

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

KH CORPORATION (HK)
LIMITED,

Plaintiff and Appellant,

v.

DAVID HYUN KIM,

Defendant and Respondent.

B271495

(Los Angeles County
Super. Ct. No. BC552154)

KH CORPORATION (HK)
LIMITED,

Plaintiff and Appellant,

v.

DAVID HYUN KIM,

Defendant and Respondent.

B271501

(Los Angeles County
Super. Ct. No. BC552155)

APPEALS from judgments of the Superior Court of the
County of Los Angeles, Michelle R. Rosenblatt, Judge. Affirmed.

Law Offices of Albert Chang and Albert Chang for Plaintiff
and Appellant.

Parker Mills, David B. Parker and Steven S. Wang for
Defendant and Respondent.

* * * * *

These consolidated appeals arise from two related lawsuits in which plaintiff KH Corporation (HK) Limited sued Five Stones, Incorporated and David Hyun Kim, alleging contract and common count claims. Plaintiff alleged defendants failed to pay for fabrics and garments they ordered from plaintiff, and that Mr. Kim was the alter ego of Five Stones.

Plaintiff obtained default judgments against Five Stones in the amounts of \$226,886.29 and \$100,605.90, and proceeded to a court trial of the alter ego allegations in both cases. The trial court entered judgments on the alter ego claims for Mr. Kim, finding that plaintiff failed to carry its burden of proof. On appeal, plaintiff contends there was substantial “uncontradicted” evidence that Mr. Kim should be held personally liable for Five Stones’ debts. Finding no merit in this contention, we affirm.

BACKGROUND

Five Stones was incorporated by Mr. Kim in 2009, and was in the business of importing and exporting garments. Five Stones generally employed between three and 10 people. Mr. Kim started Five Stones with \$400,000 in profits from another business, but did not have a promissory note for the loan to Five Stones.

When Five Stones was incorporated, Mr. Kim was its only shareholder, and Five Stones issued shares of stock to him. Mr. Kim was also the sole officer and director of the business, except for a brief time when his wife was also an officer. Mr. Kim testified that Five Stones held directors’ and shareholders’ meetings, but he had not produced any documents evidencing the meetings in discovery because he was unable to locate them. Mr. Kim lost a number of documents when the corporation’s server

crashed; others had been stored at his sister's home, and could not be located.

According to Mr. Kim, Five Stones had two checking accounts. Money from those bank accounts did not go to Mr. Kim's personal accounts. Mr. Kim never comingled his personal funds and the funds of the business.

In 2012, plaintiff's CEO, Howard Kwon, negotiated with Mr. Kim to sell various fabrics and garments to Five Stones. Mr. Kim told Mr. Kwon he was the owner of Five Stones, and Mr. Kwon dealt exclusively with Mr. Kim. According to Mr. Kim, he was acting on behalf of the corporation in all his dealings with Mr. Kwon.

The fabrics and garments were delivered to Five Stones' customers in China and Cambodia. Claiming the shipments were late and that the fabrics were flawed, Five Stones' customers refused to pay for the shipments. Five Stones in turn failed to pay plaintiff the entire sums due for the orders.

Five Stones ceased doing business in 2013, and officially dissolved in 2014. Contrary to Mr. Kim's testimony, Five Stones' certificate of dissolution stated that the corporation did not issue any shares of stock. According to Mr. Kim, the certificate of dissolution was prepared by his accountant, and the statement regarding issuance of stock had not been explained to Mr. Kim.

The trial court issued a statement of decision, finding that KH Corporation "provided insufficient evidence to show alter ego liability." The court concluded that plaintiff failed to adduce evidence that Five Stones did not maintain corporate formalities, that Five Stones and Mr. Kim commingled funds, or that Five Stones was not sufficiently capitalized. The trial court entered judgment in favor of Mr. Kim in both cases, and these timely appeals followed.

DISCUSSION

“[T]wo conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone. [Citations.]” (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538-539.)

“ ‘Among the factors to be considered in applying the doctrine are commingling of funds and other assets of the two entities, the holding out by one entity that it is liable for the debts of the other, identical equitable ownership in the two entities, use of the same offices and employees, and use of one as a mere shell or conduit for the affairs of the other.’ [Citations.] Other factors which have been described in the case law include inadequate capitalization, disregard of corporate formalities, lack of segregation of corporate records, and identical directors and officers. [Citations.] No one characteristic governs, but . . . courts must look at all the circumstances to determine whether the doctrine should be applied. [Citation.]” (*Sonora Diamond Corp. v. Superior Court, supra*, 83 Cal.App.4th at p. 538.)

Alter ego liability is a question of fact, reviewed for substantial evidence. (*Baize v. Eastridge Companies* (2006) 142 Cal.App.4th 293, 302; *Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 836-837.) On appeal from a determination that a party did not meet its burden of proof at trial, “the question for the reviewing court is ‘ “whether the evidence compels a finding in favor of the appellant as a matter of law.” ’ [Citation.] Specifically, we must determine ‘ “whether the appellant’s evidence was (1) ‘uncontradicted and unimpeached’ and

(2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.’ ” ’ [Citation.]” (*Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 769.)

Here, the evidence did not compel a finding that Mr. Kim was the alter ego of Five Stones. Mr. Kim testified there was no commingling of funds; that he and the business maintained separate accounts; and that the business observed corporate formalities such as taking minutes for meetings. Plaintiff offered no evidence of commingling of funds and other assets, inadequate capitalization, disregard of corporate formalities, or any other evidence on which we may conclude it would be inequitable to treat Mr. Kim as separate from Five Stones. The evidence that Mr. Kim was the sole owner and representative of Five Stones; he invested \$400,000 to launch the business with no promissory note from Five Stones; the inconsistency between Mr. Kim’s testimony that he held stock in Five Stones and the certificate of dissolution stating the corporation did not issue any shares of stock; and the absence of corporate records, is relevant but is insufficient to compel us to find as a matter of law that Mr. Kim was the alter ego of Five Stones.

DISPOSITION

The judgments are affirmed. Respondent is awarded his costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.