPV was adequately capitalized in 2006, when it entered into its Ecuadorian shrimp venture with D.R.S. This was a huge venture, with the cost of the shrimp alone running $700,000. Moreover, Vaughn testified there were significant additional costs – totaling about $22,000, incurred in the transport and storage of the shrimp – costs that MPV itself was responsible for covering.[5]

There is simply no evidence that MPV actually had adequate capitalization to cover these costs (as well as, presumably, substantial additional costs for storing the shrimp for some period in Mexico) in 2006; but there was substantial evidence from which the court could infer that it did not. Specifically, the undisputed evidence that MPV sold the shrimp it owned jointly with D.R.S., and then found itself needing to spend all that money to satisfy other obligations, is sufficient to demonstrate MPV was inadequately capitalized for the business it was engaged in.

Given all these factors, we conclude the trial court did not abuse its discretion by concluding fairness required both Elsa and Vaughn be held liable as alter egos of MPV in this case.

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5 According to Vaughn's testimony, the cost of transporting the containers of Ecuadorian shrimp to Mexico was approximately $4,000 each for four of the eight containers, and $1,500 each for the other four. These costs included "paperwork" for an in-bond shipment was up to $500, fees for offloading and reloading the shrimp that were $2,000 (it's unclear whether this is per container), fees for shipping from South America to Los Angeles, and fees for transporting the shrimp from Los Angeles to the Mexican border. So the total cost was around $22,000.

The judgment is affirmed. D.R.S. is to recover its costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.