

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 ONE

PEGGY MURPHY, et al.,

Plaintiffs and Appellants,

v.

PETER SPENNATO, JR., et al.,

Defendants and Respondents.

B264754

(Los Angeles County  
Super. Ct. No. BC477869)

PEGGY MURPHY, et al.,

Plaintiffs and Appellants,

v.

PETER SPENNATO, JR.,

Defendant and Respondent.

B265742

(Los Angeles County  
Super. Ct. No. BC477869)

APPEALS from judgments of the Superior Court of Los Angeles County, Frederick C. Shaller and Robert H. O'Brien, Judges. Affirmed.

Catanzarite Law Corporation, Kenneth J. Catanzarite and Brandon E. Woodward for Plaintiffs and Appellants.

Fisher & Phillips, Christine Baran, Wendy McGuire Coats, Shawn J. Voigt for Defendants and Respondents; Price, Crooke, Gary & Hammers, Stephen G. Hammers for Defendants and Respondents Candace Spennato and Peter Spennato, Jr.

---

Plaintiffs Peggy Murphy, Genevieve Peterson and Nicole Juckes appeal from multiple judgments entered against them after the trial court granted summary judgment motions in favor of defendants Peter Spennato, Jr., Candace Spennato, Peter Spennato DDS Ortho & Pedo, Inc., W. 8th Street, LLC, and Painless Properties LLC, in this action arising out of employment relationships and issues and alleged oral agreements. We affirm the judgments in these consolidated appeals.

## **BACKGROUND**

### **Plaintiffs' Employment**

In 1993, Peter Spennato, Jr., a dentist, formed a sole proprietorship dental practice. The same year, he hired Genevieve Peterson as a dental assistant and Peggy Murphy to handle billing and collections. Murphy left the dental practice in 1996, but returned to work there in 1998.

Peterson's daughter, Nicole Juckes, went to work for Mr. Spennato in 2000, the year after her high school graduation, when she was 19 years old. Among other things she answered phones, scheduled appointments, and completed filing and

paperwork. She only worked for Mr. Spennato until 2001, when her physician advised that she should stop working.

In the spring of 2000, Jukes and Mr. Spennato made an arrangement under which Jukes agreed to take title to two residential properties (the Stonewood Properties). Pursuant to the arrangement, Mr. Spennato deposited \$1,000 into Jukes's bank account. Within a month of taking title, Jukes signed grant deeds, transferring all interest in the Stonewood Properties to Mr. and Mrs. Spennato as joint tenants. The grant deeds were recorded about a year later.<sup>1</sup>

In 2007, Mr. Spennato incorporated the general dentistry practice into Peter Spennato DDS, Inc. (DDS) and the pediatric dental practice into Peter Spennato DDS Ortho & Pedo, Inc. (Ortho) and ceased his sole proprietorship. Mr. Spennato was the sole shareholder, director and officer of DDS and Ortho. Peterson and Murphy continued to work for the general dentistry practice, DDS. Murphy, but not Peterson, claims she also performed work for the pediatric dental practice, Ortho.

Mr. Spennato and his wife, Candace Spennato, formed two companies that also are defendants in this action. In 2006, they formed Painless Properties, LLC (Painless) for the purpose of managing real property. In 2009, they formed W. 8th Street LLC (8th Street), which held title to the two properties where the dental practices were located and leased those properties to DDS

---

<sup>1</sup> As discussed in more detail below, Jukes alleges she and Mr. Spennato entered into an oral partnership, requiring him to pay her 50 percent of the profits from the Stonewood Properties and all other real estate holdings purchased with income generated from the Stonewood Properties. Mr. Spennato denies the existence of the partnership.

and Ortho. Neither Peterson nor Murphy performed work for Painless or 8th Street.

In February 2011, DDS and Ortho sold the dental practices to a third-party dentist. Peterson and Murphy remained in their same employment until the time of the sale.

### **First Amended Complaint**

In January 2012, Murphy and Peterson filed this action against Mr. and Mrs. Spennato, DDS, Ortho, Painless, and 8th Street (collectively, defendants),<sup>2</sup> and Juckes asserted causes of action against Mr. and Mrs. Spennato only.

In the operative first amended complaint, filed in April 2014, Murphy and Peterson assert four causes of action for Labor Code violations (unpaid overtime wages, failure to issue accurate payroll statements, waiting time penalties, and failure to provide meal and rest breaks), a cause of action for failure to pay wages for all hours worked in accordance with Industrial Welfare Commission wage orders, and a cause of action for unlawful business practices (based on the alleged Labor Code and wage order violations) against DDS, Ortho, Painless, and Mr. and Mrs. Spennato (all defendants, as defined above, except 8th Street).

In their seventh cause of action, Murphy and Peterson assert breach of oral contract and the covenant of good faith and fair dealing against all defendants. They allege they entered into and fully performed an oral employment agreement with

---

<sup>2</sup> The first amended complaint also names Peter Spennato Jr. DDS Pension and Profit Sharing Plan as a defendant. This entity is not a party to this appeal and is not included in the term “defendants,” as defined above.

“Employer” (defined as DDS, Ortho and Painless),<sup>3</sup> under which Employer agreed to provide their wages and a retirement plan. According to the allegations, Mr. Spennato expressly promised Murphy and Peterson that he would “provide them with a safe and secure monthly income for the rest of their lives . . . commencing when he sold the Dental Practice and retired.” Murphy and Peterson claim they are entitled to “retirement benefits commencing March 2011 for life,” but Mr. and Mrs. Spennato, DDS, Ortho, Painless, and 8th Street<sup>4</sup> have refused to pay “any of the retirement plan promised benefits,” thereby (and in conjunction with the failure to pay wages), breaching the oral employment agreement and the implied covenant of good faith and fair dealing.

---

<sup>3</sup> By the time the summary judgment motions were heard, Murphy and Peterson no longer maintained Painless had ever employed them, and Peterson conceded Ortho was never her employer.

<sup>4</sup> In the first amended complaint, Murphy and Peterson allege that the entity defendants (DDS, Ortho, Painless and 8th Street) are the alter egos of Mr. and Mrs. Spennato “and that the Entities are, and at all times relevant to [the first amended complaint] were, mere shells, instrumentalities, and conduits through which [Mr. and Mrs. Spennato] carried on his/her/their business activities, exercising complete control and dominance over the Entities to such an extent that any individuality or separateness of [Mr. and Mrs. Spennato], on the one hand, and the Entities on the other hand, does not, and at all times relevant to [the first amended complaint] did not, exist.” Murphy and Peterson do not allege in the first amended complaint that the entity defendants are alter egos of each other.

Murphy and Peterson also assert an eighth cause of action for fraud against defendants. They allege defendants falsely represented “that if they continued to diligently work pursuant to each respective Employment Agreement that [defendants] would pay them wages in accordance with all applicable laws and they would also receive their respective retirement plan benefits when the Dental Practice sold in February 2011.” According to the allegations, defendants “made these representations in order to deceive [Murphy and Peterson] so that each of them would remain in [defendants’] employment because [defendants] needed [Murphy and Peterson] to work tirelessly for the Dental Practice in order to increase its income and profits.” Murphy and Peterson allege they “reasonably relied on these promises” to their detriment, in that they “remained continuously employed, diligently performing each and every obligation pursuant to the respective Employment Agreement.” In addition to compensatory damages, Murphy and Peterson seek punitive damages for the alleged fraud.

Finally, Murphy and Peterson assert a ninth cause of action for negligent misrepresentation against defendants, based on the same false representations alleged in the fraud cause of action.

Jukes brings the 10th through 12th causes of action against Mr. and Mrs. Spennato, based on the alleged existence of an oral partnership agreement between her and Mr. Spennato “to acquire, manage, hold, invest and reinvest in real estate.”

Juckles alleges Mr. Spennato “approached” her in 2000, during the year she worked for him when she was 19 years old, “and stated[,] ‘How would you like to purchase some real estate with me as your partner? If you agree then you will receive 50%

of the partnership and I guarantee you will make not less than \$25,000 but you can never tell your mother because this must be kept between you and I.' Jukes agreed and an oral partnership agreement was thereby formed with [Mr. Spennato] . . . to form a partnership to acquire, manage, hold, invest and reinvest in real estate." According to the allegations, Mr. "Spennato explained to Jukes that he needed her as a partner because he was 'maxed out' in terms of the number of properties he could buy and finance and needed her name and credit so that she could buy properties in her name for the benefit of the Partnership. Spennato promised Jukes that he would 'take care of everything required to make things legal' and 'prepare all the required documents' to document the Partnership."

Jukes alleges she and Mr. Spennato purchased the two Stonewood Properties in April 2000, "in accordance with the terms of the Partnership Agreement." Jukes further alleges, however, that she alone "signed [the] two purchase agreements, applied for two loans, provided the deposits, processed the two loan applications for over \$400,000 of debt, signed escrow instructions, signed two loans obligating herself to over \$400,000 of purchase money loans from lenders, and thereby acquired in her name two single family residences, each for a purchase price of \$249,000 . . . ." After the transactions closed, Jukes signed deeds, gifting the properties to Mr. and Mrs. Spennato. According to Jukes's allegations, Mr. Spennato told her "she need not worry" about the transfer of title "because he would document everything and keep track of the Partnership profits." He further explained "that the reason for the 'gift' reference was such that the purchase money loans would remain in place and the real estate taxes would remain the same."

Juckes alleges Mr. and Mrs. Spennato managed and rented the Stonewood Properties “on behalf of the Partnership” for about two years and then sold the properties for \$350,000 each, “netting for the Partnership approximately \$100,000 per property or \$200,000 total in April of 2003.” Juckes further claims Mr. and Mrs. Spennato “have continued to invest and reinvest the proceeds from the Partnership with Juckes in a profitable manner such that the \$200,000 profits have been invested and reinvested in various properties, to be traced and determined at the time of trial. . . .” Juckes received no proceeds from the alleged partnership.

In the first amended complaint, Juckes seeks dissolution of the partnership, an accounting, and appointment of a receiver (10th cause of action), imposition of a constructive trust over the partnership funds, assets and property (11th cause of action), and redress for the Spennatos’ unjust enrichment (12th cause of action).

Juckes also asserts a fraud claim against Mr. Spennato (13th cause of action), alleging he falsely represented that he would properly document the partnership, abide by the terms of the partnership agreement, invest and reinvest the proceeds from the Stonewood Properties for the benefit of the partnership, and ensure that she received her 50 percent interest in the partnership. According to Juckes, he made these false representations to induce her to “obtain the loans to acquire the two Stonewood Properties[,] to take title in her name, to obligate herself on loans and then to transfer by deed the property to [Mr.] Spennato for management, investment and reinvestment on behalf of the Partnership,” all of which she did in reliance on his



representations. In addition to compensatory damages, Juckes seeks punitive damages for the alleged fraud.

### **Defendants' Motions for Summary Judgment/Adjudication**

In November 2014, nearly three years after Murphy and Peterson brought this action, Painless filed its motion for summary judgment/summary adjudication of the causes of action in the first amended complaint. Painless argued Murphy and Peterson cannot prevail on their Labor Code/wage claims (1st-6th causes of action) because (1) Painless never employed either of them, and (2) they cannot establish their alter ego theory of liability. As to Murphy and Peterson's seventh cause of action for breach of contract and the covenant of good faith and fair dealing to pay wages and retirement benefits, Painless argued the cause of action fails because Painless is not a party to the alleged contract. Similarly, Painless argued Murphy and Peterson cannot prevail on their eighth cause of action for fraud and ninth cause of action for negligent misrepresentation because Painless did not make any of the alleged false representations. In arguing for dismissal of the seventh through ninth causes of action, Painless reiterated its argument that Murphy and Peterson cannot establish their alter ego theory of liability.

8th Street also filed a summary judgment/adjudication motion, making the same arguments as Painless regarding Murphy and Peterson's seventh through ninth causes of action.

Later in November 2014, Mr. and Mrs. Spennato filed their motion for summary judgment/adjudication of Murphy's and Peterson's causes of action in the first amended complaint. Mrs. Spennato made the same arguments as Painless and 8th Street: the first through sixth causes of action for Labor Code/wage violations fail because she was never Murphy or Peterson's

employer, and she is not the alter ego of either employer (DDS, Ortho); the seventh cause of action for breach of contract and the covenant of good faith and fair dealing to pay wages and retirement benefits fails because she is not a party to the alleged contract; and the eighth cause of action for fraud and ninth cause of action for negligent misrepresentation fail because she did not make any of the alleged false representations.

Mr. Spennato argued he cannot be held liable for the alleged Labor Code/wage violations because he was not Murphy's or Peterson's employer during the statute of limitations period for these causes of action, and he is not the alter ego of DDS or Ortho. As to the seventh cause of action for breach of contract and the covenant of good faith and fair dealing to pay wages and retirement benefits, Mr. Spennato argued he cannot be held liable because Murphy and Peterson allege their contract was with "Employer," defined in the complaint as DDS, Ortho and Painless, not him. Finally, Mr. Spennato argued Murphy and Peterson cannot prove their eighth cause of action for fraud or their ninth cause of action for negligent misrepresentation because, even if he made a representation about retirement benefits (which he denied), any reliance on such a representation is not reasonable as a matter of law.

Mr. and Mrs. Spennato also filed a motion for summary judgment/summary adjudication of Juckes's causes of action in the first amended complaint. They argued Juckes's 10th cause of action for dissolution of the partnership, an accounting and appointment of a receiver fails because there is no evidence of mutual intent to form a partnership, and the alleged oral agreement violates the statute of frauds. They further argued Juckes's 11th cause of action for imposition of a constructive trust

and 12th cause of action for unjust enrichment fail because there was no wrongful acquisition of property or unjust retention of a benefit by the Spennatos. With respect to the 13th cause of action for fraud, Mr. Spennato argued Juckes cannot prove either the justifiable reliance or damages element of her claim as a matter of law.

In December 2014, Ortho filed its motion for summary judgment/summary adjudication.<sup>5</sup> Ortho argued Peterson's first through sixth causes of action for Labor Code/wage violations fail because Peterson concedes Ortho was never her employer.

As to the seventh cause of action for breach of oral contract and the covenant of good faith and fair dealing to pay wages and retirement benefits, Ortho argued Peterson (and Murphy) cannot prove an enforceable oral contract with reasonably certain terms. Instead, Ortho asserted, "Plaintiffs each testified that [Mr. Spennato] made a vague promise in 1998 to invest a portion of their income if they remained employed at the Dental Practice until [Mr. Spennato] retired or the Dental Practice was sold. By Plaintiffs' own admission, no other terms of the alleged contract were discussed or agreed to by the parties." Moreover, Ortho

---

<sup>5</sup> We only discuss Ortho's motion as it relates to Peterson. Ortho did not seek summary judgment as to Murphy; it sought summary adjudication of the seventh through ninth causes of action, which the trial court granted. Murphy's first through sixth causes of action against Ortho are pending below and, therefore, Murphy could not appeal the ruling as to Ortho. The trial court also granted DDS's motion for summary adjudication of Murphy's and Peterson's seventh through ninth causes of action. Because their first through sixth causes of action against DDS are pending below, Murphy and Peterson could not appeal the ruling as to DDS.

asserted, “Plaintiffs readily concede that they never saw or requested any documentation whatsoever regarding any alleged retirement plan, and that they never asked [Mr. Spennato] any specifics about the alleged retirement plan. [Citation.] Plaintiffs also testified that they never contributed financially to any alleged retirement plan. [Citation.] Tellingly, Plaintiffs admit that they never even asked [Mr. Spennato] about the alleged retirement plan following the sale of the practice (the purported trigger for provision of benefits), and waited nearly a year after the sale of the Dental Practice to file the instant lawsuit asserting such an allegation.”

Ortho also argued the eighth cause of action for fraud and ninth cause of action for negligent misrepresentation fail because any reliance on an alleged representation about retirement benefits is not reasonable as a matter of law.

Each plaintiff opposed the motion(s) for summary judgment/adjudication brought against her, arguing there are triable issues of material fact precluding the dismissal of any cause of action in the first amended complaint. Murphy and Peterson requested a continuance of all summary judgment motions against them, arguing defendants had thwarted their attempts to discover evidence “as to the alter ego relationship between [the] Spennatos and their entity Defendants.” The trial court granted the continuance request as to Mr. Spennato’s motion for summary adjudication of Murphy’s and Peterson’s first through seventh causes of action, but denied the request as to the eighth and ninth causes of action against him (which the court dismissed), and as to the other defendants’ motions.

In April 2015, the trial court granted summary judgment in favor of Painless, 8th Street, Mrs. Spennato (as to all three

plaintiffs), Mr. Spennato (as to Juckes only), and Ortho (as to Peterson only). Murphy, Peterson, and Juckes timely appealed from these judgments (appellate case No. B264754).

The parties submitted further briefing and evidence in connection with Mr. Spennato's motion for summary judgment/adjudication as to Murphy and Peterson. In June 2015, the trial court granted summary judgment in favor of Mr. Spennato. Murphy and Peterson timely appealed from this judgment (appellate case No. B265742).

On the unopposed motion of Murphy, Peterson, and Juckes, we consolidated the two appeals for oral argument and decision.

## **DISCUSSION**

### **Standard of Review**

A trial court should grant summary judgment "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) A defendant may establish a right to summary judgment by showing that one or more elements of the cause of action cannot be established or that there is a complete defense to the cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).) Once the moving defendant has satisfied this burden, the burden shifts to the plaintiff to show that a triable issue of material fact exists as to each cause of action. (*Ibid.*) A triable issue of material fact exists where "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

"We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposition papers

except that to which objections were made and sustained.”  
(*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65-66.) We  
view the evidence and the inferences reasonably drawn from the  
evidence “in the light most favorable to the opposing party.”  
(*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 843.)

**Appeal No. B264754**

In this appeal, we review the summary judgments in favor  
of Painless, Mrs. Spennato, and 8th Street on Murphy and  
Peterson’s causes of action, summary judgment in favor of Ortho  
on Peterson’s causes of action, and summary judgment in favor of  
Mr. and Mrs. Spennato on Juckes’s causes of action.

**Labor Code/wage claims (1st-6th causes of action)**

As explained above, Murphy’s and Peterson’s Labor  
Code/wage claims against their employers are not at issue in this  
appeal and are still pending below. DDS (Murphy’s and  
Peterson’s employer from 2007-2011) did not seek summary  
adjudication as to Murphy’s and Peterson’s Labor Code/wage  
claims, and Ortho (Murphy’s alleged employer from 2007-2011)  
did not seek summary adjudication as to Murphy’s Labor  
Code/wage claims.<sup>6</sup>

The Labor Code/wage claims at issue in this appeal—  
Murphy’s and Peterson’s first through sixth causes of action  
against Painless and Mrs. Spennato—are asserted against an  
entity and an individual who never employed Murphy or

---

<sup>6</sup> As indicated above, Murphy maintains she worked for  
Ortho. Peterson has conceded she never worked for Ortho.

Peterson.<sup>7</sup> In opposing the summary judgment motions and prosecuting this appeal, Murphy and Peterson argue that Painless and Mrs. Spennato are liable for the employers' alleged Labor Code/wage violations under an alter ego theory of liability. As Painless and Mrs. Spennato argued in their summary judgment motions, this alter ego theory does not apply here as a matter of law.

“Ordinarily, a corporation is regarded as a legal entity separate and distinct from its stockholders, officers and directors. Under the alter ego doctrine, however, where a corporation is used by an individual or individuals, or by another corporation, to perpetrate fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, a court may disregard the corporate entity and treat the corporation's acts as if they were done by the persons actually controlling the corporation. [Citations.] [¶] In general, the two requirements for applying the alter ego doctrine are that (1) there is such a unity of interest and ownership between the corporation and the individual or organization controlling it that their separate personalities no longer exist, and (2) failure to disregard the corporate entity would sanction a fraud or promote injustice.” (*Robbins v. Blecher* (1997) 52 Cal.App.4th 886, 892.)

In the first amended complaint, Murphy and Peterson allege the entity defendants (Painless, 8th Street, Ortho, and DDS) are the alter egos of Mr. and Mrs. Spennato. Even if they could prove this allegation, such evidence would not establish the

---

<sup>7</sup> Neither Murphy nor Peterson named 8th Street as a defendant in the first through sixth causes of action in the operative first amended complaint.

liability of Painless on the Labor Code/wage violations causes of action. Mrs. Spennato never employed Murphy or Peterson. Mr. Spennato did not employ Murphy or Peterson during the statute of limitations period for these causes of action (the three-year statute of limitations under Code Civ. Proc., § 338, subd. (a)). Murphy and Peterson do not allege in the first amended complaint that the entity defendants are the alter egos of each other. Thus, there is no allegation that Painless is the alter ego of either employer (DDS or Ortho). Moreover, in opposition to the summary judgment motion, Murphy and Peterson sought to prove Painless is the alter ego of Mr. and Mrs. Spennato, not DDS or Ortho.

Murphy and Peterson also cannot show Mrs. Spennato is the alter ego of either employer (DDS or Ortho) for purposes of holding her liable on the Labor Code/wage violations causes of action. Mrs. Spennato was not a shareholder, director or officer of DDS or Ortho. In short, she had no ownership or control of either corporation. Murphy and Peterson cite no authority supporting the proposition that a mere community property interest in a corporation warrants piercing the corporate veil and holding Mrs. Spennato liable for the corporations' debts.

The first through sixth causes of action against Painless and Mrs. Spennato fail as a matter of law. Murphy and Peterson have not shown that a triable issue of material facts exists as to these causes of action.

**Breach of oral contract/covenant of good faith and fair dealing (7th cause of action)**

Murphy's and Peterson's seventh cause of action for breach of oral contract/covenant of good faith and fair dealing to pay wages and retirement benefits against Painless, Mrs. Spennato,



and 8th Street fails as a matter of law. As to Ortho, Peterson's seventh cause of action also fails. Murphy and Peterson allege they each had a contract with their employer(s) (DDS, Ortho). As already discussed, Painless, Mrs. Spennato, and 8th Street never employed Murphy or Peterson. Ortho did not employ Peterson, as she concedes.

The alter ego theory of liability also fails as a matter of law. The allegation that Painless and 8th Street are the alter egos of the Spennatos does not assist Murphy and Peterson in proving liability on the seventh cause of action for the reasons discussed above: Mrs. Spennato was never their employer, and Mr. Spennato was not alleged to be their employer in this cause of action, nor was he alleged to be a party to the alleged contract. Mrs. Spennato's mere community property interest in DDS and Ortho does not render her liable for the debts of the corporations. There is no allegation that Ortho is the alter ego of DDS. In opposing the summary judgment motions, Murphy and Peterson did not seek to establish the entity defendants are the alter egos of each other.

Murphy and Peterson have not shown that a triable issue of material fact exists as to their seventh cause of action against Painless, 8th Street, and Mrs. Spennato. Peterson has not shown a triable issue as to Ortho.

**Fraud/negligent misrepresentation (8th-9th causes of action)**

At the time of the summary judgment motions, Murphy and Peterson based their eighth cause of action for fraud and ninth cause of action for negligent misrepresentation on an alleged representation of lifetime retirement benefits (equal to 15 percent of their total pay per year) that they maintain Mr.

Spennato made to them in 1998, eight or nine years before he incorporated the general dentistry practice into DDS and the pediatric dentistry practice into Ortho. Murphy and Peterson cannot provide any more details about their alleged retirement plan, and they never asked Mr. Spennato for any more specifics. They never saw any documentation regarding their alleged retirement plan, and they never asked Mr. Spennato for any documentation. They never contributed any of their income to a retirement plan. When Mr. Spennato sold the dental practices, they did not inquire about their alleged retirement benefits. Instead, they filed this action about a year later, alleging the existence of a retirement plan.

Murphy's and Peterson's fraud and negligent misrepresentation causes of action against Painless, 8th Street, and Mrs. Spennato fail because none of these defendants made any of the alleged false representations.

Moreover, Painless, 8th Street, and Mrs. Spennato cannot be held liable on the eighth and ninth causes of action under an alter ego theory of liability. As discussed above, Murphy and Peterson do not allege in the first amended complaint that Painless or 8th Street is the alter ego of either DDS or Ortho (the entities that would have been responsible for paying the alleged retirement benefits). Mrs. Spennato's community property interest in DDS and Ortho does not render her liable for the debts of the corporations. Moreover, to the extent Mr. Spennato perpetuated a fraud in promising Murphy and Peterson lifetime retirement benefits, Murphy and Peterson do not show how Painless, 8th Street or Mrs. Spennato is somehow liable for that fraud.

Peterson's fraud and negligent misrepresentation causes of action against Ortho fail as a matter of law because she concedes she never worked for Ortho, so it is not clear why Ortho would have had an obligation to pay her retirement benefits.

Murphy and Peterson cannot prove their fraud and negligent misrepresentation causes of action as to any defendant because they cannot demonstrate their alleged reliance on a promise of lifetime retirement benefits was reasonable. Justifiable reliance is a necessary element of fraud and negligent misrepresentation. (*Conroy v. Regents of University of Cal.* (2009) 45 Cal.4th 1244, 1255.) Murphy and Peterson allege they remained in their jobs for an additional 13 years based on a vague and undocumented promise of retirement benefits.<sup>8</sup> They

---

<sup>8</sup> Murphy and Peterson rely on *Moncada v. West Coast Quartz Corp.* (2013) 221 Cal.App.4th 768 (*Moncada*) in support of their argument the terms of the alleged retirement plan agreement are "reasonably certain" because "they provide a basis for determining the existence of a breach and for giving an appropriate remedy." (*Id.* at p. 777.) *Moncada* is distinguishable and not helpful to Murphy and Peterson's case. There, the plaintiffs alleged in the complaint that "in order to induce them to continue to work," their former employer and its owners promised to pay them "a bonus at the time of the sale [of the company] that would be sufficient for plaintiffs to retire." (*Id.* at pp. 776-777.) In reversing the trial court's order sustaining the defendants' demurrer, the Court of Appeal found the promise was not vague and unenforceable, as the defendants argued, because a "court or jury could easily determine if defendants failed to meet this obligation by evaluating whether such bonus was paid" and could compute damages by "using standard formulae and actuarial tables" to determine a lump sum amount that would be sufficient for plaintiffs to retire. (*Id.* at p. 778.) In the case

never contributed any of their income to a retirement plan. They never sought clarity about the specific terms of the retirement plan (which they cannot articulate even now) or asked to see documentation evidencing the retirement plan. To the extent they relied on Mr. Spennato's alleged 1998 representation, their reliance was unreasonable as a matter of law.<sup>9</sup>

Murphy and Peterson have not shown that a triable issue of material fact exists as to their eighth and ninth causes of

---

before us, the alleged promise involves a pension plan with no details about how the plan would operate, not a lump-sum bonus payment as in *Moncada*. Moreover, in this case, Murphy and Peterson are at the summary judgment stage, with no evidence establishing their employers' obligations under the alleged retirement plan. In *Moncada*, the plaintiffs' allegations survived only the demurrer stage.

<sup>9</sup> Murphy and Peterson argue that a retirement plan existed and defendants attempted to conceal its existence at the time the dental practices were sold in 2011. They point to a 1996 grant deed, indicating the property where the dental practices were located was purchased by "Peter Spennato, Jr. Trustee of the Peter Spennato, Jr. DDS Pension and Profit Sharing AND Peter Spennato, Jr. and Candace Spennato, husband and wife, as Joint Tenants." They further point to two grant deeds from 2010, indicating the same property was transferred from the joint purchaser listed above to "Peter Spennato, Jr. and Candace Spennato, husband and wife, as Joint Tenants," and then again to 8th Street, the entity that eventually sold it. The trial court denied Murphy and Peterson's request for judicial notice of these grant deeds. Even if we were to consider them, these deeds do not show a triable issue of material fact that defendants owe Murphy and Peterson retirement benefits.

action against Painless, 8th Street, and Mrs. Spennato, and Peterson has not shown a triable issue as to Ortho.

**Trial court's denial of continuance request**

Murphy and Peterson contend the trial court erred in denying their requests to continue the hearing on the summary judgment motions of Painless, 8th Street, Mrs. Spennato, and Ortho. They cannot demonstrate error. They requested the continuance to conduct additional discovery on their alter ego theory. For the reasons discussed above, this theory is inapplicable as a matter of law to the causes of action against these four defendants. There is no additional evidence that would have made this theory viable.

For all the foregoing reasons, the trial court properly granted summary judgment in favor of Painless, Mrs. Spennato, and 8th Street on Murphy and Peterson's causes of action, and summary judgment in favor of Ortho on Peterson's causes of action.

**Juckes's causes of action (10-13) against the Spennatos**

Juckes contends the preponderance of the evidence standard applies to her 10th cause of action for dissolution of the partnership, an accounting, and appointment of a receiver, and the trial court erred in applying the clear and convincing evidence standard.

Under Evidence Code section 662, "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof."

Juckes alleges she retained an interest in the Stonewood Properties, even after she gifted the properties to Mr. and Mrs.

Spennato, because she had an oral partnership agreement with Mr. Jukes under which he agreed to manage the properties and provide her with 50 percent of the proceeds generated from the properties. The primary inquiry here is who had an interest in the Stonewood Properties after Jukes transferred title out of her name—the Spennatos, as reflected on the legal title, or the partnership, as Jukes claims. Jukes is attempting to rebut the presumption that the Spennatos were the owner of the full beneficial title. Thus, she must prove her claim of interest in the properties by clear and convincing evidence.

Jukes points out that ordinarily an oral partnership agreement may be established by a preponderance of the evidence. (*Weiner v. Fleischman* (1991) 54 Cal.3d 476, 483-484.) But here the gravamen of the cause of action is who had an interest in the Stonewood Properties, an inquiry within the scope of Evidence Code section 662. (See *Toney v. Nolder* (1985) 173 Cal.App.3d 791, 793-796 [clear and convincing evidence required to prove oral agreement to purchase property as equal partners where title to property was placed in only one of the alleged partner's names].) Although Jukes maintains that the partnership involved matters other than the Stonewood Properties, she cannot identify any other partnership matters (e.g., the purchase/management of other properties).

Jukes does not dispute that, if the clear and convincing evidence standard applies (as we have found), we must take this evidentiary standard into account in determining whether she has shown a triable issue of material fact. (*Anderson v. Liberty Lobby, Inc.* (1986) 477 U.S. 242, 254, 255 [“in ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary

burden”; thus, “the clear-and-convincing standard of proof should be taken into account in ruling on summary judgment motions”]; *Reader’s Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 252 [same]; *Hoch v. Allied-Signal, Inc.* (1994) 24 Cal.App.4th 48, 59-60 [“How the higher standard [clear and convincing evidence] affects the trial or appellate court’s view of the evidence may be understood by analogy to the criminal law’s requirement of proof beyond a reasonable doubt. Pursuant to this standard, the evidence is sufficient to support a conviction if ‘. . . a reasonable trier of fact could have found that the prosecution sustained its burden of proof beyond a reasonable doubt’”].)

Juckes does not argue she can prove her claim to an interest in the Stonewood Properties by clear and convincing evidence. She does not allege she contributed her own funds for the purchase of the Stonewood properties or made any mortgage payments. The evidence shows she briefly took title to the properties and then gifted them to the Spennatos. After she transferred title to the Spennatos, she did not participate in the management of the properties, inquire about the properties, or perform any other tasks for the alleged partnership. Because Juckes cannot demonstrate she had a right to any of the proceeds generated from the Stonewood Properties, her 11th cause of action for imposition of a constructive trust and 12th cause of action for unjust enrichment similarly fail.

Juckes cannot prove her 13th cause of action for fraud against Mr. Spennato because even if she could establish a misrepresentation, she cannot demonstrate damage resulting from her reliance on the misrepresentation. (*Conroy v. Regents of University of Cal.*, *supra*, 45 Cal.4th at p. 1255 [requisite elements of fraud cause of action].) Juckes does not claim that

the alleged loans damaged her in any way. She claims she “us[ed] her first time buyer’s credit capability” to secure the loans, but produced no documents demonstrating this and did not explain any effect this had on her. Juckes has not shown a triable issue of material fact exists as to this element.

For all the foregoing reasons, the trial court properly granted summary judgment in favor of Mr. and Mrs. Spennato on Juckes’s causes of action.

### **Appeal No. B265742**

In this appeal, we review the summary judgment in favor of Mr. Spennato on Murphy and Peterson’s first through ninth causes of action.

#### **Discovery issues**

Murphy and Peterson contend the trial court erred in granting Mr. Spennato’s discovery motions and limiting their ability to discover evidence supporting their alter ego theory of liability presented in opposition to the summary judgment motion.

As discussed in the background section of this opinion, Murphy and Peterson sought a continuance of the hearing on Mr. Spennato’s motion for summary judgment to allow them to conduct additional discovery related to their allegation that Mr. Spennato is the alter ego of the entity defendants. At the time they requested the continuance, both parties had discovery motions pending: Mr. Spennato’s motions for a protective order/to quash the deposition subpoenas Murphy and Peterson had served on defendants’ accountant and bookkeeper, and Murphy and Peterson’s motions to compel further responses to their requests for production of documents to Mr. Spennato and Ortho. Murphy and Peterson informed the court that the



additional discovery they were seeking was within the scope of the pending motions. On March 9, 2015, the trial court granted the requested continuance of the hearing on Mr. Spennato's motion for summary adjudication of the first through seventh causes of action (Labor Code/wage claims and breach of contract/covenant of good faith and fair dealing), and granted Mr. Spennato's motion for summary adjudication as to the eighth and ninth causes of action (fraud and negligent misrepresentation).

The trial court denied in their entirety Murphy and Peterson's motions to compel further responses by Mr. Spennato to their requests for production of documents.<sup>10</sup> The court granted in part and denied in part Mr. Spennato's motions for a protective order/to quash the deposition subpoenas of defendants' accountant and bookkeeper. Out of the 60 categories of documents that Murphy and Peterson requested the accountant and bookkeeper each produce at deposition, the court limited each subpoena to four categories of documents: the formation documents of DDS and Ortho and the corporate books of DDS and Ortho. The depositions proceeded.

On March 17, 2015, Murphy and Peterson filed motions to compel further testimony and production of documents from the persons most knowledgeable (PMK) at DDS and Ortho. Murphy and Peterson had taken the PMK depositions more than two months before, on January 8, 2015. The transcripts from these depositions were completed on January 16, 2015. On March 26, 2015, Mr. Spennato filed an ex parte application for an order striking the motions to compel on the grounds they were

---

<sup>10</sup> On appeal, Murphy and Peterson do not challenge the rulings on these two motions to compel.

untimely and outside the scope of the limited discovery for which the trial court continued the hearing on his summary judgment motion. The trial court granted the ex parte application and struck the motions to compel because they were set for hearing after the March 17, 2015 deadline to hear non-expert discovery motions, and they were outside the universe of discovery matters Murphy and Peterson referenced in their request for a continuance of the hearing on Mr. Spennato's summary judgment motion.

The standard of review for these discovery motions is abuse of discretion. (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1612.) "Where there is a basis for the trial court's ruling and it is supported by the evidence, a reviewing court will not substitute its opinion for that of the trial court. [Citation.] The trial court's determination will be set aside only when it has been demonstrated that there was 'no legal justification' for the order granting or denying the discovery in question." (*Id.* at p. 1612.)

The trial court did not abuse its discretion in striking the motions to compel further testimony and production of documents from the PMKs at DDS and Ortho. Murphy and Peterson set the motions for hearing after the deadline to hear non-expert discovery motions. The deadline was not extended by the continuance of the hearing on the summary judgment motion. No reason for the delay is apparent, as the transcripts from the PMK depositions were completed two months before Murphy and Peterson filed the motions to compel further testimony and production of documents. Moreover, the motions to compel are outside the scope of the limited discovery for which the court granted the continuance of the hearing on Mr. Spennato's motion for summary judgment. Murphy and Peterson represented in

their request for a continuance that the limited discovery they sought was within the scope of the discovery motions pending at the time the court granted the continuance. They filed these motions later.

Murphy and Peterson have not demonstrated the trial court abused its discretion in granting in part Mr. Spennato's motions for a protective order/to quash the deposition subpoenas of defendants' accountant and bookkeeper. In fact, Murphy and Peterson do not discuss the standard of review at all in arguing that the trial court erred. Nor do they explain why the discovery the trial court granted in denying in part the motions to quash—the formation documents of DDS and Ortho and the corporate books of DDS and Ortho—was insufficient for them to prove their alter ego liability theory, if such a theory was viable. They have not shown error.

### **Evidentiary issues**

In their supplemental opening brief, Murphy and Peterson contend the trial court erred in sustaining Mr. Spennato's objections to certain evidence they submitted with their May 14, 2015 supplemental opposition to the motion for summary judgment/adjudication, filed after the period of limited discovery on alter ego liability issues. They have no cause to complain because it was they who improperly attempted to use the continuance as an opportunity for a do-over, belatedly correcting evidentiary mistakes they made in connection with their first opposition, submitted more than three months before.<sup>11</sup>

---

<sup>11</sup> The parties disagree as to the standard of review applicable to the trial court's ruling on these evidentiary

Murphy and Peterson did not submit their own declarations when they filed their original opposition to the Spennatos' motion for summary judgment. Their counsel stated in his declaration that the exhibits they submitted to the court with their opposition were true and accurate copies (e.g., Peterson's pay checks and W-2 forms (ex. D); Murphy's pay checks and W-2 forms (ex. E); letters from Mr. Spennato's patients, indicating Murphy and Peterson were essential to the success of his dental practice (ex. J, Andy Lubetich letter & ex. L, Daniel Medrano letter); an email from a woman (whose relationship to the parties was not identified in the email), stating Mr. Spennato told her he would "take care of" Murphy and Peterson "when he leaves" (ex. K, Constance Jackson email); and a so-called "Detail Report," which Murphy and Peterson described as a document defendants' accountant and broker prepared for potential buyers of the dental practices, listing DDS's expenses (ex. N). The trial court sustained the Spennatos' objections to the exhibits listed above (and other exhibits) because plaintiffs' counsel did not lay a proper foundation for these documents in his declaration.

Along with their supplemental opposition, Murphy and Peterson submitted their own brand-new declarations, plus a new declaration from their counsel, attempting to lay foundation for documentary evidence the trial court already excluded when it previously ruled on Mr. Spennato's motion for summary adjudication of the eighth and ninth causes of action. The trial court did not continue the hearing on Mr. Spennato's motion for summary adjudication of the first through seventh causes of

---

objections. Under either the de novo or abuse of discretion standard, the court did not err for the reasons discussed below.

action so that Murphy and Peterson could provide declarations that they should have provided in connection with their first opposition. The court continued the hearing so that they could conduct additional but limited discovery as to the alter ego issues contemplated by the pending discovery motions.

Accordingly, the trial court properly sustained the objections to statements in and evidence attached to Murphy and Peterson's untimely declarations in support of their supplemental opposition to Mr. Spennato's motion for summary adjudication of the first through seventh causes of action, specifically exhibit D attached to Peterson's declaration, and exhibits E, J, K, L and N attached to Murphy's declaration (identified above).<sup>12</sup>

**Labor Code/wage claims (1st-6th causes of action)**

Murphy and Peterson seek to hold Mr. Spennato liable for DDS's and Ortho's alleged Labor Code/wage violations under an alter ego theory of liability, as he was not their employer during the applicable statute of limitations period for these causes of action.<sup>13</sup>

---

<sup>12</sup> Murphy and Peterson also submitted a new exhibit attached to their declarations: exhibit O, described as a copy of a photograph Murphy took of "a stack of \$500,000 in cash" that Mr. Spennato allegedly told them he had "received from the [dental] Practice" without paying taxes on it. The trial court properly sustained Mr. Spennato's objection to exhibit O because it was not new information gleaned from the limited discovery the court allowed plaintiffs to conduct. It was information already in their possession that Murphy and Peterson should have submitted with the original opposition papers, and thus was untimely.

<sup>13</sup> In the midst of the alter ego argument in the opening appellate brief, Murphy and Peterson argue that documents

“The alter ego doctrine arises when a plaintiff comes into court claiming that an opposing party is using the corporate form unjustly and in derogation of the plaintiff’s interests.” (*Mid-Century Ins. Co. v. Gardner* (1992) 9 Cal.App.4th 1205, 1212.) As previously discussed in this opinion, “Ordinarily, a corporation is regarded as a legal entity separate and distinct from its stockholders, officers and directors. Under the alter ego doctrine, however, where a corporation is used by an individual or individuals, or by another corporation, to perpetrate fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, a court may disregard the corporate entity and treat the corporation’s acts as if they were done by the persons actually controlling the corporation. [Citations.] [¶] In general, the two requirements for applying the alter ego doctrine are that (1) there is such a unity of interest and ownership between the corporation and the individual or organization controlling it that their separate personalities no longer exist, and (2) failure to disregard the corporate entity would sanction a fraud or promote injustice.” (*Robbins v. Blecher, supra*, 52 Cal.App.4th at p. 892.) “Alter ego is an extreme remedy, sparingly used.” (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 539.)

---

support a “reasonable inference” that Mr. Spennato actually was their employer during the applicable statute of limitations period (although this assertion is inconsistent with the allegations in the first amended complaint). The documents they point to (e.g., their pay checks) were properly excluded by the trial court for the reasons discussed above. Accordingly, we need not address this issue further.

Murphy and Peterson have not shown a triable issue of material fact demonstrating that Mr. Spennato used DDS or Ortho (or Painless or 8th Street) for some wrongful purpose such that it would be unjust to not hold him personally liable for the entities' debts. They assert that Mr. Spennato used DDS as his "personal piggy bank," but the evidence they rely on to support the assertion is inadmissible, namely the so-called "Detail Report."<sup>14</sup> This is one of the documents we have already held was properly excluded because Murphy belatedly attempted to lay a foundation for it in her declaration submitted with the supplemental opposition (ex. N).

Murphy and Peterson claim they will not be able to collect on a judgment against DDS or Ortho and, therefore, "an inequitable result would follow if the fiction of corporate separateness between the Spennatos and their Entity Defendants is allowed to persist."<sup>15</sup> "The alter ego doctrine does not guard every unsatisfied creditor of a corporation but instead affords protection where some conduct amounting to bad faith makes it inequitable for the corporate owner to hide behind the corporate

---

<sup>14</sup> As set forth above, Murphy and Peterson describe the inadmissible Detail Report as a document defendants' accountant and broker prepared for potential buyers of the dental practices, listing DDS's expenses.

<sup>15</sup> Murphy and Peterson point to evidence indicating Mr. and Mrs. Spennato personally received the money from the sale of the dental practices. The circumstances under which they received the money are unclear. Murphy and Peterson further claim that DDS and Ortho are "penniless," but they do not cite to evidence in the record demonstrating this.

form. Difficulty in enforcing a judgment or collecting a debt does not satisfy this standard.” (*Sonora Diamond Corp. v. Superior Court, supra*, 83 Cal.App.4th at p. 539.)

For these reasons, Murphy’s and Peterson’s Labor Code/wage violations causes of action fail as a matter of law.

**Breach of oral contract/covenant of good faith and fair dealing (7th cause of action)**

In the first amended complaint, Murphy and Peterson allege that the contract for payment of wages and retirement benefits that they each had was with their employer(s) (DDS and Ortho), not Mr. Spennato. In their original opposition to the summary judgment motion, Murphy and Peterson argued Mr. Spennato was liable on this cause of action under an alter ego theory of liability. As discussed above, the alter ego theory of liability against Mr. Spennato fails because Murphy and Peterson have not demonstrated a triable issue of material fact.

Murphy and Peterson argue that Mr. Spennato may be held liable on the seventh cause of action under a theory of promissory estoppel. They did not plead promissory estoppel in their first amended complaint or even assert it below in opposition to the summary judgment motion. It is too late to raise this unpled theory.

**Fraud/negligent misrepresentation (8th-9th causes of action)**

Murphy’s and Peterson’s fraud and negligent misrepresentation causes of action against Mr. Spennato fail as a matter of law because they cannot demonstrate their alleged reliance on a promise of lifetime retirement benefits was reasonable, as set forth above in our discussion regarding the other appeal and incorporated herein.



For all the foregoing reasons, the trial court properly granted Mr. Spennato's motion for summary judgment of Murphy's and Peterson's causes of action.

**DISPOSITION**

The judgments are affirmed. Respondents are entitled to recover their costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.