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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

FRANCESCO TIENI et al., Plaintiffs and Appellants, v. PIERLUIGI BIASIOLO et al., Defendants and Respondents.	B267697 (Los Angeles County Super. Ct. No. BC552243)

APPEAL from a judgment of the Superior Court of Los Angeles County. Gregory Keosian, Judge. Reversed.

LEX OPUS APC, Eric M. Schiffer and Mohammed K. Ghods, for Plaintiffs and Appellants.

Russ, August & Kabat, Jules L. Kabat and Paul A. Kroeger for Defendants and Respondents.

INTRODUCTION

Plaintiffs, who are not residents of California, challenge a trial court order under Code of Civil Procedure section 1030 which requires non-residents to post an undertaking for reasonable attorney's fees, thus ensuring collectability of those fees in the event defendant prevails at trial. The appeal presents a single issue: whether plaintiffs, who were not signatories to a promissory note containing an attorney's fees clause, are nevertheless bound by the fee provision in an action against a signatory defendant. The trial court concluded the attorney's fees provision applied to plaintiffs and, because defendant had demonstrated a reasonable possibility of succeeding in the lawsuit, ordered the undertaking.

We conclude that plaintiffs neither signed the promissory note nor are they suing on the note. Therefore, they are not bound by the attorney's fees provision, and the trial court erred in requiring an undertaking.

FACTUAL AND PROCEDURAL BACKGROUND

Although the appeal raises a single issue of the applicability of an attorney's fees clause, the facts are both convoluted and largely disputed. They also inform the attorney's fees analysis. Accordingly, we devote some time to a description of the parties and the transaction underlying this dispute.

1. *The Plaintiffs, their Managing Agent and the Project*

The plaintiffs are Italian resident Francesco Tieni and his wholly-owned foreign company, Ocean Park. We refer to them collectively as "Tieni" unless the context requires otherwise. Tieni sought to invest in a real estate development project in

Santa Monica. The plan was to purchase and refurbish some residential units, and eventually lease them. To do so, Tieni formed a California corporation, called New West, to take title to the property.[1] Carlo Bondanelli acted as New West's "fiduciary managing agent" in the transaction; we refer to him as "Managing Agent." Bondanelli is not a party to this appeal, but plays an important role in the lawsuit. The parties dispute ownership of New West. In 2011, Tieni owned 100 percent of the corporation; he then transferred 1 percent to Managing Agent. Tieni contends there has been no subsequent change in ownership of New West. Managing Agent contends that subsequent documents transferred all of New West to him.

2. *Defendant Biasiolo's Involvement*

To say there was a falling out between Tieni and Managing Agent is an understatement. Managing Agent believed that Tieni was not advancing sufficient funds to complete the project, and repeatedly demanded additional capital infusions which Tieni rebuffed.

What Tieni did not know was that Managing Agent had a plan to obtain the funds necessary to advance the project from a third party, defendant Pierluigi Biasiolo. Biasiolo is the respondent in this appeal. He had partnered with Managing Agent in other business ventures, and the two agreed that they

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[1] Although New West is a plaintiff in the action, because it is a California resident, it is not subject to the undertaking provision of Code of Civil Procedure section 1030. Nor is it a party to this appeal. We provide some detail about New West to the extent it is helpful to understand the underlying transaction.

would take over the project without informing Tieni. In May 2012, Managing Agent and Biasiolo executed a Letter of Intent, by which Managing Agent and Biasiolo agreed to take possession of the property, complete the refurbishment, and sell the units.[2] Pursuant to the Letter of Intent, Managing Agent and Biasiolo agreed that Managing Agent would sue Tieni "in order to acquire the control of the property." They also agreed to a division of expenses for the project (and the lawsuit), and agreed that, once the property was sold, the net profit would be equally divided between them.

3. *The Federal Action*

In June 2012, Managing Agent sued Tieni, alleging he had failed to provide the necessary funds for the project. (*Bondanelli v. Ocean Park* (Super. Ct., L.A. County, 2012, No. SC117561).) The action was removed to federal court and, as we discuss in greater detail in Part 7, on August 28, 2013, was ultimately settled at a mediation. The settlement date is significant; as Tieni would later learn, many significant events unknown to Tieni had occurred before the August 28, 2013 settlement.

4. *Biasiolo's Payments*

According to Biasiolo, he started providing separate funds for the project as early as April 2012 – even though the litigation

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[2] The Letter of Intent is signed only by Managing Agent and Biasiolo, has no attorney's fees clause, and is not the document on which the attorney's fees undertaking was based. As we discuss in detail later, the attorney's fee provision is found in a Promissory Note which lists New West as the "borrower" and Biasiolo as the "lender."

by which Managing Agent sought control of the property had not even been filed. Between April 2012 and the August 28, 2013, settlement, Biasiolo claims to have contributed over $270,000 toward the project. Nothing in the record indicates that Tieni was aware of this alleged contribution; nor do we have to resolve in this appeal the extent, if any, of Biasiolo's participation.

5. *The Property is Sold and Biasiolo Profits*

On August 20, 2013, eight days *before* the settlement of the federal lawsuit and without Tieni's knowledge, Managing Agent, purported to act on behalf of New West (the property owner of record) and sold the property to a third party for $3,300,000. On August 26, 2013, Managing Agent distributed approximately $544,000 to Biasiolo. On August 27, 2013, *the day before* the settlement, Managing Agent prepared an accounting, which, after expenses, appears to have split the net proceeds between Managing Agent and Biasiolo "50/50." This division was consistent with their earlier Letter of Intent.

6. *The Claimed Execution of the Promissory Note*

On August 27, 2013, again the day before the settlement of the federal action, Managing Agent alone allegedly signed a promissory note, on behalf of New West, in favor of Biasiolo. We say "allegedly" because the copy of the note in our record contains no signature or similar notation. The parties to the note are clearly stated to be New West and Biasiolo. It is this note that forms the basis for Biasiolo's claim for an undertaking for attorney's fees against Tieni, as Article XI contains an attorney's

fees clause.[3] The parties dispute whether the note was signed, a dispute ultimately resolved by the trial court in favor of Biasiolo, based on his declaration that he saw Managing Agent sign the note on New West's behalf.[4] What is relevant to our recitation of the facts is that, even under Biasiolo's own evidence, the terms of the agreement had not been finalized until August 26, 2013, and the note not executed until August 27, 2013. The note, which was backdated to May 15, 2012, was in favor of Biasiolo, in the principal amount of $230,000, due on sale of the property. An amendment, also unsigned in the record, increased the principal by approximately $36,000. The repayment terms provided that Biasiolo would receive 15 percent simple annual interest, plus a bonus, up to $200,000, based on the sale price of the property. Of course, as of the time the note was supposedly executed, the property had already sold for $3,300,000 – and Biasiolo had been paid over $544,000 on his $266,000 loan.

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[3] The note provides, "In the event that it should become necessary to employ counsel to collect the Debt, Borrower also agrees to pay all reasonable fees and expenses of Lender, including, without limitation, reasonable attorney's fees for the services of such counsel whether or not suit be brought." "Borrower" is defined as New West, "Lender" as Biasiolo.

[4] On appeal, Tieni challenges an evidentiary ruling excluding some of his evidence that Managing Agent never signed the note. Because we conclude the undertaking must be reversed because Tieni is not bound by the attorney's fees clause in the note, we need not reach this dispute.

7. *The Federal Action is Settled*

On August 28, 2013, after the property had been sold, Biasiolo had received a chunk of the proceeds, and the promissory note had purportedly been executed by Managing Agent on behalf of New West, the federal action was settled in mediation. The settlement agreement, between Managing Agent and Tieni, provided for the following: (1) Managing Agent could "sell/dispose of/transfer" the real property as he pleased, and Tieni would cooperate reasonably to effect Managing Agent's disposition, including, if necessary, the transfer, sale, or dissolution of New West; (2) within 60 days, Managing Agent would pay Tieni $800,000 in full settlement of all claims; and (3) both Managing Agent and Tieni affirmatively represented that they had not sold or transferred any interests in New West.

8. *Tieni Obtains a Judgment Against Managing Agent*

The 60 days came and went without Managing Agent making the settlement payment. Tieni eventually learned that the property had actually been sold before the mediation had occurred. He brought a motion to enforce the settlement agreement, which, on December 12, 2013, resulted in a court order that Managing Agent pay Tieni the $800,000, plus $4,000 in attorney's fees, by December 18, 2013.

Managing Agent again failed to pay. On March 25, 2014, the federal court entered a judgment against Managing Agent, in favor of Tieni, for $804,000. Tieni continued to investigate when the property had been sold and what had happened to the proceeds, leading to the current action.

9. *The Complaint*

On July 22, 2014, plaintiffs filed a separate action in state court. Plaintiffs were Tieni and New West; defendants were Managing Agent and several individuals and entities who had received payments from Managing Agent, including Biasiolo.[5] The complaint alleges six causes of action. The only two causes of action alleged against Biasiolo are for fraudulent conveyance and conspiracy to defraud. These causes of action alleged that Managing Agent transferred funds to Biasiolo prior to the entry of Tieni's judgment against Managing Agent, without consideration and with the intent to hinder Tieni's collection of his eventual judgment. While the fraudulent conveyance cause of action alleged that Biasiolo knew of Managing Agent's fraudulent intent, the conspiracy to defraud cause of action alleged that Biasiolo shared in the fraudulent intent, and that Managing Agent still had access to the funds despite the transfer to Biasiolo. Significantly, the two causes of action against Biasiolo are alleged by Tieni only, as he is the holder of the judgment against Managing Agent.

The complaint also includes four other causes of action against Managing Agent (but not Biasiolo), two of which are brought by New West and Tieni (breach of fiduciary duty and accounting) and two of which are brought by Tieni alone (fraud in the mediation settlement agreement and declaratory relief with respect to ownership of New West).

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[5] Renergy Alliance Corporation was named as a Doe defendant. It is a corporation wholly owned by Biasiolo. Where applicable, references to Biasiolo include Renergy.

At no point does the complaint seek rescission of the promissory note purportedly signed by Managing Agent on New West's behalf. Indeed, it does not mention that agreement at all; Tieni represents that he was unaware of the note until Biasiolo raised it in his answer. In the complaint's prayer for relief, the plaintiffs seek "all costs, attorney's fees as allowed by law." However, they do not state that the attorney's fees they seek are sought pursuant to contract, nor do they identify any contract which purportedly applies. In fact, they do not specify which plaintiffs they believe are legally entitled to fees, and from which defendants.

At some point, Managing Agent went into bankruptcy. Tieni brought an adversary proceeding in the bankruptcy which was pending while this action proceeded.

10. *Biasiolo's Answer*

Biasiolo answered the complaint, alleging, among other things, that his money had saved the property from default and foreclosure, and that the promissory note he claimed was signed by Managing Agent (on New West's behalf) was a legitimate, good faith agreement. There was no fraudulent conveyance, according to Biasiolo, because New West received fair consideration for the repayments New West ultimately made to him.

Additionally, Biasiolo challenged Tieni's purported ownership of New West. He argued that Managing Agent was the owner of New West.

Finally, Biasiolo alleged that he would be entitled to his attorney's fees pursuant to the promissory note.

11. *Biasiolo's Motion for an Undertaking*

Biasiolo then moved under Code of Civil Procedure section 1030 for an undertaking sufficient to guaranty he would be able to collect costs and attorney's fees if awarded against Tieni as prevailing party on Tieni's action. Biasiolo argued that Tieni was bound by the attorney's fees clause in the promissory note, although Biasiolo's motion made no legal argument as to why Tieni, who was not party to the agreement, would be subject to its attorney's fees clause.

In fact, Biasiolo's motion was so unconcerned with how Tieni might be bound by an agreement purportedly executed by New West, Biasiolo's motion represented that Managing Agent was the "sole member" of New West from the time it was formed. A footnote conceded that Tieni disputed this, but stated, "such dispute is not material to this motion, and [Managing Agent] was New West's sole manager." In other words, Biasiolo took the position that Tieni was bound by the attorney's fees clause in the purported agreement Biasiolo had made with New West, even though Tieni never had any ownership interest in the maker of the note, specifically New West.

12. *Tieni's Opposition*

In opposition, Tieni argued that there could be no undertaking for attorney's fees because he was not bound by the promissory note.[6] This argument had two elements: first, that the alleged maker of the note was New West, not Tieni; and

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[6] He also argued that there was no basis for an undertaking as there was no reasonable possibility that Biasiolo would succeed on the merits.

second, that the note was not signed by anyone and hence was not enforceable. Because the trial court apparently found that the note had been signed and that finding was supported by testimony from Biasiolo, we address only the first argument.

13. *Biasiolo's Reply*

In reply, Biasiolo argued that Tieni was bound "by [his] admissions and demands in [his] complaint insisting upon an award of attorney's fees." Biasiolo argued that Tieni "insist[s] [he] ha[s] standing to bring claims for New West, and because [he] insist[s] [he is] entitled to an award of attorney's fees, [Tieni is] subject to this attorney's fees clause."

14. *The Court Requires an Undertaking*

After a hearing the court granted the motion, requiring an undertaking of $300,000 to cover costs and attorney's fees should Biasiolo prevail on Tieni's complaint. The court issued a written ruling explaining that Biasiolo's evidence established a reasonable possibility of prevailing against the non-resident Tieni. As to the legal issue of how Tieni was subject to the attorney's fees clause in the note between New West and Biasiolo, the court stated only, "It is alleged that New West was owned by [Tieni] and that [Managing Agent] acted as manager."

15. *Judgment of Dismissal*

Tieni did not post the required undertaking. As a result, judgment of dismissal of his action against Biasiolo was entered on July 17, 2015. (Code Civ. Proc., § 1030, subd. (d).)

16. *Unsuccessful Motion for New Trial/Reconsideration*

Subsequently, Tieni moved for a new trial with respect to the undertaking. He again argued that he could not be bound by the promissory note, as he was not a party to it.

In opposition, Biasiolo argued that Tieni's claim against him "is that payment from New West was without consideration and should have been held by New West to be paid to [Tieni]. Accordingly, [Tieni's] claim is for New West, which is a claim regarding the promissory note, *and which is a claim [he] insist[s] in [his] complaint entitles [him] to attorney's fees*." (Emphasis original.)

At the hearing on the motion, Tieni clarified that he was not suing Biasiolo on New West's behalf and had not sued on the note at all. Arguing that Tieni and New West were two separate legal entities, Tieni took the position that he could not be bound to the attorney's fees clause in the note.

The trial court viewed the motion for new trial as a motion for reconsideration based on a purported error of law. The court concluded that it had not erred in requiring an undertaking for attorney's fees because "[Tieni is] suing on behalf of New West under the provisions of the promissory note, and therefore, if defendants won the case, [Tieni] would be required to pay attorney['s] fees." The court went on to say that, "in granting the motion for an undertaking, [the court] found that [Tieni] owned New West. [Citation.] Regardless, [Tieni's] lawsuit forced Biasiolo to defend his right to payment of the debt, which, as pointed out by defendants, is the same as if Biasiolo had cross-complained for declaratory relief that he was entitled to payment."

17. *Notice of Appeal*

Tieni filed a notice of appeal from the judgment of dismissal. We were initially concerned with the timeliness of the notice of appeal, in that it depended on the timely filing of the notice of intention to move for a new trial, and the trial court's docket sheet did not reflect that a notice of intention had been filed. We issued an order to show cause why the appeal should not be dismissed for untimeliness. This led to a series of letter briefs in which it became apparent that Tieni had timely faxed his notice of intention to the court for filing, but, for unknown reasons, the notice of intention was never stamped as filed or reflected in the docket sheet. However, when the court clerk had sent out a notice of hearing on the motion for new trial, the court's notice acknowledged that the notice of intention had been "filed herein." As notice of intention was timely transmitted to the court for filing, and the court clerk acknowledged that it had been filed, we conclude the evidence establishes filing even though the docket sheet does not reflect it. As the notice of appeal was timely filed when measured by the notice of intention, we discharge the order to show cause.

18. *Motion to Dismiss Appeal*

While the appeal was pending, Biasiolo filed a motion to dismiss the appeal and request for sanctions for a frivolous appeal. Biasiolo argued that, as an order imposing an undertaking is not appealable, Tieni's appeal is from a non-appealable order and must be dismissed. Biasiolo further argued that, as Tieni never posted the necessary undertaking, the courthouse doors are closed to him, and he may not pursue this

appeal. We have deferred ruling on the motion to dismiss until resolution of the current appeal, and we address that point below.

DISCUSSION

We first deny, as baseless, Biasiolo's motion to dismiss the appeal. Then, turning to the merits of the appeal, we conclude that, as a matter of law, the attorney's fees clause in the purported contract between Biasiolo and New West cannot bind Tieni – at least based on the current pleadings. We therefore reverse.

1. *The Appeal Is Properly Taken from an Appealable Judgment*

Code of Civil Procedure section 1030, which provides for an order requiring a foreign plaintiff to post an undertaking for costs and attorney's fees, further provides, "An order granting or denying a motion for an undertaking under this section is not appealable." (Code Civ. Proc., § 1030, subd. (g).) However, a final judgment is appealable. (Code Civ. Proc., § 904.1, subd. (a).) Specifically, a judgment of dismissal following the failure to furnish security is appealable as a final judgment. (*Yao v. Superior Court* (2002) 104 Cal.App.4th 327, 330, fn. 2; see *Efron v. Kalmanovitz* (1960) 185 Cal.App.2d 149, 156-157 [same result in the context of a statute requiring security in a shareholder derivative action].) Further, on an appeal from a judgment, "the reviewing court may review . . . any intermediate ruling, proceeding, order or decision which . . . necessarily affects the judgment . . . or which substantially affects the rights of a party . . . ." (Code Civ. Proc., § 906.) Thus, Tieni properly appealed from an appealable judgment, and, on the appeal, may

challenge the ruling imposing the undertaking. The motion to dismiss is therefore denied.

2. *Tieni is Not Bound by the Attorney's Fees Clause in the Purported Promissory Note*

Under Code of Civil Procedure section 1030, the court may require a foreign plaintiff to post an undertaking to secure an award "of costs and attorney's fees which may be awarded . . . ." "For the purposes of this section, 'attorney's fees' means reasonable attorney's fees a party may be authorized to recover by a statute apart from this section or by contract." (Code Civ. Proc., § 1030, subd. (a).) The sole issue on appeal is whether a contract, specifically, the promissory note, would authorize Biasiolo to recover attorney's fees from Tieni.

"On appeal, a determination of the legal basis for an attorney fees award is reviewed de novo as a question of law. [Citation.] [¶] Each party to a lawsuit must pay his or her own attorney fees except where a statute or contract provides otherwise. [Citation.] Where a contract specifically provides for an award of attorney fees, Civil Code section 1717 allows recovery of attorney fees by whichever contracting party prevails, regardless of whether the contract specifies that party. [Citation.]" (*Cargill, Inc. v. Souza* (2011) 201 Cal.App.4th 962, 966 (*Cargill*).) "As a general rule, such attorney fees are awarded only when the lawsuit is between signatories to the contract. [Citation.] However, under some circumstances, the Civil Code section 1717 reciprocity principles will be applied in actions involving signatory and nonsignatory parties. [Citation.]" (*Ibid.*)

Whether a nonsignatory may be bound depends on reciprocity. A nonsignatory defendant, sued on a contract as if he were a party to it, may recover attorney's fees when the plaintiff would clearly be entitled to attorney's fees if it prevailed in enforcing the contractual obligation against the defendant. (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 128 (*Reynolds Metals*).) The reverse is also true. When a nonsignatory plaintiff sues a signatory defendant on a contract and the signatory defendant prevails, the signatory defendant may also recover attorney's fees but only if the nonsignatory plaintiff would have been entitled to its fees if it had prevailed. (*Cargill, supra,* 201 Cal.App.4th at p. 967.)

"Two situations may entitle a nonsignatory party to attorney fees. First is where the nonsignatory party 'stands in the shoes of a party to the contract.' Second is where the nonsignatory party is a third party beneficiary of the contract. [Citation.]" (*Cargill, supra,* 201 Cal.App.4th at p. 966.) There is no suggestion that Tieni was a third party beneficiary of the purported Biasiolo/New West promissory note; we are concerned only with whether he is a nonsignatory plaintiff standing in the shoes of a signatory party. This can occur, when, for example, a nonsignatory is sued as the alter ego of a signatory (*Reynolds Metals, supra,* 25 Cal.3d at p. 129); the nonsignatory is the successor in interest of the signatory (*Exarhos v. Exarhos* (2008) 159 Cal.App.4th 898, 904-905); or the nonsignatory is a shareholder who acts on behalf of a corporate signatory (*Montgomery v. Bio-Med Specialties, Inc.* (1986) 183 Cal.App.3d 1292, 1295).

We assume, without deciding, that if New West, the purported maker of the note, had sued Biasiolo to set aside the transfers as fraudulent, the action itself would have been akin to an action to rescind the contract and therefore within the scope of the attorney's fees provision. (Compare *In re Mac-Go Corp.* (N.D. Cal. 2015) 541 B.R. 706, 716 [a fraudulent conveyance action is an action on a contract for purposes of an attorney's fees clause] with *Rothery v. Marshack (In re Rothery)* (Bankr. 9th Cir. 1996) 200 B.R. 644, 650-651 [while some fraudulent conveyance actions are, in effect, rescission actions, others are fraud actions not on the contract].) But this does not resolve the issue; it still must be determined whether Tieni, in this action, is attempting to stand in the shoes of New West.

Even the most cursory review of the complaint and other papers filed in the trial court establishes that he is not. Preliminarily, we note that the complaint, as a whole, is brought by New West along with Tieni. New West itself could have easily brought a cause of action against Biasiolo for rescission of the contract, but it did not do so. It is difficult to believe that Tieni brought a cause of action standing in the shoes of New West when New West was itself a party to the action, and could have brought such a cause of action directly but did not. In any event, the complaint does not mention the note, nor does it allege a basis on which Tieni could seek to rescind it. Tieni's fraudulent conveyance cause of action depends on the judgment Tieni (but not New West) possesses against Managing Agent, not on the existence of a contract between New West and Biasiolo.

In granting the motion for undertaking, the trial court relied on the fact that "[i]t is alleged that New West was owned by [Tieni]." By the time it denied the motion for new trial, the trial court stated that it had "found that [Tieni] owned New West." Even if Tieni owns New West, he does not, by that fact alone, stand in its shoes in bringing this action. There are no alter ego allegations in the complaint or in Biasiolo's answer. While Biasiolo argued, from time to time, that Tieni was pursuing a derivative action on behalf of New West, there was no attempt by Tieni to either make allegations on behalf of New West or to meet the procedural prerequisites of a derivative action. (See Corp. Code, § 800.)

On appeal, Biasiolo's sole arguments on why Tieni is bound by the attorney's fees clause in an agreement to which he was not a party are: (1) Tieni is "suing . . . for New West to take back the repayment to [Biasiolo], per the promissory note"; and (2) Tieni is judicially estopped by his prayer for attorney's fees in his complaint. As to the first, it is factually erroneous. Tieni is not suing for New West to take back the payments made to Biasiolo; Tieni alleges that his judgment debtor, Managing Agent, improperly made the payments to Biasiolo which he seeks to set aside. As to the second, "[t]he fact that a plaintiff includes a prayer for attorney fees in its complaint is not a sufficient basis on which to conclude that the plaintiff is estopped from denying its liability for such fees if the defendant prevails in the action. [Citation.]" (*Exarhos v. Exarhos, supra,* 159 Cal.App.4th at p. 907, fn. 7.)

Finally, we note that the flaw in Biasiolo's characterization of the complaint is apparent if we were to consider, hypothetically, that Biasiolo's allegations are correct and Managing Agent, not Tieni, owned New West. If that were true, Tieni's fraudulent conveyance complaint would be alleging, in effect, that, knowing he would soon owe Tieni $800,000, Managing Agent transferred $500,000 to his business partner, Biasiolo, for insufficient consideration. Biasiolo's answer would be alleging, in effect, that the payment was not without consideration, because it was pursuant to a contract Biasiolo had made with Managing Agent's own company. While the legitimacy of the contract and the sufficiency of the consideration would be at issue in the action, the action itself is not to enforce or rescind the contract itself. Tieni would be a stranger to the contract, which is between Biasiolo and Managing Agent's company. Therefore, the attorney's fees clause of the contract would not be implicated. The analysis, however, is no different simply because Tieni alleges that he owns New West. He did not attempt to bring this action while standing in the shoes of New West, nor did Biasiolo attempt to argue that he was, in fact, New West's alter ego. Biasiolo has not provided, nor has independent research disclosed, any authority for the proposition that, without more, the owners of a corporation stand in the contractual shoes of the corporation itself. (See *Twenty-Nine Palms Enterprises Corp. v. Bardos* (2012) 210 Cal.App.4th 1435, 1450 [a corporation is a distinct legal entity from its owners and shareholders].)

As there is no legal basis for an award of contractual attorney's fees to Biasiolo should he prevail on Tieni's complaint,

the trial court erred in requiring an undertaking for attorney's fees. The trial court should modify its undertaking order to require only an undertaking sufficient to cover costs.

DISPOSITION

The judgment of dismissal is reversed with directions for the trial court to vacate its order requiring a $300,000 undertaking, and enter a different order requiring an undertaking sufficient to secure any award of costs in favor of Tieni.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.