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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

LAURA LAROCCA, Plaintiff and Respondent, v. LMR PARTNERS, INC., et al., Defendants and Appellants.	B271298 (Los Angeles County Super. Ct. No. BC426342)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michelle R. Rosenblatt, Judge. Affirmed.

Stephen L. Burton for Defendants and Appellants Imastar Corporation, LMR Partners, Inc., Out the Door, LLC, and the Lambus Corporation.

Manhattan Flashman & Brandon and David M. Brandon for Defendant and Appellant The Lambus Corporation.

Law Offices of David R. Akin and David R. Akin for Defendant and Appellant LMR Partners, Inc.

Harry Haralambus, in pro. per., for Defendant and Appellant.

Law Offices of Mario D. Vega, Mario D. Vega and Robert S. Parada for Plaintiff and Respondent Laura LaRocca.

Plaintiff Laura LaRocca co-founded the cosmetics company DuWop, LLC in 1999. In 2008, she sold her entire interest in DuWop to defendant Harry Haralambus's company, LMR Partners, Inc. (fka Lambus Partners, Inc.) (LMR), for $1 million. LMR also agreed to remove LaRocca as a guarantor of DuWop's bank loans and repay LaRocca's personal loans to DuWop.

LMR ultimately paid LaRocca only $500,000 and did not remove her as a guarantor or repay her loans to DuWop. LaRocca sued LMR for breach of its agreements, and DuWop for failure to pay back her loans. After a nonjury trial, the trial court entered judgment in her favor in the amount of $1,214,757.95 and held that LMR and DuWop were alter egos of Haralambus. The court further found that LMR, DuWop, and three other entities owned by Haralambus The Lambus Corporation (Lambus Corp.), Imastar Corporation (Imastar), and Out the Door, LLC (Out the Door)—were engaged in a single enterprise with LMR and DuWop such that they were all jointly and severally liable for the judgment.

LMR, Lambus Corp., Imastar and Out the Door jointly appeal the judgment.[1] Haralambus separately appeals. The corporate appellants argue that (1) LMR was never properly added as a defendant, (2) even if it was, it was excused from performance under the contracts because of LaRocca's breaches, and (3) even if the court properly found LMR breached the contracts, there is no substantial evidence of alter ego liability. Haralambus primarily challenges the court's alter ego findings. We affirm.

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[1] DuWop has not appealed.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Formation and Early Years of DuWop

In 1999, LaRocca, a Hollywood makeup and hair stylist, co-founded DuWop with Christina Bartolucci to market two products they had created together—"IGels" and a lip gloss called "lip venom." They created DuWop as a limited liability company and split ownership 50/50. In 2001, three other individuals made capital contributions in exchange for 12 percent ownership of DuWop; LaRocca and Bartolucci each retained 44 percent ownership of the company.

In 2005, the five owners created an operating agreement. Both LaRocca and Bartolucci continued to work outside of DuWop and formalized this arrangement in the agreement: "The Members (a) acknowledge that [LaRocca and Bartolucci] are involved in other financial, investment and professional activities, and (b) agree that [LaRocca and Bartolucci] may engage for [her] own account or the account of others in any business ventures and employments."

LaRocca and Bartolucci initially operated the company out of LaRocca's residence but then moved into progressively larger commercial spaces as the company grew. In 2006, DuWop had sales of $7 million. Sales then began to decline, and DuWop started looking for investors. At that time, LaRocca was introduced to Haralambus, a lawyer and businessman with experience acquiring cosmetic companies.

2. Haralambus Offers to Buy Into DuWop

Haralambus and the DuWop owners engaged in negotiations regarding his investment in the company. Haralambus initially valued DuWop at $12 million and proposed purchasing 28 percent of DuWop for $3.4 million. By early 2007

while negotiations were ongoing, DuWop was in financial distress and Haralambus's estimated value of the company dropped to $6 million then $4.5 million. To keep the company afloat, LaRocca loaned DuWop $230,000 out of her home equity line of credit. DuWop agreed to pay monthly interest-only payments until it could afford to pay down the loans.

In January 2007, LaRocca was diagnosed with kidney failure and put on dialysis. She began working part-time. Around that time, DuWop hired Haralambus as a consultant but one without an equity interest. Haralambus warned DuWop's owners that "the company is facing bankruptcy" if it did not receive financial assistance. His company, LMR, loaned DuWop money to meet payroll and pay creditors.[2]

In November 2007, LaRocca took a leave of absence from DuWop, and Haralambus took over as CEO, still with no equity interest.

3. The Purchase Agreement

While LaRocca was on leave, Haralambus offered to buy her interest in DuWop. On August 1, 2008, LaRocca agreed to sell to LMR her entire interest for $1 million. Haralambus drafted a purchase agreement (Purchase Agreement) providing that LMR would make four $250,000 payments to LaRocca on set dates between August and December 2008. On August 8, 2008, DuWop's LLC members entered into a new operating agreement by which LMR replaced LaRocca as a member.

LMR made the first payment under the Purchase Agreement but not the second payment due in September 2008.

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[2] At the time, LMR was named Lambus Partners, Inc.

Haralambus told LaRocca he needed more time to make the payments due to LMR's financial difficulties. That month, Haralambus learned that LaRocca was developing skin care products on her own, and asked her about them. He did not ask her to create such products for DuWop.

Eventually, LMR paid LaRocca another $250,000. It did not make any further payments under the Purchase Agreement. At trial, Haralambus testified that when he found out LaRocca had created skin care products independent of DuWop, he decided that LaRocca had breached the Purchase Agreement and LMR would not fulfill its further obligations under the agreement—even though LMR did, in fact, pay LaRocca another $250,000 after he learned of LaRocca's skin care products.

4. The Letter of Undertaking

At the time LaRocca and Haralambus executed the Purchase Agreement, they also signed a Letter of Undertaking. This agreement provided that by the end of 2008 LMR would repay the loans LaRocca had made to DuWop, and remove her as a guarantor of DuWop's bank loans. Haralambus asked LaRocca not to contact the bank about being removed as a guarantor and assured her he would take care of it. However, he took no action. DuWop eventually defaulted on the loan, and LaRocca was sued. She settled for $60,000.

LMR also did not repay LaRocca for the loans she made to DuWop. DuWop continued to make interest payments through 2010. At that point, LaRocca took over the interest payments and eventually paid off the loans herself.[3]

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[3] Haralambus also orally promised to remove LaRocca as a guarantor of DuWop's commercial lease. He did not do so, and when DuWop later breached the lease, LaRocca was sued for

5. The Complaint

In November 2009, LaRocca filed a complaint for breach of contract against DuWop, LMR and Haralambus. The operative complaint added Lambus Corp., Imastar and Out the Door as defendants based on an alter ego theory. LaRocca alleged that (1) LMR breached the Purchase Agreement by not paying $500,000 of the purchase price, (2) LMR breached the Letter of Undertaking by not removing her as a guarantor from DuWop's bank loans or repaying her loans to DuWop, (3) DuWop breached an oral agreement to repay the loans she made to the company, and (4) DuWop breached the terms of her leave of absence by failing to pay her $4,000 of wages during her leave.[4]

6. Judgment

The court found in favor of LaRocca and against LMR and DuWop on the breach of contract claims. It found LaRocca was a credible witness, and Haralambus's testimony "strained" credibility at times. The court concluded that DuWop and LMR

$250,000. She settled the action for $100,000 and successfully sued DuWop for indemnification. That lawsuit has been resolved and we take judicial notice of the appellate opinion in that matter. (See *LaRocca v. Haralambus* (June 16, 2016, B257686) [nonpub.].) Haralambus argues we should agree with our opinion in the prior case that he was not the alter ego of DuWop. He does not contend the prior decision has res judicata or collateral estoppel effect. Given that the present case relies on a different record, we find the prior case of minimal relevance.

[4] LMR and DuWop cross-complained against LaRocca for a variety of claims. They only proceeded to trial on the cause of action for rescission; the remaining causes of action were dismissed. LaRocca prevailed on the rescission claim, and the cross-complaint is not at issue on appeal.

were the alter egos of Haralambus; DuWop, LMR, Lambus Corp., Imastar and Out the Door were engaged in a single enterprise; and it would be inequitable not to apply the alter ego doctrine to all defendants. The court held appellants jointly and severally liable in the amount of $1,214,757.95. Appellants moved for a new trial which was denied. Appellants timely appealed.

DISCUSSION

LMR, Lambus Corp., Imastar and Out the Door jointly filed an appellate brief. Haralambus separately filed a brief. The corporate appellants contend that the court erred in entering judgment against LMR because LaRocca used the wrong legal procedure when adding LMR as a defendant. They further argue there is no substantial evidence LMR breached the Purchase Agreement because LaRocca's breaches of the contract excused LMR's performance. Lastly, the corporate appellants contend the alter ego findings were not supported by substantial evidence. Haralambus challenges the alter ego findings and contends the court incorrectly calculated damages. We reject these contentions.

1. *The Court Did Not Abuse its Discretion in Allowing LaRocca to Add LMR as a Defendant*

The corporate appellants argue that the trial court acted without jurisdiction when it allowed LaRocca to name LMR as a defendant to the second amended complaint (SAC). Because the court found that LMR breached the Purchase Agreement, its status as a party necessarily affects all of the issues on appeal. Before addressing appellants' contention, we explain the relevant procedural history.

a. *Procedural Background*

LaRocca filed this action in November 2009 against DuWop, LMR and Haralambus. In February 2013, LaRocca filed a first amended complaint (FAC) adding Lambus Corp., Imastar, and Out the Door. The FAC alleged that LMR had filed for bankruptcy and explained, "Due to the automatic stay, LMR [] is not a named defendant in this [FAC]. However, should the bankruptcy be dismissed without a discharge of LMR [], Plaintiff shall name LMR [] as a [] defendant . . . ."

Haralambus, Out the Door, Imastar and Lambus Corp. demurred to the FAC. By the time the court ruled on the demurrer, LMR's bankruptcy had been dismissed. The court sustained the demurrer in part with leave to amend and LaRocca filed the SAC naming LMR as a defendant.[5]

Defendants demurred to the SAC arguing that the addition of LMR was beyond the scope of the amendments the court had allowed after partially sustaining the demurrer. The court overruled the demurrer, holding that "LMR has always been a Defendant to the complaint . . . ."[6]

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[5] LaRocca also filed a Doe Amendment adding LMR as a defendant. The trial court acknowledged this was not the proper procedure.

[6] LMR later filed an ex parte application to vacate the court's order on the ground the court erred in allowing LaRocca to add LMR as a defendant. The trial court denied the application, and LMR filed a petition for writ of mandate. The petition was summarily denied. (See *LMR Partners, Inc. v. Superior Court* (Feb. 3, 2015, B261704) [nonpub. order].)

b. *The Trial Court Acted Within Its Discretion in Allowing the Amendment*

Appellants contend that by omitting LMR from "the face of the FAC," LaRocca dismissed LMR from the action. (See *Fireman's Fund Ins. Co. v. Sparks Construction* (2004) 114 Cal.App.4th 1135, 1142 ["It has long been the rule that an amended complaint that omits defendants named in the original complaint operates as a dismissal as to them. [Citations.]"].) Appellants further contend that LaRocca's subsequent naming of LMR to the SAC exceeded the scope of amendment permitted by the court when it sustained the demurrer to the FAC; she was to formally move for leave to amend to add LMR as a defendant.

"The decision to allow an amendment of the pleadings rests in the sound discretion of the trial court." (*Garrison v. Board of Directors* (1995) 36 Cal.App.4th 1670, 1679.) "The trial court['s] discretion to allow amendments to pleadings . . . should be exercised liberally in favor of amendments, for judicial policy favors resolution of all disputed matters in the same lawsuit." (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1047.) We review the trial court's decision to allow an amendment to the complaint for an abuse of discretion. (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 273.)

Here, the trial court exercised its discretion to allow LaRocca to add LMR as a defendant to the SAC. Appellants argue that the court's order was void and in excess of its jurisdiction because the court did not follow "a certain process and procedure." However, appellants do not cite to any authority holding that a trial court is without jurisdiction to rule on the scope of a plaintiff's amendments outside of a formal motion for leave. Although appellants argue the court's order was

prejudicial, they do not explain what prejudice LMR suffered other than LMR returned as a party. Given that LMR was initially named as a defendant to the action and the FAC expressly stated that LMR was temporarily not included as a defendant pending its bankruptcy, we cannot see what prejudice LMR suffered when LaRocca did exactly that: name LMR as a defendant when it was no longer in bankruptcy proceedings.

2. *Substantial Evidence Supports the Trial Court's Conclusion That LMR Breached the Purchase Agreement*[7]

The corporate appellants argue that LMR was excused from performing under the Purchase Agreement because of LaRocca's breaches of that agreement, namely, (1) LaRocca did not provide LMR with DuWop stock certificates, and (2) LaRocca violated the covenant of good faith and fair dealing by refusing to return to work at DuWop after her leave of absence, and by engaging in competitive activity while on leave.[8] We find no error.

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[7] The corporate appellants also challenge the trial court's finding that LMR was liable for breach of the Letter of Undertaking. They argue the Letter of Undertaking was not a contract because it lacked consideration. The trial court found the Letter of Undertaking was part of the Purchase Agreement. Therefore, the consideration was LaRocca's interest in DuWop which she conveyed in the Purchase Agreement. Although the corporate appellants argue the Purchase Agreement's integration clause barred any separate agreements, that clause expressly provides the Agreement may be amended "by written instrument signed by the parties"— the trial court reasonably construed the Letter of Undertaking as such an amendment.

[8] The corporate appellants also contend that LaRocca breached the Purchase Agreement by "misrepresenting her

The elements of a cause of action for breach of contract are (1) the existence of the contract, (2) the plaintiff's performance or excuse from performance, (3) the defendant's breach, and (4) damages. (*First Commercial Mortgage Co. v. Reece* (2001) 89 Cal.App.4th 731, 745.) We review appellants' claim that the evidence did not show LMR breached the agreement for substantial evidence. (See *Ash v. North American Title Co.* (2014) 223 Cal.App.4th 1258, 1268.) Under the substantial evidence standard, we "view the evidence in the light most favorable to the prevailing party and draw all reasonable inferences and resolve all conflicts in its favor. [Citation.]" (*Ibid.*)

In support of their first argument, the corporate appellants cite to the rule that "where defendant's duty to perform under the contract is conditioned on the happening of some event, the plaintiff must prove the event transpired." (*Consolidated World Investments v. Lido Preferred Ltd.* (1992) 9 Cal.App.4th 373, 380.) However, appellants cite to no language in the Purchase Agreement conditioning LMR's payments on the transfer of certificates.

Appellants also argue that "when a party's failure to perform a contractual obligation constitutes a material breach of the contract, the other party may be discharged from its duty to perform under the contract." They contend that LMR was excused from performing under the Purchase Agreement due to LaRocca's breaches. We conclude substantial evidence supports

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capital account with the company" but they neither develop this argument nor cite to any supporting evidence in the record. We, therefore, do not address it. (See *Huntington v. Landmark Adult Community Assn. v. Ross* (1989) 213 Cal.App.3d 1012, 1021.)

the trial court's findings that LaRocca (1) did not breach the Purchase Agreement by not delivering stock certificates, and (2) did not breach any duty by not returning to work after she sold her interest in the company or developing her own skin care products.

With respect to the stock certificates, Haralambus drafted the Purchase Agreement which provided that LaRocca would give LMR share certificates for 174,000 shares of "common stock of DuWop LLC." Common stock is defined as shares in a *corporation* (Corp. Code, § 159); an LLC, by contrast, does not issue stock. Rather, LLCs may issue "membership 'units' comparable to shares of stock." (§ 3.05 Overview of California LLC Law, MCACL § 3.05.)

As DuWop was an LLC, not a corporation, the parties implicitly understood there would be no literal compliance with this provision. The term "share certificates" was thus ambiguous in the agreement given that LaRocca was selling her membership units. Ambiguities should be construed against the drafter. (*Zipusch v. LA Workout, Inc.* (2007) 155 Cal.App.4th 1281, 1288.) There is nothing in the record showing that Haralambus did not receive any LLC documents he needed to operate the company. Rather, as the trial court found, "a review of all of the evidence shows that LaRocca and Haralambus were both aware that LaRocca sold all of her interest and membership units in DuWop, LLC, in satisfaction of her duty" under the Purchase Agreement.

With respect to appellants' second argument—that LaRocca violated the covenant of good faith and fair dealing by not returning to work and developing her own line of skin care products—the trial court made credibility findings supporting LaRocca's version of events. As to whether she would return to

work, the trial court concluded "there was never an understanding that LaRocca would return to work after the leave of absence" and "Haralambus never invited her back in any capacity once the [] Purchase Agreement was signed." The Purchase Agreement also did not obligate her to work at DuWop post-sale, and did not contain any non-compete provision governing her actions while on leave. In contrast, DuWop's operating agreement provided that LaRocca (and her partner) were allowed to engage in outside business ventures. This was sufficient evidence that LaRocca did not breach any implied covenant to return to work or refrain from developing skin care products independently.

3. *Substantial Evidence Supports the Alter Ego and Single Enterprise Liability Findings*

We now reach appellants' primary argument on appeal: that the trial court erred in finding alter ego liability.

a. *Applicable Law*

"A corporate identity may be disregarded—the 'corporate veil' pierced—where an abuse of the corporate privilege justifies holding the equitable ownership of a corporation liable for the actions of the corporation. [Citation.] Under the alter ego doctrine, then, when the corporate form is used to perpetuate 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 or organizations actually controlling the corporation, in most instances the equitable owners. [Citations.] The alter ego doctrine prevents individuals or other corporations 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.)

"Alter ego liability is not limited to the parent-subsidiary corporate relationship; rather, under the single enterprise rule, liability can [also] be found between sister [or affiliated] companies. [Citation.]" (*Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1341–1342.) " ' "In effect what happens is that the court, for sufficient reason, has determined that though there are two or more personalities, there is but one enterprise; and that this enterprise has been so handled that it should respond, as a whole, for the debts of certain component elements of it." [Citations.]' " (*Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220, 1249–1250.)

" 'In California, two 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.]' [Citation.]" (*Troyk v. Farmers Group, Inc., supra*, 171 Cal.App.4th at pp. 1341–1342.)

There are many factors that may be relevant to determining whether the unity of interest in a particular case is such that the corporations' separate personalities no longer exist—the first prong of the alter-ego test. (*Highland Springs Conference & Training Center v. City of Banning* (2016) 244 Cal.App.4th 267, 280.) "No one characteristic governs, but the 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. 539.)

Unity of interest factors include (1) inadequate capitalization, (2) disregard of corporate formalities and failure to maintain arm's length relationships among related entities, (3) identical supervisors and management, (4) the use of the same office or business location, (5) the employment of the same employees and/or attorney, (6) commingling of funds and other assets, (7) identical equitable ownership in the two entities, (8) the holding out by one entity that it is liable for the debts of the other, (9) use of one as a mere shell or conduit for the affairs of the other, and (10) the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another. (*Highland Springs Conference & Training Center v. City of Banning*, *supra*, 244 Cal.App.4th at pp. 280—281; *Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 940.)

" ' "The issue is not so much whether, for all purposes, the corporation is the 'alter ego' of its stockholders or officers, nor whether the very purpose of the organization of the corporation was to defraud the individual who is now in court complaining, as it is an issue of whether in the particular case presented and for the purposes of such case justice and equity can best be accomplished and fraud and unfairness defeated by a disregard of the distinct entity of the corporate form." . . . "The law of this state is that the separate corporate entity will not be honored where to do so would be to defeat the rights and equities of third persons." . . .' " (*Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 511.)

We review the trial court's fact findings on alter ego for substantial evidence. (*Wells Fargo Bank, N.A. v. Weinberg* (2014) 227 Cal.App.4th 1, 8.) "In general, in reviewing a judgment based upon a statement of decision following a bench trial, 'any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision. [Citations.]' [Citation.] In a substantial evidence challenge to a judgment, the appellate court will 'consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.]' [Citation.] We may not reweigh the evidence and are bound by the trial court's credibility determinations. [Citations.]" (*Estate of Young* (2008) 160 Cal.App.4th 62, 75–76.)

b. *The Evidence at Trial*

At trial, LaRocca presented extensive evidence regarding each defendant's relationship with the other to support her alter ego theory.

i. Overlapping Ownership and Personnel

DuWop, LMR, Lambus Corp., Imastar and Out the Door had overlapping ownership and personnel. Haralambus owned 60 percent of Lambus Corp.; his wife owned the remaining 40 percent. Lambus Corp. owned LMR, which owned approximately 40 percent of DuWop. Haralambus also owned 60 percent of Imastar, which owned 80 percent of an intermediary company, which owned 83 percent of Out the Door. Haralambus himself owned the remaining 17 percent of Out the Door.

The corporate appellants and DuWop also had overlapping management and personnel. Haralambus was the managing member of LMR, and the CEO of DuWop and Out the Door.

Between 2008 and 2010, the same accountant prepared LMR's, DuWop's, Lambus Corp.'s, Imastar's and Out the Door's tax returns. DuWop, Imastar, and Out the Door employed the same individual as a senior manager. In the trial court proceedings here, the same attorney represented appellants at various times, and the corporate appellants retained the same expert at trial.

ii. Shared Resources

There was evidence appellants shared office space without observing legal formalities or allocating rent. LMR, DuWop, Imastar and Out the Door shared the same commercial space. Only DuWop held the lease; there were no subleases. Sometimes DuWop paid the rent; sometimes Out the Door paid the rent. When Out the Door paid the rent, it did not ask for reimbursement from DuWop and no loan was created. Imastar paid rent to Out the Door, but also paid rent to another of Haralambus's companies on the premises, Simply Beauty. LMR also paid rent to Simply Beauty.

When Out the Door paid the rent, Haralambus signed the check as CEO of both Out the Door and DuWop. He explained that DuWop "needed assistance with regards to the rent and generally, [] [w]e have tried to apportion rent in such a way that the total burden did not fall on DuWop []." DuWop was eventually evicted and Haralambus signed a new lease at the property on behalf of Out the Door. DuWop's inventory remained at the location and it continued to use the location as its business address.

iii. Disregard of Corporate Formalities

There was little evidence demonstrating the corporate defendants' observance of corporate formalities. For example, Haralambus testified that DuWop's members agreed at a meeting

to convert LMR's loans to equity. However, he was unable to point to any evidence of the agreement. He eventually testified the equity conversion was "implied" by the entire Purchase Agreement.

In 2012, LMR's corporate status was suspended. By 2012, DuWop had stopped maintaining its financial records, and by the time of trial, its corporate status was suspended. In 2014, Lambus Corp.'s corporate status was suspended. In 2015, Imastar's corporate status was suspended.

iv. The Trademark Assignment

Extensive evidence was presented regarding DuWop's transfer of its trademarks to Imastar in 2012. At that time, DuWop had already been sued by LaRocca. The DuWop owners—LaRocca was no longer an owner—all agreed to the transfer, having been given the opportunity to trade their interest in DuWop into shares of Imastar. According to appellants' own expert at trial, at the time of the assignment, Haralambus had a "controlling interest" in Imastar, and LMR had a "controlling interest" in DuWop.

There was no independent appraisal of the trademarks. Haralambus testified that the consideration for the trademarks was between $1 million and $1.5 million that Imastar had loaned to DuWop. However, while the "intention" was that DuWop would "get loan forgiveness" from Imastar in exchange for the trademarks, Haralambus was "not sure" if that happened. The trademarks were later valued in Imastar's books at $750,000, and DuWop continued to be in debt to Imastar. The assignment was not reflected in DuWop's accounts.

v. Expert Testimony

A. *Plaintiff's Expert*

Renee Howdeshell, an accountant and certified fraud examiner, testified for LaRocca on the issue of alter ego. Howdeshell concluded that the defendant entities transferred assets between themselves without repayment. For example, DuWop's trademarks were assigned to Imastar "without an arm's length transaction based on an analysis of their value." LMR's purchase of an interest in DuWop suggested the trademarks were worth $3 million. The only consideration given in exchange for the trademark assignment was Imastar's payment of minimal filing fees for trademark registration.

Howdeshell opined that the defendant entities commingled assets as demonstrated by records showing that loans were made without adequate documentation or repayment. Imastar loaned over $1 million to DuWop and made loans to Out the Door "on many occasions" without promissory notes. On one occasion, LMR bought goods on behalf of DuWop but was owed by Imastar for the purchase. On another occasion, LMR invoiced DuWop for a consulting fee but actually charged Imastar. The entities' sharing of resources without repayment was demonstrated by their sharing of a commercial space without paying DuWop as the master tenant for a proportionate share of the rent.

Howdeshell found that the entities' financial records were inconsistent and inaccurate, showing varying loan balances between Imastar, LMR, and Lambus Corp. Specifically, some documents showed Imastar had a negative loan balance as to LMR and Lambus Corp. while others showed a positive loan balance for the same time period. LMR's records conflicted with those of Imastar regarding loan balances between the entities. In

addition, Haralambus had instructed the corporate appellants' shared accountant in an email to combine Imastar's loan balances for loans from Lambus Corp. and LMR.

Lastly, Howdeshell concluded that LMR "had no meaningful activity except as an uncompensated pass through for investment and was under capitalized with negative income and negative equity." She defined a "pass through" entity as "a temporary stopping point for money before the money is transferred on." LMR had no income and filed for bankruptcy in 2012 and 2015.

B. *Defendants' Expert*

David Weiner, a forensic economist, was retained by the defense to review Howdeshell's conclusions. He disagreed with her finding of a unity of interest among the defendants; however, he did not review all of the documents Howdeshell reviewed for her testimony. Weiner was not asked to make his own analysis as to the alter ego issue.

Weiner made several conclusions that bolstered Howdeshell's testimony. He acknowledged that LMR had filed for bankruptcy and it was reasonable to infer that a bankrupt company is inadequately capitalized. He confirmed that, assuming Haralambus controlled Out the Door and DuWop, Haralambus would benefit if Out the Door loaned money to DuWop and was not repaid. He opined that a corporation's failure to maintain its corporate status suggested a failure to observe corporate formalities. He testified that Haralambus had a "controlling interest" in DuWop and Imastar when DuWop's trademarks were assigned, and DuWop should have obtained a valuation of the trademarks for the transfer to be at arms-length.

c. *Trial Court Findings*

The court concluded that DuWop and LMR were the alter egos of Haralambus; DuWop, LMR, Lambus Corp., Imastar and Out the Door were engaged in a single enterprise; and it would be inequitable not to apply the alter ego doctrine. Specifically, the court found that funds "were transferred back and forth between the entities without promissory notes, documentation or repayment schedules," the transfer of DuWop's trademarks "was not an arm's length transaction," "LMR and Lambus Corp[.] were pass through companies and had no other purpose," "LMR was undercapitalized," and "the common denominator was that they were all controlled by Haralambus, who was familiar with their books, and who had the same accountants working for each, and had the entities for the most part share space without subleases or payment of rent to DuWop."

i. Unity of Interest

There was substantial evidence to support the trial court's conclusion that Imastar, Out the Door and Lambus Corp. had a unity of interest with DuWop and LMR. To begin with, the evidence indicated that Haralambus had ownership and control over the entities. Haralambus owned Lambus Corp. with his wife, and Lambus Corp. owned LMR. LMR, in turn, owned approximately 40 percent interest in DuWop. Haralambus owned a majority share—60 percent—in Imastar which, in turn owned 75 percent of Out the Door. Haralambus himself also owned 17 percent of Out the Door. Although Haralambus indirectly owned DuWop and LMR through Lambus Corp., because the trial court made findings that Lambus Corp.'s corporate form should also be disregarded, the trial court reasonably found Haralambus an alter ego of DuWop and LMR.

(See *CADC/RADC Venture 2011-1 LLC v. Bradley* (2015) 235 Cal.App.4th 775, 789.)

Haralambus was CEO of DuWop after LaRocca left. He was also CEO of Out the Door. He was the managing member of LMR. The evidence further indicated he managed the operations of Imastar and Lambus Corp. as the majority owner of those companies. For example, he instructed the entities' accountant to combine LMR and Lambus Corp.'s loan balances with Imastar. The trial court could reasonably infer that Haralambus engineered the trademark assignment from DuWop to Imastar even though all the DuWop members approved it—Haralambus admitted the DuWop members were offered ownership in Imastar in exchange for their ownership in DuWop. His own expert testified that Haralambus had "controlling interests" in Imastar and DuWop at the time of the assignment.

The entities also shared personnel and resources. They used the same accountant, and employed the same attorney at one time or another while this case was proceeding in the trial court. DuWop, Imastar and Out the Door employed the same senior manager. DuWop, Imastar, Out the Door, and LMR all shared the same commercial space. (See *Associated Vendors, Inc. v. Oakland Meat Co.*, *supra*, 210 Cal.App.2d at p. 940.)

The entities' manner of sharing the same office space also showed that they commingled accounts and disregarded legal formalities. Although DuWop held the lease, there was no sublease as to the other entities' use of space at the property. Nor was there a consistent division of rent reflecting each entity's proportionate use of the property: sometimes DuWop paid the rent, sometimes Out the Door paid the rent, Imastar paid rent to

Out the Door and Simply Beauty, and LMR paid rent to Simply Beauty.

The entities' commingling of funds was also shown by evidence that assets were transferred between the entities without accurate documentation or repayment. Imastar's accounting records and tax returns showed inconsistent loan balances between Imastar and DuWop, Lambus Corp. and LMR. According to Howdeshell, an email showed that Haralambus instructed the entities' shared accountant to combine Lambus Corp.'s and LMR's loan balance with Imastar. As to DuWop's trademark transfer, it was purportedly made as payment for loans made by Imastar that were never documented by any promissory note. Although "the intention" of this transfer was for DuWop to obtain "loan forgiveness" for a $1–$1.5 million dollar debt, the records and testimony established the debt was not forgiven.

The lack of accurate financial records regarding loans between the entities also demonstrated their failure to observe corporate formalities. The factor was further supported by evidence LMR, DuWop, Lambus Corp. and Imastar failed to maintain their corporate status with the state at certain times. Appellants' own expert testified that a company's suspension suggests a failure to observe corporate formalities. There was also evidence of the failure to document major corporate decisions: when Haralambus was asked if there was any documentation of DuWop's members' agreement to convert LMR's loans to equity, he was unable to point to any.

The evidence also established that LMR and Lambus Corp. were mere shells for Haralambus's activities. Haralambus admitted that LMR had never received compensation for placing

an investment, and Howdeshell concluded it was undercapitalized—it had negative equity and income. LMR filed for bankruptcy twice during the trial court proceedings and appellants' own expert admitted that it is reasonable to infer that a bankrupt company is inadequately capitalized. The trial court concluded Lambus Corp. did not have a "legitimate commercial purpose" but existed only to shield Haralambus from liability. This was a reasonable inference from evidence that Lambus Corp.'s only activity was ownership of LMR which itself was an undercapitalized pass-through entity.

Haralambus argues that the above evidence was insufficient to establish that he was an alter ego of the entities he controlled and owned. He focuses on which factors were *not* present, arguing there was no evidence he commingled personal assets with those of his entities or that he held himself out as personally liable for their debts. However, the question is not which factors were absent—the alter ego analysis does not depend on any one factor. The question is which factors were present to establish the required unity of interest.

There were multiple factors present here, as noted above. First, there was substantial evidence Haralambus owned and controlled the entities. Second, there was abundant evidence Haralambus commingled entity assets and disregarded corporate formalities: he signed checks by Out the Door paying for DuWop's and Imastar's rent, he engineered the assignment of DuWop's trademarks to Imastar for no consideration, and he directed the entities' accountant to combine LMR's and Lambus Corp.'s loan balance.

In support of his argument, Haralambus cites to *Mid-Century Ins. Co. v. Gardner* (1992) 9 Cal.App.4th 1205 where the

trial court found no alter ego liability. The Court of Appeal affirmed, finding no evidence the defendant "generally treated corporate assets as his own or disregarded the separate nature of the business." (*Id.* at p. 1215.) In fact, "the only factor" the plaintiff could point to was the defendant's "domination of ownership and control." (*Ibid.*) *Mid-Century* may be distinguished on precisely that ground: there was more evidence here than simply Haralambus's domination of ownership and control. Rather, the evidence established he disregarded the corporate form. It was also reasonable, as explained below, for the trial court to infer that Haralambus disregarded the corporate form in order to evade payment of obligations, which leads us to the second factor in the alter ego analysis: an inequitable result if the alter ego doctrine is not applied.

ii. Inequitable Result

We also agree that the trial court found substantial evidence an injustice or inequity would result absent imposition of single enterprise and alter ego liability. Haralambus arranged for LMR to purchase LaRocca's interest in DuWop when it was undercapitalized. Although he consistently told LaRocca LMR needed more time to make its payments under the Purchase Agreement because of financial difficulties, at trial he testified that he simply decided not to pay LaRocca the balance due under the Purchase Agreement because he believed she had created competing products. Even this testimony was suspect given that *after* Haralambus found out LaRocca created other products, LMR continued to make further payments under the Purchase Agreement. What is undisputed is that LMR did not fulfill its obligations under the Purchase Agreement and Letter of Undertaking and then its corporate form was suspended and it

filed for bankruptcy. There was substantial evidence LMR was an undercapitalized pass-through entity, Lambus Corp. had no purpose other than to shield Haralambus from liability, and Haralambus bore responsibility for these corporations' actions and their disregard of the corporate form.

Haralambus's manipulation of LMR's and the other entities' accounts and commingling of assets obfuscated the extent of their assets, ensuring that LaRocca would be disadvantaged in trying to obtain payment of debts. After LaRocca had filed this lawsuit against DuWop, Haralambus engineered the transfer of DuWop's primary assets to Imastar for no consideration, leaving DuWop a hollow shell without means of satisfying its creditors. (See *Alexander v. Abbey of Chimes* (1980) 104 Cal.App.3d 39, 46–47.) From this record, it was reasonable for the trial court to infer that Haralambus's intent in disregarding the corporate form of the appellant entities was to frustrate LaRocca's attempts to collect any amount. Without the application of the alter ego doctrine, there are no funds by which LaRocca can enforce any judgment against DuWop and LMR.

d. *Estoppel*

The corporate appellants contend that LaRocca is estopped from contending that they were alter egos of DuWop because she was a corporate officer of DuWop. In support, they cite *Wynn v. Treasure Co.* (1956) 146 Cal.App.2d 69, 76 holding that "a person who has acted as a director, officer, or agent of an association purporting to be a corporation is estopped to deny its corporate existence both as against the alleged corporation itself and its members and stockholders. [Citation.]" However, this rule is inapplicable when "considerations of equity and fair dealing" bar estoppel (*Hiehle v. Torrance Millworks, Inc.* (1954)

126 Cal.App.2d 624, 629–630) and thus the trial court may properly decline to find an estoppel when there is "no element of reliance by defendants upon any conduct of plaintiff which could give rise to that equitable conclusion" (*Engineering Service Corp. v. Longridge Inv. Co.* (1957) 153 Cal.App.2d 404, 417). Here, the trial court found no estoppel because LaRocca sued appellants based on acts taken after she no longer worked at DuWop and after she had sold all her interest in the company. We find no abuse of discretion. (See *Miller v. Bank of America, N.A.* (2013) 213 Cal.App.4th 1, 9–10 ["because judicial estoppel is an equitable doctrine [citations], whether it should be applied is a matter within the discretion of the trial court."].)

The corporate appellants also argue that LaRocca is estopped because (1) she did not "insist[] on additional safeguards" when she entered into the subject contracts with DuWop and LMR, and (2) she knew that Lambus Corp., Imastar or Out the Door were not "obligated to make any payment to [her] under these agreements" because only DuWop and LMR were parties to the contracts. As to the first contention, it is unclear what appellants mean by "additional safeguards." As to the second contention, it is the purpose of alter ego to address precisely this set of facts: when a plaintiff contracts with only one entity and due to a unity of interest it would be inequitable to permit a related entity to avoid liability.

4. *Damages Calculation*

Haralambus contends the trial court's damages calculation of $1,214,757.95 was incorrect. He argues the correct amount is $1,147,188.90. Haralambus's calculation fails to account for the $67,568.91 in damages the trial court awarded for LMR's breach of the Letter of Undertaking (LMR's failure to "remove" LaRocca

as a guarantor on DuWop's loan from Citibank). After finding that LMR breached that agreement, the court awarded "$67,568.91 in damages . . . on the Citibank loan." We find no error.

DISPOSITION

The judgment is affirmed. Respondent is to recover her costs on appeal.

RUBIN, J.

WE CONCUR:

BIGELOW, P.J.

HALL, J.*

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