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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of MICHAEL and
TANIA S. PRICE.

2d Civ. No. B276415
(Super. Ct. No. 1438381)
(Santa Barbara County)

MICHAEL MCKEON PRICE,

Appellant,

v.

TANIA S. PRICE,

Respondent.

In an earlier appeal,¹ we affirmed the trial court's order requiring Michael to pay Tania's attorney fees following entry of a stipulated judgment settling issues of child and spousal

¹ *In re Marriage of Price* (Oct. 18, 2016, B263562) [nonpub. opn.].

support.² Here, Michael appeals an order joining Michael Price, M.D., Inc. (M.D., Inc.) as an additional judgment debtor. It appears that the income Michael earns, which is paid to M.D., Inc., is considerably more than the amount M.D., Inc. pays to Michael each month. Consequently, he owes Tania a substantial amount of back support. The court concluded Michael's claimed penury was self-imposed and that M.D., Inc. is Michael's "alter ego." It ordered that the corporation be added as a judgment debtor to satisfy his support obligation.

On the record before us, we agree with the trial court that Michael is deliberately evading his agreed-upon obligation. We conclude, however, that while there may be ways to achieve equity in this matter, joining a corporation that did not exist at the time of the stipulated judgment is not one of them. We reverse.

FACTS AND PROCEDURAL BACKGROUND

Michael and Tania were married in 2000 and had twins five years later. They separated in 2013. On April 11, 2014, the parties entered into a stipulated judgment of dissolution in which Michael agreed to pay \$5,912 per month in child support and \$10,540 per month in spousal support. At that time, Michael earned over \$64,000 per month as an orthopedic surgeon for Scheinberg Orthopedic Group (Scheinberg). Tania, who had not worked in many years, was a stay-at-home mother and primary caretaker of the two children. Her only income is the child and spousal support Michael agreed to pay in the stipulated judgment.

² We refer to the parties by their first names to avoid confusion. No disrespect is intended.

Scheinberg terminated Michael's employment in October 2014. The following month, he formed M.D., Inc., an S corporation, with the intention of starting his own practice. Michael is the sole shareholder of M.D., Inc.

In early 2015, Michael claimed that his only income was \$11,000 per month, paid as a salary from M.D., Inc. This disclosure prompted Tania to seek an order declaring M.D., Inc. to be Michael's alter ego and allowing her to pierce its corporate veil. The trial court denied the motion without prejudice. It found "that the case of *Postal Instant Press v. Kaswa Corp.* (2008) 162 Cal.App.4th 1510 [*Postal Instant Press*] is controlling. *Postal Instant Press* specifically addresses reverse piercing of the corporate veil, holding that a third party creditor could not pierce the corporate veil and reach corporate assets to satisfy the claims of a former shareholder. The case held that reverse piercing of the corporate veil is not permissible at this time in California and no authority existing in California law at this time overrides this case. Tania has alternative legal remedies available other than piercing the corporate veil."

In July 2015, Michael was convicted of six counts of contempt for failure to pay child and spousal support. Since his conviction, Michael has continued to defy court orders and has evaded Tania's efforts to execute on the judgment. As of May 4, 2016, Michael owed Tania \$209,340 in back support and another \$51,650 in attorney fees.

At some point, Tania discovered that Michael earns \$600,000 per year through his employment with Kern County Medical Management (Kern Medical). Instead of depositing that income into personal accounts, which Tania could attach, Michael instructed Kern Medical to split the compensation for his services

between M.D., Inc. and another apparent shell corporation he and his new wife had formed, MLP Enterprise, Inc. (MLP, Inc.). As a result, M.D., Inc. receives \$25,000 in monthly compensation, instead of the \$11,000 claimed by Michael. MLP, Inc. also receives \$25,000 per month. Michael's personal expenses, including credit card charges, are paid through the two corporations.

Based on this new information, Tania moved for an order amending the judgment to include M.D., Inc. and MLP, Inc. as judgment debtors. Michael opposed the motion and requested an evidentiary hearing. Tania subsequently withdrew her motion as to MLP, Inc.

The trial court granted the motion as to M.D., Inc., finding that Tania had shown, by a preponderance of the evidence, that M.D., Inc. is Michael's alter ego. It denied Michael's request for an evidentiary hearing because (1) Michael and M.D., Inc. failed to provide discovery relevant to Tania's motion, (2) Michael failed to comply with the court's support and fee orders, and (3) Michael was not prejudiced because he submitted multiple declarations in opposition to the motion. Michael appeals.³

³ Tania did not file a respondent's brief. "Because [she] did not appear in this appeal, we 'decide the appeal on the record, the opening brief, and any oral argument by the appellant' (Cal. Rules of Court, rule 8.220(a)(2); [Citation].)" (*Galleria Plus, Inc. v. Hanmi Bank* (2009) 179 Cal.App.4th 535, 537, fn. 2.)

DISCUSSION

Michael contends that the trial court's order amending the judgment to add M.D., Inc. as a judgment debtor violates the corporation's right to due process. He is correct.

Code of Civil Procedure section 187⁴ allows a trial court to amend a judgment to add an additional judgment debtor upon a showing "(1) that the new party [is] the alter ego of the old party *and* (2) that the new party had controlled the litigation, thereby having had the opportunity to litigate, in order to satisfy due process concerns."⁵ (*Triplett v. Farmers Ins. Exchange* (1994) 24 Cal.App.4th 1415, 1421 (*Triplett*); see *NEC Electronics Inc. v. Hurt* (1989) 208 Cal.App.3d 772, 778 (*NEC*).) The judgment creditor bears the burden to satisfy both prongs by a preponderance of evidence. (See *Wollersheim v. Church of Scientology* (1999) 69 Cal.App.4th 1012, 1017-1018.) We review the trial court's findings for substantial evidence. (*Jack Farenbaugh & Son v. Belmont Construction, Inc.* (1987) 194 Cal.App.3d 1023, 1029.)

The first prong of the section 187 test is not at issue. Substantial evidence supports the trial court's finding that M.D., Inc. is presently the alter ego of Michael. At issue is the second

⁴ All further statutory references are to the Code of Civil Procedure.

⁵ Section 187 provides: "When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code."

prong, i.e., whether M.D., Inc. had sufficient control over the previous litigation to satisfy due process concerns. (*Triplett, supra*, 24 Cal.App.4th at p. 1421 [“The due process considerations are in addition to, *not in lieu of*, the threshold alter ego issues”].) “Control of the litigation sufficient to overcome due process objections may consist of a combination of factors, usually including the financing of the litigation, the hiring of attorneys, and control over the course of the litigation.’ [Citation.] Clearly, some active defense of the underlying claim is contemplated. [Citation.]” (*NEC, supra*, 208 Cal.App.3d at p. 781; see *Motores De Mexicali v. Superior Court* (1958) 51 Cal.2d 172, 176 [due process “guarantees that any person against whom a claim is asserted in a judicial proceeding shall have the opportunity to be heard and to present his defenses”].)

Here, Tania has failed to demonstrate that M.D., Inc. actually controlled the dissolution litigation in a manner that provided it an opportunity to protect itself during the proceeding. It is undisputed that M.D., Inc. did not exist until months after Michael and Tania executed the stipulated judgment resolving their dissolution action. As a result, M.D., Inc. did not and could not engage in some active defense of the underlying claims. (See *NEC, supra*, 208 Cal.App.3d at p. 781.) It did not finance the litigation, hire the attorneys who represented Michael or direct the course of the action. (See *id.*, at pp. 778-779.) Although Michael did perform these tasks, he did so on his own behalf and not on behalf of a corporation.

Corporate entities are presumed to have existences separate from their shareholders. (*Mid-Century Ins. Co. v. Gardner* (1992) 9 Cal.App.4th 1205, 1212.) On the record presented, we cannot conclude that M.D., Inc. controlled the

litigation in this matter such that adding it as a judgment debtor would comport with due process. Because Tania failed to satisfy both the “alter ego” and “control of litigation” prongs of section 187, we reverse the trial court’s order.⁶

In so ruling, we recognize that the equities weigh heavily in favor of the order adding M.D., Inc. as a judgment debtor. Michael has not only thwarted Tania’s attempts to collect on the judgment, but he also has ignored the trial court’s orders requiring him to meet his agreed-upon support obligation. But equitable considerations, however compelling, do not trump due process concerns. (See *Hagge v. Iowa Dept. of Revenue and Finance* (Iowa 1993) 504 N.W.2d 448, 452 “[E]quity cannot override the clear commands of the Due Process Clause”.) Nonetheless, as the trial court points out, Tania has other remedies available to her. For example, to the extent Michael has fraudulently transferred his property to M.D., Inc., Tania may be equitably entitled to have those transfers set aside. (See *Postal Instant Press, supra*, 162 Cal.App.4th at p. 1524.) Our

⁶ Even if Tania had satisfied the two prongs of section 187, the trial court’s order still may be improper because it holds the corporation responsible for the debts of the shareholder instead of holding the shareholder liable for the corporation’s debts. This theory of liability, known as “outside reverse piercing of the corporate veil,” has been rejected by many courts, including *Postal Instant Press, supra*, 162 Cal.App.4th at pages 1512-1513. In light of our decision, we need not reach either the question of whether a judgment creditor may be permitted to attach corporate assets through a section 187 motion when the judgment debtor is the sole shareholder of the corporation, or the broader question of whether California law permits “outside reverse piercing of the corporate veil.”

decision does not preclude her from pursuing this or any other appropriate post-judgment enforcement remedy.

DISPOSITION

The order adding M.D., Inc. as a judgment debtor is reversed. In the interests of justice, the parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Donna D. Geck, Judge

Superior Court County of Santa Barbara

The Law Offices of Cynthia A. de Petris, Cynthia A.
de Petris, and L.E. Becker for Appellant.

No appearance for Respondent.