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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

PAUL HAGGIS, INC., et al.,

Plaintiffs and Respondents,

v.

BOB YARI et al.,

Defendants and Appellants.

B243369

(Los Angeles County
Super. Ct. No. BC381582)

APPEAL from an order of the Superior Court of Los Angeles County. Daniel J. Buckley, Judge. Reversed with directions.

Horvitz & Levy, David M. Axelrad and S. Thomas Todd; K&L Gates, Christopher J. Kondon and Saman M. Rejali for Defendants and Appellants.

Ropers, Majeski, Kohn & Bentley, Terry Anastassiou; Arent Fox and Richard L. Charnley for Plaintiffs and Respondents.

Appellants Bob Yari and Davand Holdings, LLC appeal from an order after judgment adding them as defendants in the underlying action of *Paul Haggis, Inc., et al. v. Persik Productions, Inc.* (L.A. Sup. Ct. No. BC381582 ["*Haggis v. Persik*"].)[1] They contend that the order is not supported by substantial evidence. We agree and therefore reverse.

FACTS AND PROCEEDINGS BELOW

This is an action by the writers, director and other members of the creative team that made the Oscar-winning film Crash for compensation due them under their contract with the film's principal backer, Persik Productions, Inc. The plaintiffs are Paul Haggis, who directed and co-wrote Crash, Bobby Moresco who co-wrote and co-produced the film, Mark Harris, a co-producer, and Brendan Fraser, an actor in the film.

The original defendants were Persik Productions, Inc. which obtained the financing for the film and Persik's various subsidiaries: Crash Distribution, Crash Production, Syndicate Films International, and Bulls Eye Entertainment. Together, Persik and its subsidiaries managed the finances and distribution of the film.

In a bench trial the court found in favor of the plaintiffs on their claims of breach of contract and constructive trust and entered a judgment awarding them over $12,000,000 in damages and prejudgment interest.

Plaintiffs subsequently moved for an order amending the judgment to add Bob Yari and Davand Holdings, LLC as defendants on the ground that the original defendants were Yari's and Davand's alter egos. Yari owned 100 percent of Davand; Davand owned 100 percent of Persik; Persik owned 100 percent of Bob Yari Films; and Bob Yari Films owned 100 percent of Crash Distribution and Crash Production. Yari also owned 100 percent of Syndicate Films International and Bulls Eye Entertainment.

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[1] In a separate appeal we upheld the judgment against the original six defendants in the action. (*Paul Haggis, Inc., et al. v. Persik Productions, Inc., et al.* (January 31, 2014, B240556 [nonpub. opn.].)

The original defendants and Davand operated out of the same location and had the same officers.

The trial court granted plaintiffs' motion to amend the judgment. Yari and Davand filed timely appeals.

DISCUSSION

Yari and Davand argue that on each element of alter ego liability the evidence relied on by both plaintiffs and the trial court is insufficient, and that no other substantial evidence in the record supports the court's factual findings. We agree as to one of the elements of alter ego liability, so it is not necessary for us to address the remainder.

"Ordinarily, a corporation is regarded as a legal entity separate and distinct from its stockholders, officers and directors. Under the alter ego doctrine, however, where a corporation is used by an individual or individuals, or by another corporation, to perpetrate fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, a court may disregard the corporate entity and treat the corporation's acts as if they were done by the persons actually controlling the corporation. [Citations.] [¶] In general, the two requirements for applying the alter ego doctrine are that (1) there is such a unity of interest and ownership between the corporation and the individual or organization controlling it that their separate personalities no longer exist, and (2) failure to disregard the corporate entity would sanction a fraud or promote injustice. [Citations.]" (*Communist Party v. 522 Valencia, Inc.* (1995) 35 Cal.App.4th 980, 993.) The test for the second requirement "is that if the acts are treated as those of the corporation alone, it will produce an unjust or inequitable result." (*Misik v. D'Arco* (2011) 197 Cal.App.4th 1065, 1073.)

The record before us does not contain substantial evidence of an unjust or inequitable result sufficient to warrant application of the alter ego doctrine to Yari and Davand in this case. "Difficulty in enforcing a judgment does not alone satisfy this element." (*Leek v. Cooper* (2011) 194 Cal.App.4th 399, 418.) Nor does a mere breach of contract satisfy the requirement. (*Shafford v. Otto Sales Co., Inc.* (1953)

119 Cal.App.2d 849, 861 ["Breach of contract by the corporation, even though fraudulently concealed, does not support an inference that the corporate entity was being misused for personal purposes"].) Moreover, the alter ego doctrine should be applied more sparingly in contract cases than in tort or other third-party liability cases, because "the claimants in consensual transactions generally have chosen the parties with whom they have dealt and have some ability, through personal guarantees, security agreements, or similar mechanisms, to protect themselves from loss. For example, the fact that a company is undercapitalized can be overcome in many contractual settings, because the parties can allocate the risk of financial failure as they see fit." (*Cascade Energy and Metals Corp. v. Banks* (10th Cir. 1990) 896 F.2d 1557, 1577 (*Cascade Energy*).)

Here, the original production and distribution agreement (PDA) between Persik, on the one hand, and Haggis, Harris, and Moresco, on the other, expressly called for Persik to create "a one-off production entity controlled by Persik (the 'LLC') . . . to produce the Picture." (Block capitals omitted.) The agreement further provided that Persik "shall guarantee any of the obligations incurred by the LLC." Persik accordingly created Crash Production to produce the film. The subsequent agreement between Fraser and Crash Production did not include an express guarantee by Persik (though Fraser would arguably be a third party beneficiary of the Persik guarantee in the original PDA), but it did include an express guarantee by Bull's Eye.

The documents thus reflect that the parties acted as described in *Cascade Energy*, using "guarantees, security agreements, or similar mechanisms, to protect themselves from loss." (*Cascade Energy*, *supra*, 896 F.2d at p. 1577.) The parties expressly and consensually structured their transaction around an entity created for the sole purpose of producing *Crash*, with its obligations to be guaranteed by Persik. The problem is that Persik went bankrupt (and Bull's Eye appears to have no assets). But the record contains no evidence that Persik's bankruptcy had anything to do with plaintiffs, their film, or any wrongdoing by Yari or Davand that should entitle plaintiffs to pierce the corporate veil. On the contrary, uncontradicted evidence shows that even after plaintiffs filed suit in

November 2007, Davand's capital contributions to Persik exceeded Persik's distributions to Davand by more than $10 million. The uncontradicted evidence thus shows that Yari and Davand were not looting Persik but rather were trying to keep it afloat.

Plaintiffs argue to the contrary, but the evidence they cite is not persuasive. Plaintiffs refer to a transaction in September 2008 in which Persik received $90,000 from Crash Distribution. Yari and Davand point out that the record contains no evidence that at the time of that transfer Yari and Davand knew that some or all of that money was owed to plaintiffs; plaintiffs themselves cite no evidence to the contrary. Moreover, given that the PDA made Persik the guarantor of Crash Production's obligations, even if the transfer of the $90,000 *to Persik* was in some way improper, plaintiffs still had the right to sue Persik to recover any sums they were due. The problem, again, is that Persik went bankrupt for apparently unrelated reasons.

Plaintiffs also contend that it does not matter that "Yari and Davand were pumping money into Persik Productions faster than it was coming back," because "Yari and Davand got much of this money from Crash Distribution in the first place, much of which money [it] should have been paying out to Haggis and Fraser, as well as to professional guilds." Plaintiffs cite no evidence for the assertion that Yari and Davand "got much of this money from Crash Distribution in the first place." In the absence of such evidence, the net inflow of capital from Davand to Persik through 2009 (Persik filed its bankruptcy petition in January 2010) tends to shows that Davand was not looting but rather was supporting Persik, which was the guarantor of Crash Production's obligations under the PDA.

For all of the foregoing reasons, we conclude that the record does not contain substantial evidence of an unjust or inequitable result sufficient to warrant application of alter ego liability. We therefore reverse the superior court's order and direct the court to deny plaintiffs' motion. Our resolution of this issue makes it unnecessary for us to address the other issues raised by the parties.

DISPOSITION

The order amending the judgment to add Bob Yari and Davand Holdings LLC as defendants is reversed, and the superior court is directed to enter a new and different order denying plaintiffs' motion to amend the judgment. Appellants are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

MILLER, J.*

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