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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

TAHOE RENO INDUSTRIAL CENTER, LLC, Plaintiff and Appellant, v. BRONWOOD, LLC, et al., Defendants and Respondents.	B278567 (Los Angeles County Super. Ct. No. BC567421)

APPEAL from a judgment of the Superior Court of Los Angeles County, Maureen Duffy-Lewis. Reversed with directions.

Procopia, Cory, Hargreaves & Savitch, Kendra J. Hall, John D. Alessio and Sean M. Gaffney for Plaintiff and Appellant.

Law Offices of Robert M. Silverman, Robert Silverman; Klika, Parrish & Bigelow and Franklin T. Bigelow, Jr., for Defendants and Respondents Bronwood, LLC and Richard Katzenbach.

Kulik Gottesman Siegel & Ware, Glen L. Kulik and Patricia Brum for Defendant and Respondent Michael Rosenfeld.

In the underlying action, the court awarded Tahoe Reno Industrial Center (Tahoe Reno) $1.275 million in fees and costs, which were to be paid by Bronwood, LLC (Bronwood). The members of Bronwood are Richard Katzenbach (Katzenbach) and Woodstone, LLC (Woodstone). One of Woodstone's members is Michael Rosenfeld (Rosenfeld) (collectively with Bronwood and Katzenbach, Defendants).

In a subsequent action, Tahoe Reno sought to enforce the judgment against Defendants by alleging the following causes of action: alter ego liability; declaratory relief; and violation of the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) (UCL). Defendants demurred and the trial court sustained those demurrers without leave to amend.

On appeal, Tahoe Reno challenges the trial court's ruling with respect to the alter ego (first cause of action) and declaratory relief (second cause of action) claims only.[1] We hold that the trial court erred with regard to both the "alter ego" and declaratory relief causes of action and, accordingly, reverse with regard to those claims and remand for further proceedings consistent with our holding herein.

BACKGROUND

I. The underlying litigation

Tahoe Reno is the owner of a large tract of land zoned for industrial and commercial development in Storey County,

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[1] On appeal, Tahoe Reno does not challenge the trial court's ruling with respect to its UCL cause of action (third cause of action).

Nevada. Bronwood, Global Power Associates, LLC (GPAC), and others formed Tahoe Reno Utility Services Company, LLC, (TRUSC) to facilitate a project contemplating the creation of a new utility district which would service tenants and customers located in Tahoe Reno's Storey County development (the Project). The Project, was ultimately unsuccessful.

In 2001, Bronwood, on behalf of itself and other members of TRUSC, filed a civil action in the Los Angeles Superior Court against various parties, including, Tahoe Reno and GPAC: *Bronwood, LLC v. Tahoe-Reno Utility Services Company, LLC, et al*. (2012, No. BC251412) (the underlying litigation). Among other things, Bronwood alleged that GPAC, Tahoe Reno, and Tahoe Reno's members were alter egos of each other. Tahoe Reno and GPAC cross-complained against Bronwood and Katzenbach, among others.

In 2012, the trial court in the underlying litigation ultimately awarded Bronwood damages, costs, and attorney fees totaling approximately $3.5 million against GPAC and awarded Tahoe Reno and certain other parties $174,833.83 in costs and $1,100,780.27 in attorney fees from Bronwood. The other parties to the fee award subsequently assigned their interest in the judgment to Tahoe Reno. The judgment also provided that there was no alter ego relationship between Tahoe Reno, GPAC, or their members.

In an attempt to collect on the judgment, Tahoe Reno filed adversary proceedings against Bronwood and, as part of those proceedings, took the debtor's examinations of several individuals, including Katzenbach and Rosenfeld. Tahoe Reno, however, subsequently abandoned its collection efforts in favor of a separate lawsuit in federal court.

II. Tahoe Reno's federal action

In March 2014, Tahoe Reno filed a declaratory relief action in federal district court in Nevada against Bronwood and others: *Tahoe Reno Indus. Ctr., LLC v. Bronwood, LLC, et al*. (D.Nev. June 16, 2014, 3:14-cv-00170-RCJ-VPC) 2014 U.S.Dist. Lexis 81576 (the federal action). In the federal action, Tahoe Reno sought to hold the defendants liable for the judgment in the underlying action on an alter ego theory of liability.

In June 2014, the district court dismissed the federal action on jurisdiction grounds. Among other things, the district court found that the assignment by the other parties of their interest in the judgment in the underlying litigation to Tahoe Reno was "collusive" and undertaken solely for jurisdictional purposes: "On balance, the Court is convinced that the assignment was made to create jurisdiction. . . . The only purpose for assigning the judgment to [Tahoe Reno] alone, for no consideration, the day before filing suit, was to create diversity jurisdiction."

III. Tahoe Reno's current action

In December 2014, six months after the dismissal of the federal action, Tahoe Reno initiated the instant action. Tahoe Reno's original complaint asserted three causes of action: "Alter Ego Liability"; "Fraudulent Conveyance"; and "Civil Conspiracy" Tahoe Reno premised its alter ego cause of action on the judgment in the underlying litigation and sought to recover various unidentified compensatory damages, as well as punitive damages, because defendants "engaged in intentional fraud and conduct which evidenced a wanton disregard for the rights of others" and were "guilty of oppression, fraud and malice."

In March 2015, Bronwood and Katzenbach demurred, challenging the alter ego cause of action on two principal

grounds: (1) Tahoe Reno "failed to present specific factual allegations to demonstrate that Katzenbach or Bronwood acted with fraudulent intent or in bad faith"; and (2) res judicata barred the claim because Tahoe Reno "in the underlying litigation argued for an alter ego determination and lost." In opposition, Tahoe Reno disputed that its factual allegations in support of its alter ego claim were insufficient and argued that the res judicata argument was procedurally and substantively flawed—Katzenbach or Bronwood did not attach any documents from the underlying litigation to support their res judicata argument; and, as the amended judgment made clear, Tahoe Reno never sought any ruling that Katzenbach was Bronwood's alter ego.

On October 29, 2015, the trial court sustained Bronwood and Katzenbach's demurrer to all causes of action with leave to amend. With regard to the alter ego cause of action, the trial court ruled that "there is no such independent cause of action called 'alter ego' "and that in any event, Tahoe Reno failed to "allege any specific facts that would satisfy the recited elements of alter ego." Although the trial court granted leave to amend "generally" in the event Tahoe Reno could "fix" its claims, it warned that Tahoe Reno should not waste its hard work "on something that's not a cause of action."

On November 18, 2015, Tahoe Reno filed its first amended complaint (FAC).[2] As before, Tahoe Reno alleged a cause of action

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[2] In its original complaint Tahoe Reno also sued two Woodstone entities, one a purported California limited liability company, the other a purported Delaware limited liability company. In the FAC, Tahoe Reno sued only the California Woodstone.

for alter ego, but this time supported it with more detailed factual allegations and with exhibits (corporate documents and deposition excerpts). As in its original pleading, Tahoe Reno based its alter ego cause of action in the FAC on the judgment in the underlying litigation and sought both compensatory and punitive/exemplary damages. In addition, Tahoe Reno asserted in the FAC two new causes of action, one for declaratory relief and the other for a violation of the UCL. Tahoe Reno's declaratory relief claim focused on alter ego-related issues (e.g., whether Bronwood and Woodstone "ever existed" as legitimate entities with their own separate legal personages and whether Katzenbach is the alter ego of Bronwood and whether Rosenfeld is the alter ego of Bronwood or Woodstone.

Defendants demurred to the FAC. With regard to the alter ego claim, Defendants, echoing the trial court's conclusion with respect to that same claim in the original complaint, argued that it was not an independent cause of action. Defendants argued, moreover, that even if Tahoe Reno's alter ego allegations were considered as only a theory of liability, Tahoe Reno had failed again to state sufficient facts to pierce the corporate veil of multiple entities. As for the declaratory relief cause of action, Defendants argued that it was improper because Tahoe Reno had not asked for and the trial court had not given leave to add new causes of action. In addition, Defendants argued that even if Tahoe Reno could properly assert such a cause of action, it failed to allege a proper subject of declaratory relief or an actual controversy between the parties.

Tahoe Reno opposed the demurrers arguing, inter alia, that an independent action to enforce a judgment based on alter ego allegations was proper, the trial court's previous ruling did not

preclude either an amended alter ego claim or a new claim arising out of that same primary right. In opposing Defendants' demurrers, Tahoe Reno also requested leave to amend its pleadings if the trial court sustained the demurrers.

On August 1, 2016, the trial court heard oral argument on Defendants' demurrers and then took the matter under submission. Later that same day, the trial court issued its order sustaining the demurrers on every cause of action in the FAC without leave to amend. With regard to the alter ego claim, the trial court explained that "[t]here is no such independent cause of action called 'alter ego' " and, that in any event res judicata barred Tahoe Reno's claim because in the underlying action Bronwood was purportedly found not to be a sham entity.[3] As for

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[3] As noted above, the Defendants in their moving papers did not argue that the alter ego claim in the FAC was barred by the doctrine of res judicata. The issue was discussed only at the hearing and only then briefly and without the benefit of any supporting evidence. On appeal, however, Defendants argue that Tahoe Reno's alter ego claim was in fact barred by res judicata as a result of proceedings in the underlying litigation. More specifically, although Defendants concede that the judgment in the underlying proceeding does not contain an explicit ruling on Tahoe Reno's alter ego claim, they maintain that because Tahoe Reno "could" have raised its claim in that proceeding it is now barred.

An appellate court has "discretion to consider an issue not properly raised in the trial court, if it presents a pure question of law on undisputed factual evidence regarding either (1) a noncurable defect of substance such as lack of jurisdiction or failure to state a cause of action, or (2) a matter affecting the public interest or the due administration of justice." (*Vikco Ins. Services, Inc. v. Ohio Indemnity Co.* (1999) 70 Cal.App.4th 55,

the declaratory relief and UCL claims, the trial court did not offer any explanation for its rulings. Tahoe Reno timely appealed.

DISCUSSION

I. Standard of review

We independently review the ruling on a demurrer and determine de novo whether the pleading alleges facts sufficient to state a cause of action. (*McCall v. PacifiCare of Cal., Inc*. (2001) 25 Cal.4th 412, 415.) We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded, and facts of which judicial notice can be taken. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) "If the allegations in the complaint conflict with the exhibits, we rely on and accept as true the contents of the exhibits. However, in doing so, if the exhibits are ambiguous and can be construed in the manner suggested by plaintiff, then we must accept the construction offered by plaintiff." (*SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 83.)

"It is not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which he describes the defendant's conduct. A demurrer tests only the legal sufficiency of the pleading." (*Committee on Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, 213

67.) The fact-intensive issue of whether Tahoe Reno's alter ego claim is barred by what could have been litigated in the underlying litigation is not such a question.

Since Defendants failed to raise the issue of res judicata properly below in connection with their demurrers to the FAC, we decline to consider their arguments on appeal. (See generally, *People v. Rundle* (2008) 43 Cal.4th 76, 126.)

(*Children's Television*).) Accordingly, in considering the merits of a demurrer, "the facts alleged in the pleading are deemed to be true, however improbable they may be." (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) "We will affirm if there is any ground on which the demurrer can properly be sustained, whether or not the trial court relied on proper grounds or the defendant asserted a proper ground in the trial court proceedings." (*Martin v. Bridgeport Community Assn., Inc.* (2009) 173 Cal.App.4th 1024, 1031.)

II. Plaintiff's alter ego cause of action

A. THE ALTER EGO DOCTRINE

It is well-established under California law that the alter ego doctrine is only a means of imposing liability for an underlying cause of action, not an independent/stand-alone cause of action. "*A claim against a defendant, based on the alter ego theory, is not itself a claim for substantive relief, e.g., breach of contract or to set aside a fraudulent conveyance, but rather, procedural*, i.e., to disregard the corporate entity as a distinct defendant and to hold the alter ego individuals liable on the obligations of the corporation where the corporate form is being used by the individuals to escape personal liability, sanction a fraud, or promote injustice." (*Hennessey's Tavern, Inc. v. American Air Filter Co.* (1988) 204 Cal.App.3d 1351, 1358–1359, italics added (*Hennessey's Tavern*); *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 418–419; see generally 15 Cal.Jur.3d (2012) Corporations, § 22, pp. 92–93 ["Under California law, there is no such thing as a substantive alter-ego claim"].)

The Ninth Circuit has summarized the limits of California's alter ego doctrine as follows: "Instead of creating, enforcing, or expounding on substantive duties, *California's alter ego doctrine*

merely acts as a procedural mechanism by which an individual can be held jointly liable for the wrongdoing of his or her corporate alter ego." (*Double Bogey, L.P. v. Enea* (9th Cir. 2015) 794 F.3d 1047, 1051–1052, italics added.) California's approach to the alter ego doctrine is consistent with general American jurisprudence. As the United States Supreme Court has stated, "[p]iercing the corporate veil is not itself an independent . . . cause of action, 'but rather is a means of imposing liability on an underlying cause of action.' " (*Peacock v. Thomas* (1996) 516 U.S. 349, 354.)

B. TAHOE RENO ALLEGED A PROPER CAUSE OF ACTION TO ENFORCE THE JUDGMENT

Under California law, it is well-established that where, as here, a creditor discovers postjudgment that the judgment debtor has little or no assets and is controlled by a nonparty alter ego, the creditor has two options: First, the creditor may file a noticed motion to amend the judgment to add a nonparty alter ego as a judgment debtor, or may apply for an order to show cause why the nonparty alter ego should not be joined as a defendant. (See generally, Code Civ. Proc., § 187; *Jack Farenbaugh & Son v. Belmont Construction, Inc.* (1987) 194 Cal.App.3d 1023, 1027–1029; *Misik v. D'Arco* (2011) 197 Cal.App.4th 1065, 1074–1075 [failure to allege alter ego in underlying lawsuit does not preclude motion to amend judgment].)

Alternatively, the creditor "may file an independent action on the judgment, alleging that the proposed judgment debtor was an alter ego of an original judgment debtor." (*Highland Springs Conference & Training Center v. City of Banning* (2016) 244 Cal.App.4th 267, 288; see *Hennessey's Tavern, supra*, 204 Cal.App.3d at p. 1358; Ahart, Cal. Practice Guide: Enforcing

Judgments and Debts (The Rutter Group 2016) ¶ 6:1575, p. 6G-89.) Such an action is not referred to as an alter ego claim, but as an "action on the judgment." (*Highland Spring*, at p. 288.)

Here, Tahoe Reno plainly mislabeled its first cause of action.[4] However, what matters is not how a claim is labeled or styled, but whether it states a cause of action on any available legal theory. (*Duggal v. G.E. Capital Communications Services, Inc.* (2000) 81 Cal.App.4th 81, 86.) Here, by the FAC's first cause of action, Tahoe Reno sought to enforce the judgment in the underlying litigation by effectively adding Defendants as judgment debtors via their status as Bronwood's alleged alter egos. As discussed above, an independent alter ego-based action on the judgment is a well-recognized claim under California law. And, as discussed below, Tahoe Reno alleged sufficient facts to support an alter ego theory of liability against Defendants.[5]

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[4] Tahoe Reno argues that its alter ego claim was properly labeled and styled as an independent stand-alone cause of action and relies on two cases for support: *Taylor v. Newton* (1953) 117 Cal.App.2d 752; and *Brenelli Amedeo, S.P.A. v. Bakara Furniture, Inc.* (1994) 29 Cal.App.4th 1828. While both of those cases support the proposition that a judgment creditor may pursue the alter ego of a judgment debtor in a separate proceeding, neither case holds (or even suggests) that alter ego allegations may stand alone as an independent cause of action.

[5] In an action to enforce a judgment against an alter ego, the judgment creditor is entitled under the Enforcement of Judgments Law (Code Civ. Proc., § 680.010 et seq.) (the EJL) to the amount of the judgment plus interest and certain costs and fees, including attorney fees. (See Code Civ. Proc., §§ 685.010, 6850.40, 6850.50, 685.070.) However, the EJL does not provide for the recovery of punitive or exemplary damages over and above

C. TAHOE RENO'S ALTER EGO ALLEGATIONS ARE SUFFICIENT

Detailed pleading is not required to allege an alter ego theory of liability. Indeed, "[i]t is not even essential, apparently, that . . . the alter ego doctrine always be specifically pleaded in the complaint in order for it to be applied in appropriate circumstances. [¶] . . . [Citation.] . . . [C]ourts have followed a liberal policy of applying the alter ego doctrine where the equities and justice of the situation appear to call for it rather than restricting it to the technical niceties depending upon pleading and procedure. It is essential principally that a showing be made that both requirements, i.e., unity of interest and ownership, and the promotion of injustice by the fiction of corporate separate existence, exist in a given situation." (*First Western Bank & Trust Co. v. Bookasta* (1968) 267 Cal.App.2d 910, 915, italics omitted (*First Western*); see *Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 236 (*Rutherford*) ["only 'ultimate rather than evidentiary facts' " necessary to support alter ego theory].)

First Western, *supra*, 267 Cal.App.2d 910 held that the following allegations were adequate to state a cause of action against the defendant on an alter ego theory: "that the individuals. . . . 'dominated' the affairs of the corporation; that a

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what may already be included in the judgment. In its alter ego cause of action in the FAC, however, Tahoe Reno seeks to recover both compensatory *and* punitive and exemplary damages. We do not reach the issue of whether Tahoe Reno's demand for punitive and exemplary damages in its alter ego cause of action is consistent with an independent action on the judgment, because that issue was not raised below or on appeal.

'unity of interest and ownership' existed between respondent and the corporation; that the corporation is a 'mere shell and naked framework' for individual manipulations; that its income was diverted to the use of the individuals and respondent; that the corporation was, in effect, inadequately capitalized; that the corporation failed to issue stock and to abide by the formalities of corporate existence; that the corporation is and has been insolvent; and that adherence to the fiction of separate corporate existence would, under the circumstances, promote injustice." (*Id.* at pp. 915–916.)

Here, Tahoe Reno generally alleged in the FAC that Bronwood and Woodstone (a) were owned, controlled and dominated by Katzenbach and Rosenfeld, (b) were never capitalized, (c) failed to abide by various corporate formalities, and (d) commingled funds with their respective members. Tahoe Reno attempted to bolster these general allegations with specific factual allegations drawn from the transcript of the debtor's examination of Bronwood's manager, Katzenbach, who testified that Brownwood did not keep records regarding the entity's initial capitalization, did not have a bank account, did not hire any employees, and did not maintain a separate office but instead used Woodstone's office and did so without the benefit of a lease. In addition, Tahoe Reno included in its FAC a number of factual allegations regarding the failure by Bronwood's members to adhere to the terms of Bronwood's operating agreement and certain "consent resolutions," allegations that Tahoe Reno attempted to substantiate through additional transcript excerpts.

That there are factual ambiguities in the FAC, such as whether Rosenfeld is the alter ego of the California Woodstone or the Delaware Woodstone, are not fatal to Tahoe Reno's claim,

especially where, as here, discovery was stayed pending the outcome of Defendants' demurrers to the FAC. A demurrer tests only the legal sufficiency of a pleading, not the sufficiency of its supporting evidence. (*Children's Television*, *supra*, 35 Cal.3d at p. 213.) Moreover, as is the case here, " 'less particularity [of pleading] is required where the defendant may be assumed to possess knowledge of the facts at least equal, if not superior, to that possessed by the plaintiff.' " (*Rutherford*, *supra*, 223 Cal.App.4th at p. 236.)

Assuming, as we must, the truth of Tahoe Reno's expressly pleaded alter ego allegations and all facts that reasonably can be inferred from them (*Schifando v. City of Los Angeles*, *supra*, 31 Cal.4th at p. 1081), we hold that under the teaching of *First Western*, *supra*, 267 Cal.App.2d 910, Tahoe Reno made sufficient allegations of alter ego liability to avoid a sustention of a demurrer on its first cause of action. Accordingly, we hold that the trial court erred with regard to the dismissal of Tahoe Reno's "alter ego" cause of action.

III. Tahoe Reno's declaratory relief cause of action

In its minute order sustaining Defendants' demurrers to the FAC, the trial court failed to specify the ground for its ruling on the declaratory relief claim contrary to the requirements of Code of Civil Procedure section 472d. However, this failure is not reversible error per se. Instead, we will uphold the trial court's ruling on the declaratory relief claim if any of the grounds stated in Defendants' demurrers are well taken. (*Muraoka v. Budget Rent-A-Car, Inc.* (1984) 160 Cal.App.3d 107, 114–115; *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th

97, 111.)[6] As discussed below, we hold that Tahoe Reno stated a claim for declaratory relief with respect to its alter ego claim.

A. TAHOE RENO'S ABILITY TO ASSERT A CLAIM FOR DECLARATORY RELIEF

As a preliminary matter, Rosenfeld argued below that Tahoe Reno could not assert a claim for declaratory relief because the claim was not asserted in "the original complaint and [Tahoe Reno] failed to obtain[ ] permission from the [trial court] prior to alleging [it] in the FAC." We are not persuaded by this argument.

While Tahoe Reno is not "free to add any cause of action under the sun to her complaint," courts allow a plaintiff to add new causes of action (including claims for declaratory relief) without first securing leave from the trial court where the new cause of action "directly responds to the court's reason for sustaining the earlier demurrer." (*Patrick v. Alacer Corp*. (2008) 167 Cal.App.4th 995, 1015.)

Here, the FAC's new declaratory relief cause of action was in direct response to the trial court's finding that Tahoe Reno's alter ego allegations could not stand as an independent cause of action. Accordingly, we hold that Tahoe Reno was entitled to assert its declaratory relief cause of action without first obtaining leave from the trial court.

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[6] Moreover, the record before us does not indicate that Tahoe Reno called this irregularity to the attention of the trial court, and it makes no mention of it here. As a result, Tahoe Reno must be held to have waived the protections of the Code of Civil Procedure section 472d. (*E.L. White, Inc. v. City of Huntington Beach* (1978) 21 Cal.3d 497, 504, fn. 2.)

B. TAHOE RENO ALLEGED A PROPER SUBJECT AND AN ACTUAL CONTROVERSY

" 'To qualify for declaratory relief, [a party] would have to demonstrate its action presented two essential elements: "(1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to [the party's] rights or obligations." ' " (*Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 909.) " 'Declaratory relief is a broad remedy, and the rule that a complaint is to be liberally construed is particularly applicable to one for declaratory relief.' " (*City of Tiburon v. Northwestern Pac. R.R. Co.* (1970) 4 Cal.App.3d 160, 170.)

Upon review, we hold that the FAC alleged the basic elements for a declaratory relief cause of action.

1. Proper subject

Under California law, it is well established that a "controversy regarding the status of one claiming membership in a corporation is a proper subject of a declaratory judgment." (*Maguire v. Hibernia S. & L. Soc.* (1944) 23 Cal.2d 719, 731; see generally 26 Cal.Jur.3d (2016) Declaratory Relief, § 41, pp. 73–74.) Here, the FAC sought a declaration regarding the status of Katzenbach and Rosenfeld as members of Bronwood and Woodstone for the limited and specific purpose of finding who is responsible for paying the judgment in the underlying litigation. Such a determination is a proper subject for a declaratory relief cause of action.

2. Actual controversy

" 'The "actual controversy" language in Code of Civil Procedure section 1060 encompasses a *probable* future controversy relating to the legal rights and duties of the parties.

[Citation.]' [Citation.] It does not embrace controversies that are 'conjectural, anticipated to occur in the future, or an attempt to obtain an advisory opinion from the court.' " (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1582.)

Here, Tahoe Reno has not alleged a conjectural or anticipated controversy. Rather, Tahoe Reno has alleged an actual, existing and justiciable controversy over whether Katzenbach and Rosenfeld are responsible for the judgment entered in Tahoe Reno's favor in the underlying litigation.

3. Alter ego

As discussed above, Tahoe Reno's alter ego allegations, which form the factual core of its declaratory relief claim, are sufficient to survive demurrer. Accordingly, we hold that the trial court erred with regard to the dismissal of the declaratory relief cause of action.

DISPOSITION

The judgment is reversed. The trial court is directed to vacate its order sustaining the demurrers and enter a new order (1) overruling the demurrer to the first cause of action, (2) overruling the demurrer to the second cause of action, and (3) sustaining the demurrer to the third cause of action without leave to amend. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J. CHANEY, J.