Filed 12/19/12 Asphalt Professionals v. D and S Homes CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ASPHALT PROFESSIONALS, INC.,

Plaintiff and Respondent,

v.

D AND S HOMES, INC. et al.,

Defendants and Appellants.

2d Civil No. B238597
(Super. Ct. No. SC044181)
(Ventura County)

Defendants D and S Homes, Inc. (D & S Homes); D & S Development, LLC (D & S Development); Darin Davis; Stephen Bock; Skyphol, LLC, California; Skyphol, LLC, Delaware; the Leon Family Trust; Regina Leon, trustee of the Leon Family Trust; Jose F. Leon, trustee of the Leon Family Trust; Jose Leon; and Regina Leon appeal a judgment granted in favor of plaintiff Asphalt Professionals, Inc. (API). The court in a bifurcated trial found the defendants to be alter egos of T.O. IX, LLC (T.O. IX). API sued T.O. IX for breach of a construction contract because it did not pay for all of API's construction work on a housing development project.

We conclude, among other things, that: 1) substantial evidence supports the findings that appellants, with the exception of Regina Leon and the Leon Family Trust, are alter egos of T.O. IX; and 2) appellants have not shown that they timely and properly raised a defense at trial based on their claim that an exculpatory provision in a T.O. IX contract precludes alter ego liability. We reverse in part and affirm in part.

FACTS

In 2004, API signed a construction contract with T.O. IX, a limited liability company (LLC). In the contract, T.O. IX is listed as the "owner/builder" of a new housing development project. API was the subcontractor that agreed to perform asphalt and concrete street improvement services for the project.

During construction, there were a number of modifications or "change orders" to the original contract. The instructions and communications relating to the changes API had to implement came from D & S Homes, a small corporation formed by Stephen Bock and his partner Darin Davis. Bock and Davis had been partners in the construction business. In 2005, Bock, Davis and Jose Leon owned 84 percent of D & S Homes. D & S Homes owned 60 percent of T.O. IX.

On August 11, 2005, D & S Homes gave notice to API that it had violated provisions of the original 2004 construction contract. In that letter, D & S Homes referred to that 2004 agreement as "our contract," and it notified API that it had "no option . . . but to terminate" the contract. This termination letter did not mention T.O. IX. The letter was signed by Davis as the president of D & S Homes.

T.O. IX did not pay API for all the contracting work it performed on the housing project. API sued T.O. IX stating causes of action for breach of contract and foreclosure on a mechanic's lien. It later amended the complaint, added additional defendants and added causes of action for fraud, conspiracy and quantum meruit. It alleged that T.O. IX, an LLC, was "a mere shell and sham without capital, assets, stock, shareholders, membership interests or members" and that it fell within the alter ego doctrine because it was "a device to avoid individual liability" by the persons and entities who controlled it.

The trial court bifurcated the case. The first phase involved API's causes of action for breach of contract, foreclosure on a mechanic's lien and quantum meruit. The second phase involved fraud and alter ego issues.

After trial on the first phase, the trial court awarded API damages and attorney fees.

After trial on the second phase, the trial court found that every appellant was "the alter ego of" T.O. IX. It said, "T.O. IX was an undercapitalized shell used to conduct business for Mr. Davis, Mr. Bock, and Mr. Leon, who dominated control of it to shield them from liability for their actions." It found they utilized "different undercapitalized LLC's" to conduct business and acted in "bad faith," and that "an inequitable result will follow" if alter ego liability is not imposed. The court said that Davis, Bock and Jose Leon used company assets for "their own personal benefit" in "a manner inconsistent with accepted arms length corporate practices"; that "employees of the entities" they controlled "were being used interchangeably" at T.O. IX, D & S Homes, D & S Development and Skyphol; and that Bock, Davis and Jose Leon had "interlocking control" over those entities and there was a lack of "independent financial accountability" in these companies.

DISCUSSION

Substantial Evidence

Appellants contend the evidence is insufficient to support a finding that they are alter egos of T.O. IX.

Alter Ego Liability

"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 plaintiff's interests." (*Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 300.) Where shareholders abuse the corporate structure, it may be "disregarded and the corporation looked at as a collection or association of individuals" who are "liable for acts done in the name of the corporation." (*Ibid.*)

"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." (*Mesler v. Bragg Management Co.*, *supra*, 39 Cal.3d at p. 300.) "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.*)

Several factors may be relevant in determining whether business entities are alter egos of individuals. These include whether the company was used as an undercapitalized "shell" to conduct business for individuals who dominated and controlled it to shield them from liability for their actions. (*Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 811, 812-813.) An alter ego status also may be shown by "the disregard of legal formalities and the failure to maintain arm's length relationships [between the entities]" and the individuals. (*Id*. at pp. 811-812.) Other factors may include failing to segregate the funds of the separate entities, diverting corporate assets for the benefit of individual shareholders, using the same employees for the different entities, and the lack of any independent and separate corporate management structure. There are numerous other factors that may be considered. "'No single factor is determinative, and instead a court must examine all the circumstances to determine whether to apply the doctrine.'" (*Id.* at p. 812.)

API alleged that T.O. IX as an LLC was "a mere shell and sham without capital" and assets, and Bock, Davis, Jose Leon used it as "a device to avoid "individual liability." An LLC "'is a hybrid business entity that combines aspects of both a partnership and a corporation.'" (*Warburton/Buttner v. Superior Court* (2002) 103 Cal.App.4th 1170, 1187.) LLC's are modern entities, but "'"[a] member of a limited liability company shall be subject to liability under the common law governing alter ego liability."'" (*Id*. at p. 1188.)

In reviewing the sufficiency of the evidence, we do not weigh the evidence or decide credibility of the witnesses. (*Fredrics v. Paige* (1994) 29 Cal.App.4th 1642, 1647; *Church of Merciful Saviour v. Volunteers of America* (1960) 184 Cal.App.2d 851, 856.) We look to the evidence supporting the findings and draw all reasonable inferences to support the judgment. (*Griffith Co. v. San Diego College for Women* (1955) 45 Cal.2d 501, 508.)

In contending the trial court's findings are not supported by the evidence, appellants primarily rely on the evidence they produced at trial. They do not cite API evidence. This is tantamount to a waiver of this argument on appeal. "[A]n attack on the evidence without a fair statement of the evidence is entitled to no consideration when it is apparent that a substantial amount of evidence was received on behalf of the respondent." (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) "Thus, appellants who challenge the

decision of the trial court based upon the absence of substantial evidence to support it "'are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed waived.'" (*Ibid.*) But even so, from our review of the record, we conclude substantial evidence supports the judgment.

The Finding That T.O. IX Was a Shell Entity

The trial court found that T.O. IX was a "shell" entity which the defendants used as a "subterfuge" for "contracting without a license." Appellants have not shown this finding is unsupported by the record.

In 2004, API signed a "subcontract agreement" to provide paving services to T.O. IX. T.O. IX was listed as the owner and "builder" of homes in the contract. But T.O. IX was cited by the Contractor's State Licensing Board (CSLB) for contracting without a license. It was ordered to cease contracting activities. A company's functional incapacity is a relevant factor in determining alter ego status. (*Zoran Corp. v. Chen*, *supra*, 185 Cal.App.4th at p. 811.) The CSLB action supports a finding that T.O. IX could not be the builder of the homes. The building permits for the T.O. IX project were not filed by T.O. IX. They were prepared by Davis and D & S Development.

API signed the subcontract with T.O. IX, but the agreement provides the parties are API, the subcontractor, and a "Contractor" that is not identified. After signing the contract, API learned that T.O. IX was not the builder. D & S Homes and D & S Development notified API that they were the entities that would work with API on this project. On August 11, 2005, Davis, the president of D & S Homes, notified API that he was terminating the T.O. IX contract. In that letter he referred to that agreement as "our contract," not as T.O. IX's contract.

A summary D & S Homes prepared regarding the T.O. IX housing project lists "D & S Homes" *and* T.O. IX as the "Property Owner." API correctly notes that the trial court could reasonably infer that D & S Homes considered itself to be an owner. That conflicts with T.O. IX's representations about its ownership of the project in the subcontract.

API presented evidence showing that T.O. IX had insufficient assets to pay bills. An accountant from D & S Homes testified that "if T.O. IX needs to cut a check,

somehow the money gets transferred from D & S Homes, Inc., to T.O. IX." The trial court could reasonably infer T.O. IX was not able to independently conduct business.

"'[T]he attempt to do corporate business without providing any sufficient basis of financial responsibility to creditors is an abuse of the separate entity . . . ." (*Claremont Press Publishing Co. v. Barksdale* (1961) 187 Cal.App.2d 813, 816.) T.O. IX's "undercapitalization" is a factor supporting a finding that it was a "shell" used for the benefit of another entity or person. (*Zoran Corp. v. Chen*, *supra*, 185 Cal.App.4th at p. 811.) There was evidence that T.O. IX did not have a separate business identity. T.O. IX and D & S Development shared the same office. But T.O. IX paid no rent. D & S Homes paid that obligation. An employee of D & S Homes performed accounting services for T.O. IX. D & S Homes had access to a T.O. IX bank account. These factors support an alter ego finding. (*Ibid.*) Appellants have not shown the trial court erred by finding T.O. IX was a shell entity.

Evidence of Interlocking Control by Bock, Davis and Jose Leon

A major task in deciding alter ego status is determining the persons "actually controlling" the alter ego entities. (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.) Here the trial court could reasonably infer that Bock, Davis and Jose Leon had the actual and interlocking control over T.O. IX and a series of other entities they used to conduct business.

Bock testified that he owned Emaron Homes, LLC. Emaron Homes owned 50 percent of D & S Development. Bock and Davis formed D & S Development to construct homes in 1999. In a city business tax certificate, Davis said D & S Development was "a subsidiary of" T.O. IX. D & S Homes was the successor to D & S. Development.

In 2005, Bock, Davis and Leon owned 84 percent of D & S Homes. Bock owned 28 percent, Davis owned 28 percent, and Leon's family trust owned 28 percent. Bock was the D & S Homes' CEO. Davis was the president. Jose Leon was the D & S Homes' secretary and the former chairman of the board. The D & S Homes' controller took orders from Bock, Davis and Jose Leon.

Davis was both the president of D & S Homes and the T.O. IX officer who signed the T.O. IX contract. Bock filed the T.O. IX articles of organization with the Secretary of State. He is listed as the T.O. IX "organizer." D & S Homes had a controlling interest in T.O. IX because it owned 60 percent of that company. Skyphol, LLC owned 20.38 percent of T.O. IX. Jose Leon was the managing member of Skyphol and he and his family trust owned Skyphol.

In addition to this evidence of interlocking control, the trial court could reasonably infer that the entities that Bock, Davis and Leon controlled lacked separate identities. In 2003, Skyphol deeded the real property for the housing project to T.O. IX. In the Quitclaim Deed, Leon certified the "*Grantors and Grantees are comprised of the same parties*." (Italics added.) In a water permit, Bock listed the "property owner" of the T. O IX project as Skyphol and T.O. IX. In a business tax declaration, Davis declared that D & S Development was a "subsidiary of" T.O. IX. Constance Davis, a former D & S Homes' customer service manager, testified that she considered D & S Homes and D & S Development to be the same entity.

Bock and Davis had a pattern of forming new LLC entities for new construction projects. Appellants have not shown why the trial court could not reasonably infer their motive was to avoid legal liability. The court asked why companies would adopt a practice of having new LLC's for new projects. The D & S Homes' accountant said there was an industry trend toward forming such multiple entities. He said, "[T]he separate LLC allowed these companies to sort of constrain any potential lawsuits or liability."

Evidence Showing a Lack of Arm's Length Relationships

A "failure to maintain arm's length relationships [between the entities]" and individuals is a relevant factor in determining alter ego liability. (*Zoran Corp. v. Chen, supra*, 185 Cal.App.4th at pp. 811-812.) Bock claimed that D & S Homes was a "separate entity." But he admitted that it did not issue payroll checks for its employees. It did not prepare W-2's or 1099 forms. Those tasks were performed by another company Bock owned called Real Estate Spectrum. Bock said Real Estate Spectrum also "obtained workers' compensation insurance in its own name for the employees of D & S Homes, Inc."

But later D & S Homes and Real Estate Spectrum switched positions so that D & Homes assumed "the payroll process" for its own employees. Their ability to switch their roles with respect to these obligations is a factor supporting the trial court's findings.

The trial court could also infer a lack of arm's length relations from the way the Bock, Davis and Leon entities distributed funds to each other. When D & S Homes was unable to pay its bills, it received money from Jose Leon and his family trust to cover the obligations. D & S Homes paid the rent for D & S Development. The D & S Homes' controller testified D & S Homes disbursed funds to D & S Development and Real Estate Spectrum without providing invoices or financial documentation. It also paid T.O. IX's rent. D & S Homes paid the invoices for legal services for Davis and Bock individually and for the legal services provided to the other companies they owned. Those individuals and companies never reimbursed D & S Homes for those payments.

Using the Same Employees for the Different Companies

The use of the same employees to perform services for the various entities is a factor supporting alter ego liability. (*Zoran Corp. v. Chen*, *supra*, 185 Cal.App.4th at p. 811.) Pat Lee, a D & S Homes' employee, performed accounting services for that company. But Bock and Davis also required her to perform accounting services for other companies they owned. When she performed those services, she did not "allocate" her time "amongst these entities," and she did not bill them. James Paules was employed by D & S Homes as a controller. But he also was performing accounting for T.O. IX, D & S Development, Real Estate Spectrum, and Emaron Homes. He was paid by D & S Homes.

Lack of Financial Separation and Company Payment for Personal Expenses

API presented evidence to support the trial court's finding that there was a lack of financial separation between the entities and individuals. D & S Homes used a T.O. IX bank account to issue checks. As a D & S Homes' employee, Lee made "personal bank deposits" for Bock and Davis. Financial controllers provide a safeguard to prevent the improper use of company assets by requiring invoices and financial documentation before issuing company checks. Here the trial court could find there were no safeguards because the controller had to issue checks on demand without knowing why he was making these

disbursements. Paules testified that he was "instructed" to issue checks from Real Estate Spectrum to Bock, Davis and Jose Leon as "compensation." But he did not "believe they were performing any services for Real Estate Spectrum." There were no "time sheets, billing statements, invoices" or any financial documentation to "backup" the authority for issuing these checks. There was no withholding for payroll taxes for Bock, Davis and Leon.

Paules said he was instructed to issue a check to Davis and make an entry that it was payment for a "note payable." But he was not given any financial documentation to verify that the company owed money to Davis. Several companies controlled by Bock and Davis shared the office space at the D & S Homes' headquarters. But only D & S Homes paid the rent. The other entities were not billed for their "pro rata" share.

There was evidence that D & S Homes' assets were used to pay for shareholders' personal expenses. Jose Leon instructed D & S Homes to issue him a $30,000 check so he could purchase a Corvette automobile. The company paid his private automobile "lease payments." API presented evidence showing that Bock or his wife obtained a Lexus automobile paid for by D & S Homes' funds.

At trial, Paules was asked, "Can you tell us which employee at D & S [Homes] or Real Estate Spectrum was receiving payments for their Honda Odyssey?" He replied, "It was Martin Barrett, our treasurer." Lee testified that Davis required her to make payments from a Fairland Construction account, a company Davis owned, to pay for a Harley Davidson motorcycle. But that company did not own a motorcycle.

Bock and Davis had a D & S Homes' company credit card. But the company's controller could not determine whether they used it for business or personal expenses. He had to rely on Bock and Davis to decide how to account for the expenses. The lack of an internal financial control mechanism to prevent company assets to be used for personal matters is evidence supporting alter ego liability. (*McKee v. Peterson* (1963) 214 Cal.App.2d 515, 531.) The evidence supports a finding that there was a "failure to maintain arm's length relationships" and no financial barrier between the entities and the individuals. (*Zoran Corp. v. Chen*, *supra*, 185 Cal.App.4th at p. 811.)

Appellants suggest the trial court should have relied on their version of the facts. But it either rejected the facts they relied on or gave them less weight. We may not overturn such determinations. Deciding the weight of evidence and credibility are matters reserved for the trial court. (*Church of Merciful Savior v. Volunteers of America, Inc.*, *supra*, 184 Cal.App.2d at p. 856.) The evidence API presented was sufficient to support the judgment against all appellants, with the exception of appellants Regina Leon and the Leon Family Trust.

Did Appellants Properly Raise a Defense to Bar Alter Ego Liability?

Appellants contend a provision in the contract between API and T.O. IX precludes alter ego liability and requires reversal of the judgment.

Section 20.2 of the contract provides, in relevant part, "Notwithstanding any other provision in this Agreement to the contrary, no officer, shareholder, director or other representative of Contractor . . . shall have any personal liability for the performance of any obligations or in respect of any liability of Contractor under this Agreement, and no monetary or other judgment shall be sought or enforced against any such individuals or their assets . . . ."

API contends appellants did not raise the applicability of this provision during trial, during an earlier bifurcated trial in this case, or in two prior appeals. It argues this issue was waived because it was not timely raised. We agree.

Appellants did not raise the section 20.2 issue at the start of trial on alter ego issues on January 7, 2011. Nor did they claim that they would be relying on any contract provision to bar alter ego liability. Trial ended on October 14, 2011, when the last witness testified. During post-trial argument on December 1, 2011, almost one year after the first day of trial, appellants' counsel mentioned this provision and claimed it precluded alter ego liability. The trial court said, "[Y]ou *just* raised it. *But you didn't raise it over the course of this case*." (Italics added.) The court found the issue was not raised on a prior summary judgment motion, during a prior appeal or at any time during "five years" of litigation.

Appellants may not challenge the trial court's implied finding that they waived this issue because they did not produce a complete record. Appellants' appendix does not

include their answer to the complaint. Consequently, we cannot determine whether they raised this issue as an affirmative defense. (*Hughes v. Nashua Mfg. Co.* (1968) 257 Cal.App.2d 778, 783 ["An affirmative defense must be raised in the answer or else it is waived"].) There was a prior trial phase in this case. But appellants have not included the record from that proceeding. Where the record is silent we presume the trial court's findings are supported by matters not before us. (*Furlough v. Transamerica Ins. Co.* (1988) 203 Cal.App.3d 40, 46.) Given the incomplete record, we cannot conclude appellants raised this issue as a defense in their pleadings or before or during any of the trials in this action.

But even from the record we have, the result does not change. During closing argument, API objected that: 1) the section 20.2 clause was ambiguous, and 2) there was no factual showing whether it applied to T.O. IX or other unidentified entities. API's counsel noted that the provision mentions a "Contractor," but T.O. IX was not a contractor and there was no contractor named in the agreement. T.O. IX was listed as an "owner/builder." But evidence showed it was not licensed or the actual builder. API claimed it was deceived by T.O. IX and it did not waive its right to sue. Given these contentions, the applicability of section 20.2 could not be resolved in appellants' favor by simply reviewing the face of the provision. (*Pacific State Bank v. Green* (2003) 110 Cal.App.4th 375, 389; *Estate of Black* (1962) 211 Cal.App.2d 75, 86.)

The trial court could reasonably find that for appellants to prevail on this issue they had to present evidence: 1) to resolve the ambiguities (*Christie v. Kimball* (2012) 202 Cal.App.4th 1407, 1412; *Estate of Black*, *supra*, 211 Cal.App.2d at p. 86); 2) to prove who were the parties subject to this clause; 3) who was the unidentified "contractor"; 4) whether section 20.2 could be applied to shield defendants who were not parties to the agreement; 5) whether applying it was consistent with the parties' mutual intent; 6) whether the parties intended this clause as a waiver of alter ego claims; and 7) how a shell entity could validly prepare or enforce this provision.

But appellants did not request the trial court to re-open the trial. They did not request permission to amend their pleadings. They did not ask the court to allow them to give notice to API so the issue could be tried as an alter ego liability defense. They did not

provide a valid justification for not raising the issue earlier. Nor did they explain how raising the issue at this late date was not prejudicial to API. Appellants suggest that API should have raised the section 20.2 issue. But a plaintiff is not required to raise the opposing party's defenses. Nor should it be subject to a trap for the unwary that is sprung as a post-trial eleventh-hour surprise. Appellants waived this issue. (*Mokler v. County of Orange* (2007) 157 Cal.App.4th 121, 136 [defense waived claim "by failing to raise issue before trial"]; *Color-Vue, Inc. v. Abrams* (1996) 44 Cal.App.4th 1599, 1605 [failure to raise issue before trial constituted waiver]; *Villa Pacific Building Co. v. Superior Court* (1991) 233 Cal.App.3d 8, 11; *Hughes v. Nashua Mfg. Co., supra,* 257 Cal.App.2d at p. 783 [issue is waived where it is not included as an affirmative defense]; *Steward v. Paige* (1949) 90 Cal.App.2d 820, 825.)

But even so, appellants' remaining contentions are not meritorious. They claim section 20.2 constituted a waiver of API's right to sue. But "the right to pursue claims in a judicial forum is a substantial right and one not lightly to be deemed waived." (*Marsch v. Williams* (1994) 23 Cal.App.4th 250, 254.) An exculpatory provision that does not "clearly and unequivocally" relate to the type of claims involved in plaintiff's action may not be applied to bar judicial relief. (*Fahey v. Gledhill* (1983) 33 Cal.3d 884, 894.) Here section 20.2 does not "clearly and unequivocally" refer to alter ego liability claims. (*Ibid.*)

Moreover, appellants' contention that provisions similar to this have been enforced in other contexts misses the point. The trial court found that applying it *in this case* would be inequitable given the facts showing *alter ego liability*. It found this was a "stock boilerplate" provision; and that "T.O. IX was an undercapitalized shell used to conduct business for Mr. Davis, Mr. Bock, and Mr. Leon, who dominated control of it to shield them from liability for their actions." The court added that appellants' "bad faith" was "pervasive throughout the case" and they had used "different undercapitalized LLC's." It said that "under the particular circumstances of this case," applying it to bar alter ego liability would "sanction a fraud or promote injustice."

Contractual clauses are not enforced if they have the effect of relieving parties of the consequences for their bad faith acts or actions that contravene public policy. (*Szetela*

v. Discover Bank (2002) 97 Cal.App.4th 1094, 1101; *Klein v. Asgrow Seed Co*. (1966) 246 Cal.App.2d 87, 100; *Halliday v. Greene* (1966) 244 Cal.App.2d 482, 488.) The trial court found that T.O. IX was not the entity it claimed to be in the contract. It was a shell and defendants deceived API. "'[A] party who has induced the other party to enter into the contract based on . . . an intentional misrepresentation . . . cannot be relieved of liability by any . . . exculpatory clause, or other clause waiving liability, contained in the contract.'" (*Manderville v. PCG&S Group, Inc.* (2007) 146 Cal.App.4th 1486, 1501, italics omitted.) Because appellants have not set forth the evidence supporting the judgment, they are not in a position to challenge the court's findings that applying section 20.2 to defeat alter ego liability would sanction fraud and be inequitable. (*Nwosu v. Uba*, *supra*, 122 Cal.App.4th at p. 1246.)

Regina Leon and The Leon Family Trust

Regina Leon contends the trial court erred because it imposed alter ego liability on her because of her actions as a trustee of a trust and it improperly imposed liability on the Leon Family Trust. She claims the alter ego doctrine does not apply to trusts. She is correct that a trust cannot be designated as an alter ego. (*Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, 518.) "'Because a trust is not an entity, it's impossible for a trust to be anybody's alter ego.'" (*Id.* at p. 521.) Consequently, the judgment against the Leon Family Trust must be reversed.

But the alter ego doctrine "may apply to a trustee" such as Regina Leon. (*Greenspan v. LADT LLC*, *supra*, 191 Cal.App.4th at p. 518.) Regina Leon claims the evidence is insufficient to subject her to alter ego liability because of the passive nature of her trust-related actions. We agree.

The trial court found that Jose Leon and Regina Leon were trustees of the Leon Family Trust and that the trust wired money into a D & S Homes' bank account. But unlike Jose Leon, the trial court did not find that Regina Leon affirmatively exercised control over T.O. IX with Bock and Davis. Instead, it found that in conducting her trust functions, Regina Leon followed the instructions of her husband Jose Leon. It said, "[S]he intentionally does not read documents she is asked to sign" (boldface omitted), and she is

"indifferent" and "has no concern" about "what he does or what his businesses do." At trial she testified that she did not know whether she signed "personal commercial guarantees" for T.O. IX because she did not read them.

Regina Leon may have neglected her duties as a trustee. But that does not make her subject to T.O. IX alter ego liability. She "'must have been an actor in the course of conduct constituting the "abuse of corporate privilege."'" (*American Home Ins. Co. v. Travelers Indemnity Co.* (1981) 122 Cal.App.3d 951, 966.) The evidence in the record about her passive actions is insufficient for alter ego liability.

Appellants claim that there are errors in the trial court's statement of decision. These alleged errors do not merit grounds for reversal. The trial court's material findings are amply supported.

We have reviewed appellants' remaining contentions and we conclude they have not shown error.

The judgment is reversed as to appellants Regina Leon and the Leon Family Trust. In all other respects, the judgment is affirmed. Each party shall bear their own costs on appeal.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Glen M. Reiser, Judge

Superior Court County of Ventura

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