Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Second District, Division 5, California.
Terence J. MIX, Plaintiff and Appellant,
v.
TUMANJAN DEVELOPMENT CORPORATION, Defendant;
Michael TUMANJAN, Objector and Respondent.

No. B157394.
(Los Angeles County Super. Ct. Nos. YC023339 c/w BC151589).
Aug. 7, 2003.

APPEAL from a judgment of the Superior Court of Los Angeles County. Cary Nishimoto, Judge. Affirmed.
Spiwak & Iezza and Richard P. Petersen for Plaintiff and Appellant.

Law Office of James A. Flanagan and James A. Flanagan for Defendant and Respondent.

GRIGNON, Acting P.J.

***1** Appellant Terence Mix appeals from a postjudgment order denying his motion to amend the judgment to add respondent Michael Tumanjan FN1 as a nonparty judgment debtor based on an allegation that Michael was the alter ego of judgment debtor Tumanjan Development Corporation (TDC). Mix also raises issues on appeal in connection with orders denying motions to compel discovery, denying his motion for reconsideration, and awarding attorney fees to Michael as a prevailing party. Mix contends: (1) his notice of appeal was timely and the orders are appealable; (2) the trial court abused its discretion in denying two discovery motions; (3) the trial court's finding that Michael was not the alter ego of TDC is not supported by substantial evidence; and (4) Michael is not entitled to attorney fees as a prevailing party. We affirm.

FN1. Because two people involved with the litigation in the instant case share the last name Tumanjan, they will be referred to individually by their first names.

FACTS AND PROCEDURAL BACKGROUND

TDC is a closely held corporation engaged in residential development. TDC was incorporated on October 10, 1980, with a capitalization of $10,000. TDC's original shareholders were Michael and his father George Tumanjan. TDC issued shares of stock and filed Articles of Incorporation and By-Laws. Corporate minutes have been kept throughout the existence of the corporation. Since 1980, TDC's accountant Kirk Howell has prepared income tax returns for TDC, reviewed bank statements and cancelled checks, prepared a general ledger, and reviewed financial documents to allocate income and expenses to appropriate accounts. TDC suffered losses in the real estate market during the 1980s. TDC borrowed funds from lenders and shareholders, including Michael. Promissory notes were prepared for some of the loans from Michael, while other loans were “ongoing” and authorized pursuant to a blanket corporate resolution. Accountant Howell documented in the corporation's financial books and records all of Michael's loans to the corporation in his shareholder account, noting loan payments and repayments. TDC made payments on the loans either to Michael directly or to others for Michael's benefit. Each payment on the loans was deducted from the balance in Michael's shareholder account. Corporate books of account kept on a regular and contemporaneous basis included corporate minutes, a bank account in TDC's name and annual income tax returns.

In 1992, Michael became the sole officer, director, and shareholder of TDC. Michael worked for

TDC without compensation throughout the 1990's to rebuild the financial strength of TDC and repay its obligations. Michael's last capital contribution to TDC was prior to 1995. After 1995, Michael worked as a general contractor on residential real estate projects for other entities. Michael personally leased and paid for TDC's corporate offices.

George and Plaza Redondo, Ltd. (collectively Plaza Redondo) owned an office building and leased office space to Mix in 1989. In 1995, Mix filed a complaint against Plaza Redondo for fraud, rescission, breach of contract, declaratory relief, and an accounting based on overcharges for rent. Plaza Redondo filed an answer. Mix vacated the premises in 1996. Plaza Redondo apparently defaulted on a loan secured by the office building, and on January 30, 1996, the lender filed an action against Plaza Redondo. William Fanning was appointed by the court as receiver for the office building. On June 7, 1996, Fanning filed a complaint against Mix for breach of the lease agreement. The two actions were consolidated for trial.

***2** A tentative agreement was reached for the sale of the office building by Plaza Redondo to the Richard Otto Wahlgren Trust through TDC. An escrow opened. On November 7, 1996, TDC held a special meeting of the board of directors. The corporate minutes state that the board reviewed a proposal to purchase the office building for the amount of the encumbrances. George would place into escrow all sums necessary to refinance the building. After escrow closed between TDC and Wahlgren, George was to receive all net proceeds. TDC would retain the right to collect rents due and owing, including rents due from Mix.

TDC negotiated with the lender, who agreed to accept $4.4 million as payment in full for the encumbrances. On November 14, 1996, TDC's board of directors resolved to execute a promissory note to obtain a loan for $4.4 million to be secured by the office building. TDC took title to the office building on November 15, 1996. Other than the office building, on November 30, 1996, TDC had assets of $323,344.75 and liabilities of $1,281,558.10 for loans from George and Michael. TDC sold the office building to the Trust for $4.4 million in January 1997. The sale agreement reserved to TDC the right to continue the lawsuit filed by the receiver, although the Trust would receive the first $100,000 of any recovery from Mix.

In late 1996, TDC received a settlement of $700,000 from the Fountain Valley School District in connection with development projects. TDC used the funds to repay some of its outstanding loans. On February 3, 1997, TDC entered into a contract with Michael to provide administrative management services for his construction projects. For its services, Michael paid TDC $1,200 per month by credit to his shareholder account.

On February 4, 1997, Plaza Redondo substituted attorney James Sloey as its attorney of record. On February 5, 1997, by stipulation between Mix and TDC, TDC was substituted in place of Fanning and Plaza Redondo in the consolidated action. On April 15, 1997, Michael testified in a deposition taken in the instant case that TDC had taken title to the office building on November 15, 1996, and sold the property to the Trust in late January or early February, but retained the right to maintain the lawsuit filed by the receiver.

Between January 31, 1997, and August 20, 1997, TDC paid $224,000 on Michael's behalf to his former wife's corporation pursuant to Michael's divorce settlement. The sums were debited to Michael's shareholder account.

A jury trial began on August 29, 1997. Michael was present for every day of the trial. The jury found in favor of Mix in both actions, awarding him damages of $59,778. The trial court entered judgment in favor of Mix on September 15, 1997. On November 30, 1997, TDC had assets of $4,800.37 and liabilities of $740,433.60 for shareholder loans.

On December 1, 1997, the trial court granted

TDC's motion for new trial on the ground of juror misconduct. Mix appealed the order granting a new trial. We reversed and remanded with directions to reinstate the judgment in favor of Mix. On November 30, 1998, TDC's balance sheet had changed little from the previous year. TDC had assets of $2,000.72 and liabilities of $751,714.64 for shareholder loans.

***3** Between 1995 and 2001, checks from TDC's bank account were written to Michael's sister, daughter, and wife. All of the sums were debited to Michael's shareholder account. Michael made multiple deposits of personal funds. The deposits increased his shareholder account. Excess repayments from TDC occasionally resulted in a negative shareholder account. During 1999, Michael owed TDC as much as $51,383.68, and during 2000, he owed TDC $18,780 .78. Michael was not charged interest for these loans from the corporation.

Mix and TDC both appealed from a May 2000 minute order awarding attorney fees and costs to Mix. We held in a published opinion that Mix was entitled to recover attorney fees incurred for work performed by third party attorneys.

On November 30, 2000, TDC had assets of $54.90 and liabilities of $348,307.53 for shareholder loans. No interest on the loans from Michael was recorded in TDC's books until November 30, 2000, when $5,205.52 in interest was recorded paid to Michael.

On January 5, March 14, and June 15, 2001, Mix conducted judgment debtor examinations of Michael as TDC's representative. On November 14, 2001, Mix filed a motion to amend the judgment to add Michael as a nonparty alter ego of TDC as a judgment debtor. On November 30, 2001, Michael filed an opposition. A hearing on the motion to amend the judgment to add a nonparty alter ego was held on December 11, 2001. Michael requested that, in the event the trial court denied the motion for failure to submit documentation of the checks TDC wrote to third parties on Michael's behalf, the trial court grant a continuance to submit the documentation. The trial court took the matter under submission.

Later that day, the trial court issued a minute order denying the motion to amend the judgment to add Michael as a judgment debtor based on alter ego. The trial court stated, in pertinent part: “The mere fact that [Michael] was the sole officer, director and shareholder of TDC is not sufficient to establish alter ego liability. Plaintiff has not established that this is different from other closely held corporations. [¶] ... [¶] The remaining allegations relate to the level of unity of interest as shown by various alleged acts of commingling of accounts, failure to keep corporate formalities, and looting of assets. [Mix] has not sustained his burden to establish the necessary unity of interest between [Michael] and TDC. The evidence presented by [Mix] merely established that certain loans and payments were made to and by [Michael] from the corporation and by the corporation. It has not been established why this is irregular for closely held corporations or that the corporation and [Michael] were not entitled to do so. There is no evidence that these transactions were not followed or that looting of assets must have occurred, all without providing competent evidence to support the assertions.”

On December 27, 2001, Mix filed a motion for reconsideration of the order denying the motion to amend the judgment to add nonparty alter ego as judgment debtor, on the ground of new facts and failure to consider the facts and governing law in the original motion. Mix submitted additional documentary evidence. Michael filed an opposition to the motion for reconsideration on the ground that it did not meet the requirements of Code of Civil Procedure section 1008 and the evidence did not support Mix's arguments. Michael filed a motion for an order determining that he was a prevailing party entitled to attorney fees and costs. Mix opposed the motion.

***4** A hearing was held on January 30, 2002, on Mix's motion for reconsideration and Michael's motion for attorney fees and costs. The trial court took the matters under submission. On February 1, 2002, the trial court denied the motion for reconsideration on the ground that Mix had failed to provide new or different facts, circumstances, or law that could not have been submitted at the original hearing. Moreover, the trial court found that the newly submitted evidence merely presented additional disputed facts and did not warrant reconsideration. The trial court found Michael was a prevailing party and ordered Mix to pay Michael's reasonable attorney fees of $5,613.

On March 6, 2002, Mix filed a notice of appeal “from the Minute Order entered on December 11, 2001, ... denying Plaintiff's motion to amend the judgment; from the Minute Order entered February 1, 2002, ... denying Plaintiff's motion for reconsideration; from the Court's Minute Order of February 1, 2002, ... awarding attorney's fees and costs to [Michael] as the prevailing party; and from the Court's Minute Order dated February 15, 2002, ... denying Plaintiff's request for post-judgment attorney's fees and costs.”

DISCUSSION

I. *Appealability*

Michael contends the appeals from the discovery orders, the order denying the motion to amend to add a nonparty judgment debtor, and the order denying reconsideration must be dismissed as from nonappealable orders. We disagree.

A. July 26, 2001 Discovery Orders

Michael contends the trial court's July 26, 2001 discovery orders were reviewable only by extraordinary writ. He further contends the notice of appeal failed to specify the discovery orders and was untimely. These contentions are simply incorrect.

A discovery order is an interim order reviewable on appeal from the final judgment. (*Pacific Tel. & Tel. Co. v. Superior Court* (1970) 2 Cal.3d 161, 169; *Johnson v. Superior Court* (2000) 80 Cal.App.4th 1050, 1060.) “Writ proceedings are not the favored method for reviewing discovery orders because typically the delay caused by such review results in greater harm than in the enforcement of an improper discovery order. [Citations.] The aggrieved party must usually wait to raise the ruling by direct appeal from the final judgment. [Citation.]” (*Johnson v. Superior Court, supra,* 80 Cal.App.4th at p. 1060.)

In this case, the trial court's interim discovery orders were subsumed in the final order denying the motion to amend the judgment to add a nonparty judgment debtor. A timely appeal from the order denying the motion to amend included review of issues related to the discovery orders. Because we conclude below that the appeal from the order denying the motion to amend was timely, Mix may properly raise issues concerning the discovery orders. It would have been improper for Mix to specify the interim discovery orders in the notice of appeal, because the discovery orders are not separately appealable.

B. Order Denying Motion to Amend Judgment

***5** By minute order on December 11, 2001, the trial court denied the motion to amend the judgment to add a nonparty judgment debtor. On December 24, 2001, Michael served a document on Mix entitled “Notice of Ruling” and a copy of the trial court's minute order that had not been file-stamped. Mix filed the notice of appeal on March 6, 2002. Michael contends the appeal from the December 11, 2001 order was untimely. We disagree.

California Rules of Court, rule 2(a) provides that the notice of appeal “must be filed on or before the earliest of:[¶] (1) 60 days after the superior court clerk mails the party filing the notice of appeal a document entitled ‘Notice of Entry’ of judgment or a file-stamped copy of the judgment, showing the date either was mailed; [¶] (2) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled ‘Notice of Entry’ of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or [¶] (3) 180 days after entry of judgment.” A document captioned “Notice of Ruling” is not equivalent to a document entitled “Notice of Entry.” (*20th Century Ins. Co. v. Superior Court* (1994) 28 Cal.App.4th 666, 671-672.)

In this case, the document Michael served was not entitled “Notice of Entry,” nor did Michael serve on Mix a file-stamped copy of the minute order. Therefore, Mix had 180 days after the entry of judgment in which to file a notice of appeal and the March 6, 2002 notice of appeal was timely.

C. Motion for Reconsideration

A motion for reconsideration is not separately appealable, but is reviewable on an appeal from the underlying appealable order. (*Rojes v. Riverside General Hospital* (1988) 203 Cal.App.3d 1151, 1160, overruled on other grounds in *Passavanti v. Williams* (1990) 225 Cal.App.3d 1602; but see *In re Marriage of Burgard* (1999) 72 Cal.App.4th 74, 81 [Courts of Appeal are divided as to whether an order denying reconsideration is appealable].)

II. *Alter Ego Doctrine*

Mix contends the trial court's finding that TDC was not the alter ego of Michael during the relevant time period from 1997 to the present is not supported by substantial evidence.[FN2] We disagree.

FN2. To the extent Mix contends certain evidence of Michael's was inadmissible, we note that he failed to obtain rulings in the trial court on his evidentiary objections. Accordingly, the objections are deemed waived. (*St. Sava Mission Corp. v. Serbian Eastern Orthodox Diocese* (1990) 223 Cal.App.3d 1354, 1372 & fn. 6.)

“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.” (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.) “ ‘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.]” (*Mid-Century Ins. Co. v. Gardner* (1992) 9 Cal.App.4th 1205, 1212 .) “Under [Code of Civil Procedure] section 187, the court has the authority to amend a judgment to add additional judgment debtors. [Citation.] [¶] Judgments are often amended to add additional judgment debtors on the grounds that a person or entity is the alter ego of the original judgment debtor. [Citations.] This is an equitable procedure based on the theory that the court is not amending the judgment to add a new defendant but is merely inserting the correct name of the real defendant. [Citations.] ‘Such a procedure is an appropriate and complete method by which to bind new individual defendants where it can be demonstrated that in their capacity as alter ego of the corporation they in fact had control of the previous litigation, and thus were virtually represented in the lawsuit.’ [Citation.]” (*NEC Electronics Inc. v. Hurt* (1989) 208 Cal.App.3d 772, 778.)

***6** Two general requirements must be met to invoke the alter ego doctrine: (1) there must be such a unity of interest and ownership that the separate personalities of the corporation and the shareholder do not in fact exist; and (2) if the acts are treated as those of the corporation alone, an inequitable result will follow. (*Sonora Diamond Corp. v. Superior Court, supra,* 83 Cal.App.4th at p. 538.) “It is the plaintiff's burden to overcome the presumption of the separate existence of the corporate entity.” (*Mid-Century Ins. Co. v. Gardner, supra,* 9 Cal.App.4th at p. 1212.)

Among the factors to be considered in applying the doctrine are: “the commingling of funds and other assets; the failure to segregate funds of the individual and the corporation; the unauthorized diversion of corporate funds to other than corporate purposes; the treatment by an individual of corporate assets as his own; the failure to seek authority to issue stock or issue stock under existing authorization; the representation by an individual that he is personally liable for corporate debts; the failure to maintain adequate corporate minutes or records; the intermingling of the individual and corporate records; the ownership of all the stock by a single individual or family; the domination or control of the corporation by the stockholders; the use of a single address for the individual and the corporation; the inadequacy of the corporation's capitalization; the use of the corporation as a mere conduit for an individual's business; the concealment of the ownership of the corporation; the disregard of formalities and the failure to maintain arm's-length transactions with the corporation; and the attempts to segregate liabilities to the corporation.” (*Mid-Century Insurance Co. v. Gardner, supra,* 9 Cal.App.4th at p. 1213 & fn. 3.) “No one characteristic governs, but the courts must look at all the circumstances to determine whether the doctrine should be applied.” (*Sonora Diamond Corp. v. Superior Court, supra,* 83 Cal.App.4th at p. 539.) “The courts have cautioned against relying too heavily in isolation on the factors of inadequate capitalization or concentration of ownership and control.” (*Mid-Century Ins. Co. v. Gardner, supra,* 9 Cal.App.4th at p. 1213.)

“Alter ego is an extreme remedy, sparingly used.” (*Sonora Diamond Corp. v. Superior Court, supra,* 83 Cal.App.4th at p. 539.) “In almost every instance where a plaintiff has attempted to invoke the doctrine he is an unsatisfied creditor. The purpose of the doctrine is not to protect every unsatisfied creditor, but rather to afford him protection, where some conduct amounting to bad faith makes it inequitable, under the applicable rule above cited, for the equitable owner of a corporation to hide behind its corporate veil.” (*Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 842.)

“The applicable standard of appellate review is the familiar substantial evidence rule.” (*Sonora Diamond Corp. v. Superior Court, supra,* 83 Cal.App.4th at p. 535.) Under that standard, we review the record in the light most favorable to Michael, resolving all evidentiary conflicts and indulging all reasonable inferences in support of the judgment, to determine whether there is sufficient substantial evidence to warrant a reasonable trier of fact in finding for Michael based upon the whole record. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.) “If there is no conflict in the relevant evidence, the question is one of law as to which we exercise our independent judgment.” (*Sonora Diamond Corp. v. Superior Court, supra,* 83 Cal.App.4th at p. 535.)

***7** The trial court's determination that Michael was not the alter ego of TDC is supported by substantial evidence. As the sole director, officer, and shareholder of the corporation, Michael complied with corporate formalities. He conducted annual board meetings and memorialized the meetings in the corporate minutes. He called special sessions of the board to authorize important corporate decisions, such as the purchase of the office building. These sessions were also memorialized in the corporate minutes. Michael did not commingle his individual funds with TDC's funds or use TDC's funds indiscriminately for his own purposes. Every contribution Michael made to the corporation was documented in his shareholder account as a loan to the corporation. Each expenditure on Michael's behalf was segregated and documented as repayment of principal on the outstanding balance of the loan. Mix points out that in 1999 and 2000, Michael's shareholder account was negative, showing that he owed money to the corporation. However, the loans from TDC to Michael were accounted for and repaid. It is clear that Michael's assets and the corporation's assets were kept meticulously separated.[FN3]

FN3. Because we conclude substantial evidence supports a finding of no alter ego liability, we do not discuss whether Michael controlled the litigation.

The facts on which Mix relies to support alter ego do not establish as a matter of law that Michael was the alter ego of TDC. For example, the fact that Michael's loans to and from TDC were not specifically authorized or memorialized by promissory notes is outweighed by the fact that TDC's corporate accounting records scrupulously maintained Michael's shareholder account and tracked the funds at issue. There was no commingling of assets or use of corporate funds for other than corporate needs and debts. Mix contends that because Michael signed and paid for TDC's corporate office lease in his personal capacity, he held himself out as liable for TDC's debts. However, since Michael did not hold himself out to Mix as liable for TDC's debts, this fact carries little weight in an equitable determination as to whether to pierce the corporate veil based on Michael's conduct. With so little additional evidence of alter ego, the mere fact that Michael was the sole owner, director, and officer of the corporation and TDC may have been inadequately capitalized are not sufficient to establish alter ego as a matter of law.

Mix contends Michael engaged in a scheme to keep TDC insolvent by loaning the corporation funds which should have been made as capital contributions and taking distributions in the form of repayment of the principal. However, debt securities held by a close corporation's major shareholders is a common method for financing a corporation's capital needs. (1 Ballantine & Sterling, Cal. Corporation Laws (4th ed.) § 62.04[4], p. 4-62.) “A major nontax advantage to a shareholder-creditor is the fact that the corporation may be able to pay interest or even make payments on the principal of a loan to it when it would not be able to pay dividends or repurchase shares.” (*Ibid.*) A corporation cannot pay a dividend to shareholders when the corporation is, or as a result of the dividend will become, unable to meet its liabilities as they mature. (*Ibid.*) However, a corporation is not required to pass these tests before it can pay interest on, or the principal of, borrowed money. (*Ibid.*)

***8** “From a tax stand-point, there may be a point at which a capital structure becomes so thin, that is, debt heavy, that the debt will be treated as stock.” (4 Ballantine & Sterling, Cal. Corporation Laws (4th ed.) § 482.03 [3], p. 23-23.) If debt is treated as stock, “the repayment of the principal will be treated as a dividend distribution if, as is likely, the transaction cannot qualify as a redemption of stock.” (*Id.,* p. 23-24.) “Outside the income tax field, the thin incorporation rule has given rise to the so-called Deep-Rock Doctrine,[ ] under which an alleged corporate debt owed to a shareholder-creditor is subordinated to the claims of other corporate creditors and perhaps even other preferred or common shareholders of the corporation. So far, the Doctrine has been applied only in bankruptcy and insolvency proceedings, and proceedings involving corporate reorganizations or dissolutions. (1 Ballantine & Sterling, Cal. Corporation Laws (4th ed.) § 62.04 [4], p. 4-62.) In addition to the rule of equitable subordination, “a preferential payment while the corporation is insolvent to a creditor who is a director of the corporation or the controlling shareholder of the corporation is prohibited by the law and may be recovered for the benefit of the other creditors.” (2 Marsh, Marsh's Cal. Corporation Law (4th ed.) § 16.18, p. 16-130.) Thus, where the separate existence of an insolvent corporation and its controlling shareholder has been maintained and the corporation makes preferential payments to the controlling shareholder to the detriment of other creditors, alter ego is not the appropriate remedy.

Mix also contends the trial court failed to apply the law correctly. However, it is clear from the minute order that the trial court considered appropriate factors relevant to making an alter ego determination. Mix simply disagrees with the trial court's conclusions concerning the significance of certain facts and complains the trial court failed to mention facts Mix considers significant. We do not reweigh the evidence on appeal.

III. *Motion for Reconsideration*

The trial court properly denied Mix's motion for reconsideration of the order denying his motion to amend the judgment to add a nonparty judgment debtor. Mix did not have good cause for failing to submit documentary evidence and citation to authority with his original motion. He cannot satisfy his burden to provide evidence and authority in support of his motion by requiring the trial court to request it from him and grant a continuance. In addition, nothing Mix submitted in his motion for reconsideration would require us to reach a different conclusion.

IV. *July 26, 2001 Discovery Orders*

Mix contends the trial court abused its discretion by denying two discovery motions that sought evidence of alter ego. We disagree.

A. Standard of Review

"Discovery statutes vest a wide discretion in the trial court, and exercise of that discretion will be disturbed only when it can be said there has been an abuse of discretion." (*Morgan v. Community Redevelopment Agency* (1991) 231 Cal.App.3d 243, 259.) "Abuse of discretion is a deferential standard of review. [Citation.] Under this standard, a trial court's ruling 'will be sustained on review unless it falls outside the bounds of reason.' [Citation.]" (*Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 881.)

B. Facts

***9** During the June 15, 2001 judgment debtor examination, TDC's attorney objected to certain questions and instructed Michael not to answer. On July 2, 2001, Mix filed a motion for an order compelling answers to 14 questions and to continue the examination. The questions at issue are: (1) whether prior to the substitution of TDC in the lawsuit, Michael was aware of the lawsuit, hired TDC's attorney to conduct the litigation, authorized substitution of TDC as a party and subsequently controlled TDC's litigation decisions; (2) the terms of TDC's agreement with the Trust; (3) the dates that George co-owned the property with the limited partnership; and (4) whether Michael personally signed the lease for TDC's corporate offices as the tenant.

On January 5 and June 4, 2001, the trial court limited Mix's document production subpoenas to records dating from the initiation of litigation in May 1995. On July 2, 2001, Mix filed a motion to compel production of documents, including the following: (1) all of TDC's bank account records; and (2) any stock certificates, stock registers and other records documenting ownership of TDC stock for the period from January 1, 1995, to the present.

TDC opposed both motions. A hearing was held on July 23, 2001, and the trial court took the matter under submission. On July 26, 2001, the trial court denied the motion compelling production of records. The trial court found that Mix "fails to provide any authority for the order(s) sought. [Code of Civil Procedure section 708.030, subdivision (c)] requires that production demands in debtor examination proceedings comply with rules that apply in the normal civil litigation. Hence, [Code of Civil Procedure] section 2031 govern[s] this motion. [Mix] has not made any showing of a good faith attempt to meet and confer with the judgment debtor and there is no separate statement under [California Rules of Court, rule] 335. Also, the issue as to how far back [Mix] is entitled to get Imperial Bank records already has been ruled on at least once in the past six months. [Mix] did not file a motion for reconsideration timely or at all as to production of documents beyond five years. [Code of Civil Procedure] section 1008." The trial court denied the judgment debtor examination motion.

Shortly after the hearing, Mix apparently received TDC's bank records for the period from 1995 forward. However, because the trial court had denied his request for conclusion of the debtor examination, Mix was unable to examine Michael concerning the bank records.

C. Motion to Compel Production of Documents

The trial court's order denying Mix's motion for production of bank records prior to 1995 was not an abuse of the trial court's discretion. TDC purchased the office building in 1996 and was substituted as a defendant in the instant action in 1997. The trial court granted discovery of TDC's bank records from 1995 forward, which included records for two years prior to TDC's involvement in the litigation. Bank records from 1995 through 2001 were sufficient to show whether Michael had disregarded the corporate form, commingled his personal funds with TDC's assets, and other factors related to alter ego. There is no reason to expect that TDC's bank records for years prior to 1995 would not have been cumulative of the information revealed in the records after 1995. Mix notes that he was not permitted to examine Michael concerning the bank records that were produced. However, Mix did not request to continue the debtor examination in connection with production of documents. The request was made only in connection with the unanswered questions at the examination.

***10** Records documenting stock ownership are relevant to an alter ego determination in some cases. However, it is undisputed that from 1992 to the present, Michael was the sole shareholder of TDC. Mix makes no argument concerning the necessity of post-1995 records documenting stock ownership of TDC. We note that accountant Howell declared stock had been issued in 1980.

D. Motion to Compel Answers and Continue Debtor Examination

We need not consider whether the trial court abused its discretion in denying Mix's motion to compel answers and continue the debtor examination. All of Mix's questions related to whether Michael controlled the litigation. We have concluded that substantial evidence supported the trial court's finding that Michael was not an alter ego of TDC. Therefore, we never reach the second issue of whether TDC's alter ego controlled the litigation. Even had Michael answered the questions posed concerning his control of the litigation, the answers would not have changed the alter ego determination.

V. *Attorney Fees Order*

Mix contends Michael is not entitled to attorney fees as a prevailing party, because he was never a party to the litigation. This contention is incorrect.

The lease at issue in this action provided for attorney fees as follows: “If Tenant or Landlord shall bring any action for any relief ... arising out of or under this Lease, including any suit by Landlord for the recovery of rent or possession of the Premises, the losing party shall pay the successful party its costs of suit or arbitration, including without limitation, a reasonable sum for attorneys' fees in such suit or arbitration and such attorneys' fees shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment.”

Mix would have been entitled to recover his attorney fees had he established Michael was the alter ego of TDC, which was a party in the instant action. Therefore, pursuant to the principles of reciprocity provided for in Civil Code section 1717, Michael is entitled to recover his attorney fees. (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 128-129.) The trial court properly awarded Michael his attorney fees as a prevailing party.

DISPOSITION

The orders are affirmed. Michael Tumanjan is awarded his costs on appeal.

We concur: ARMSTRONG and MOSK, JJ.

Cal.App. 2 Dist.,2003.
Mix v. Tumanjan Development Corp.
Not Reported in Cal.Rptr.3d, 2003 WL 21810813 (Cal.App. 2 Dist.)

END OF DOCUMENT