

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREGORY HALL, et al.,
Plaintiffs,
v.

No. C 08-03447 CW
ORDER DENYING
DEFENDANTS ISMAEL
AVILA AND MOISES
AVILA'S MOTION
FOR SUMMARY
JUDGMENT
(Docket No. 222)

APARTMENT INVESTMENT AND MANAGEMENT
COMPANY; AIMCO CAPITAL, INC.; FORTNEY
& WEYGANDT, INC.; IMR CONTRACTOR
CORPORATION; BAY BUILDING SERVICES;
BAY AREA CONSTRUCTION FRAMERS, INC.;
ALL HALLOWS PRESERVATION, LP; BAYVIEW
PRESERVATION, LP; LA SALLE
PRESERVATION, LP; SHOREVIEW
PRESERVATION, LP; ISMAEL AVILA; and
MOISES AVILA,
Defendants.

Plaintiffs Gregory Hall, Fausto Aguilar, Gonzalo Aguilar,
Charles Chilton, Douglas Givens, Quincy Mouton, Richard Rankin,
Hector Rodriguez, Arnulfo Carranza-Rivas and Terry Mackey seek to
hold Defendants Ismael and Moises Avila liable for Defendant IMR
Contractor Corporation's alleged misconduct on an alter ego
theory.¹ The Avilas, who are the remaining Defendants against whom
Plaintiffs have active claims, move for summary judgment.
Plaintiffs oppose the motion. The motion was taken under
submission on the papers.

To invoke California's alter ego doctrine, a plaintiff must
demonstrate two elements: "(1) such a unity of interest and
ownership between the corporation and its equitable owner that no

¹ Plaintiffs' claims against IMR are currently stayed pending
IMR's bankruptcy.

1 separation actually exists, and (2) an inequitable result if the
2 acts in question are treated as those of the corporation alone.”
3 Leek v. Cooper, 194 Cal. App. 4th 399, 417 (2011) (citing Sonora
4 Diamond Corp. v. Superior Court, 83 Cal. App. 4th 523, 538 (2000)).

5 Courts may consider several factors, including

6 the unauthorized diversion of corporate funds or assets
7 to other than corporate uses; . . . the treatment by an
8 individual of the assets of the corporation as his
9 own; . . . the failure to maintain minutes or adequate
10 corporate records; . . . sole ownership of all of the
11 stock in a corporation by one individual or the members
12 of a family; . . . the diversion of assets from a
13 corporation by or to a stockholder or other person or
14 entity, to the detriment of creditors, or the
15 manipulation of assets and liabilities between entities
16 so as to concentrate the assets in one and the
17 liabilities in another.

18 Leek, 194 Cal. App. 4th at 417 (citations omitted). These factors
19 are not exhaustive, nor are any of them dispositive. Id. at 418.

20 Whether the alter ego doctrine applies is a question of fact. Id.

21 Plaintiffs proffer sufficient evidence to meet the first prong
22 of the alter ego test. The record shows that the Avilas owned and
23 directed IMR; IMR made payments for properties it did not own; and
24 the Avilas transferred IMR vehicles to Stronger Building Services,
25 an entity owned by Moises Avila’s son and the Avilas’ sister.

26 Further, there are inconsistencies as to whether corporate
27 formalities were followed. Based on this evidence, a jury could
28 find a unity of interest between IMR and the Avilas.

Plaintiffs also present sufficient evidence to meet the second
prong of the alter ego test. IMR declared bankruptcy approximately
three months before trial. This supports Plaintiffs’ contention
that the Avilas purposely “positioned IMR for bankruptcy in order

1 to discharge any liability for their misdeeds." Opp'n at 20:25-26.
2 Thus, a jury could conclude that an inequitable result would occur
3 if IMR's corporate form is not disregarded.

4 Accordingly, the Avilas' motion for summary judgment is
5 DENIED. (Docket No. 222.) Although the existing record is
6 sufficient to create a genuine dispute of material fact, Plaintiffs
7 are granted ninety days to conduct discovery regarding their alter
8 ego allegations.

9 The Court is inclined to bifurcate the trial in this action,
10 with the first trial addressing only Plaintiffs' alter ego
11 allegations.

12 The parties are referred to Magistrate Judge Donna Ryu for a
13 settlement conference. A further case management conference will
14 be held on October 11, 2011 at 2:00 p.m.

15 IT IS SO ORDERED.

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17 Dated: August 4, 2011



18 CLAUDIA WILKEN
19 United States District Judge
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