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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

VIDEO TECH SERVICES, INC.,

Plaintiff and Appellant,

v.

EDWARD ABDALLA ET AL.,

Defendants and
Respondents.

B266891

(Los Angeles County
Super. Ct. No. SC105947)

APPEAL from a judgment of the Superior Court of Los
Angeles County, Craig D. Karlan, Judge. Affirmed.

Gordee, Nowicki & Blakeney, Alan J. Gordee and
Bryan B. Arnold, for Plaintiff and Appellant.

Jonathan A. Brod Law Corporation and Jonathan A.
Brod, for Defendants and Respondents.

Plaintiff and appellant Video Tech Services, Inc. obtained a judgment against several defendants, including Thomas Woolsey,¹ after terminating sanctions were imposed as a sanction for discovery abuse. Video Tech appeals from a post-judgment order denying a motion to amend the judgment to add Thomas, in his capacity as trustee of the H.E. Woolsey Trust (Trust 1), as a judgment debtor. Video Tech contends the trial court applied an incorrect legal standard to determine whether a trustee is the alter ego of a judgment debtor, specifically, by requiring Trust 1 to have been involved in the underlying dispute. The record on appeal is inadequate to demonstrate prejudicial error, as it contains no reporter's transcript of the hearing on the motion to amend the judgment, or suitable substitute such as a settled statement or agreed statement, as authorized by California Rules of Court, rules 8.134 and 8.137. Assuming the record on appeal is adequate for review, however, we conclude the court applied the correct standard and no error has been shown. We affirm.

¹ Because two relevant people share the last name Woolsey, they will be referred to individually by their first names for clarity.

FACTS AND PROCEDURAL BACKGROUND

Trust Estate and Video Tech Judgment

Harvey Woolsey was an engineer who began purchasing rental properties in the 1960s. He incorporated the H.E. Woolsey Corporation in 1971. Thomas is Harvey's only child. He is an architect and began working for the corporation in 1986.

In August 1990, Harvey established Trust 1. He transferred his interest in the family home, several rental properties, vehicles, furnishings, household goods, and jewelry to Trust 1. The corporation leased office space from Trust 1.

Harvey also owned an auto dealership. In July 1995, Harvey applied for an unsecured revolving line of credit in the name of "Harvey E. Woolsey & Thomas D. Woolsey Auto Dealers." The application listed average checking account balances of \$75,000 for each applicant. Harvey's average balance in his savings account was \$40,000, while Thomas's average balance in savings was \$1,000. Harvey also signed a personal guaranty. The maximum amount that could be borrowed on the line of credit was \$50,000.

Harvey's financial statement for the line of credit listed 15 real properties, as well as other assets, income, liabilities, and expenditures. Thomas also provided a financial statement to the bank, which listed ownership of one property.

Thomas married in 1998. He established the Thomas D. Woolsey Trust (Trust 2) on March 1, 1999. He transferred two properties that he purchased from his father to Trust 2. Thomas divorced in early 2000. He could not afford to make the payments on the properties and gave them back to his father. His father transferred them back to Trust 1. Trust 2 has no assets. It is inactive or no longer in existence.

Thomas had a son and married his second wife in 2003. Harvey was diagnosed with prostate cancer. He gave all of his shares of the corporation to Thomas, and he restated Trust 1 in its entirety on March 27, 2003. Thomas divorced in 2004.

Harvey died in January 2007. Thomas became trustee of Trust 1, with broad powers to manage assets for the benefit of himself and future beneficiaries. The trustee is entitled to reasonable compensation from the trust estate each year. Thomas hired attorney Jonathan Brod to assist him with the administration of Trust 1.

Thomas is also the initial beneficiary under Trust 1. There are ascertainable standards for the distribution of income and principal. The trustee is required to pay as much of the net income and principal as necessary for the beneficiary's health, education, or support. Thomas has a power of appointment, but if he does not appoint all of the trust estate, the remainder is to be distributed at his death in specific shares to six of Harvey's nieces and nephews, and in a slightly larger share to Harvey's grandson. Any portion

of the trust allocated to Harvey's grandson is to be held and administered by a successor trustee. Trust 1 also contains a spendthrift provision, which prevents access to trust assets by creditors.

Thomas married his third wife in 2008, and they had a child together. In September 2009, Thomas, as trustee of Trust 1, distributed funds to purchase a five-unit apartment property on Larch Street in Inglewood for \$589,000. On Brod's advice, he took title to the property in the name of a new revocable trust, the D.W. Trust dated December 7, 2009 (Trust 3). The grant deed executed by the seller of the Larch Street property on September 17, 2009, states that the grantee is Thomas, as trustee of Trust 3. Although title was taken in the name of Trust 3, tenants wrote rent checks to Trust 1.

Video Tech is a national audiovisual staffing company which provides technical crews to operate equipment at live events. Video Tech's general manager, Edward Abdalla, was a tenant in a building owned by Trust 1. In the fall of 2009, Abdalla and Thomas began discussing a joint business venture that would directly compete with Video Tech. They met with Video Tech employees David Santos and Timothy Rodriquez. Abdalla, Santos, and Rodriquez resigned from Video Tech on October 26, 2009, without notice, to work for H.E. Woolsey Corporation, doing business as The Crew Source (TCS). On December 7, 2009, Video Tech filed a complaint against Abdalla, Santos, Rodriquez, Thomas, and

TCS for several causes of action, including misappropriation of trade secrets.

Thomas began divorce proceedings in October 2010, which concluded in July 2014. Video Tech had unsuccessfully attempted to compel discovery several times. The trial court concluded evidence had been destroyed and granted a motion for terminating sanctions against all defendants except Rodriquez. The court awarded compensatory damages of \$2,000,754 against Abdalla, Santos, Woolsey, and TCS, jointly and severally, as well as costs of \$595,779.80. In addition, the court awarded punitive damages of \$500,000 against TCS alone. The court declined to award punitive damages against the individual defendants due to a lack of evidence of their net worth, but noted that an award of punitive damages would otherwise have been merited. The court entered judgment on August 18, 2014, which the defendants appealed, and this court affirmed in a nonpublished opinion. (*Video Tech Services Inc. v. Abdalla* (Apr. 13, 2015, B259688) [nonpub. opn.].)

At the end of 2014, Thomas transferred the Larch Street property to Trust 1. Thomas amended Trust 3 to change the successor trustees and the amount of the fee paid to the trustee.

Post Construction was incorporated in December 2014. Trust 1 owns the stock of Post. Thomas is the sole director. Post's main business activity is maintenance and repair of Trust 1's buildings. Post's gross income is \$6,000.

Motion to Amend the Judgment

On March 27, 2015, Video Tech filed a motion to amend the judgment to add Thomas, as trustee of Trust 1, as a judgment debtor. Video Tech attached portions of Thomas's judgment debtor examination taken in February 2015.

Thomas has lived for 57 years in the family home in Inglewood purchased by his father. The home is owned and maintained by Trust 1. He uses the furniture that his father placed in Trust 1, including his father's bed, couch, books, and TV. The trust holds property insurance policies and a life insurance policy on Thomas's life with Trust 1 as the beneficiary. He is currently unemployed and receives Medi-Cal.

Trust 1 owns a 1950 GMC truck, 1967 VW truck, 1974 Austin Mini Cooper, 2000 Volvo V70, and 2004 Volvo V50. Thomas drives the 2000 Volvo V70. No one drives the other vehicles, and they are all kept at his home. All of the vehicles are registered in the name of Trust 3, but he made a mistake, because they are assets of his father and owned by Trust 1. Thomas has kept the auto sales license current, but the dealership ceased operations. No other property was ever transferred to Trust 3.

Thomas recently sold his 2005 Honda motorcycle for \$3,100 to pay his lawyer to finish his divorce. He owes attorney fees of \$423,756.01 for his last divorce.

Trust 1 owns several properties that have rent-controlled units. It receives annual gross income of \$650,000

and annual net income of approximately \$3,400. Many of the properties are mortgaged, because Thomas had to pay taxes of \$3.8 million to the Internal Revenue Service. No beneficiaries receive any income payments from Trust 1.

Thomas explained that Brod made a mistake when he put the Larch Street property in Trust 3 because it belonged to Trust 1. Thomas used funds from Trust 1 to buy the property, and the property belonged to Trust 1, not to Thomas as an individual, so they transferred it back to Trust 1. Video Tech's attorney asked, when Thomas took out the money to purchase the property, whether an agreement was prepared for Thomas as a trustee, or whether a loan was made to Thomas individually. Thomas stated that it was a loan to Trust 3, not to him as an individual. He stated that Brod had all the paperwork for the transaction. Four hundred and five thousand dollars is owed on the property.

Thomas owns all the shares of the corporation. The corporation pays his expenses in the form of a loan. Thomas keeps track of his expenses. Thomas earns an annual fee of \$20,000 as trustee of Trust 1, which Trust 1 pays to the corporation. The corporation employs one handyman and another individual on a contract basis. The corporation pays labor, materials, expenses, workers' compensation insurance, and payroll taxes. At the end of the year, if the office made money, Thomas applied it to his debt. He receives a small amount from the corporation.

Trust 1 charges the corporation \$4,800 per year for office space, which is the amount that was set by Harvey.

Trust 1 keeps track of the rent owed, and credits the corporation for goods and services received.

Thomas keeps receipts of purchases for Trust 1. Goods that are purchased to make repairs on buildings are saved in a pile for taxes if incorporated into something depreciable. The receipts are segregated by property. Thomas keeps a full record in a computer program that tracks the rent received for Trust 1 and other bookkeeping matters. Thomas files his income tax returns separately from Trust 1's tax returns.

To fund TCS, Thomas contributed \$50,000 from the unsecured credit line that Harvey opened in 1995. Trust 1 did not contribute any funds for TCS. The funds were paid back by TCS within one year. In May 2013, Thomas transferred his interest in TCS to Abdalla in exchange for \$10,000 and an indemnity agreement. Abdalla subsequently declared bankruptcy.

Thomas, as trustee of Trust 1, opposed the motion to amend the judgment. He submitted the declarations of Brod, attorney Howard Pilch, and himself, as well as bank records. Video Tech and Thomas each filed evidentiary objections. Video Tech filed a reply. Video Tech attached the trust, additional excerpts from the judgment debtor examination, and title documents.

Video Tech filed a supplemental brief, which states that the trial court requested additional briefing on the issue of whether a successor trustee of a trust created for a valid

purpose by a third party can be added as a judgment debtor under an alter ego theory.

The case summary reflects that a hearing was held on the motion to amend the judgment on May 22, 2015, and the trial court took the matter under submission, but there is no minute order in the record on appeal. No reporter's transcript or suitable substitute has been included in the record on appeal.

On June 25, 2015, the trial court issued a minute order denying the motion to amend the judgment. The court found Video Tech had not presented sufficient evidence to establish that an exception to the spendthrift protection applies, such that Thomas's actions as trustee warranted including him as trustee as a judgment debtor. The court relied on *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 522 (*Greenspan*), for the proposition that the alter ego doctrine can be applied in the context of a trust, and a trustee can be added as a judgment debtor under certain circumstances. The court added, "The Court of Appeal's analysis in *Greenspan* suggests that the doctrine of alter ego is properly applied when the trust itself was involved in the underlying wrong, e.g. the trust was used to commit the harm at issue or to shield the fruits thereof. That is, in deciding that the alter ego doctrine is applicable to trusts, the court in *Greenspan* cites several federal and non-California authorities which applied the alter ego doctrine when the trust played some part in the actual dispute. [Citations.]"

The trial court found there was insufficient evidence that Trust 1 was involved in the underlying dispute with Video Tech. The court also reviewed evidence showing that the bank relied on properties which were in Trust 1, while it was still revocable, to extend the line of credit that was eventually used by Thomas to fund TCS, but the court found the relationship between the line of credit and the formation of TCS was too tenuous to apply the alter ego doctrine. The court considered Video Tech's argument that Thomas transferred personal property, specifically, the Larch Street property, into the trust. The court agreed that Thomas's statements about the funds used to acquire the property were inconsistent, but the court found none of the property Thomas transferred into Trust 1 had anything to do with the Video Tech litigation.

“Based upon the Court of Appeal's reasoning in *Greenspan*, Thomas Woolsey's alleged use of the Trust to shield assets unrelated to this action, without more, provides an insufficient ground to apply the alter ego doctrine. Moreover, it is unclear from the evidence presented whether Thomas Woolsey or [Trust 1] actually purchased the Inglewood property in 2009, and thus, whether a fraudulent conveyance (or any other asset protection scheme) actually occurred. [¶] As such, without more (i.e. a direct connection between [Trust 1] and the conduct complained of in the underlying litigation between the parties), the Court is unwilling to take the drastic step of opening all the assets of [Trust 1], a spendthrift trust, to Thomas Woolsey's

creditors.” Therefore, the court denied the motion. Video Tech filed a timely notice of appeal.

DISCUSSION

Standard of Review

“Under Code of Civil Procedure section 187, ‘the trial court has jurisdiction to modify a judgment to add additional judgment debtors.’ [Citation.] The decision to modify the judgment is consigned to the trial court’s discretion. [Citation.]” (*Wolf Metals Inc. v. Rand Pacific Sales, Inc.* (2016) 4 Cal.App.5th 698, 703, fn. omitted (*Wolf Metals*); see *Danko v. O’Reilly* (2014) 232 Cal.App.4th 732, 745.) “To the extent the exercise of that discretion relies on factual findings, we review those findings for the existence of substantial evidence. [Citation.]” (*Wolf Metals, supra*, at p. 703.) When an issue involves the application of law to undisputed facts, we review the matter de novo. (*Martinez v. Brownco Const. Co., Inc.* (2013) 56 Cal.4th 1014, 1018.)

Alter Ego

Video Tech concedes that the record is inadequate to demonstrate an abuse of discretion or challenge the sufficiency of the evidence to support the trial court’s findings, because it does not include a reporter’s transcript or suitable substitute for the hearing on its motion to amend

the judgment. Video Tech contends the record is sufficient, however, to review whether the trial court applied an incorrect legal standard to determine alter ego. We conclude that no error has been shown.

In many cases where the standard of review is substantial evidence or abuse of discretion, a reporter's transcript or an agreed or settled statement is indispensable. (*Southern California Gas Company v. Flannery* (2016) 5 Cal.App.5th 476, 483.) "A reporter's transcript may not be necessary if the appeal involves legal issues requiring de novo review. [Citation.]" (*Ibid.*)

Under Evidence Code section 664, we begin with the presumption that the court has properly performed its judicial duty. (Evid. Code, § 664; *People v. Coddington* (2000) 23 Cal.4th 529, 644, overruled on other grounds in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13.) We presume that the trial court "[knew] and [applied] the correct statutory and case law [citation]" (*People v. Coddington, supra*, at p. 644.) "[A] judgment or order of the trial court is presumed correct and prejudicial error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) 'In the absence of a contrary showing in the record, all presumptions in favor of the trial court's action will be made by the appellate court. "[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented.'" (*Bennett v. McCall* (1993) 19 Cal.App.4th 122, 127.) This general principle of

appellate practice is an aspect of the constitutional doctrine of reversible error. (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610.)” (*Foust v. San Jose Const. Co., Inc.* (2011) 198 Cal.App.4th 181, 187.)

“Judgments may be amended to add additional judgment debtors on the ground that a person or entity is the alter ego of the original judgment debtor. . . .

“Amendment of a judgment to add an alter ego ‘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. . . .

“Such a procedure is an appropriate and complete method by which to bind new . . . 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.” . . .’ . . .” [Citations.]” (*Greenspan, supra*, 191 Cal.App.4th at p. 508.)

A party asserting alter ego as a basis for amending a judgment under section 187 must demonstrate “(1) the parties to be added as judgment debtors had control of the underlying litigation and were virtually represented in that proceeding; (2) there is such a unity of interest and ownership that the separate personalities of the entity and the owners no longer exist; and (3) 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, 815–816, citing *Greenspan, supra*, 191 Cal.App.4th at pp. 509, 511.)

“Under the alter ego doctrine, . . . when the corporate form is used to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, the courts will ignore the corporate entity and deem the corporation’s acts to be those of the persons . . . actually controlling the corporation, in most instances the equitable owners. [Citations.] The alter ego doctrine prevents individuals . . . from misusing the corporate laws by the device of a sham corporate entity formed for the purpose of committing fraud or other misdeeds. [Citation.]’ (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.)” (*Wolf Metals, supra*, 4 Cal.App.5th at p.703.)

As the *Greenspan* court noted, “““The alter ego test encompasses a host of factors: ‘[1] [c]ommingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses . . . ; [2] the treatment by an individual of the assets of the corporation as his own . . . ; [3] the failure to obtain authority to issue stock or to subscribe to or issue the same . . . ; [4] the holding out by an individual that he is personally liable for the debts of the corporation . . . ; the failure to maintain minutes or adequate corporate records, and the confusion of the records of the separate entities . . . ; [5] the identical equitable ownership in the two entities; the identification of the equitable owners thereof with the domination and control of the two entities;

identification of the directors and officers of the two entities in the responsible supervision and management; sole ownership of all of the stock in a corporation by one individual or the members of a family . . . ; [6] the use of the same office or business location; the employment of the same employees and/or attorney . . . ; [7] the failure to adequately capitalize a corporation; the total absence of corporate assets, and undercapitalization . . . ; [8] the use of a corporation as a mere shell, instrumentality or conduit for a single venture or the business of an individual or another corporation . . . ; [9] the concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities . . . ; [10] the disregard of legal formalities and the failure to maintain arm's length relationships among related entities . . . ; [11] the use of the corporate entity to procure labor, services or merchandise for another person or entity . . . ; [12] the diversion of assets from a corporation by or to a stockholder or other person or entity, to the detriment of creditors, or the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another . . . ; [13] the contracting with another with intent to avoid performance by use of a corporate entity as a shield against personal liability, or the use of a corporation as a subterfuge of illegal transactions . . . ; [14] and the formation and use of a corporation to transfer to it the existing liability of another person or entity.' . . . [¶] This long list of factors is not exhaustive.

The enumerated factors may be considered ‘[a]mong’ others ‘under the particular circumstances of each case.’ . . . “No single factor is determinative, and instead a court must examine all the circumstances to determine whether to apply the doctrine” (*Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 811–812, citations omitted.)” (*Greenspan, supra*, 191 Cal.App.4th at pp. 512–13.)

“Spendthrift trusts are generally valid. [Citations.]” (*Parscal v. Parscal* (1983) 148 Cal.App.3d 1098, 1102.) “‘The doctrine that property may be made inalienable by such declaration of [a spendthrift] trust rests upon the theory that a donor has the right to give his property to another upon any conditions which he sees fit to impose, and that, inasmuch as such a gift takes nothing from the prior or subsequent creditors of the beneficiary to which they previously had the right to look for payment, they cannot complain that the donor has provided that the property or income shall go or be paid personally to the beneficiary and shall not be subject to the claims of creditors.’ [Citation.]” (*Id.* at pp.1102–1103.) “Another such purpose has sometimes been expressed: ‘[T]hat the protection of impecunious beneficiaries is in accord with public policy, at least to the extent of keeping such beneficiaries from becoming public charges.’ [Citation.]” (*Id.* at p. 1103.)

The trial court in this case correctly relied on *Greenspan* for the proposition that a trustee may be added as a judgment debtor under the alter ego doctrine. The court noted that cases have applied the alter ego doctrine when

the trust itself was involved in the underlying wrongdoing. The court did not interpret *Greenspan* as requiring a showing that the trust was involved in the underlying wrongdoing in every case. The trust's involvement was one factor that would warrant application of the alter ego doctrine. The trial court considered each of the circumstances raised by Video Tech. The court found Trust 1 was not involved in the underlying dispute with Video Tech. Without a greater connection between Trust 1 and the conduct in the underlying litigation, the trial court was "unwilling to take the drastic step of opening all the assets" of a spendthrift trust. The court was aware that it had discretion to add Thomas, as trustee of Trust 1, as a judgment debtor, even without a direct connection between the Trust and the underlying litigation, but the court exercised its discretion to deny the motion under the circumstances. We presume the trial court knew and applied the correct legal standard, and Video Tech has not demonstrated error.

DISPOSITION

The order is affirmed. Respondent Thomas Woolsey, as trustee of the H.E. Woolsey Trust, is awarded his costs on appeal.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

KIN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.