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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ERIC ALDEN,

Appellant,

v.

CASE FINANCIAL, INC., et al.,

Defendants and Respondents.

B254300

(Los Angeles County
Super. Ct. No. BC391485)

APPEAL from a judgment of the Superior Court of Los Angeles County,

Kevin C. Brazile, Judge. Affirmed.

Law Office of Nick A. Alden, Nick A. Alden and Aleksey Sirotin for Appellant.

Gladych & Associates, Inc. and John A. Gladych for Defendants and

Respondents.

In this breach of contract action, judgment was entered against the plaintiff Old CFI, Inc. for attorney's fees and costs incurred by the defendants Case Financial, Inc. (Case) and Case Corporation. The trial court then amended the judgment to add one of Old CFI's shareholders, Eric Alden, as a judgment debtor. Alden appeals. He contends the trial court applied the wrong legal standard, and substantial evidence does not support the trial court's findings that (1) he was the alter ego of Old CFI and (2) controlled the litigation. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

Old CFI was previously in the business of providing loans to plaintiffs and their attorneys in personal injury cases. In March 2002, Case acquired certain assets from Old CFI and issued shares of stock to Old CFI in exchange. Case also entered into a "Services Agreement" with Old CFI whereby Case agreed to liquidate Old CFI's assets in exchange for a fee. After this asset purchase, Alden was named Chief Executive Officer of Old CFI. At some point before the current action was brought, Case sued Alden in the Delaware Chancery Court.

In May 2008, Old CFI brought the underlying action against Case and its subsidiary, Case Corporation (collectively, the Case defendants), for breach of the Services Agreement based on Case's alleged failure to pay Old CFI funds collected from the liquidation of Old CFI's assets. The complaint also contained causes of action for breach of fiduciary duty and "conspiracy to embezzle property" alleging that Case's officers had embezzled shares of stock from Old CFI.

The Case defendants successfully petitioned the trial court to compel arbitration on the breach of contract cause of action under an arbitration clause in the Services Agreement. During the arbitration, Case alleged that Old CFI brought this lawsuit solely to retaliate for the Delaware suit against Alden. The arbitrator dismissed the

¹ We take judicial notice of our earlier opinions in *Old CFI, Inc. v. Case Financial, Inc.* (B227489; filed on July 29, 2011) [nonpub. opn.] and *Old CFI, Inc. v. Case Financial, Inc.* (B251404; filed on August 28, 2014) [nonpub. opn.]. (Evid. Code, § 452, subd. (d).)

matter with prejudice, finding that Old CFI was a “resurrected empty shell of a defunct company . . . [that] was revitalized to bring this action behind a ‘corporate veil’ to annoy, harass, and inflict financial harm on [Case],” in retaliation for Case’s suit against Alden, to gain an economic advantage in that suit, or for some other reason. The arbitrator further found “there will be gross injustice if the corporate entity is not disregarded,” and awarded the Case defendants \$47,908.19 in fees and costs.

Old CFI filed a motion to vacate the award in the trial court. The court granted the motion on the basis that the arbitrator had exceeded her powers by scheduling the arbitration hearing outside of Los Angeles County in violation of a provision in the Services Agreement. The Case defendants appealed, and we reversed the order vacating the award. On remand, the trial court confirmed the award, and granted Old CFI leave to amend its complaint on its tort claims.

Old CFI then dismissed its tort claims and the Case defendants moved for an award of the attorney’s fees they incurred defending against those claims. The trial court denied the motion and the Case defendants appealed. We affirmed.

The Case defendants then moved under Code of Civil Procedure section 187 to amend the judgment to add eight of Old CFI’s shareholders as additional judgment debtors. The Case defendants argued the arbitration award established that Old CFI’s shareholders were alter egos of the corporation and controlled the litigation.

The court issued a tentative ruling denying the motion but also finding that Alden had controlled the litigation: “[T]he trial court may amend its judgment to add as a judgment debtor someone who is the alter ego of a corporate defendant. . . . ‘Such a procedure is . . . appropriate . . . where it can be demonstrated that [the new defendants] in their capacity as alter ego[s] of the corporation . . . in fact had control of the previous litigation, and thus were virtually represented in the lawsuit.’ [Citations.] . . . In this case, there is sufficient evidence to demonstrate that Eric Alden had control of the litigation,” but “no evidence that [the other seven shareholders] controlled the litigation or were virtually represented in the lawsuit.”

We do not have any record of the oral proceedings at the hearing. However, the minute order indicates the court adopted the tentative ruling but modified it to grant the motion as to Eric Alden only. Judgment was entered against Old CFI and Alden in the amount of \$51,687.63 plus interest. Alden timely appealed.

CONTENTIONS

Alden contends the trial court applied an incorrect legal standard because the tentative ruling expressly found that he controlled the litigation without addressing whether he was also Old CFI's alter ego. Alden also contends there was insufficient evidence to support findings that he controlled the litigation and was Old CFI's alter ego.²

DISCUSSION

1. Applicable Law

“Under Code of Civil Procedure, section 187, the court ha[s] the authority to amend the judgment to add a judgment debtor. [Citation.]” (*Carr v. Barnabey's Hotel Corp.* (1994) 23 Cal.App.4th 14, 20 (*Carr*).) “ ‘As a general rule, “a court may amend its judgment at any time so that the judgment will properly designate the real defendants.” ’ ” (*Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 508.) “ ‘The greatest liberality is to be encouraged in the allowance of such amendments in order to see that justice is done.’ [Citations.]” (*Carr, supra*, 23 Cal.App.4th at p. 20.)

Alden cites *Triplett v. Farmers Ins. Exchange* (1994) 24 Cal.App.4th 1415 (*Triplett*) for the holding that “[t]he ability under section 187 to amend a judgment to add a defendant, thereby imposing liability on the new defendant without trial, requires *both* (1) that the new party be the alter ego of the old party *and* (2) that the new party

² Alden also asserts arguments that we addressed in the first appeal in this matter. Alden's assertions are frivolous. (See *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650 [an appeal is frivolous when it “indisputably has no merit”].) Alden contends the arbitrator erred in (1) denying Old CFI's request to continue the trial date, (2) improperly setting the trial in San Diego, and (3) reviewing evidence on irrelevant matters and issues that were not before her. As we already have addressed these arguments, and the arbitrator's actions are not subject to review on this appeal, we decline to revisit these arguments.

had controlled the litigation, thereby having had the opportunity to litigate, in order to satisfy due process concerns.” (*Id.* at p. 1421.)

Alden does not acknowledge that a related line of cases holds that “even if all the formal elements necessary to establish alter ego are not present, an unnamed party may be included as a judgment debtor if ‘the equities overwhelmingly favor’ the amendment and it is necessary to prevent an injustice. [Citation.]” (*Carolina Casualty Ins. Co. v. L.M. Ross Law Group, LLP* (2012) 212 Cal.App.4th 1181, 1188-1189 (*Carolina Casualty*); see also *Carr, supra*, 23 Cal.App.4th at pp. 21-23.)

“The trial court’s decision to amend a judgment to add a judgment debtor is reviewed for an abuse of discretion. [Citations.] Factual findings necessary to the court’s decision are reviewed to determine whether they are supported by substantial evidence. [Citations.]” (*Carolina Casualty, supra*, 212 Cal.App.4th at p. 1189.)

2. *The Proper Legal Standard*

Alden contends the trial court “applied only the ‘control of the litigation’ prong of the *Triplett* test, and failed to apply the ‘alter ego’ prong.” Alden bases this argument on the court’s tentative ruling that expressly found Alden controlled the litigation without addressing whether Alden was also Old CFI’s alter ego. However, the tentative ruling referred to both prongs of the *Triplett* test, and the court was not required expressly to set forth an alter ego finding in its order.

Furthermore, under *Carolina Casualty*, the court may amend a judgment to add an unnamed party as a judgment debtor even when the formal elements necessary to establish alter ego are not present. (See *Carolina Casualty, supra*, 212 Cal.App.4th 1181 [holding that the addition of an individual as judgment debtor was proper even with no alter ego finding where the corporate defendant had dissolved and the individual controlled the litigation].) Accordingly, Alden has not shown that the trial court applied an incorrect legal standard.

3. *Sufficient Evidence Supported the Court’s Findings*

Alden contends there was insufficient evidence supporting the findings that he was Old CFI’s alter ego and controlled the litigation. Given the limited appellate record

Alden has provided, he has not met his burden of demonstrating reversible trial court error on this issue. (See *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712 [holding it is the appellant's burden affirmatively to demonstrate error].)

Alden did not provide a reporter's transcript or other record of the oral proceedings on the motion to amend the judgment. (See Cal. Rules of Court, Rule 8.120(b) ["If an appellant intends to raise any issue that requires consideration of the oral proceedings in superior court, the record on appeal must include a record of these oral proceedings in the form of one of the following: [¶] (1) A reporter's transcript under rule 8.130; [¶] An agreed statement under rule 8.134; or [¶] A settled statement under rule 8.137."]) Therefore, we cannot determine what evidence, if any, was admitted at the hearing and we are left with a judgment roll appeal.

"In a judgment roll appeal . . . [t]he sufficiency of the evidence is not open to review. The trial court's findings of fact and conclusions of law are presumed to be supported by substantial evidence and are binding on the appellate court, unless reversible error appears on the record." (*Bond v. Pulsar Video Productions* (1996) 50 Cal.App.4th 918, 924; see also Cal. Rules of Court, rule 8.163.) As the sufficiency of the evidence is not subject to attack on a judgment roll appeal where only a partial record has been provided, we must presume the evidence submitted was sufficient to support the trial court's decision.

DISPOSITION

The judgment is affirmed. Respondents are awarded costs on appeal.

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EGERTON, J.^{*}

WE CONCUR:

EDMON, P. J.

KITCHING, J.

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