Filed 12/16/15 Edson v. Don Cornelius Productions Inc. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MICHAEL EDSON, Plaintiff and Appellant, v. DON CORNELIUS PRODUCTIONS INC. et al., Defendants and Respondents.	B259699 (Los Angeles County Super. Ct. No.SC 119894)

APPEAL from an order of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge. Reversed and remanded with instructions.

Wein Law Group, Steven Lawrence Weinberg for Plaintiff and Appellant.

Valensi Rose, Stephen F. Moeller for Defendants and Respondents.

INTRODUCTION

Appellant Michael Edson contracted to purchase real estate from Don Cornelius Productions, Inc. (DCP). During escrow, Edson discovered the property actually was in the name of Don Cornelius personally, who was deceased. Before Don's[1] death, he transferred the property's title to himself as the trustee of the Donald C. Cornelius Revocable Trust (the trust), but never recorded the change. Upon Don's death, his sons, Anthony Cornelius and Raymond Cornelius, became successor trustees (the trustees). When the title discrepancies arose during escrow, the trustees petitioned the Superior Court to correct the title so the sale to Edson could proceed.

Meanwhile, to settle an ongoing property line dispute with the next-door neighbors, the trustees gave the neighbors an easement and option to buy part of the property Edson had contracted to purchase. Escrow eventually closed 94 days late, and Edson sued DCP and the trustees for breach of contract; the parties proceeded to arbitration. The arbitrator found that DCP, but not the trustees, was liable for the breach. DCP has been dissolved and is insolvent, and Edson cannot collect on his judgment.

Edson moved to amend the judgment to have the trustees named as alternative judgment debtors on alter ego grounds. The trial court held that because the trustees prevailed on the breach of contract claim at arbitration, Edson's motion was barred by res judicata, and denied the motion. Edson appealed.

We reverse the trial court's order denying the motion. Res judicata acts as a bar to relitigation of issues in subsequent cases, not later proceedings in the same case. In addition, the arbitrator's determination that the trustees were not directly liable for the breach of contract does not preclude a finding that the trustees acted as the alter ego of DCP. Res judicata therefore does not bar Edson's motion to amend the judgment.

[1] Because there are three relevant persons with the last name Cornelius, we will refer to these parties by their first names to avoid confusion. We intend no disrespect.

FACTUAL AND PROCEDURAL BACKGROUND

A. Sale of the property at issue and related litigation

To understand the background issues in this case, a chronological explanation is warranted. The facts are largely undisputed.

Don Cornelius was a television producer who died on February 1, 2012. Following his death, Don's son, Anthony, decided to sell Don's property on Mulholland Drive. Plaintiff Michael Edson submitted an offer to buy the property for $1,650,000 on November 2, 2012. Anthony, signing on behalf of DCP as the seller of the property, counter-offered on November 5, 2012. After back-and-forth negotiations, the parties agreed to the terms of the sale. Escrow was to close on December 28, 2012.

Unbeknownst to Edson, DCP did not actually own the property it purported to sell. On November 29, 2012, a title search revealed that title to the property was in Don's name. Edson would later discover, after escrow closed, that DCP's powers to operate in California had been forfeited by the Franchise Tax Board in 2007 and were never revived. Edson would also later discover that the trust was the sole shareholder of DCP, and Anthony was the sole director of DCP.

Don previously owned an adjacent parcel of land that was purchased by Roger and Ellen LeComte in 2010. Pool equipment for the LeComtes' parcel was located over the boundary line on the property Edson contracted to purchase. On November 23, 2012, the LeComtes told Edson that they disputed ownership of the portion of the property containing the pool equipment. The disputed parcel included 1,464 square feet of the property Edson intended to buy.

On December 19, 2012, the trustees filed an ex parte *Heggstad* petition[2] in Los Angeles Superior Court for an order confirming that the trustees were the correct owners of the property. The petition stated that Don had transferred all real property to himself as trustee of the trust in 2011, and that upon his death Anthony and Raymond became

[2] A *Heggstad* petition is a petition to retitle assets into a trust, based on the authority of *Estate of Heggstad* (1993) 16 Cal.App.4th 943 and Probate Code section 850, subdivision (a)(3)(B).

successor trustees. In a declaration of urgency filed with the ex parte application, Anthony stated under penalty of perjury that "the Trustees negotiated a purchase and sale agreement with the buyer" for the property, and "the terms of the proposed sale are quite favorable to the Trust." Anthony noted that the buyer was unwilling to complete the transaction until problems with the title had been remedied.

The same day, December 19, the LeComtes filed suit for quiet title in Los Angeles Superior Court against DCP, the trustees, and their brokerage company. The LeComtes recorded a notice of pendency of action with the Los Angeles County Recorder's Office.

The Superior Court granted the trustees' *Heggstad* petition to transfer title to the trustees on January 23, 2013.

On January 29, 2013, Edson filed a complaint for breach of contract and specific performance relating to escrow, which had been set to close on December 28. He named DCP and the trustees as defendants. He alleged that each of the defendants worked as agents for one another. He alleged that "DCP, as agent for Defendant Co-Trustees" executed the property purchase agreement and thereafter breached that agreement. He also alleged that title to the property was vested in the trustees pursuant to the court order on the *Heggstad* petition.

On February 23, 2013, DCP assigned all rights in the contract for the sale of the property to the trustees.

On March 15, 2013, the trustees settled the LeComte lawsuit by granting the LeComtes an easement to the disputed portion of land in exchange for a release of all of the LeComtes' claims against the defendants in that case, and an option to purchase the land for $10. Edson was informed about the settlement on March 22, after the settlement was complete and the LeComtes had recorded the easement and option.

Edson refused to take title to the property subject to the LeComtes' easement and option. DCP served Edson a demand to close escrow. Edson took title but stated that he was reserving rights to any related causes of action, including a right to seek to terminate the easement and option. Escrow finally closed on April 1, 2013, 94 days late. The trust paid attorneys' fees related to escrow with a check signed by Anthony.

B. The arbitration award

In his action against DCP and the trustees, Edson demanded that the parties arbitrate pursuant to the property purchase agreement. DCP and the trustees jointly responded to the demand with a general denial and affirmative defenses. In preparation for arbitration, DCP and the trustees referred to themselves jointly as "respondents." They jointly noticed Edson's deposition. They jointly filed "Respondents' Witness List," "Respondents' Exhibit List," and an arbitration brief. Their arbitration brief notes that the dispute is between "the Claimant and Respondents." The brief noted that after Don's death, the property "devolved to Anthony Cornelius and Raymond Cornelius, as Trustees of the Don Cornelius Revocable Trust," and that Anthony, as trustee, sought to sell the property. It also stated, contradictorily, that "[a]t the time the Respondents entered into the Purchase and Sale Agreement, legal title to the Cornelius Property was vested in the DCP corporation; however, the beneficial interest in the Property was held by the Don Cornelius Trust and its successor Trustees." It explained that title was transferred to the trustees by the Superior Court. The brief argued that Edson took title subject to the LeComte easement and option. The brief made no effort to distinguish DCP, the trust, or the trustees with respect to liability for potential damages.

At the three-day arbitration hearing in December 2013, the parties presented evidence about the value of Edson's loss of use of the property while escrow was delayed and the value of the parcel optioned to the LeComtes. Witnesses included Anthony, Edson, the parties' respective experts, and Valerie Horn, an attorney who had assisted with the sale of the property. The trust paid a portion of the arbitrator's fees with a check signed by Anthony.

The arbitrator found there was a "time is of the essence" provision in the agreement and that "DCP breached the agreement by failing to close [escrow] by December 28, 2012." The arbitrator also found that Edson contracted to purchase unencumbered land, and by the time the sale was complete the property was encumbered by the LeComtes' easement and option. Based on the evidence presented, the arbitrator valued Edson's losses from the delayed escrow at $21,776. The arbitrator found that the

value of the LeComte easement/option was $83,448. The arbitrator awarded Edson $96,027 in attorneys' fees. Including later-added costs and interest, the award totaled $230,667.

Throughout the arbitrator's written findings, the arbitrator referred only to "DCP" as the liable party. Immediately after the arbitrator made his findings, Edson requested that the arbitrator clarify the award to include all defendants. Edson pointed out that all defendants should be held liable because following transfer of title to the property the trustees were the rightful sellers, the trustees breached the contract by delaying the close of escrow and granting the easement to the LeComtes, and the trustees and DCP participated fully in the arbitration without distinguishing between the parties.

The arbitrator denied Edson's request to change the award. In a section of the award titled "Request for Clarification of Final Award," the arbitrator stated, "The Arbitrator did not reopen the hearing to consider Edson's Request for Clarification. Further, the Arbitrator found that the Request for Clarification did not seek to correct a computational, typographical, or other similar error in the Final Award, but rather sought to modify a substantive finding. Therefore, the Arbitrator has no jurisdiction to grant the Request for Clarification." Despite this declared lack of jurisdiction, the arbitrator nonetheless opined, "[T]here is no basis in equity to modify the Final Award to find all Respondents, and not just DCP, liable for breach of contract because Edson never raised that issue in the Hearing or in his Post-Hearing Brief."

Edson filed a petition to confirm and correct the arbitration award with the trial court under Code of Civil Procedure section 1286.6, subdivision (c).[3] He argued that the trustees were independently liable for the breach of contract. Edson pointed out that DCP assigned all rights to the purchase agreement to the trustees during escrow, and the trustees subsequently breached the contract. He also noted that as the assignee of the

[3] A court "shall correct the award and confirm it as corrected if the court determines that . . . the award is imperfect in a matter of form, not affecting the merits of the controversy." (Code Civ. Proc., § 1286.6, subd. (c).)

purchase agreement, the trustees should "stand in the shoes" of the assignor. In addition, Edson argued that the trustees were the alter ego of DCP. Edson argued that the award should therefore be against the trustees as well as DCP.

Only the trustees opposed Edson's motion; DCP made no appearance. The opposition stated, "Counsel for the Respondent is appearing only for the Trust[4] in this proceeding. Counsel previously appeared at the arbitration on behalf of [DCP]. However, as noted in the Petition, DCP is now a suspended and defunct corporation and is no longer represented by counsel in this proceeding." In fact, DCP had not been in good standing in California since 2007.[5] And DCP was involuntarily dissolved in Illinois on August 9, 2013, three months before it filed its briefs relating to the arbitration in November 2013.

In opposition to Edson's motion to correct the arbitration award, the trustees argued that the trust "was always named as a Defendant in this lawsuit, and was a Respondent party which fully participated in the arbitration." But based on Edson's "failure of proof," the trustees argued, the arbitrator properly found that only DCP was liable. Moreover, the trustees argued, there was no basis for finding that the trustees were the alter ego of DCP because the relationship between the trustees and DCP was not unknown to Edson.

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[4] The parties often refer to the trustees and the trust interchangeably. In fact, the trustees were the named defendants in the action below, and Edson has moved to name the trustees as judgment debtors. In addition, "the alter ego doctrine may apply to a trustee but not a trust." (*Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 518 (*Greenspan*).) We therefore refer to the parties as "the trustees" except where quoting the parties' documents.

[5] DCP's rights to operate in California have been forfeited by the Franchise Tax Board since 2007. DCP therefore did not have the power to "sell, transfer, or exchange real property in California." (Rev. & Tax. Code, § 23302, subd. (d).) DCP also did not have the power to contract with Edson. Indeed, purporting to do so can be a misdemeanor. (Rev. & Tax. Code, § 19719 [Any person who "attempts or purports to exercise the powers, rights, and privileges of a corporation that has been suspended pursuant to Section 23301 or who transacts or attempts to transact intrastate business in this state on behalf of a foreign corporation, the rights and privileges of which have been forfeited pursuant to the section" is guilty of a misdemeanor].)

The trial court denied Edson's request to correct the arbitration award. It did not address Edson's alter ego argument. The court entered a judgment that states, "Plaintiff Michael Edson shall take nothing by his complaint for breach of contract against Anthony Cornelius and Raymond Cornelius, as Trustees of the Donald Cornelius Revocable Trust." The judgment awards damages to Edson on the arbitration award against "Don Cornelius Productions, Inc., an Illinois corporation."

C. Edson's motion to add the trustees as judgment debtors.

Edson filed a motion pursuant to Code of Civil Procedure section 187 (section 187). (See *Carolina Casualty Insurance Company v. L.M. Ross Law Group, LLP* (2012) 212 Cal.App.4th 1181, 1188 (*Carolina Casualty*) ["Under Code of Civil Procedure section 187 . . . the trial court is authorized to amend a judgment to add additional judgment debtors."].) Edson argued that the trustees should be included in the judgment because they were the alter ego of DCP. Edson pointed out that the trustees actually controlled the sale of the property and caused the related breaches of the purchase agreement. Moreover, Edson noted that the trustees appeared throughout the litigation and acted jointly in the arbitration with DCP, which was dissolved and insolvent.

The trustees opposed the motion, chiding Edson for his "fourth or fifth attempt" to "change the outcome of the arbitration." The trustees argued that Edson was never ignorant of the facts involving the trustees, so he could not now add the trustees as a judgment debtors. The trustees also argued that Edson "waived any right to hold the Trust liable as an alter ego of DCP, by completely abandoning this issue during the arbitration." Finally, the trustees argued that because it prevailed in the arbitration, it "cannot now be held liable for these same damages."

The trial court denied the motion on res judicata grounds. The court's order states, in full, "The final arbitration award has res judicata effect. See *Flynn v. Gorton* (1989) 207 Cal.App.3d 1550, 1555. [¶] The Trust prevailed at the arbitration regarding the breach of contract claim. [¶] The fact that an alter ego theory was not brought forth at the arbitration is immaterial. Res judiciata bars any claims that were brought or could have been brought against the Trust during arbitration."

Edson timely appealed the judgment and the order denying his section 187 motion.

STANDARD OF REVIEW

A court's ruling on a motion to add a judgment debtor is reviewed for abuse of discretion. (*Danko v. O'Reilly* (2014) 232 Cal.App.4th 732, 745 (*Danko*).) In addition, "[f]actual findings necessary to the court's decision are reviewed to determine whether they are supported by substantial evidence." (*Carolina Casualty*, *supra*, 212 Cal.App.4th at p. 1189.)

Here, however, the trial court made no findings of fact. The court denied Edson's motion on the legal grounds of res judicata. When an issue involves the application of law to undisputed facts, we review the matter de novo. (*Martinez v. Brownco Const. Co., Inc*. (2013) 56 Cal.4th 1014, 1018.)

DISCUSSION

A. Section 187

Section 187 states in full, "When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code." (§ 187.) This section gives the trial court the authority to alter an existing judgment: "Buried in this opaque language is the power of a trial court to amend a judgment by adding judgment debtors." (*Danko*, *supra*, 232 Cal.App.4th at p. 735.) Courts have long recognized that a court may amend a judgment to designate the "real" party to a proceeding. (See, e.g., *Mirabito v. San Francisco Dairy Co.* (1935) 8 Cal.App.2d 54, 57 ["That a court may at any time amend its judgment so that the latter will properly designate the real defendants is not open to question."].)

"Amending judgments under Code of Civil Procedure section 187 is an equitable procedure." (*Wells Fargo Bank, National Association v. Weinberg* (2014) 227 Cal.App.4th 1, 8 (*Wells Fargo*).) "[T]he general rule is that 'a court may amend its judgment at any time so that the judgment will properly designate the real defendants.'

(*Alexander v. Abbey of the Chimes* [(1980)] 104 Cal.App.3d 39, 45, 163 Cal.Rptr. 377.)" (*Dow Jones Co. v. Avenel* (1984) 151 Cal.App.3d 144, 149.) "In order to see that justice is done, great liberality is encouraged in the allowance of amendments brought pursuant to Code of Civil Procedure section 187." (*Misik v. D'Arco* (2011) 197 Cal.App.4th 1065, 1073 (*Misik*).)

Section 187 and the alter ego doctrine often go hand-in-hand. "The authority of a court to amend a judgment to add a nonparty alter ego as a judgment debtor has long been recognized." (*Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc*. (2013) 217 Cal.App.4th 1096, 1106 (*Toho-Towa*).) "Judgments are often amended to add additional judgment debtors on the grounds that a person or entity is the alter ego of the original judgment debtor." (*NEC Electronics Inc. v. Hurt* (1989) 208 Cal.App.3d 772, 778.)

A party asserting alter ego as a basis for amending a judgment under section 187 must demonstrate "(1) the parties to be added as judgment debtors had control of the underlying litigation and were virtually represented in that proceeding; (2) there is such a unity of interest and ownership that the separate personalities of the entity and the owners no longer exist; and (3) an inequitable result will follow if the acts are treated as those of the entity alone." *Relentless Air Racing, LLC v. Airborne Turbine Ltd. Partnership* (2013) 222 Cal.App.4th 811, 815-816, citing *Greenspan*, *supra*, 191 Cal.App.4th at pp. 509, 511.)

B. Res judicata

Edson argues that the alter ego doctrine applies in this case. The trial court did not reach that issue, because it held that Edson's motion was barred by the doctrine of res judicata. The trial court noted that the alter ego issue was not raised at arbitration, but held that "[r]es judicata bars any claims that were brought or could have been brought against the Trust during arbitration." (See, e.g., *McCready v. Whorf* (2015) 235 Cal.App.4th 478, 482 ["Res judicata serves as a bar to all causes of action that were or could have been litigated in the first cause of action."].) On appeal, the trustees reiterate this position, arguing that Edson did not present alter ego evidence to the arbitrator, even though "he was in full possession of this evidence before the 2013 arbitration hearings

began." Both the trial court and the trustees are incorrect; res judicata does not bar a finding of alter ego in the context of amending a judgment.

Res judicata has two aspects. Claim preclusion is the "primary aspect" of res judicata, and it "acts to bar claims that were, or should have been, advanced in a previous suit involving the same parties." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.) Issue preclusion, also known as collateral estoppel, is the ""'secondary aspect'"" of res judicata; it "describes the bar on relitigating issues that were argued and decided in the first suit." (*Ibid*.)

"*Claim preclusion* 'prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them.'" (*DKN Holdings*, *supra*, 61 Cal.4th at p. 824, quoting *Mycogen Corp. v. Monsanto Co*. (2002) 28 Cal.4th 888, 896.) "Claim preclusion arises if a second suit involves: (1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in the first suit." (*Ibid*.) "*Issue preclusion* prohibits the relitigation of issues argued and decided in a previous case, even if the second suit raises different causes of action. [Citation.] Under issue preclusion, the prior judgment conclusively resolves an issue actually litigated and determined in the first action." (*Ibid*.)

Here, res judicata does not apply because Edson sought only to amend the judgment—there was no second lawsuit between the same parties or parties in privity with one another. "Res judicata gives conclusive effect to a former judgment only when the former judgment was in a different action; an earlier ruling in the same action cannot be res judicata." (7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 334, p. 939; see also *Griset v. Fair Political Practices Com'n* (2001) 25 Cal.4th 688, 702.) Edson sought to amend the judgment under section 187. To hold that res judicata barred Edson's attempt to amend the judgment in the only lawsuit between the parties would render section 187 a nullity.

Moreover, liability based on the alter ego doctrine is separate from the underlying liability for breach of contract, and res judicata does not bar litigation of issues that were not previously decided. The trial court relied on the arbitrator's findings in denying

Edson's motion on res judicata grounds, but the arbitrator did not cite alter ego as a basis for denying Edson's request to clarify the award. Instead, the arbitrator found that he did not have jurisdiction to make the "substantive" change Edson wanted. The arbitrator opined that Edson did not provide a basis "to find all Respondents, not just DCP, liable for breach of contract." Thus, the arbitrator made no findings relating to alter ego, and lack of findings cannot serve as a legitimate basis for the application of res judicata.

Two cases demonstrate that res judicata does not apply to a post-judgment finding of alter ego, even when the additional judgment debtor ego was a defendant in the underlying proceedings, because a finding of alter ego is distinct from a determination of liability for the underlying actions. In *Wells Fargo*, *supra*, 227 Cal.App.4th at pp. 3-4 plaintiff Wells Fargo sued a law corporation and attorney Weinberg, as an individual guarantor, for repayment of a business line of credit. Weinberg successfully demurred to the single cause of action in which he was named individually as a defendant. Wells Fargo later prevailed on summary judgment against the law corporation. The judgment against the corporation became uncollectable because Weinberg drained the company of assets before dissolving it. (*Id*. at p. 4.) The Court of Appeal held that an alter ego finding was not barred by Weinberg's successful demurrer. "The motion to add Weinberg to the judgment sought a remedy, not for breach of contract, but for Weinberg's exercise of control over the law corporation that deprived Wells Fargo of the ability to collect the judgment against the law corporation for breach of contract. These are separate and distinct wrongs." (*Id*. at p. 7.) The court went on to say, "Even if Wells Fargo could have pursued a theory of alter ego, there was no bar to doing so after judgment." (*Ibid*.)

The *Wells Fargo* court relied on *Greenspan*, *supra*, 191 Cal.App.4th at p. 496 which held that "it would not always be inequitable to add as a judgment debtor a party who prevailed in an arbitration." There, the parties acquired a building and endeavored to renovate it, but had a number of disagreements in the process. The plaintiffs named as defendants two companies controlled by Barry Shy, as well as Shy individually. The arbitrator found the two defendant companies jointly and severally

liable; it did not find Shy liable. (*Greenspan, supra*, 191 Cal.App.4th at p. 502.) After the plaintiffs found they could not collect on the judgment, they moved to include Shy as a judgment debtor. (*Id*. at p. 506.) Shy argued that he could not be deemed a judgment debtor because he prevailed at arbitration. The court rejected this argument: "Barry Shy contends he cannot be added as a judgment debtor because he was a party to the arbitration and prevailed. But he fails to understand that the judgment is based on the claim that [his two companies] breached the Purchase Agreement. Shy was not a party to that claim and did not prevail on it. To add him as a judgment debtor would be based, not on a finding he breached the agreement, but on his control of the Shy Trust and its companies to such an extent that his failure to satisfy the judgment would promote injustice." (*Id*. at p. 507.)

Here, the same reasoning applies. Even though the arbitrator held that the trustees were not directly liable for the breach—presumably because DCP was the only party named in the purchase agreement—that conclusion does not bar the findings relevant to a section 187 motion: (1) that the trustees had control of the underlying litigation and were virtually represented, (2) there is such a unity of interest and ownership in DCP and the trustees that the separate personalities of DCP and the trustees no longer exist, and (3) an inequitable result will follow if the acts of the trustees are treated as those of DCP alone. *Relentless*, *supra*, 222 Cal.App.4th at pp. 815-816; *Greenspan*, *supra*, 191 Cal.App.4th at pp. 509, 511.) Any finding that the trustees should be named as judgment debtors would be based on the relationship and interaction between the trustees and DCP—not a finding that the trustees themselves breached the purchase agreement with Edson.

The trustees make much of the fact that Edson knew DCP was "insolvent" before the arbitration. They argue that Edson "had every reason to believe the alter ego doctrine applied to the Trust, and had every opportunity to litigate alter ego." But "[r]es judicata is not a bar to claims that arise after the initial complaint is filed" (*Wells Fargo*, *supra*, 227 Cal.App.4th at p. 7), and Edson's inability to collect on his judgment certainly did not arise before the initial complaint was filed. The trustees also argue that Edson "had in his possession certified documents from the States of California and Illinois which

conclusively established that the DCP corporation was not only forfeited, but had been dissolved." Edson's discoveries while litigation was pending—after the initial complaint was filed—do not preclude a post-judgment finding that the trustees acted as DCP's alter ego.

In addition, "a plaintiff's failure to allege the alter ego doctrine in the underlying lawsuit does not preclude a motion to amend the judgment." (*Misik*, *supra*, 197 Cal.App.4th at p. 1069.) This is because "Code of Civil Procedure section 187 . . . does not require that the ground for such a motion be alleged and proved before entry of judgment." (*Id.* at pp. 1074-1075.) The trustees cite no authority stating that alter ego must be litigated in the underlying action. Instead, they distinguish *Greenspan* and *Wells Fargo* because in those cases the courts found that the plaintiffs did not have a solid basis for litigating the alter ego issue at the outset of the case. But the trustees misread the holdings of those cases. "As *Greenspan* points out, there are good policy reasons not to force a plaintiff to litigate alter ego status in the underlying action. Nothing in *Greenspan* requires plaintiffs to do so. At most, *Greenspan* states that where a plaintiff reasonably believes an alter ego relationship exists, the complaint 'should probably' include alter ego allegations. 'Should probably' is not mandatory." (*Relentless*, *supra*, 222 Cal.App.4th at p. 817.)

The fact that Edson did not allege or prove the alter ego issue in the underlying action before judgment was entered is therefore not a bar to adding the trustees as judgment debtors under section 187.

The trial court erred by denying Edson's motion on the basis of res judicata. Because a section 187 motion requires findings of fact based on the *Relentless* factors enumerated above, we remand to allow the court to make those findings in the first instance.

DISPOSITION

The order is reversed and the matter is remanded for further proceedings consistent with this opinion. Edson shall recover his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.