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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

1426 NORTH LAUREL AVENUE HOMEOWNER'S ASSOCIATION, Plaintiff and Respondent, v. SUNSET ON SUNSET, LLC et al., Defendants and Appellants.	B257815 (Los Angeles County Super. Ct. No. SC107580)

APPEAL from an order of the Superior Court of Los Angeles County. Allan J. Goodman, Judge. Affirmed.

Milstein Adelman, Lee Jackson and Mayo Makarczyk, for Plaintiff and Respondent.

De Novo Law Firm, Benjamin Yrungaray, for Defendants and Appellants.

* * * * * *

A limited liability corporation (LLC) was negligent in building a condominium. The homeowners association sued and obtained a $4.9 million judgment against the condominium and, on theories of alter ego and his personal involvement in many of the construction decisions, the LLC's chief member. We conclude that there was substantial evidence to support the trial court's finding of alter ego liability, and affirm.

FACTS AND PROCEDURAL BACKGROUND

Defendant and appellant Sunset on Sunset, LLC (the LLC) acquired a plot of land at 1426 North Laurel Avenue in West Hollywood. The LLC has two members, defendant and appellant Avraham Hassid (Hassid) and his wife. Because Hassid's wife has no involvement with the LLC, the LLC is operated exclusively by Hassid himself. Hassid listed his home address in the LLC's bank records. The LLC had no employees, maintained no financial records, and did not keep any documentation of its official acts. Hassid had previously loaned the LLC money without any documentation, and has used the LLC's money to pay the expenses of Hassid's other businesses.

The LLC built a 19-unit condominium at the Laurel Avenue location. The building's floors were unlevel, so much so that its doors and windows would not close or properly seal. The building was topped with substandard roofing materials and tiles. When the rains came, the building suffered catastrophic leaks. It will cost more than $4.2 million to fix these construction defects.

Plaintiff and respondent 1426 North Laurel Avenue Homeowners Association (the Association) represents the condominium owners and its board of directors. On their behalf, the Association sued the LLC, Hassid, Hassid's wife, and the architect and his company (collectively, defendants) for the building's severe construction defects. By the time the matter proceeded to a bench trial, the Association had dismissed Hassid's wife and narrowed its lawsuit to three claims against the remaining defendants: (1) they were strictly liable for the construction defects based on "mass production" of housing and based on their use of "defective components"; (2) they were negligent in constructing the building; and (3) they were per se negligent in light of Civil Code section 895 et seq.

In a 14-page ruling, the trial court rejected the Association's strict liability claim, but concluded that the remaining defendants were negligent and negligent per se. The court concluded that it would take nine months and cost $4.227 million to repair the construction defects, and awarded the Association $4.978 million to cover the cost of repair, the cost of alternative housing during the repairs, and the cost of the Association's investigation.

Most pertinent to this appeal, the trial court ruled that Hassid was jointly and severally liable for the full $4.978 million judgment. The court relied on two, alternative rationales. First, the court found that Hassid "personally made decisions about the [condominium] project," including the "extremely cavalier" decision to select "inferior and less expensive" materials for roofing materials and tiles. Second, the court found that the LLC was Hassid's alter ego. In making this finding, the court found that Hassid and the LLC shared a "unity of interest and ownership" because the LLC was "undercapitalized; was operated without respect for its separate entity existence; some of its expenses were paid by other entities; its assets were used to pay liabilities of [Hassid's] other businesses . . .; and he 'loaned' [the LLC] funds when and as needed and did not either get repaid or document the loans he made. In short," the court concluded, Hassid "did not respect the separate legal existence of the very entity he created to shield himself from liability." The court also concluded that an "unjust result" would occur if the LLC were not treated as Hassid's alter ego—namely, "the plaintiff[s] would be deprived of an effective remedy for the extremely cavalier choices made personally by [Hassid] which resulted in such catastrophic damages to the structure that its occupants must vacate it for at least 270 days while it is being reconstructed."

After the trial court entered judgment, Hassid filed a timely notice of appeal.

DISCUSSION

In this appeal, Hassid attacks the trial court's ruling that he is jointly and severally liable for the LLC's indebtedness to the Association. We review the court's alter ego ruling for substantial evidence. (*Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 155.) In assessing whether a finding is supported by substantial evidence, we ask whether there is

"evidence that a rational trier of fact could find to be reasonable, credible, and of solid value . . . to support the finding" and do so while "view[ing] the evidence in the light most favorable to the [finding]." (*San Diegans for Open Government v. City of San Diego* (2016) 245 Cal.App.4th 736, 740.) As explained below, we conclude that substantial evidence supports the trial court's alter ego finding; we accordingly have no occasion to reach the court's alternative basis for imposing personal liability upon Hassid. (E.g., *Drake v. Pinkham* (2013) 217 Cal.App.4th 400, 403 [declining to reach alternative basis for ruling].)

As a general rule, the debts incurred by or imposed upon an LLC belong only to the LLC, not to its members. (Corp. Code, § 17703.04, subd. (a).) However, an LLC member may "be subject to [personal] liability under the common law governing alter ego liability." (*Id.*, subd. (b); see also *Misik v. D'Arco* (2011) 197 Cal.App.4th 1065, 1075-1076 (*Misik*) [applying alter ego doctrine to an LLC].)

A court may treat an LLC (or any corporation) as the "alter ego" of its members (or shareholders) only if (1) there is "such unity of interest and ownership that the separate personalities of the [LLC] and the individual no longer exist"; and (2) "an inequitable result will follow" "if the acts [of the LLC] are treated as those of the [LLC] alone." (*Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 300; *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538 (*Sonora Diamond*).) The alter ego doctrine "'is an extreme remedy, sparingly used.'" (*Highland Springs Conference & Training Center v. City of Banning* (2016) 244 Cal.App.4th 267, 281, quoting *Sonora Diamond*, at p. 539.)

In assessing whether there is a "unity of interest and ownership," courts look to the totality of the circumstances. (*Sonora Diamond, supra,* 83 Cal.App.4th at p. 539.) Those circumstances include, but are not limited to, (1) whether the LLC and its member commingle funds or other assets, (2) whether the member makes personal use of the LLC's assets, (3) whether organizational formalities have been observed and organizational records maintained, (4) whether the LLC has any employees, officers, or operating funds, (5) whether the LLC was inadequately capitalized, (6) whether the

individual has held itself out as liable for the LLC's debts (or vice versa), and (7) whether the LLC is used as a "mere shell or conduit" for the individual's affairs. (*CADC/RADC Venture 2011-1 LLC v. Bradley* (2015) 235 Cal.App.4th 775, 789 (*CADC/RADC Venture*); *Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, 512-513; *Sonora Diamond*, at pp. 538-539.)

In assessing whether an inequitable result will follow from the failure to conflate the LLC and its member, there must be "'some conduct amounting to bad faith [that] makes it inequitable for the corporate owner to hide behind the corporate form.'" (*Hub City Solid Waste Services, Inc. v. City of Compton* (2010) 186 Cal.App.4th 1114, 1123.) It is not enough to show merely that a creditor will go unpaid. (*Ibid.*; *Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 842 ["(t)he purpose of the (alter ego) doctrine is not to protect every unsatisfied creditor"].)

Substantial evidence supports the trial court's findings as to both elements of the alter ego doctrine. There is substantial evidence that the LLC and Hassid shared a "unity of interest and ownership" because the LLC was little more than a conduit for Hassid: He co-owned the LLC with his wife, but she had no involvement whatsoever; he was the LLC's sole active member; he used his money to pay the LLC's debts (either outright or through undocumented loans) and used the LLC's money to pay the debts of his other businesses; the LLC used Hassid's home address in its bank records; the LLC also employed no one and did not observe organizational formalities. There was also substantial evidence that Hassid engaged in conduct amounting to bad faith—namely, he made "cavalier choices" regarding how to build the condominium, resulting in a building with major structural defects that will take more than $4.2 million to repair and will displace the Association's members for nine months.

Hassid makes two arguments to overturn the trial court's findings. First, he asserts that the "mere fact of sole ownership and control does not eviscerate the separate corporate entity." (*Katzir's Floor and Home Design, Inc. v. M-MLS.com* (9th Cir. 2004) 394 F.3d 1143, 1149.) Although ownership is a necessary but not sufficient condition to a finding of alter ego (*CADC/RADC Venture*, *supra*, 235 Cal.App.4th at p. 789

[necessary]; e.g., *Hollywood Cleaning & Pressing Co. v. Hollywood Laundry Service, Inc.* (1932) 217 Cal. 124, 129 [not sufficient]), here there was much more: As detailed above, there was ample other evidence that Hassid had blurred the lines between himself and the LLC.

Second, Hassid contends that it would not be "unjust" to require the Association to enforce its judgment against the LLC alone because (1) the LLC was properly capitalized, (2) undercapitalization of the LLC is not enough by itself to justify imposition of alter ego liability, and (3) there was otherwise no showing of "bad faith" conduct. We are unpersuaded. The fact that Hassid had to loan (or give) the LLC infusions of his own money is substantial evidence that the LLC was undercapitalized. And although leaving creditors with no remedy (due to undercapitalization or otherwise) is not a sufficient reason to conclude that the individual being made personally liable engaged in "bad faith conduct," here there was more: As noted above, the trial court found that Hassid personally made the decision to skimp on key materials that substantially contributed to the water damage to the condominium. His "cavalier" decisions make it inequitable to leave the Association members with a judgment that, if unsatisfied, would effectively leave them homeless. (*Misik, supra*, 197 Cal.App.4th at p. 1074 [no showing of fraud or fraudulent intent required]; see cf. *Relentless Air Racing, LLC v. Airborne Turbine Ltd. Partnership* (2013) 222 Cal.App.4th 811, 813 [wrongful intent not required when assessing whether there is "inequitable result," as part of test of determine whether to add judgment debtors to a lawsuit].)

DISPOSITION

The judgment is affirmed. The Association is entitled to costs on appeal.

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_____, J.
HOFFSTADT

We concur:

_____, P.J.
BOREN

_____, J.
CHAVEZ