Filed 6/28/11; pub. order 7/27/11 (see end of opn.)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

PHILLIPS, SPALLAS & ANGSTADT, LLP et al., Plaintiffs and Respondents, v. SHAHAB E. FOTOUHI et al., Defendants and Appellants.	A129047 (City & County of San Francisco Super. Ct. No. CPF-04-504215)

A law firm obtained a $2.4 million judgment against one of its former partners, defendant Shahab E. Fotouhi, and, in an effort to collect the judgment, sought court orders: (1) charging Fotouhi's interest in his new law firm, Fotouhi, Epps, Hillger & Gilroy, LLP (the Partnership) (Code Civ. Proc., § 708.310; Corp. Code, § 16504, subd. (a)); (2) extending the order charging his partnership interest to a corporation it contends is a "mere continuation" of the Partnership formed "to frustrate attempts to collect on the judgment . . . [,]" Fotouhi, Epps, Hillger & Gilroy, P.C. (the Corporation); and (3) adding both the Partnership and the Corporation to the judgment against Fotouhi as his alter egos. The superior court issued a charging order against both the Partnership and the Corporation, directing each to pay 15 percent of its monthly net revenues toward the judgment until it is satisfied. The superior court declined to find the Partnership and Corporation to be Fotouhi's alter egos.

Fotouhi, the Partnership, and the Corporation (collectively, defendants) appeal. They contend the court erred in: (1) issuing a charging order against a corporation;

(2) relying on a "mere continuation" analysis; (3) levying on corporate assets to satisfy a judgment against a shareholder; and (4) violating the due process rights of the Partnership and Corporation. We reject these contentions and affirm the judgment.

I. FACTUAL BACKGROUND

In November 2000, Fotouhi entered into a partnership agreement with Phillips, Spallas & Fotouhi, LLP (the Phillips firm). In March 2004, Fotouhi announced he was leaving the firm, effective April 1, 2004, and taking two major insurance clients with him (insurance clients).

Fotouhi started a new law practice, with three of the Phillips firm's former associates, Darren Epps, Wendy Hillger, and Michael Gilroy. Fotouhi, Epps, Hillger & Gilroy, LLP registered as a limited liability partnership on March 25, 2004. As the general partner, managing partner, and president of the Partnership, Fotouhi held a "dominant position in the firm," and controlled the firm's books and records. He generated between 75 and 90 percent of the work.

In May 2004, the Phillips firm's successor in interest, Phillips, Spallas, & Angstadt, LLP, and two of its named partners, Robert K. Phillips and Gregory L. Spallas (collectively, plaintiffs) asserted claims against Fotouhi for violating the partnership agreement and filed a petition in the superior court to compel arbitration. On May 17, 2005, an arbitration panel awarded plaintiffs liquidated damages of $2.4 million, finding Fotouhi had breached the partnership agreement by failing to give proper notice of his withdrawal, and continuing to perform work for and referring work from the insurance clients (arbitration award). Fotouhi vowed plaintiffs would " 'never get a dime out of him.' "

A week later, Fotouhi met with a bankruptcy attorney and, on August 29, 2005, filed a petition for chapter 7 bankruptcy. In December 2007, the bankruptcy court entered a judgment denying him discharge, finding he had made false oaths in his bankruptcy schedules and statement of financial affairs. The bankruptcy court found he "was motivated by his expressed intention to deprive his former partners of any recovery on their massive judgment against him, and to mislead all parties as to the value of his

interest in [the Partnership] as well as other assets" and that, by leaving virtually no paper trail, Fotouhi maximized "his ability to obfuscate the extent and nature of his property and business dealings."

The bankruptcy trustee filed a proceeding to recover referral fees Fotouhi did not report in his bankruptcy papers, and the bankruptcy court entered a $53,666.43 judgment against Fotouhi on November 18, 2008.

Less than a month later, on December 12, 2008, "Fotouhi, Epps, Hillger & Gilroy, Inc."[1] filed articles of incorporation. The Corporation issued 1000 shares of stock on December 17, 2008. The majority shareholders were Ryan Mau, who had not been a partner of the Partnership, and Hillger, with 350 shares each. Epps, Gilroy, and Fotouhi were issued 100 shares each. Mau and the partners of the Partnership became the directors and officers of the Corporation. Fotouhi was secretary of the Corporation, which registered with the California State Bar in January 2009.

The Partnership continued operating as a law practice.

The bankruptcy trustee pursued a claim for valuation of Fotouhi's interest in the Partnership as an asset of the bankruptcy estate. The bankruptcy court found Fotouhi had a 38.59 percent interest in the Partnership and valued this interest at more than $546,000 as of the filing of the bankruptcy petition. On May 10, 2009, the bankruptcy court entered judgment against the Partnership for $546,440.18.

Shortly after the May 2009 bankruptcy judgment was entered, the Partnership began doing business as "Fotouhi, Epps, Hillger & Gilroy, P.C." The Corporation took over the Partnership's office lease and continued to operate in the same location. The Corporation filed substitutions of counsel for the Partnership's clients in pending cases, and vendor accounts were changed to the Corporation's name. The Partnership's website became the Corporation's website, and firm's name was changed on the letterhead and signage to reflect that it was now a professional corporation (P.C.) rather than a limited

[1] Fotouhi, Epps, Hillger & Gilroy, Inc., and Fotouhi, Epps, Hillger & Gilroy, P.C. are the same business entity. We refer to them interchangeably as "the Corporation."

liability partnership (LLP). On June 1, 2009, the Corporation adopted bylaws, a shareholder agreement was executed, and the partners of the Partnership signed a bill of sale/asset purchase agreement transferring "certain real property" and personal property to the Corporation. The bill of sale does not identify the property or specify the consideration paid for these assets. Fotouhi states in a declaration that the "buy-sell agreement" provided for the Corporation's purchase of the Partnership's computers and equipment over a 12-month period at $3,000 per month. He maintains that no accounts receivable or work in progress carried over from the Partnership to the Corporation.

The Partnership's billable hours ended on May 31, 2009, and the Corporation's billable hours began on June 1, 2009.[2]

The superior court confirmed the arbitration award against Fotouhi and entered a $2.4 million judgment in plaintiffs' favor on June 17, 2009.

II. PROCEDURAL HISTORY

Plaintiffs' Motions

On November 24, 2009, plaintiffs filed three motions in the superior court proceeding seeking to enforce the judgment. First, they moved for an order (1) charging Fotouhi's interest in the Partnership; (2) declaring his interest in the Partnership at 38.59 percent; (3) directing the Partnership to pay to them amounts due to Fotouhi until the judgment is satisfied; and (4) appointing a receiver to distribute 15 percent of the Partnership's gross revenue to them until the judgment is satisfied. Second, plaintiffs moved for an order (1) extending the charging order to the Corporation, as a continuation of the Partnership; (2) appointing a receiver over the Corporation; and (3) requiring payment of 15 percent of the Corporation's gross revenue to them until the judgment was satisfied. Third, plaintiffs moved to add both the Partnership and the Corporation as judgment debtors, contending they were Fotouhi's alter egos.

[2] As of September 1, 2009, the Partnership remained in good standing with the California Secretary of State. The Partnership terminated its certificate of registration with the California State Bar on September 15, 2009.

After the motions were fully briefed (with over 1670 pages of supporting papers), they were taken off calendar by the court,[3] to be renoticed for hearing in the discovery department. Shortly thereafter, plaintiffs served a renotice of each motion, indicating the motions would "be based on the documents previously filed with this court for the [previously scheduled hearing date] which include this Re-Notice, the Memorandum of Points & Authorities, Declaration of [plaintiffs' counsel], Declaration of [plaintiff] Robert Phillips, Declaration of [attorney for the bankruptcy trustee], Index to Exhibits, Request for Judicial Notice, Opposition and Reply papers filed with the court, the file of this court, and upon such evidence and argument to be presented at the hearing of this matter. [¶] A true and correct copy of the documents previously filed by both parties for the [previously scheduled hearing date] will be provided to [this] Department."

The Superior Court's Order

On May 10, 2010, the superior court entered an order denying plaintiffs' motion to add alter egos as judgment debtors but granting the motions for a charging order against both the Partnership and the Corporation. The court found "[T]he law firm corporation is a continuation of the law firm partnership" and ordered each to pay 15 percent of its net income to plaintiffs, without any deduction from gross revenue for salary or other compensation to Fotouhi, including personal expenses, commencing with the first pay period after March 15, 2010.[4] In determining the firm's net revenue, regular salaries of the other shareholders/partners were to be deducted, but not further compensation or payments to these individuals. The court appointed an auditor at Fotouhi's expense.

Defendants filed a timely notice of appeal from the order.[5]

---

[3] The motion had to be taken off calendar because, on the date of the originally scheduled hearing, plaintiffs filed a challenge to the commissioner scheduled to hear the matter (Code Civ. Proc., § 170.6).

[4] Defense counsel represented that the Corporation's directors and officers/ employees received a minimum salary that was set when the Corporation was formed.

[5] An order granting a judgment creditor's motion for a charging order is appealable. (*Baum v. Baum* (1959) 51 Cal.2d 610, 613–615; see also *Redevelopment Agency v. Goodman* (1975) 53 Cal.App.3d 424, 429 [any order relating to the

III. DISCUSSION

A. *The Standard of Review*

We presume the superior court's order to be correct and indulge all intendments and presumptions to support it regarding matters as to which the record is silent. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*); accord, *Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) As the appealing parties, defendants have the burden to affirmatively show error. (*Denham*, at p. 564.)

"As to pure questions of law, such as procedural matters or interpretations of rules or statutes, we exercise our independent judgment. [Citations.]" (*Gordon's Cabinet Shop v. State Comp. Ins. Fund* (1999) 74 Cal.App.4th 33, 38.) The application of a statute to undisputed facts also presents a question of law subject to de novo review. (*International Engine Parts, Inc. v. Feddersen & Co.* (1995) 9 Cal.4th 606, 611.) To the extent our review requires consideration of the superior court's determination of disputed factual issues, we affirm these findings if substantial evidence supports them. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.)

B. *The Alleged Procedural Error*

Defendants first contend plaintiffs' motions should have been denied on procedural grounds because they were not properly renoticed. Specifically, defendants maintain that plaintiffs did not comply with the local San Francisco Superior Court rules and the California Rules of Court because they did not re-serve a copy of their memoranda of points and authorities and supporting evidence with the renotices of motion. The superior court overruled defendants' objection, stating: "You had the papers; you dealt with the papers; you've been able to oppose the papers on the merits." We find no error.

---

enforcement of a judgment is appealable]; *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651–652 [postjudgment order is appealable if it raises different issues than an appeal from the judgment and it affects the judgment or relates to it by enforcing it or staying its execution].)

We find nothing in the court rules on which defendants rely that requires a party to once again serve and file the moving and supporting papers when a motion is renoticed for hearing. The local rules provide that a hearing on a motion that is taken or ordered off calendar may be rescheduled only by written notice served in compliance with Code of Civil Procedure section 1005. (Super. Ct. San Francisco County, Local Rules, rule 8.2(B)(4).) But section 1005 requires only that moving and supporting papers be served and filed at least 16 court days before the hearing. Plaintiffs clearly indicated in each renotice of motion that they were relying on the briefing and evidence already on file with the court for the previously scheduled hearing and properly served those materials nearly two months earlier. Defendants' reliance on California Rules of Court, rules 3.1112(a) and 3.1113 fails for the same reason. (See *id.*, rules 3.1112(a) [supporting papers must include a notice of hearing, the motion, and a supporting memorandum]; 3.1113(a) [moving party shall "serve and file a supporting memorandum"].)[6] Plaintiffs filed each of these, albeit at different times.

In any event, the superior court acted within its discretion in not requiring the literal compliance that defendants insist is required. "[I]t is always in the power of the court to suspend its own rules, or to except a particular case from their operation, whenever the purposes of justice require. [Citations.]" (*Adams v. Sharp* (1964) 61 Cal.2d 775, 777–778; *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1364 ["[c]ognizant of the strong policy favoring the disposition of cases on their merits . . . , judges usually consider whether to exercise their discretion in applying local court rules . . ." (italics omitted)].) Unless otherwise shown, we presume "the court disregarded its rules for sufficient cause and to subserve the ends of justice . . . . [Citation.]" (*Johnson v. Sun Realty Co.* (1934) 138 Cal.App. 296, 299 (*Johnson*).)

Defendants have not shown any abuse of the court's discretion. The motions were fully briefed on both sides and were simply being reset for hearing on a different calendar

[6] California Rules of Court, rule 3.1113(j) requires supporting memoranda and declarations to be attached to the notice of motion, but only "[t]o the extent practicable." Here, these materials comprise almost 900 pages.

and on a later date. The renotices clearly indicated that plaintiffs were relying on the papers previously filed with the court and previously served upon defendants. The superior court acted reasonably in declining to insist on compliance with filing and service requirements applicable to original motions.[7] We note that none of the court rules on which defendants rely provides a sanction for noncompliance, and defendants did not request one under Code of Civil Procedure, section 575.2. (See *Johnson*, *supra*, 138 Cal.App. at p. 299 ["[n]oncompliance with [court rules], to which no penalty was attached, did not prevent the court from hearing and disposing of the demurrer"].)

The authority on which defendants rely does not call for a different result. *County of Santa Clara v. Perry* (1998) 18 Cal.4th 435 is inapposite. In that case our Supreme Court, considering child support orders in paternity proceedings, held that the Family Code provides for retroactivity of such orders only to the date of a noticed motion or order to show cause seeking support, and not to the filing date of the paternity complaint. (*Id.* at p. 438.) The court held that an opponent's actual knowledge of the proceeding, by virtue of the complaint, did not excuse a statutory notice requirement. (*Id.* at p. 442.) We do not excuse notice requirements in this case, but conclude, rather, that plaintiffs did not violate them. *City of Tulare v. Superior Court* (2008) 169 Cal.App.4th 373, 382–383 (*Tulare*) is also distinguishable. The court there found that a separately noticed *Pitchess*[8] motion was required to obtain additional discovery because, unlike the motions at issue here, the motion in *Tulare* sought "additional, previously undisclosed information based on new facts" and "was thus more than a mere continuation of the original motion." (*Tulare*, at pp. 382–383.)[9]

---

[7] Indeed, under defendants' analysis, materials supporting the oppositions and replies—over 770 pages—would also have to be refiled with the court for no readily apparent purpose.

[8] *Pitchess v. Superior Co*urt (1974) 11 Cal.3d 531.

[9] Defendants contend plaintiffs' failure to re-serve and refile their supporting papers denied them due process. As they provide no authority or analysis in support of this assertion, they have waived it. (*Badie v. Bank of America* (1998) 67 Cal.App.4th

Defendants' contentions would fail in any case, as they show no prejudice resulting from the superior court's decision not to deny the motions on procedural grounds.[10] Defendants argue, without any support in the record, that it was "unclear whether [plaintiffs] in fact lodged all of . . . the opposition papers and . . . evidence . . . ." They could have allayed any concerns in this regard by confirming at the hearing that the relevant materials were before the court, or by simply requesting a continuance of the hearing if they felt it was necessary to do so. Moreover, the docket clearly identifies each document filed in connection with the motions, and we presume the trial court considered all relevant materials on file. (See *Ross v. Superior Court* (1977) 19 Cal.3d 899, 913–914, applying Evid. Code, § 664 [presumption that " 'official duty has been regularly performed' "].) Defendants have not shown otherwise.

C. *The Alleged Substantive Errors*

1. *The Charging Orders*

The superior court issued a charging order against the Partnership under Code of Civil Procedure section 708.310 (hereafter, § 708.310), and Corporations Code section 16504, subdivision (a) (hereafter, § 16504(a)). Section 708.310 provides: "If a money judgment is rendered against a partner or member but not against the partnership or limited liability company, the judgment debtor's interest in the partnership or limited liability company may be applied toward the satisfaction of the judgment by an order charging the judgment debtor's interest pursuant to [Corporations Code] Section 15673, 16504, or 17302 . . . ." Section 16504(a) provides: "On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may

---

779, 784–785 (*Badie*).) We disagree, in any case, as we conclude the motion renotices sufficiently identified the facts and law on which plaintiffs intended to rely.

[10] Notwithstanding defendants' indignation that plaintiffs "have the *chutzpah* to contend that [they] have failed to establish any prejudicial error," "[a]n appellant bears the burden to show not only that the trial court erred, but also that the error was prejudicial . . . ." (*Hoffman Street, LLC v. City of West Hollywood* (2009) 179 Cal.App.4th 754, 772; Cal. Const., art. VI, § 13.)

appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or that the circumstances of the case may require." (See Corp. Code, § 16504, subd. (b) [charging order is "a lien on the judgment debtor's transferable interest in the partnership"]; *Taylor v. S & M Lamp Co.* (1961) 190 Cal.App.2d 700, 711 (*Taylor*) ["the purpose of the lien of a charging order is to permit the judgment creditor to realize on his judgment . . . by appropriate supplementary proceedings or orders against [the debtor] partner's interest in the partnership"].)

Relying on principles of successor liability, the superior court applied its order to the Corporation as well, finding: "[T]he . . . [C]orporation is a continuation of the . . . [P]artnership." A corporation purchasing the principal assets of another corporation generally does not assume the seller's liabilities but will be held liable for these obligations if it is deemed " 'a mere continuation of the seller.' " (*Maloney v. American Pharmaceutical Co.* (1988) 207 Cal.App.3d 282, 287 (*Maloney*), citing *Ray v. Alad Corp.* (1977) 19 Cal.3d 22, 28 (*Ray*).) The extension of liability to the purchasing corporation in these circumstances is based on "the principle that '[i]f a corporation organizes another corporation with practically the same shareholders and directors, transfers all the assets but does not pay all the first corporation's debts, and continues to carry on the same business, the separate entities may be disregarded and the new corporation held liable for the obligations of the old. [Citations.]' [Citation.]" (*McClellan v. Northridge Park Townhome Owners Assn.* (2001) 89 Cal.App.4th 746, 753 (*McClellan*); *Blank v. Olcovich Shoe Corp.* (1937) 20 Cal.App.2d 456, 461 ["[c]orporations cannot escape liability by a mere change of name or a shift of assets when and where it is shown that the new corporation is, in reality, but a continuation of the old. Especially . . . when actual fraud or the rights of creditors are involved . . ."]; see 9 Witkin, Summary of Cal. Law (10th ed.

2005) Corporations, § 16, p. 795 ["[t]he same approach has been used in cases where individuals incorporate, or where a corporation changes to a partnership"].)[11]

2. *The Superior Court Did Not Charge Fotouhi's Interest in the Corporation.*

Defendants challenge the superior court's order only to the extent it applies to the Corporation.[12] They contend the superior court erred in "charg[ing] the 'interest' of a corporate employee" because "charging orders are permissible only in the context of partnerships or limited liability companies." (Italics omitted.) Defendants misconstrue the superior court's order. The superior court's written order states only: "The motions for charging order against the law firm partnership and the law firm corporation are both granted," but these motions sought an "[o]rder charging the interest of Fotouhi in the [Partnership]," an order determining that the Corporation is a continuation of the Partnership, and an order determining that the charging order sought against the Partnership is applicable to the Corporation. Indeed, in announcing its ruling at the initial hearing on the motions, the superior court indicated: "Charging order will issue against Fotouhi's interest in the partnership and its continuation[,] the corporation . . . ." Thus, the superior court charged Fotouhi's partnership interest against the Corporation it deemed a "mere continuation" of that Partnership, effectively disregarding the distinction

---

[11] The superior court found "more likely than not that the shift to a corporate structure was intended to avoid the liabilities [Fotouhi] would otherwise have had as a partner in a partnership." We observe that a purchasing corporation also is liable for its predecessor's obligations when " 'the transfer of assets to the purchaser is for the fraudulent purpose of escaping liability for the seller's debts.' " (*Maloney, supra*, 207 Cal.App.3d at p. 287.)

[12] Defendants assert error regarding the charging order against the Partnership for the first time in their reply brief. They contend section 16504(a) only authorizes an order charging a judgment debtor's transferable interests and that Fotouhi's partnership interest is not transferable because of ethical restrictions on the sale of an interest in a law firm partnership. Defendants have waived this contention by failing to assert it in their opening brief, and we do not consider it. (*Moore v. Shaw* (2004) 116 Cal.App.4th 182, 200, fn. 10; *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 500.) We note, however, that Corporations Code section 16502 provides: "The only transferable interest of a partner in the partnership is [his] share of the profits and losses of the partnership and [his] right to receive distributions. . . ."

between the two. The record therefore demonstrates that, although the superior court applied the charging order to the Corporation, the interest charged was Fotouhi's interest in the Partnership.

We reject defendants' contentions that the superior court had no authority to issue such an order. Nothing in section 708.310 or section 16504(a) limits the entities against whom a charging order may be applied; these provisions relate only to the *interest* that may be charged. Moreover, section 16504(a) authorizes a court to issue a charging order and "make all other orders . . . that the circumstances of the case may require." Here, the superior court found that an order against the Corporation was required to enforce the judgment: "I have been presented with evidence that Mr. Fotouhi has not only declared his intent but taken substantial steps to avoid paying a debt that the courts have determined he . . . is owing. . . . [¶] . . . [¶] . . . Frankly, I think that [the] best reading [of defendants' arguments]. . . is that they are part of a continuing scheme to carry out [Fotouhi's] vow not to ever pay a dime." The superior court found that "the order with respect to the [P]artnership, in order to be properly enforced, needs also to run against the [C]orporation"; and that "allowing the money to go to [Fotouhi] and not be paid against the judgment, or to go to his partners and then through a back door to him would be a miscarriage of justice." The superior court concluded: "[Defendants] have way overplayed their hands. They've created the situation now where something's going to be done, to make sure that Mr. Fotouhi doesn't get out from under this judgment without meeting his legal obligations, as best this court can do."

Substantial evidence in the record supports these findings. The record reflects that Fotouhi not only declared his intent not to pay the judgment, but that he filed for bankruptcy shortly after the arbitration award in an unsuccessful attempt to discharge the debt and maneuvered Partnership funds to conceal his assets, and that his partners assisted him in his efforts to avoid paying the judgment.[13]

[13] The bankrupcty court noted evidence that "in preparation for his bankruptcy filing, [Fotouhi] devised an elaborate scheme to syphon off [the Partnership] money for the acquisition of . . . property and to free up the equity in his house," specifically, having

Code of Civil Procedure section 187 (hereafter, § 187) provides further authority for the superior court's decision to apply the charging order to the Corporation. This provision affords trial courts "all the means necessary to carry [their jurisdiction] into effect," and courts may adopt "any suitable process or mode of proceeding . . . which may appear most conformable to the spirit of this code" if the course of proceeding is not specifically pointed out. Section 187 "relates primarily to procedural matters, typically to control the court's own process, proceedings and orders, but also may relate to situations in which the rights and powers of the parties have been established by substantive law or court order but workable means by which those rights may be enforced or powers implemented have not been granted by statute. [Citations.]" (*Topa Ins. Co. v. Fireman's Fund Ins. Companies* (1995) 39 Cal.App.4th 1331, 1344 (*Topa*), italics omitted [discussing concept of inherent judicial powers].) Given the diligence of Fotouhi and his colleagues in protecting his assets and his expressed intent to prevent plaintiffs from collecting "a dime," a charging order against the Partnership was unlikely to be effective in satisfying the judgment. Section 187 allowed the superior court to disregard the illusory distinction between the Corporation and the Partnership to give effect to its charging order. (See *McClellan, supra,* 89 Cal.App.4th at p. 754 [authority under § 187 to "disregard[] the corporate entity on any of several theories in order to add an additional judgment debtor"]; *Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, 509 ["[s]imply put, section 187 recognizes 'the inherent authority of a court to make its records speak the truth"].)

Defendants argue that the superior court abused its discretion in relying on its powers under section 187. (See *Platypus Wear, Inc. v. Goldberg* (2008) 166 Cal.App.4th 772, 782 [a trial court abuses its discretion when it acts on "a mistaken view about the scope of its discretion"]; *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 393 [" '[a]ction that transgresses the confines of the

---

his partners make large draws, which were used for the down payment and "kicked back to him."

applicable principles of law is outside the scope of discretion . . .' "].) They maintain that section 187 does not apply in this case because extending the charging order to the Corporation was not necessary to effect enforcement of the judgment since an appropriate statutory process—wage garnishment—is otherwise available.

We are not persuaded by defendants' premise that the superior court could properly rely on its powers under section 187 only if no other means for enforcing the judgment were available. They cite no authority supporting this construction of the proviso making section 187 applicable: "if the course of proceeding be not specifically pointed out by this Code or the statute . . . ." The authority on which they rely suggests that the pivotal distinction in evaluating the exercise of a trial court's power under section 187 is whether the court adopted a "suitable process or mode of proceeding" in finding a "workable means" to enforce an established substantive right or, rather, whether it did so in effectively legislating such a right in the first instance. (See *Topa, supra,* 39 Cal.App.4th at pp. 1344–1345 [court's inherent powers are "narrowly, and appropriately, confined to procedural innovations arguably essential to effective exercise of otherwise-granted jurisdiction or vindication of otherwise-established substantive rights or powers"].)

In this case, section 16504(a) afforded plaintiffs a right to an order charging Fotouhi's partnership interest. The superior court properly relied on section 187 to provide a practical means for enforcing that right. To the extent the proviso language in section 187 limits the court's authority in this regard, the question is whether the statutes provide a mechanism for enforcing plaintiff's right in these circumstances, not whether they provide another means of enforcing the judgment.[14]

[14] Defendants contend the court's reliance on section 187 prevented Fotouhi from claiming exemptions available to a garnishee. They have not shown the court's order precluded such exemption claims, and to the extent it does, the basis for this complaint is that the court precluded defendants from using an illusory partnership/corporation distinction to shield Fotouhi's assets from the judgment.

3. *Defendants Have Not Shown Error in the Imposition of Successor Liability*.

Defendants contend the superior court erred in applying the charging order to the Corporation on a theory of successor liability, for two reasons. First, they maintain the "rationale underpinning [for] . . . successor liability plainly contemplates that the predecessor entity actually owed a judgment in the first place," and the judgment debtor in this case was Fotouhi, not the Partnership. But the superior court did not hold the Corporation liable for the judgment against Fotouhi but, rather, for an obligation of the *Partnership*. We observe that service of a notice of motion for a charging order on the judgment debtor and the partnership creates a lien on the judgment debtor's interest in the partnership, which continues if a charging order issues. (Code Civ. Proc., § 708.320, subds. (a), (b); see Corp. Code, § 16504, subd. (b) ["charging order constitutes a lien on the judgment debtor's transferable interest in the partnership"].) As defendants have not provided any authority or analysis discussing the Partnership's liability for such a lien, they have failed to demonstrate error in any case. (*Badie, supra,* 67 Cal.App.4th at pp. 784–785 [waiver of arguments not supported by reasoned analysis & authority].)

Second, defendants contend a showing of inadequate consideration is required to establish a successor corporation is a "mere continuation" and that substantial evidence does not support such a finding here. They rely on decisions holding that successor liability on a "mere continuation" theory requires a finding that the purchasing entity paid inadequate consideration for the seller's assets. (See, e.g., *Maloney, supra*, 207 Cal.App.3d at pp. 287–288 [" '[b]efore one corporation can be said to be a mere continuation or reincarnation of another it is required that there be insufficient consideration running from the new company to the old' "]; *Enos v. Picacho Gold Min. Co.* (1943) 56 Cal.App.2d 765, 779 ["essential foundation of the [mere continuation] rule . . . is the lack of consideration running from the new company to the old"].) Plaintiffs rely on *Ray, supra*, 19 Cal.3d 22, in contending such a showing was not required here because "[t]he owners of the [Partnership] are the same persons as the owners of the [Corporation]." (See *id.* at p. 29 [implying that successor liability as a "mere continuation" requires "a showing of one or both of the following factual elements:

(1) no adequate consideration was given for the predecessor corporation's assets and made available for meeting the claims of its unsecured creditors; (2) one or more persons were officers, directors, or stockholders of both corporations"].) Several years after *Ray*, however, the court rejected a plaintiff's attempt to base "mere continuation" liability on common management or ownership alone: "[E]ven when the same persons are officers or directors of the two corporations, liability is not imposed on the acquiring corporation when recourse to the debtor corporation is available and the two corporations have separate identities." (*Beatrice Co. v. State Bd. of Equalization* (1993) 6 Cal.4th 767, 778.)

We need not decide, however, whether inadequate consideration is an essential component of a "mere continuation" theory, as we conclude that substantial evidence supports a finding of inadequate consideration here in any case.[15] The evidence shows that the Corporation literally stepped into the Partnership's shoes. It took over representation of its clients, operated out of the same office, and simply changed the operating name on the Partnership's signs, letterhead, and website to reflect that it was now a professional corporation instead of a limited liability partnership. The bill of sale shows only that the Partnership sold to the Corporation its "interest" in "certain real property" and "personal property owned . . . and used in connection with" that real property—it does not reflect the sale of the Partnership's good will, or its accounts receivable and work in progress.[16] Nor does it indicate the purchase price actually paid. The only evidence in this regard is Fotouhi's testimony that the Corporation paid $36,000 for the Partnership's computers and equipment. The evidence shows that, at the time the

[15] No finding of inadequate consideration appears in the superior court's written order but we imply such a finding to the extent it was required. (*Blanc v. Paymaster Mining Co.* (1892) 95 Cal. 524, 530; see *Denham, supra*, 2 Cal.3d at p. 564.) At the initial hearing, the superior court expressly rejected defendants' contention that there was no evidentiary basis for a finding of inadequate consideration.

[16] The bill of sale refers to Schedules I and II, attachments identifying the real and personal property purchased. Defendants do not include these schedules with the bill of sale attached as an exhibit to Fotouhi's declaration, and provide only the signature pages of an "Asset Purchase Agreement," and not the agreement itself.

Corporation was formed, the Partnership had been operating for almost five years. There was evidence that the value of Fotouhi's partnership interest alone was over $546,000 as of August 29, 2005, and that the Partnership was worth more than $1.4 million at that time, over three years before the Corporation was formed in December 2008. Evidence of Fotouhi's draws from the Partnership during the year before the Corporation issued stock in December 2008 (over $240,000) suggests that the Partnership at least retained its value over the years and permit an inference, in any case, that the Corporation did not pay adequate consideration for the Partnership's assets. The superior court was free to reject Fotouhi's claim in his declaration that the Partnership's accounts receivable and work in progress were not transferred to the Corporation.[17]

4. *The Court Did Not Use Corporate Assets to Satisfy a Shareholder's Debt.*

Defendants contend: "The court's order[,] which requires the [C]orporation to pay 15% of its collected fees over to [plaintiffs] until the judgment against Mr. Fotouhi, individually, is satisfied amounts to a levy of execution against corporate assets, violates the due process rights of both the [P]artnership and the [C]orporation, and is therefore improper." (Bold & italics omitted.) Defendants contend that corporate assets are not available to satisfy a judgment against a shareholder and that "a 'charging order' which requires the firm to turn over a percentage of *its* profits clearly implicates the rights of non-judgment debtors, and in effect holds them responsible for paying the judgment [against Fotouhi]." (Bold omitted.) We do not find these contentions persuasive.

First, the superior court's order is not a "levy" upon corporate assets to satisfy the judgment against Fotouhi.[18] The superior court properly charged Fotouhi's partnership

[17] Fotouhi does not explain how the Partnership work in progress was completed, or the disposition of its accounts receivable, except to claim that they were not "comingled."

[18] Defendants misapply authority addressing the procedure for proceeding against a partner's interest in a partnership, which holds that a creditor may not use a levy of execution and must move for a charging order. (See *Sherwood v. Jackson* (1932) 121 Cal.App. 354, 356; *Baum v. Baum, supra,* 51 Cal.2d at p. 613; *Taylor, supra,*

interest against the Partnership and applied the order to the Corporation, deeming it legally responsible for the Partnership's liabilities. Thus, the court ordered the Corporation to satisfy the Partnership's obligation, not Fotouhi's. Moreover, the payments the court ordered the Corporation to make draw exclusively upon Fotouhi's share of Partnership profits and surplus. The superior court disregarded the corporate form and the illusory distinction between the Partnership and the Corporation, and the amounts due under its order represent his interest in the Partnership. (See *Hellman v. Anderson* (1991) 233 Cal.App.3d 840, 846 [" 'partner's interest in the partnership is his share of the profits and surplus . . .' "].)[19]

Defendants contend that the superior court's order amounts to improper "outside reverse piercing" of the corporate veil, relying on *Postal Instant Press, Inc. v. Kaswa Corp.* (2008) 162 Cal.App.4th 1510 (*Postal Instant Press*). We reject this contention. In *Postal Instant Press*, the court held that, although the corporate veil may be pierced to hold a shareholder liable for the debts or conduct of an alter ego corporation, a third party generally cannot pierce it to reach corporate assets to satisfy claims against a shareholder. (*Id.* at pp. 1518–1525.) As discussed above, the superior court in this case did not disregard the corporate form to satisfy claims against a shareholder but, rather, to hold it liable for the obligations of its predecessor, the Partnership.

Second, the court's order does not violate due process. Defendants argue that the superior court effectively added the Partnership and Corporation to the judgment against Fotouhi even though they were not parties to that proceeding and are not his alter egos. We disagree. The superior court's order reaches only Fotouhi's share in the profits and surplus of the Partnership, not his partners' shares, so it does not hold the Partnership

---

190 Cal.App.2d at p. 710 [" '[c]harging orders on partnership interests have replaced levies of execution as the remedy for reaching such interests' "].)

[19] Fotouhi maintains he is a 10 percent shareholder in the Corporation, but the superior court could reasonably have rejected this claim in accordance with evidence that his share in the Partnership was 38.59 percent and its finding that the Corporation was formed to avoid his liabilities.

liable for the judgment against him. Furthermore, as discussed above, the superior court's order holds the Corporation liable for the Partnership's liabilities, not Fotouhi's.

IV. DISPOSITION

The superior court's order is affirmed with costs to plaintiffs.

_____
Bruiniers, J.

We concur:

_____
Jones, P. J.

_____
Needham, J.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

PHILLIPS, SPALLAS & ANGSTADT, LLP et al., Plaintiffs and Respondents, v. SHAHAB E. FOTOUHI et al., Defendants and Appellants.	A129047 (City & County of San Francisco Super. Ct. No. CPF-04-504215)

BY THE COURT:

The opinion in the above-entitled matter filed on June 28, 2011, was not certified for publication in the Official Reports. For good cause, we conclude that the opinion should be partially published in the Official Reports, and it is so ordered. Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, the opinion is certified for publication with the exception of Parts III.B. and III.C.3.

Phillips v. Fotouhi (A129047)

Superior Court of the City and County of San Francisco, No. CPF-04-504215, Peter J. Busch, Judge.

Ellis, LaVoie, Poirier, Steinheimer & McGee, Mark E. Ellis, Daniel D. McGee and Brandon L. Reeves for Defendants and Appellants.

Law Offices of Michael A. Papuc and Michael A. Papuc for Plaintiffs and Respondents.