

Tentative Rulings for October 8, 2020
Departments 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

20CECG00065 *Walls v. Felix* is continued to October 29, 2020 (Dept. 503)

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

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Tentative Rulings for Department 501

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Tentative Ruling

Re: *In re Richard Nunes Vasquez*
Superior Court Case No. 20CECG02579

Hearing Date: October 8, 2020 (Dept. 501)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To deny without prejudice.

Explanation:

The petition is incomplete and insufficient information is provided to determine whether the settlement is fair and reasonable.

Petitioner includes no information about the policy limits. Two others received significantly more money in settlement (\$69,959.54 to petitioner Gloria Ramirez; \$400,000 to Ricardo Valdovino), but there is no information as to the nature of their injuries or why the settlement was allocated this way. Petitioner failed to include Attachment 12, which would address this issue.

Counsel seeks 25% (\$6,250) of the settlement in attorney's fees. "Attorney's fees, if awarded, shall be awarded in conformity with Rule 7.955 of the California Rules of Court. In computing fees, parents claiming reimbursement for medical and other expenses shall pay their proportionate share of the attorneys' fees, except in cases of hardship." (Local Rule 2.8.4(D).) Counsel's declaration fails to provide the information required by rule 7.955(b).

Petitioner failed to include Attachment 18a, in which a copy of the retainer agreement is to be provided.

Petitioner failed to include Attachment 19(b)(2), in which petitioner is to provide the name, branch and address of the depository of the funds.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DTT on 10/2/2020.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: *In Re: Rylynn Juarez*
Superior Court Case No. 20CECG02379

Hearing Date: October 8, 2020 (Dept. 501)

Motion: Petition to Compromise Minor's Claims

Tentative Ruling:

To deny without prejudice.

Explanation:

The letter from the department of psychiatry states that the minor's prognosis "appears good, with ongoing treatment." (Pet., p. 43, emphasis added.) The documentation regarding the minor's physical injuries adequately shows that the minor has fully recovered, however the court is concerned about the minor's emotional/mental health, as nothing has been provided showing a complete recovery. It is unclear whether the minor is receiving on-going counseling and, if so, whether it is covered by the minor's health care policy, or whether funds should be accessible to cover the cost of counseling services for the minor. Accordingly, the instant petition to compromise the minor's claim is denied, without prejudice.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DTT on 10/7/2020.
(Judge's initials) (Date)

Tentative Rulings for Department 502

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Tentative Rulings for Department 503

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Tentative Ruling

Re: ***Vazquez v. Aimhigh Group, LLC***
Superior Court Case No. 16CECG03062

Hearing Date: October 8, 2020 (Dept. 503)

Motion: By Judgment Creditor Maricela Vazquez to Amend
Judgment to Add Alter Egos as Judgment Debtors

Tentative Ruling:

To grant the motion as to Manjit Singh and R&S Diversified, Inc., and to deny it without prejudice as to Sukhninder Singh. Moving party is directed to submit to the court, within five (5) days of service of the minute order, an amended judgment consistent with the ruling on this motion.

Explanation:

Judgment creditor (formerly plaintiff) Maricela Vazquez seeks to add three new names as judgment debtors on the judgment entered against Aimhigh Group, LLC (“Aimhigh”) on October 31, 2019: Manjit Singh, Sukhninder Singh, and R&S Diversified, Inc. (“R&S”).

Although the opposition was very late-filed, the court will consider it. The moving party objected to the lateness, but she nonetheless addressed the merits of the opposition, which waived the defect. (*Alliance Bank v. Murray*, (1984) 161 Cal.App.3d 1, 7; *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697.)

Applicable Law

After a judgment creditor obtains a judgment against a corporation and it then discovers that the corporation has few or no assets and is controlled by a nonparty alter ego, the judgment creditor may ask the court for leave to amend the judgment to add the alter ego as a judgment debtor and enforce the judgment against that debtor. The court’s authority is pursuant to Code of Civil Procedure Section 187, which allows the court to use “all the means necessary” to carry its jurisdiction into effect. (*Dow Jones Co. v. Avenel* (1984) 151 Cal.App.3d 144, 148—section 187 serves as basis for amendment of judgment pursuant to alter ego doctrine.) The amendment is not meant to add a new defendant, but rather to set forth the *true name of the real defendant*. (*Id.* at p. 149; *Misik v. D’Arco* (2011) 197 Cal.App.4th 1065, 1074-1075—failure to allege alter ego doctrine in underlying lawsuit did not preclude amendment of judgment to add judgment debtor’s alter ego.)

Amending a judgment to add a nonparty defendant necessarily means liability is imposed on someone without benefit of trial. Thus, a judgment creditor moving for this relief must establish both (1) that the new party is the alter ego of the old party; and (2) that the new party “controlled the litigation, thereby having had the opportunity to

litigate, in order to satisfy due process concerns." (*Triplett v. Farmers Ins. Exchange* (1994) 24 Cal.App.4th 1415, 1421.) "The due process considerations are in addition to, *not in lieu of*, the threshold alter ego issues." (*Id.*, emphasis in the original.) The moving party must prove these elements by a preponderance of the evidence. (*Wollersheim v. Church of Scientology* (1999) 69 Cal.App.4th 1012, 1016.)

As an alternative, a "successor corporation" can be added as a judgment creditor *even if it is not an alter ego*, under the authority of Code of Civil Procedure section 187 where there is substantial evidence that a successor corporation is a mere continuation of a judgment debtor corporation/LLC. (*McClellan v. Northridge Park Townhome Owners Ass'n, Inc.* (2001) 89 Cal.App.4th 746, 753-756.)

The general rule of successor liability is that a corporation that purchases all of the assets of another corporation is not liable for the former corporation's liabilities unless, among other theories, the purchasing corporation is a mere continuation of the selling corporation. To be a mere continuation, California courts require evidence of one or both of the following factual elements: (1) a lack of adequate consideration for acquisition of the former corporation's assets to be made available to creditors, or (2) one or more persons were officers, directors, or shareholders of both corporations. Inadequate consideration is an "essential ingredient" to a finding that one entity is a mere continuation of another.

(*Katzir's Floor and Home Design, Inc. v. M-MLS.com* (9th Cir. 2004) 394 F.3d 1143, 1150, citations omitted.)

The court must have jurisdiction over the judgment debtor's alter ego in order to enter a valid judgment against the alter ego. This is normally accomplished by service of process. (*Milrot v. Stamper Medical Corp.* (1996) 44 Cal.App.4th 182, 185 [noting the only other potential source of jurisdiction there was alleged alter ego's attorney's appearance at motion to amend judgment].) The same holds true with finding a corporation a "mere continuation" of a predecessor entity: the party proposed to be added to the judgment must be given notice and a proper opportunity to respond. (*Nelson v. Adams USA, Inc.* (2000) 529 U.S. 460, 466-468.)

Notice/Service

Initially, the notice given to all three potential new judgment debtors could be considered insufficient to the extent the motion was merely served by mail and not personally served. "Service of process" means service in the same manner as a summons, which was not done here. There was no appearance by Sukhinder Singh in opposition to the motion, so it cannot be presumed he has waived this defect.

However, Manjit Singh did appear and oppose the motion, so any defect in service as to him was waived. Likewise, the Secretary of State's website entry for R&S indicates that Manjit Singh is the corporation's agent for service of process, and the proof

of service indicates R&S was served, "C/O Manjit Singh" at the same address Mr. Singh¹ was served in his individual capacity (1147 Crenshaw Street, Visalia, California 93291). This supports a presumption that the mailing directed toward R&S reached its destination, as did the mailing directed toward Mr. Singh. Also, it appears Mr. Singh purports to speak for all three proposed new defendants (himself, Sukhninder Singh and R&S) in his opposition. While he has no authority to speak on behalf of Sukhninder Singh, he does have authority, as CEO, CFO (and shareholder) of R&S, to argue on behalf of the corporation; therefore, any defect of service as to R&S has likewise been waived.²

Therefore, the court finds that notice of this motion was not adequately given to Sukhninder Singh, so the motion is denied without prejudice as to him. However, the notice was adequate as to Manjit Singh and R&S, so the motion can be analyzed on the merits as to them.

Evidentiary Objections

The court overrules all evidentiary objections. Judicial notice of information from official government agency websites has become quite common, and such information is generally considered not to be subject to reasonable dispute. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 753 [taking notice of a purchase and assumption agreement under Evidence Code section 452, subdivision (h) found proper as "not reasonably subject to dispute and . . . capable of ready determination."] The judgment from the court's own website (from this same case) is obviously capable of ready determination.

No objections were made to the Declaration of George Vasquez.

Merits

The court finds that Manjit Singh controlled Aimhigh's actions and litigation decisions. The fact that he did so in his role as managing member of the LLC is not the point of this portion of the analysis. The point is that he took actions and made decisions on behalf of Aimhigh, as opposed to having no involvement at all. He verified discovery responses, attended at least one deposition, took part in the mediation and signed the settlement agreement. He was presumably involved in hiring the attorney to represent Aimhigh. (*Alexander v. Abbey of the Chimes* (1980) 104 Cal.App.3d 39, 46 [control shown where nonparty alter ego hired counsel, was the person with whom the corporate defendant's counsel primarily dealt, was kept fully informed of suit's progress, was familiar with all the issues, and helped draft documents for the litigation]; *Minton v. Cavaney* (1961) 56 Cal.2d 576, 581 [no control where alter ego only supplies funds for defense, appears as witness or cooperates without exerting influence over course of litigation].) The key is the exertion of influence. (*Ibid.*)

¹ References to "Mr. Singh" herein are to Manjit Singh and not Sukhninder Singh.

² Alternatively, to the extent Mr. Singh might argue that he appears and opposes the motion only on his individual behalf, it is clear that the corporation was given notice and a clear opportunity to respond, so the due process concerns have been addressed, as required.

The next step is to consider whether there are sufficient facts to find that Mr. Singh was the alter ego of Aimhigh sufficient to justify piercing the corporate veil. Establishing alter ego requires the moving party to establish two elements: (1) that there is such a unity of interest and ownership that the separate personalities of the entity and the owners no longer exist; and (2) that an inequitable result will follow if the acts are treated as those of the entity alone. (*Relentless Air Racing, LLC v. Airborne Turbine Ltd. Partnership* (2013) 222 Cal.App.4th 811, 815.) "It is well established that the conditions under which the corporate entity may be disregarded vary according to the circumstances in each case and the matter is particularly within the province of the trial court. This is because the determination of whether a corporation is an alter ego of an individual is ordinarily a question of fact." (*Alexander v. Abbey of the Chimes* (1980) 104 Cal.App.3d 39, 46, citation omitted.)

"The doctrine is applicable where some innocent party attacks the corporate form as an injury to that party's interests. The issue is not so much whether the corporate entity should be disregarded for all purposes or whether its very purpose was to defraud the innocent party, as it is whether in the particular case presented, justice and equity can best be accomplished and fraud and unfairness defeated by disregarding the distinct entity of the corporate form." (*Communist Party v. 522 Valencia, Inc.* (1995) 35 Cal.App.4th 980, 993.)

Factors establishing a unity of interests/ownership between the corporation and the alter ego include commingling of corporate funds, the failure to observe corporate formalities including maintaining minutes, and the failure to contribute sufficient capital. (*Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 840; *Mid-Century Ins. Co. v. Gardner* (1992) 9 Cal.App.4th 1205, 1212-1213.) Sufficient facts were set forth to determine that there is a unity of interest and ownership between Aimhigh and Mr. Singh. There was evidence of the failure to observe corporate formalities in the failure to timely file statements of interest with the Secretary of State, as well as allowing the LLC to be declared in suspended status by the Franchise Tax Board, i.e., for failure to pay some required tax or fee.

The second prong of "inequitable result" is also found here. The 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. (*Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 842.) However, this does not require the moving party to prove that the alter ego committed a fraud or acted with fraudulent intent. (*Relentless Air Racing, LLC v. Airborne Turbine Ltd. Partnership, supra*, 222 Cal.App.4th at p. 816.) Instead, the moving party must establish the manner in which he/she was harmed by the shareholder's abusive conduct toward the corporation, or some other "injustice" or "inequity" that would result if the corporate veil were not pierced. (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 540; *Misik v. D'Arco, supra*, 197 Cal.App.4th at p. 1074.) This is shown as a matter of law where the judgment debtor is insolvent due to acts of the alter ego, even if no wrongful intent is shown. (*Relentless Air Racing, LLC v. Airborne Turbine Ltd. Partnership, supra*, 222 Cal.App.4th at p. 816.)

Here, the timeline established by the evidence shows that settlement was reached in early 2018, defendant Aimhigh had the settlement approved as a good faith

settlement in June 2018, such that the due date for its payment to Ms. Vazquez was June 28, 2018. It has never paid this debt. R&S was created in December 2018, which is presumably around the time Aimhigh was being contacted directly regarding payment of the settlement amount, since by that time its attorney had obtained a court order allowing him to withdraw as counsel. Ms. Vazquez' motion for entry of judgment pursuant to Code of Civil Procedure section 664.6 was filed in early 2019. Aimhigh did not oppose that motion, but by the time it was filed and the court granted it, Aimhigh had already entered into a sales contract (in January 2019) for the sale of the restaurant and its liquor license to R&S for \$58,000, even though it had paid \$200,000 for these assets just four years prior. Mr. Singh was on both sides of that transaction, as a managing member of Aimhigh and the CFO/CEO of R&S, so it must be presumed he had control over all aspects of the transaction, including what appears to be an overly low sale price. At some point in this process, Aimhigh was allowed to go into suspended status. These facts are sufficient to show that the inequitable result (Aimhigh having insufficient assets to pay its debt to Ms. Vazquez) has occurred largely through acts either taken or directed by Mr. Singh.

However, one barrier to finding that R&S is an alter ego of Aimhigh is that there is not a complete unity of ownership, since Jose Ramirez is an officer and shareholder of R&S, when he is not (and apparently never has been) involved in Aimhigh and he had no involvement in the litigation. Even so, the evidence supports finding that R&S is a "mere continuation of Aimhigh. "Inadequate consideration is an essential ingredient to a finding that one entity is a mere continuation of another." (*Katzir's Floor and Home Design, Inc. v. M-MLS.com, supra*, 394 F.3d at p. 1150, citations and internal quotes omitted.) The facts support an inference that Aimhigh's acceptance of a sale price of \$58,000 for what had cost it \$200,000 just four years prior constitutes inadequate consideration. Mr. Singh's conclusory statement that the sale was "in good faith" and that Aimhigh received "equivalent value for the assets sold" does not address this price disparity. The business conducted by both Aimhigh and R&S are the same, and at the same address. Both elements that courts look for in order to find mere continuation are met: (1) an inadequate purchase price; and (2) at least one person (Mr. Singh) was an officer and shareholder/LLC member of both entities. This supports adding R&S as a judgment debtor, even if it is not an alter ego of Aimhigh.

Finally, Mr. Singh did not cite any authority for his argument that use of the California Bulk Sales Act (Cal. U. Com. Code, § 6101 et seq.) somehow insulates a party from liability for a fraudulent transfer. There is no such authority, and, in fact, courts have expressly found the opposite. In *Monastra v. Konica Business Machines, U.S.A., Inc.* (1996) 43 Cal.App.4th 1628, defendants argued that complying with the Bulk Sales Act means there could be no fraud as a matter of law, and the court found this to be a "preposterous assertion":

It amounts to saying that, if notice of a proposed bulk sale is published and recorded as required in the act, the parties to the sale may, with complete impunity, place all of the seller's assets out of the reach of any creditor who is unwary enough to miss the *single* publication and the notice in the county recorder's office, and it makes no difference if this is done with the specific intent to defraud such creditor.

