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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

JIA NONG GUO et al., Plaintiffs and Respondents, v. SHUMIN ZHANG et al., Defendants and Appellants.	B235748 (Los Angeles County Super. Ct. No. BC415219)

APPEAL from orders of the Superior Court of Los Angeles County, Robert L. Hess, Judge. Affirmed.

Shumin Zhang, in pro. per., for Defendant and Appellant Shumin Zhang.

Jungfeng Han, in pro. per., for Defendants and Appellants Jungfeng Han and Hong Yei Group, Inc.

No appearance for Plaintiffs and Respondents.

In these appeals from postjudgment orders for attorney fees and costs, we reject appellants' contentions and affirm.

BACKGROUND

Defendant and appellant Jungfeng Han and his wife, defendant and appellant Shumin Zhang, operated the Hong Yei Restaurant where plaintiffs and respondents Jia Nong Guo and Jiam Hui Han were employed. In 2009, plaintiffs sued defendants and Hon Yei Group, Inc., doing business as Hong Yei Restaurant (the corporation) for various Labor Code violations including nonpayment of overtime wages and failure to provide meal and rest breaks.[1] Although plaintiffs initially filed separate actions, they were deemed to be related actions and were consolidated.

After consolidation, the parties entered into a conditional settlement agreement that resulted in the filing by plaintiffs of a January 21, 2010 notice of settlement pursuant to rule 3.1385(c) of the California Rules of Court.[2] The notice stated that the parties had conditioned the dismissal of the case on the satisfactory completion of specified items that would not be completed within 45 days, but that a dismissal would be filed by March 22, 2010. However, the case was not dismissed and a bench trial was held in June 2010.

When trial began, the restaurant was no longer being operated by defendants and the corporation had been dissolved. In an effort to hold the individual defendants liable for the corporation's Labor Code violations, plaintiffs pursued an alter ego theory of liability against Han and Zhang.[3] The trial court found that Han was the corporation's

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[1] As defendants do not challenge the trial court's factual findings concerning the Labor Code violations, we will not discuss them in this opinion.

[2] All further rule references are to the California Rules of Court.

[3] "'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

sole alter ego. It stated that although Zhang "had significant responsibilities for the operation of the restaurant, the evidence did not show that she had or claimed an ownership interest, or that she had a position as an officer or director of" the corporation.

The trial court entered a judgment against Han and the corporation and awarded damages of $63,292.12 to plaintiff Han and $53,785.02 to plaintiff Guo, plus reasonable costs and attorney fees under Labor Code section 226, subdivision (e). The judgment absolved Zhang of liability and awarded her costs.

The present appeals by defendants Zhang and Han concern two different postjudgment orders. Defendant Zhang, who is in pro. per., challenges the July 7, 2011 order taxing costs, claiming she is entitled to more than her (reduced) costs award of $470. Defendant Han, who is also in pro. per., challenges (both individually and as the corporation's alter ego) the October 17, 2011 order granting plaintiffs' motion for costs of $10,444.25 and attorney fees of $95,680.09. Additional facts relevant to their contentions will be discussed below.

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interests. [Citation.] In certain circumstances the court will disregard the corporate entity and will hold the individual shareholders liable for the actions of the corporation: "As the separate personality of the corporation is a statutory privilege, it must be used for legitimate business purposes and must not be perverted. When it is abused it will be disregarded and the corporation looked at as a collection or association of individuals, so that the corporation will be liable for acts of the stockholders or the stockholders liable for acts done in the name of the corporation." [Citation.]' (*Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 300.)

"'There is no litmus test to determine when the corporate veil will be pierced; rather the result will depend on the circumstances of each particular case. There are, nevertheless, two general requirements: "(1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow." [Citation.] And "only a difference in wording is used in stating the same concept where the entity sought to be held liable is another corporation instead of an individual."' (*Mesler v. Bragg Management Co.*, *supra*, 39 Cal.3d at p. 300.)" (*Baize v. Eastridge Companies* (2006) 142 Cal.App.4th 293, 302.)

DISCUSSION

Preliminarily, we note that no respondent's brief was filed by either plaintiff. This allows us to "decide the appeal on the record, the opening brief, and any oral argument made by the appellant." (Rule 8.220(a)(2).)

I. Defendant Zhang's Appeal From the July 7, 2011 Order Taxing Costs

Although the two cases had been consolidated, Zhang filed (without the assistance of counsel) a separate memorandum of costs for each complaint. She requested $7,430 in costs from each plaintiff, for a total award of $14,860.

Plaintiffs filed a joint motion to tax costs, in which they argued that Zhang's costs did not exceed $546.69. They pointed out that many of Zhang's claimed litigation expenses were incurred jointly with her husband Han who, as the losing party, remained liable for his own costs.

Zhang argued below that plaintiffs' motion to tax costs was both untimely and invalid. The trial court rejected her arguments, granted plaintiffs' motion to tax costs, and entered the July 7, 2011 order awarding her $470 in (reduced) costs.

On appeal, Zhang raises four arguments regarding the July 7 order. First, she contends that because she filed a separate memorandum of costs for each complaint, each plaintiff was required to file his own motion to tax costs. However, the consolidation of the two cases allowed the trial court to conduct a joint hearing on all common issues, including costs. (Code Civ. Proc., § 1048, subd. (a) ["When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."].) Assuming that Zhang objected to plaintiffs' failure to file separate motions in the trial court (her opening brief does not indicate whether she raised the issue below), we infer in favor of the July 7 order that her objection was overruled because, under the circumstances, requiring separate motions would have increased

unnecessary costs for no substantive purpose. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 ["'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.'"].)

Second, Zhang argues that because she paid an appearance fee of $355 in each case, she is entitled to recover two appearance fees, or a total of $710. We disagree. Because defendants Zhang, Han, and the corporation were jointly represented throughout the pretrial and trial proceedings by the same attorney, the two appearance fees were jointly incurred by all three defendants. We infer in favor of the July 7 order that the second appearance fee was taxed as a litigation expense that must be paid by the other two defendants. (*Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 564.)

Third, Zhang claims that the trial court erred in not imposing sanctions against plaintiffs' trial counsel for failing to appear at trial on June 30, 2010, and for filing a frivolous motion for sanctions. We reject this contention for several reasons, including that the notice of appeal identified only the July 7, 2011 order for costs. If there was an order denying sanctions, it was not mentioned in the notice of appeal. Moreover, the notice of appeal from the July 7, 2011 order is insufficient to encompass the January 5, 2011 judgment because the judgment was not mentioned in the notice of appeal. (*Shiver, McGrane & Martin v. Littell* (1990) 217 Cal.App.3d 1041, 1045 ["a notice of appeal will not be considered adequate if it completely omits any reference to the judgment being appealed"].)

Finally, Zhang asserts that the trial court erred in not awarding attorney fees under Code of Civil Procedure sections 128.7 and 436, which she was entitled to recover as the prevailing party. We reject this contention because the notice of appeal, which identifies only the July 7, 2011 order concerning costs, is insufficient to encompass the January 5, 2011 judgment for the reasons previously discussed.

II. Defendant Han's Appeal From the October 17, 2011 Order Awarding Fees and Costs to Plaintiffs

As we mentioned earlier, the judgment ordered defendant Han and the corporation to pay plaintiffs' reasonable attorney fees and costs. Plaintiffs then filed a postjudgment motion with supporting documentation for an award of $95,680.09 in attorney fees and $10,444.25 in costs. Defendant Han filed an opposition (without the assistance of counsel) in which he argued that plaintiffs were not entitled to fees and costs because: (1) their motion was untimely; and (2) they failed to dismiss their complaints as required by the earlier notice of conditional settlement. After rejecting Han's arguments, the trial court entered the October 17, 2011 order awarding plaintiffs $95,680.09 in attorney fees and $10,444.25 in costs.

In his appeal from the October 17 order, Han contends, as he did below, that the order is invalid because the motion for fees and costs was untimely and the complaint was not dismissed as required by the earlier notice of conditional settlement. The record fails to support either contention.

Turning to the issue of timeliness, we observe that under rule 3.1702, a motion for fees and costs must be filed within the time for filing a notice of appeal. Where, as in this case, there is no indication that the judgment (or notice of its entry) was mailed by the clerk or served by either party, the notice of appeal must be filed within 180 days after the date of entry of judgment. (Rule 8.104.) The judgment in this case was entered on Wednesday, January 5, 2011. The 180th day fell on Sunday, July 3, 2011, which was a holiday and therefore excluded from the 180-day period. (Code Civ. Proc., §§ 10, 12a.) Because the following day, Monday, July 4, 2011, was also a holiday, the 180-day period was extended to Tuesday, July 5, 2011. The motion, which was filed on July 5, 2011, was timely.

Han's remaining contention is that plaintiffs failed to dismiss their complaints as required by the notice of conditional settlement. We reject this contention because the notice of appeal from the October 17, 2011 order does not encompass the January 5, 2011 judgment for the reasons previously discussed. In any event, the contention lacks merit.

According to the January 21, 2010 notice of settlement, the parties had conditioned the dismissal of the case on the satisfactory completion of specified items that would not be completed within 45 days. Given that the case was not dismissed within the appointed time, we infer in favor of the judgment that dismissal was not entered because the necessary conditions were not fulfilled. (*Denham v. Superior Court, supra,* 2 Cal.3d at p. 564.)

DISPOSITION

The orders are affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.