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August 9, 2010

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Re: California Sum Judg/Piercing Corporate Veil Rsrch

-Summary Judgment

Under California law, a motion for summary judgment must be granted if all of the papers submitted show “there is no triable issue as to any material fact and . . .the moving party is entitled to a judgment as a matter of law.” **Code Civ. Proc. Section 437c, subd. (c).**

A party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. **Brown v. Ransweiler, 171 Cal. App. 4th 516, 525 (Cal. App. 4th DCA 2009).** Once the moving party meets this initial burden, the burden then shifts to the party opposing summary judgment to establish, by means of competent and admissible evidence, that a triable issue of material fact still remains. **Id.**

Because a summary judgment denies the adversary party a trial, it should be granted with caution. **Colores v. Board of Trustees, 105 Cal. App.4th 1293, 1305 (Cal. App. 2nd DCA 2003).** Declarations of the moving party are strictly construed, those of the opposing party are liberally construed, and doubts as to whether a summary judgment should be granted must be resolved in favor of the opposing party. **Id.** The court focuses on issue-finding; it does not resolve issues of fact. **Id.**

-Piercing the Corporate Veil

Under California law, a corporation is ordinarily regarded as a legal entity, separate and distinct from its shareholders, officers and directors. **S.J. Amoroso Const. Co., Inc. v. Knecht, ___ Cal. App. 4th ___, 2010 WL 2951456, *2 (Cal. App. 2nd DCA 2010).** The law, however, may disregard a corporate identity “where an abuse of the corporate privilege justifies holding the equitable ownership of a corporation liable for the actions of the corporation.” **Id.**

In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. **S.J. Amoroso Const. Co., Inc. v. Knecht, supra, 2010 WL 2951456, at *2.** Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone. **Id.**

Among the factors to be considered in applying the doctrine are the failure to segregate funds of the individual and the corporation; the unauthorized diversion of corporate funds to other than corporate purposes; the representation by an individual that he is personally liable for corporate debts; failure to maintain adequate corporate minutes and records; the use of a single address for the individual and the corporation; *the inadequacy of the corporation's capitalization*; the use of the corporation as a mere conduit for an individual's business; the concealment of ownership of the corporation; the disregard of corporate formalities and the failure to maintain arms-length transactions with the corporation, and the attempts to segregate liabilities to the corporation. **S.J. Amoroso Const. Co., Inc. v. Knecht, ___ Cal. App. 4th ___, 2010 WL 2951456, *3.** *No one characteristic governs*, but the courts must look at all the circumstances to determine whether the doctrine should be applied. **Sonora Diamond Corp. v. Superior Court, 83 Cal. App. 4th 523, 539 (Cal. App. 5th DCA 2000).** Alter ego is an extreme remedy, sparingly used. **Id.**

Finally, even if some or all of the above-mentioned factors are established, piercing the corporate veil also requires a showing that *the corporate alter ego acted in bad faith.* . **S.J. Amoroso Const. Co., Inc. v. Knecht, supra, 2010 WL 2951456, at *3; Sonora Diamond Corp. v. Superior Court, supra, 83 Cal. App. 4th at 539** (“[t]he alter ego doctrine does not guard every unsatisfied creditor of a corporation but instead affords protection where some conduct *amounting to bad faith* makes it inequitable for the corporate owner to hide behind the corporate form”).

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