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THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

HI-TECH CONSTRUCTION, INC.,

Plaintiff, Cross-Defendant, and
Appellant,

v.

RONGJIE MA et al.,

Defendants, Cross-Complainants,
and Respondents.

A126752

(San Mateo County
Super. Ct. No. CIV 468483)

After a judgment was entered against cross-defendant Yousef Haddad in the action below, respondents Rongjie and Dunhua Ma sought to amend the judgment to add appellant Hi-Tech Construction, Inc. (Hi-Tech) as a judgment debtor. The trial court granted the motion, finding that Hi-Tech was the “true cross-defendant in this case.” On appeal, Hi-Tech argues the evidence was insufficient to support the court’s order. We shall affirm the order amending the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

This appeal arises out of a dispute over the construction of a house.¹ Yousef Haddad sued respondents Rongjie and Dunhua Ma for breach of contract and to foreclose

¹ Hi-Tech failed to include a copy of the underlying complaint or cross-complaint in the record on appeal. In order to establish the context of the underlying dispute, on the court’s own motion we take judicial notice of the record in a related appeal, *Yousef Haddad v. Rongjie Ma*, case number A125561. (Evid. Code, §§ 452, subd. (d)(1), 459.)

on a mechanic's lien. In the original, verified complaint, Haddad alleged he was "doing business as Hi-Tech Construction."²

Haddad alleged in his complaint that respondents hired him to construct a home on property the respondents owned in Millbrae. He further alleged the respondents breached the contract by instructing him to stop work and by prohibiting him from completing the work. Attached to the complaint was a copy of a "Home Construction Agreement" between "Hi-Tech Construction" and respondents, dated July 11, 2007. Respondents filed a cross-complaint against Haddad, alleging claims for breach of contract, negligence, elder abuse, and negligent and intentional misrepresentation.

Following a jury trial, the jury returned a verdict in favor of respondents on the causes of action for breach of contract, negligence, negligent misrepresentation, and intentional misrepresentation. The jury further found in favor of respondents on Haddad's breach of contract cause of action, but it found in favor of Haddad on respondents' elder abuse claim. The court entered judgment in favor of respondents for \$643,235.12, an amount that included an award for attorney fees and costs. This court affirmed the judgment against Haddad in an appeal in case number A125561.

After the judgment was entered in the trial court, respondents attempted to levy on two bank accounts that Haddad had used in connection with the construction of their home. Respondents discovered that the accounts were being maintained in the name of Hi-Tech Construction, Inc., instead of Haddad's name or that of his sole proprietorship, Hi-Tech Construction. To avoid confusion in this opinion, we shall hereafter refer to the corporate entity and the appellant in this appeal, Hi-Tech Construction, Inc., as Hi-Tech. We shall refer to Haddad's "dba" name—Hi-Tech Construction—as Haddad's sole proprietorship, unless the context of the discussion requires otherwise.

² The complaint did not expressly state that "Hi-Tech Construction" was a sole proprietorship, although that was the implication to be drawn from the allegation that Haddad was "doing business as Hi-Tech Construction." (See *Providence Washington Ins. Co. v. Valley Forge Ins. Co.* (1996) 42 Cal.App.4th 1194, 1200 ["dba" simply indicates that individual operates sole proprietorship under fictitious business name].)

Following their attempt to levy on bank accounts that turned out to be Hi-Tech's and not Haddad's, respondents moved to amend the judgment to add Hi-Tech as a judgment debtor. Respondents argued that Haddad had failed to identify Hi-Tech as a separate and distinct entity during discovery. Respondents further argued that Haddad had committed a fraud on the court by failing to disclose that Haddad's sole proprietorship—Hi-Tech Construction—was separate and distinct from Hi-Tech. Respondents sought to add Hi-Tech as a judgment debtor to prevent injustice.

The evidence offered in support of the motion revealed that Haddad had failed to state during discovery that he was employed by or otherwise had any affiliation with Hi-Tech. At no time did he attempt to differentiate his sole proprietorship from Hi-Tech. At trial, he failed to discuss, explain, or disclose that he had an affiliation with Hi-Tech. Yet, the majority of the expenses that Haddad incurred to construct respondents' home were paid for by Hi-Tech, not his sole proprietorship. One payment of over \$23,000 for construction materials was made on a credit card belonging to "MICHELINE NADRA/HIGH-TECH CNSTRCTN." Nadra was Haddad's sister-in-law and purportedly the majority (51 percent) shareholder of Hi-Tech. Further, a check in the amount of \$105,000 from respondents to Haddad was deposited into the account of Hi-Tech. Thus, Hi-Tech not only paid the expenses to construct respondents' home but also deposited the payments from respondents. The respondents also introduced evidence that Haddad's sole proprietorship had an inactive contractor's license whereas Hi-Tech had an active contractor's license. In addition, Haddad's sole proprietorship and Hi-Tech shared the same address. Further, when Haddad notified the City of Millbrae that he was no longer the general contractor on respondents' project, the notification was made on behalf of Hi-Tech, not Haddad's sole proprietorship.

The evidence offered in support of the motion to amend the judgment also suggested that Haddad had taken steps to avoid satisfying the judgment, such as quitclaiming his and his wife's interest in two properties just six days before trial. Haddad's brother was the beneficiary of the quitclaim deeds. Haddad has also failed to appear at a judgment debtor's exam, resulting in the issuance of a bench warrant for his arrest.

Both Hi-Tech and Haddad opposed the motion to amend the judgment. In its opposition, Hi-Tech asserted that (1) it was not a party to the contract with respondents, (2) it was not the alter ego of Haddad, (3) Haddad and Hi-Tech were separate and distinct, (4) Hi-Tech had not controlled the litigation between Haddad and respondents, and (5) it would be unfair to add Hi-Tech as a judgment debtor because its interests were not adequately represented during the litigation against respondents.

Hi-Tech offered as evidence in opposition to the motion documents indicating that the chief executive officer of Hi-Tech was Micheline Nadra, Haddad's sister-in-law. Haddad's wife and brother were also listed as corporate officers. Nadra stated in a declaration that Hi-Tech "has had numerous different shareholders all holding different percentages in the company," although the only shareholder specifically identified was Nadra, with a claimed 51 percent interest. Nadra also stated that Hi-Tech had a separate contractor's license from Haddad as well as its own separate bank accounts. Further, Nadra stated that Hi-Tech was not a party to the agreement with respondents, was "never given an opportunity to defend itself" against respondents' claims, and "did not provide any financial support" to Haddad in his action against respondents. Notably, one of the documents offered by Nadra identified Haddad as the "Responsible Managing Officer" of Hi-Tech with an equity interest of 10 percent or more in Hi-Tech.

In the opposition papers filed by Haddad, he claimed that Hi-Tech did not even exist when he entered into the contract with respondents. He claimed to own only two percent of the outstanding stock in Hi-Tech, and he claimed to be an employee of Hi-Tech but not an officer or director. Haddad further declared that the corporation took the name Hi-Tech not because it was a continuation of his sole proprietorship but because the other shareholders "liked the name." Neither Haddad nor Hi-Tech explained why a payment to the sole proprietorship (i.e., Haddad) from respondents was deposited into Hi-Tech's account, and neither offered an explanation as to why Hi-Tech paid for the expenses of the project purportedly undertaken by Haddad's sole proprietorship.

In response to the evidence offered by Haddad and Hi-Tech, respondents offered a document filed with the California Secretary of State showing that Haddad was, in fact,

the chief executive officer and chief financial officer of Hi-Tech as of February 26, 2008. A filing with the Secretary of State on May 16, 2008, listed Haddad as a corporate vice-president of Hi-Tech, and a filing on May 7, 2009, again listed Haddad as both chief executive officer and chief financial officer.

Following a hearing on July 24, 2009, the court granted the motion to amend the judgment to add Hi-Tech as a judgment debtor. At the hearing, the court and counsel for respondents pointed out numerous inconsistencies and errors in the submissions by Haddad and Hi-Tech, beginning with Haddad's inaccurate statement that Hi-Tech did not even exist when he entered into the contract with respondents.³ The court also pointed out that Haddad had stated under penalty of perjury that he was not an officer or director of Hi-Tech when official records showed otherwise. In response to the court's request for the identity of the numerous "other shareholders" aside from Haddad who would be prejudiced by making Hi-Tech a judgment creditor, counsel was able to identify only Haddad's wife, Mary Haddad, and sister-in-law, Micheline Nadra.

Following counsel's arguments, the court stated: "First of all, as you can tell, I'm pretty upset by all of this. I do think a fraud is being committed on the Court, and I'm concerned, quite frankly . . . about counsel's involvement with the fraud that your clients are attempting to commit on this Court. [¶] I view both Mr. Haddad's declaration and Ms. Nadra's declaration as including conclusions that support their opposition that are totally contrary to the evidence that's in the record. Your opposition consists totally of conclusions, inaccurate factual statements, and I really do believe that it is a fraud." The court went on to detail its findings of fact, including that Haddad's wife and sister-in-law knew about the contract with respondents, signed checks on Hi-Tech's account in connection with the project, and received into Hi-Tech's accounts the funds that respondents paid under the contract. The court, citing *Carr v. Barnabey's Hotel Corp.* (1994) 23 Cal.App.4th 14, 20 (*Carr*), stated that "[t]his is not an alter ego liability case," and ruled the court had equitable power under Code of Civil Procedure section 187 to

³ Hi-Tech filed its articles of incorporation with the Secretary of State on March 1, 2007. Haddad entered in the contract with respondents on July 11, 2007.

amend the judgment to do justice. The court found that “the true cross-defendant in this case is Hi-Tech Construction, Inc.” The court also dismissed the concern about prejudice to the other shareholders of Hi-Tech, pointing out that the only two shareholders of Hi-Tech who had been identified, other than Haddad, were Haddad’s wife and sister-in-law, both of whom were actively involved in the project with respondents. Further, the court found that Hi-Tech was not only controlling the project with respondents but was also controlling the litigation against respondents.

On August 3, 2009, the court filed orders amending the judgment (to add a judgment debtor) and the second amended judgment. The second amended judgment specifies that respondents are entitled to recover the judgment of \$643,235.12, plus interest, from Haddad and Hi-Tech. Hi-Tech timely appealed from the order amending the judgment and the second amended judgment. Haddad is not a party to this appeal.

DISCUSSION

Hi-Tech claims the court erred in adding it as a judgment debtor, asserting there is insufficient evidence that it was Haddad’s alter ego, that it subsidized the litigation, or that it otherwise had any active control or involvement in the case against respondents. Hi-Tech also argues that this court should find, as a matter of law, that a judgment creditor cannot reach corporate assets to satisfy a shareholder’s personal liability. As explained below, we reject these claims of error.

1. *Standard of review*

Upon review of an order amending a judgment to add an additional judgment debtor, we consider whether substantial evidence supports the trial court’s findings. (*McClellan v. Northridge Park Townhome Owners Assn., Inc.* (2001) 89 Cal.App.4th 746, 751-752 (*McClellan*)). When considering a challenge to the sufficiency of the evidence, we begin with the “ ‘presumption that the record contains evidence to sustain every finding of fact.’ [Citations.]” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) “[W]e must consider all of the evidence in the light most favorable to the prevailing party, accept as true all the evidence and reasonable inferences therefrom that tend to establish the correctness of the trial court’s findings and decision, and resolve

every other conflict in favor of the judgment. [Citation.] ‘It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact. Our authority begins and ends with a determination as to whether, on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, in support of the judgment.’ [Citation.]” (*Baxter Healthcare Corp. v. Denton* (2004) 120 Cal.App.4th 333, 369.)

2. Waiver of objections to sufficiency of the evidence

“It is the duty of counsel to refer the reviewing court to the portion of the record which supports appellant’s contentions on appeal. [Citation.]” (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) We are not required to search the record on our own seeking trial court error, and we may disregard claims for which no reference is furnished. (*Ibid.*; see also *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 (*Nwosu*); *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) This basic rule is a corollary to the equally fundamental principle that a judgment is presumed correct on appeal, “and a party attacking the judgment, or any part of it, must affirmatively demonstrate prejudicial error. [Citation.]” (*People v. Garza* (2005) 35 Cal.4th 866, 881.)

Here, Hi-Tech fails to provide record support for its factual claims. The briefs contain page after page of assertions about what the evidence showed or failed to show, without a single citation to the record on appeal. In one instance in the opening brief in which Hi-Tech did cite to the record, the citation is not to testimony but instead to counsel’s argument at the hearing on the motion to amend the judgment. Because we have no obligation to search the record to corroborate Hi-Tech’s unsupported factual claims, we would be justified in disregarding Hi-Tech’s claims of error on this basis alone.

In addition, it is well settled that “ ‘[a] party who challenges the sufficiency of the evidence to support a particular finding must *summarize the evidence* on that point, *favorable and unfavorable*, and *show how and why it is insufficient*. [Citation.]’ [Citation.]” (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409.) “[A]n attack on the evidence without a fair statement of the evidence is entitled to no consideration when it is apparent that a substantial amount of evidence was received on behalf of the

respondent. [Citation.] Thus, appellants who challenge the decision of the trial court based upon the absence of substantial evidence to support it “are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed waived.” [Citations.]’ [Citation.]” (*Nwosu, supra*, 122 Cal.App.4th at p. 1246.)

In this case, not only did Hi-Tech fail to cite the record on appeal to support its recitation of the evidence, but it also failed to set forth or summarize all of the material evidence, favorable or unfavorable, with respect to the issues in dispute. Consequently, we could treat Hi-Tech’s challenge to the sufficiency of the evidence as having been waived (*Nwosu, supra*, 122 Cal.App.4th at p. 1246), and our inquiry would be at an end. Although we would be justified in summarily dismissing Hi-Tech’s claims, we address them below in order to establish that Hi-Tech’s claims fail on the merits.

3. Evidence supporting adding Hi-Tech as a judgment debtor

Code of Civil Procedure section 187 vests in the trial court jurisdiction to amend a judgment to add additional judgment debtors in the interest of justice.⁴ (*McClellan, supra*, 89 Cal.App.4th at p. 752.) “The greatest liberality is to be encouraged in the allowance of such amendments in order to see that justice is done. [Citation.]” (*Carr, supra*, 23 Cal.App.4th at p. 20.) Code of Civil Procedure section 187 is most often utilized “ ‘to add additional judgment debtors on the grounds that a person or entity is the alter ego of the original judgment debtor. [Citations.] This is an equitable procedure based on the theory that the court is not amending the judgment to add a new defendant but is merely inserting the correct name of the real defendant. [Citations.]’ ” (*McClellan, supra*, at p. 752.)

⁴ Code of Civil Procedure section 187 provides as follows: “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.”

“Under the alter ego doctrine, . . . when the corporate form is used to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, the courts will ignore the corporate entity and deem the corporation’s acts to be those of the persons or organizations actually controlling the corporation, in most instances the equitable owners. [Citations.] The alter ego doctrine prevents individuals or other corporations from misusing the corporate laws by the device of a sham corporate entity formed for the purpose of committing fraud or other misdeeds. [Citation.]” (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.)

While an alter ego theory is the typical means by which an additional defendant is added to a judgment, it is not the only means. Thus, for example, in *McClellan, supra*, 89 Cal.App.4th at pp. 753-754, the appellate court held that successor liability was an available theory upon which to add a judgment debtor to a judgment. In that case, the court concluded that the newly added judgment debtor was the mere continuation of a predecessor corporation that had been a party to the lawsuit. (*Id.* at pp. 754-755.) Further, in *Carr, supra*, 23 Cal.App.4th at pp. 21-23, the court observed that although there was insufficient evidence to support a finding that the newly added judgment debtor was the alter ego of the named defendant, the equities nevertheless favored upholding the trial court’s order amending the judgment. Among other things, the court stated that the newly added judgment debtor’s conduct “approached a fraud on the court.” (*Id.* at p. 20.) The appellate court concluded that the newly added judgment debtor was not prejudiced by the trial court’s order and that reversing the order would “work an injustice.” (*Id.* at p. 23.) Likewise, in *In re Levander* (9th Cir. 1999) 180 F.3d 1114, 1116, the Ninth Circuit Court of Appeals held that the United States Bankruptcy Court had jurisdiction to amend its order “under [Code of Civil Procedure] § 187 and its inherent power based on the fraud perpetrated upon it” by a party to the proceedings. The court agreed with the analysis in *Carr*, stating it was unnecessary to find that the newly added party was the alter ego of an existing party under the circumstances. (*In re Levander, supra*, at p. 1122.)

Here, one of Hi-Tech's primary arguments is that there was insufficient evidence to support a finding that it was the alter ego of Haddad. Hi-Tech's argument misses the mark. The trial court specifically stated that "this is not an alter ego liability case" and instead based its ruling on general equitable powers afforded to it by Code of Civil Procedure section 187. Further, the evidence amply supports the trial court's findings. Among other things, Hi-Tech was directly involved in respondents' project. It not only received funds directly from respondents but paid for the fees and expenses of the project through its corporate accounts. Hi-Tech has never explained why it had such extensive financial dealings in a construction project in which it purportedly had no involvement. Other evidence supports a finding that Haddad and Hi-Tech were not as separate and distinct as Hi-Tech now urges. For example, Haddad and Hi-Tech shared the same business address as well as the same name. In addition, Hi-Tech held itself out as the general contractor on respondents' project in correspondence with the City of Millbrae Building Department. In short, there was no practical distinction between Haddad's sole proprietorship and Hi-Tech from respondents' perspective.

Despite clear evidence that Hi-Tech was involved in respondents' project, Haddad failed to mention his employment or involvement with Hi-Tech during the course of this litigation, instead referencing only his sole proprietorship. Similarly, during his deposition, he testified that he was the owner of a business named Hi-Tech Construction, while again failing to distinguish between his sole proprietorship and the corporation. Under the circumstances, the trial court had ample justification for its conclusion that Haddad and Hi-Tech had committed a fraud on the court. This is particularly true in light of the attempts by Haddad and Hi-Tech to claim that Haddad had no significant ownership interest in or managerial control of Hi-Tech, when such assertions were belied by the documentary evidence in the record.

Hi-Tech contends that it cannot be held liable as a judgment debtor because it was not shown to have any active control or involvement in the litigation. It is true, as Hi-Tech claims, that a party cannot be added as a judgment debtor unless that party "had control of the previous litigation, and thus [was] virtually represented in the lawsuit.'

[Citation.]” (*NEC Electronics Inc. v. Hurt* (1989) 208 Cal.App.3d 772, 778.)

Notwithstanding Hi-Tech’s claims otherwise, that requirement was met in this case.

The trial court specifically found that Hi-Tech controlled the litigation against respondents. Its finding is supported by evidence that Haddad effectively controlled Hi-Tech as both a shareholder of record and an officer of the corporation. Haddad’s and Hi-Tech’s interests in the matter were indistinguishable. Further, the court articulated its concern that adding Hi-Tech as a judgment debtor might prejudice shareholders of Hi-Tech other than Haddad or those directly involved in the project with respondents. However, the court dismissed this concern, stating that the only shareholders who had been identified other than Haddad were his wife and sister-in-law, both of whom were intimately involved in the transaction with respondents. Accordingly, there is no reason to believe that adding Hi-Tech as a judgment debtor violates the due process rights of Hi-Tech or its individual shareholders.

We conclude there is ample evidence to support the trial court’s order. Indeed, just as in *Carr*, it would “work an injustice” to reverse the trial court’s order. (*Carr*, *supra*, 23 Cal.App.4th at p. 23.)

4. “Outside reverse piercing”

Hi-Tech urges that, as a matter of law, it is improper to pierce the corporate veil to reach corporate assets to satisfy a shareholder’s personal liability. As support for its position, Hi-Tech relies upon *Postal Instant Press, Inc. v. Kaswa Corp.* (2008) 162 Cal.App.4th 1510, 1518 (*Postal Instant Press*), in which the court described “ ‘outside’ or ‘third party’ reverse piercing” as the situation in which “a third party outsider seeks to reach corporate assets to satisfy claims against an individual shareholder. [Citations.]” In *Postal Instant Press*, the appellate court held that a corporation cannot be saddled with an individual shareholder’s liability under a theory of outside reverse piercing. (*Id.* at pp. 1512-1513, 1521-1524.) As we explain, adding Hi-Tech to the judgment here does not constitute improper “outside reverse piercing.”

As clarified in *Postal Instant Press*, the “true issue that outside reverse piercing seeks to address is not the misuse of the corporate form to shield the shareholder from

personal liability.” (*Postal Instant Press, supra*, 162 Cal.App.4th at p. 1523.) Instead, the primary concern is that a shareholder may seek to defraud judgment creditors by transferring personal assets to the corporation in order to shield the assets from collection. (*Ibid.*) The problem with reverse piercing, as the *Postal Instant Press* court described, is that innocent shareholders of the corporation may be adversely affected by a decision that requires a corporation to pay for the debts of an individual shareholder. (See *id.* at pp. 1512, 1523-1524.) The court further explained that judgment collection procedures offer adequate protection against attempts to shield assets from creditors through the fraudulent or improper transfer of such assets to a corporation. (*Id.* at p. 1524.)

The concerns raised by the court in *Postal Instant Press* are not present here. As the trial court impliedly determined, this case is no more about reverse piercing than it is about alter ego liability. The court determined that Hi-Tech was the true party in this case based upon equitable considerations. The court did not amend the judgment “to add a new defendant but . . . merely insert[ed] the correct name of the real defendant” The basis for this decision is that Hi-Tech and Haddad’s sole proprietorship were one and the same in their dealings with respondents. The court did not base its decision on a finding that Haddad had belatedly transferred assets to Hi-Tech in order to avoid paying the judgment.⁵ Rather, Hi-Tech was actively involved in respondents’ project long before any dispute arose over the contract.

Moreover, the record does not reveal any “innocent” shareholders of Hi-Tech who would be adversely affected a decision requiring Hi-Tech to pay for the debts of Haddad. As noted above, despite Hi-Tech’s unsupported assertion that “there are numerous other shareholders,” the only shareholders it ever identified were Haddad, his wife, and his sister-in-law, each of whom had direct involvement in the matter that generated this litigation.

⁵ In *Postal Instant Express*, the judgment creditor’s “real concern” was that the judgment debtor used a corporate entity to shield assets from creditors. (*Postal Instant Press, supra*, 162 Cal.App.4th at p. 1523.) The court pointed out that, to the extent the judgment debtor fraudulently conveyed assets to the corporation or fraudulently sold his corporate stock, the judgment creditor had legal means to reach those assets. (*Ibid.*)

For the reasons described above, *Postal Instant Press* is inapposite. Under the circumstances presented here, the trial court was not precluded as a matter of law from adding Hi-Tech as a judgment debtor.

DISPOSITION

The order amending the judgment is affirmed. Respondents shall be entitled to their costs on appeal.

McGuiness, P.J.

We concur:

Siggins, J.

Jenkins, J.