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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

ALFRED BARABAS, Plaintiff and Appellant, v. AUDIOVOX ADVANCED ACCESSORIES GROUP, LLC, Defendant and Respondent.	B284303 (Los Angeles County Super. Ct. No. BC598561)

APPEAL from a judgment of the Superior Court of Los Angeles County, Samantha P. Jessner, Judge. Affirmed.

Oaktree Law and Larry Fieselman for Plaintiff and Appellant.

Esensten Law, Robert L. Esensten and Randi R. Geffner for Defendant and Respondent.

The trial court found that Audiovox Advanced Accessories Group, LLC (AAAG) breached Alfred Barabas's (plaintiff) employment agreement causing him damages, but ruled that plaintiff had not adduced sufficient evidence to justify piercing the corporate veil to hold its parent corporation, Voxx International Corporation (VIC) liable as AAAG's alter ego. Plaintiff appeals from the ensuing judgment. We conclude that substantial evidence supports the trial court's ruling and affirm.

BACKGROUND

I. Plaintiff's employment with AAAG

Plaintiff worked under a four-year employment contract with AAAG as a product development manager starting in March 2013 where he invented, designed, engineered, and developed consumer automotive electronics and technologies for sale by VIC's other affiliated entities.

Sales of products that plaintiff developed did not go well. In March 2015 plaintiff learned that sales needed to improve for AAAG to continue operating. Plaintiff understood that a lot of inventory was going to be written off and that AAAG's Vice President and Chief Financial Officer, Charles Stoehr, was upset.

Approximately halfway into the term of his contract, plaintiff and AAAG executed an amended employment agreement reducing plaintiff's salary by 20 percent and later a restated amended agreement eliminating his bonuses. AAAG remained unprofitable, and so it ceased operations and terminated plaintiff from his job in October 2015.

Plaintiff commenced this lawsuit against AAAG and VIC for breach of his employment contract, its implied covenant of good faith and fair dealing, and for rescission, restitution, and

declaratory relief. Plaintiff sought to hold VIC liable as the alter ego of AAAG.

II. Corporate structure

VIC is a publicly-traded international manufacturer and distributor of automotive, premium audio, and consumer accessories. Formed 55 years ago as a stand-alone company, it now owns more than 30 global brands and conducts its business through 18 subsidiaries. VIC does not sell any products directly, though it holds many intellectual property rights and licenses some of those rights to third parties.

VIC and its subsidiaries were formed separately. Each subsidiary has its own operating agreement or articles of incorporation, board of directors, officers or members, financial statements, and each maintains its own tax identification number. Each entity operates in its own product segment, e.g., premium audio, consumer electronics accessories, and high-end audio, and may exist in different locations with different customers, channels of distribution, quality of product, or price point. VIC's filings with the Securities and Exchange Commission do not report by subsidiary, but rather on the basis of product segments.

VIC provides its subsidiaries with human resources, accounting, collection, management information, and computer system services, and then charges its subsidiaries for these "shared services" based on usage or headcount. None of its subsidiaries has a bank account. When an entity generates a sale, it sends an invoice to the purchaser to send the payment to VIC.

AAAG, one of VIC's subsidiaries, was a Delaware limited liability company formed in February 2013. Its sole owner and

member was Voxx Electronics Corporation (VEC), formerly Audiovox Corporation, another subsidiary of VIC. AAAG's purpose was to conduct research and develop automotive accessory technology as part of VIC's overall business plan. AAAG's after-market products were sold by VEC and its before market products were sold by Voxx-Hirschmann, another entity of VIC. All of AAAG's profits and losses were allocated to its member, VEC, not to VIC. Thomas Malone was AAAG's president; Loriann Shelton was its vice president/secretary and treasurer; and Stoehr, VIC's senior vice president and chief financial officer, was AAAG's vice president.

AAAG had its own business, employees, and financial records. The company was managed and operated by its own board of directors and not by VIC. Malone was responsible for AAAG's day-to-day operations and made executive decisions about its operations. Malone negotiated the employment contracts with plaintiff on behalf of AAAG and alone decided to cease AAAG's operations. The company was not formed for the sole purpose of employing plaintiff. AAAG was formed, leased office space in its own name, and then hired plaintiff, his brother, and several other engineers as employees.

Plaintiff's employment contract was with AAAG only and he performed services solely for that company. Plaintiff had an employee badge which was issued by VIC to facilitate access to the New York offices. All employees of VIC subsidiaries have such a badge, without which they would have trouble entering the offices. Plaintiff also had business cards showing him to be an employee of VIC and of VEC. He obtained those cards because he chose to deal directly with customers and wanted to avoid confusion about the company's structure. Plaintiff was paid by

VEC because it was the paymaster under the shared services arrangement. Plaintiff's W-2 was issued by AAAG as his employer.

AAAG operated and was treated in the same manner as VIC's other wholly owned subsidiaries. VIC handled AAAG's human resources and accounting through its centralized "shared services." AAAG's initial capitalization and working capital were provided by VIC in the form of intercompany loans that were documented on the books of AAAG and VIC, just as similar loans were reflected on the individual financial statements of each of VIC's other entities. VIC paid AAAG's rent through intercompany allocation. VIC also extended intercompany loans to cover AAAG's $2,765,990.80 operating loss caused by the failure of plaintiff's products to sell.

At trial, plaintiff testified that he had no information that caused him to believe that AAAG was formed to shield VIC from liability, or that AAAG was treated any differently than the other subsidiaries of VIC.

The court found that AAAG wrongfully terminated plaintiff from his job and that plaintiff suffered $291,672.50 in damages. However, the court found that plaintiff failed to meet his burden to show that VIC should be held liable for plaintiff's damages based on the alter ego doctrine. AAAG was formed to provide plaintiff and others with the opportunity to research and develop automotive accessory technology and products that would be sold by other groups or divisions of VIC. The court found that AAAG was not undercapitalized to avoid liability or to perpetrate a fraud, but because plaintiff failed to develop products that other entities could sell, so that no profits were recorded for AAAG. The court explained that VIC treated AAAG in the same manner

as it treated all of its subsidiaries, with the result that AAAG was not organized for the purpose of perpetrating a fraud. The court found it was not reasonable to infer that this large-scale company would set up AAAG the way it did to avoid liability for a few hundred thousand dollars or to defraud a group of five or six employees. Finally, the court was unconvinced that plaintiff would suffer an inequitable result if VIC were not found to be the alter ego of AAAG. VEC was the sole member of AAAG and was the entity that existed between AAAG and VIC. All of AAAG's financial activities were " 'rolled into' " VEC, with the result, the court ruled, that VEC could have satisfied plaintiff's judgment against AAAG.

Plaintiff filed his timely appeal.

DISCUSSION

I. The standard of review and the alter ego doctrine

Plaintiff's only challenge on appeal is to the court's finding that VIC was not the alter ego of AAAG. Plaintiff contends that the evidence clearly showed that AAAG was operated solely for VIC's benefit with no separate existence of its own, and that VIC was responsible for AAAG's obligations, including plaintiff's judgment. Otherwise an injustice would result, plaintiff argues, because he would be unable to recover damages after having prevailed against AAAG.

"Normally the corporation is an insulator from liability on claims of creditors. The fact that incorporation was desired in order to obtain limited liability does not defeat that purpose. [Citations.] Limited liability is the rule, not the exception; and on that assumption large undertakings are rested, vast enterprises are launched, and huge sums of capital attracted." (*Anderson v. Abbott* (1944) 321 U.S. 349, 361–362.) " 'Because society

recognizes the benefits of allowing persons and organizations to limit their business risks through incorporation, sound public policy dictates that imposition of alter ego liability be approached with caution.' " (*Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, 512 (*Greenspan*).)

"The figurative terminology 'alter ego' and 'disregard of the corporate entity' is generally used to refer to the various situations that are an abuse of the corporate privilege." (*Minton v. Cavaney* (1961) 56 Cal.2d 576, 579.) A claim against a defendant based on the alter ego theory is a procedural one. The claim seeks "to disregard the corporate entity as a distinct defendant and to hold the alter ego [parent corporation] liable on the obligations of the [subsidiary] where the corporate form is being used by the [parent corporation] to escape personal liability, sanction a fraud, or promote injustice." (*Hennessey's Tavern, Inc. v. American Air Filter Co*. (1988) 204 Cal.App.3d 1351, 1359.) " 'In other words, *bad faith in one form or another must be shown before the court may disregard the fiction of separate corporate existence*.' " (*Id*. at p. 1358, italics added.)

When deciding whether to treat a subsidiary as the alter ego of its parent corporation, the trial court assesses two questions: "whether (1) there is ' "such unity of interest and ownership that the separate personalities of the [subsidiary] corporation and [its parent corporation . . .] no longer exist" ' and (2) ' "if the acts are treated as those of the [subsidiary] alone, an inequitable result will follow." ' " (*Davidson v. Seterus, Inc*. (2018) 21 Cal.App.5th 283, 305 (*Davidson*).)

The first prong, unity of corporate identity, "may be satisfied by a showing of domination and control of the corporation, which occurs most often in the context of a parent-

subsidiary relationship." (Note, *Piercing the Corporate Law Veil: The Alter Ego Doctrine Under Federal Common Law* (1982) 95 Harv. L.Rev. 853, 854.) However, "more is required than solely a parent-subsidiary corporate relationship to create liability of a parent for the actions of its subsidiary." (*Walker v. Signal Companies, Inc.* (1978) 84 Cal.App.3d 982, 1001.) A subsidiary that is wholly owned but independently managed and controlled will be recognized as a separate corporate entity. (9 Witkin, Summary of Cal. Law (11th ed. 2019) Corporations, § 19, p. 1.) A parent corporation may nonetheless be held liable for the torts or on the contract of a subsidiary when it owns all the shares of the subsidiary *and exercises sufficient control over or manipulates the latter's activities* so as to relegate the subsidiary to the status of a mere agent, conduit, or instrumentality of the parent. (*Davidson*, *supra*, 21 Cal.App.5th at pp. 305–306.)

When evaluating the unity of corporate identity and inequitable results "courts look to the totality of the circumstances bearing on the relationship between the parent and its subsidiary. [Citations.] Those circumstances include, but are not limited to (1) whether the parent and subsidiary commingle funds and other assets, (2) whether the parent has represented to third parties that it is liable for the subsidiary's debts, (3) whether the parent owns 100 percent of the subsidiary's stock, (4) whether the parent and subsidiary use the same offices and same employees, (5) whether the subsidiary is used as the ' " 'mere shell or conduit' " ' for the affairs of the parent, (6) whether the subsidiary is inadequately capitalized, (7) whether the parent or subsidiary disregard corporate formalities such as holding board meetings, keeping corporate records, and acting through votes of the corporate board,

(8) whether the parent and subsidiary commingle their corporate records, (9) whether the parent and subsidiary have ' "identical directors and officers," ' and (10) whether the parent has diverted the subsidiary's assets to the parent's uses." (*Davidson*, *supra*, 21 Cal.App.5th at p. 306, fn. 17.) This " ' "list of factors is not exhaustive" ' " and " ' "[n]o single factor is determinative." ' " " ' "[I]nstead a court must examine all the circumstances to determine whether to apply the doctrine." ' " (*Greenspan*, *supra*, 191 Cal.App.4th at p. 513.)

The law concerning piercing the corporate veil " 'is easy to state but difficult to apply.' [Citation.] Because it is founded on equitable principles, application of the alter ego ' "is not made to depend upon prior decisions involving factual situations which appear to be similar. . . . 'It is the general rule that the conditions under which a corporate entity may be disregarded vary according to the circumstances of each case.' " ' " (*Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.* (2013) 217 Cal.App.4th 1096, 1108.) Hence, whether the corporate veil should be ignored is a question of fact which will not be disturbed when supported by substantial evidence. (*Ibid.*) When the statement of decision sets forth its factual and legal basis, all conflicts in the evidence and reasonable inferences to be drawn from the facts are resolved in support of the trial court's decision. (*Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 45–46.)

II. Plaintiff failed to demonstrate the absence of substantial evidence to support the judgment.

Rather than to show that the evidence does not support the trial court's findings, plaintiff's appellate briefs recast the facts in a light most favorable to himself, largely by citing documents

that were not admitted at trial. But, the power of an appellate court reviewing a factual determination " ' "begins and ends with the determination as to whether there is any substantial evidence contradicted or uncontradicted which will support the finding of fact." ' [Citation.] ' "[W]e have no power to judge of the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom." ' [Citation.] We do not reweigh evidence or reassess the credibility of witnesses." (*Orozco v. WPV San Jose, LLC* (2019) 36 Cal.App.5th 375, 391.) Also, we are unable to evaluate those facts for which plaintiff failed to give page citations. (*Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205.)

A. *Unity of corporate identity*

In addressing the unity-of-identity prong of the alter ego test, plaintiff focuses on two main factors, control and capitalization. He first argues that the evidence shows that "[e]verything was run for the benefit of [VIC], the parent" who formed AAAG to "insulat[e] [itself] from liability incurred by its subsidiaries." Plaintiff lists the following facts: VIC wholly owned its subsidiaries; the companies had a "substantial overlap" of officers; and VIC provided shared services, such as human resources and accounting, which Shelton agreed allowed VIC to keep a tight rein on the subsidiaries. VIC's outside general counsel testified that one purpose of operating through subsidiaries was to limit VIC's liability for a judgment that a subsidiary might incur. Plaintiff adds that he carried VIC business cards and had a VIC company badge. He argues that the operations of VIC and AAAG were so integrated through the

comingling of funds, activities, common direction, and supervision that they should be considered one enterprise.

Given that limiting liability is a main purpose of incorporation (*Greenspan*, *supra*, 191 Cal.App.4th at p. 512), more evidence is required than simply that AAAG was a wholly owned subsidiary of VIC. Substantial evidence here shows that AAAG had a separate corporate identity and was not controlled, managed, or manipulated by VIC so as to indicate bad faith. Independently formed to conduct research and development of automotive audio accessories, AAAG was only a small segment of VIC's global business empire. AAAG observed the corporate form, had its own offices and employees, and was managed and operated by its own member and officers. Malone had sole responsibility for AAAG's operations and was not an officer of any other VIC subsidiary. AAAG kept its own financial books and records. There is no evidence that AAAG's books were subject to tampering, that its funds were comingled with VIC's, or that corporate formalities were disregarded.

Plaintiff believes that the fact that AAAG was formed and treated in the same manner as all other VIC subsidiaries is evidence that the subsidiaries were created to insulate VIC from potential liability. But that is not the inference the trial court drew from the evidence. The court found the similar treatment among all VIC subsidiaries demonstrated that AAAG was *not* organized for the purpose of perpetrating a fraud. We may not indulge in inferences that contradict the trial court's decision. (*Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.*, *supra*, 226 Cal.App.4th at pp. 45–46.)

Plaintiff further contends that AAAG's inadequate capitalization is an important basis for disregarding the

corporate form and primary evidence that VIC was its alter ego. He observes that AAAG had no bank account and no assets. VIC paid its rent and operating costs through its lone line of credit for expenditures. Plaintiff cites federal cases to support this assertion. Of course, we are not bound by federal court decisions. (*Sandler v. Sanchez* (2012) 206 Cal.App.4th 1431, 1443.)

"An obvious inadequacy of capital, measured by the nature and magnitude of the corporate undertaking, has frequently been an important factor in cases denying stockholders their defense of limited liability." (*Anderson v. Abbott*, *supra*, 321 U.S. at p. 362.) In California, the corporate veil can be pierced to hold the parent liable for the subsidiary's debts when the parent "provide[s] inadequate capitalization" (*Minton v. Cavaney*, *supra*, 56 Cal.2d at p. 579), i.e., the subsidiary's "capital was ' "trifling compared with the business to be done and the risks of loss" ' " (*id*. at p. 580). But to disregard the corporate form, there must also be a showing that the parent "actively participate[s] in the conduct of corporate affairs." (*Id*. at p. 579.) Here, apart from the absence of evidence that VIC actively participated in the affairs of AAAG, there is no evidence the undercapitalization was purposefully orchestrated to defraud VIC's creditors. AAAG was a research and development company that lacked capital because its products did not sell, causing it to run a deficit. As the trial court observed, measured against the magnitude of VIC's corporate undertaking, AAAG's capital inadequacy is simply not enough to suggest that it was fraudulently designed to avoid its obligations. (See *Pearl v. Shore* (1971) 17 Cal.App.3d 608, 617 [lack of financial resources attributable to poor management rather than undercapitalization].)

Moreover, a "parent is not 'exposed to liability for the obligations of [the subsidiary] when [the parent] contributes funds to [the subsidiary] for the purpose of assisting [the subsidiary] in meeting its financial obligations and not for the purpose of perpetrating a fraud.' " (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 539.) There must be "some conduct amounting to bad faith [that] makes it inequitable for the corporate owner to hide behind the corporate form." (*Ibid*.) Plaintiff failed to adduce such evidence of bad faith. The record contains no evidence that VIC represented to third parties that it would be liable for AAAG's debts, or diverted AAAG's assets for its own purposes or to avoid AAAG's liability. The trial court rationally found that the evidence did not support the conclusion that a company as vast as VIC would set up AAAG the way it did to avoid liability for a few hundred thousand dollars or to defraud a group of five or six employees.

B. *Inequitable result*

Plaintiff argues the inequitable result of the trial court's decision is that "[n]either [VEC] nor [VIC] has stepped up to pay the judgment." However, AAAG was a limited liability company and VEC was its only member. Plaintiff did not sue VEC and did not adduce evidence to support holding VEC liable for his judgment.

Plaintiff counters that VEC was a fiction and existed on paper only. But, the testimony he cites is that *Voxx Electronics Group* was a "fiction" because it was "just a grouping of a segment, a product segment." Exhibit 44, the organizational chart for VIC, confirms that *Voxx Electronics Group* is a group of VIC subsidiaries consisting of VEC, Audiovox Websites LLC, Omega Research and Development Technology LLC, AAAG, and

Audiovoxx Mexico. Plaintiff cites us to no evidence that *VEC* was a fiction and would be unable to meet AAAG's obligations.

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs of appeal.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

LAVIN, Acting P. J.

EGERTON, J.