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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

FILED
LOS ANGELES SUPERIOR COURT
SEP. 14 2004
JOHN A. CLARKE, CLERK
[Signature]
BY E. SABALBURD, DEPUTY

JOHN DOE I, et al.,
Plaintiffs,

vs.

UNOCAL CORP. et al.,
Defendants

JOHN ROE III, et al.,
Plaintiffs,

vs.

UNOCAL CORPORATION, et al.,
Defendants

CASE NOS. BC 237 980 AND
BC 237 679

RULING ON UNOCAL DEFENDANTS'
MOTION FOR JUDGMENT

Hearing date: 8/9/04

Ruling date: 9/14/04

After considering the moving, opposing, and reply papers and the arguments of
counsel at the hearing, the court now rules as follows:

Defendants' motion for judgment is DENIED.

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RULING ON UNOCAL DEFENDANTS'
MOTION FOR JUDGMENT

JOHN ROE III, et al.,
Plaintiffs,
vs.
UNOCAL CORPORATION, et al.,
Defendants

Hearing date: 8/9/04

Ruling date: 9/8/04

14

After considering the moving, opposing, and reply papers and the arguments of
counsel at the hearing, the court now rules as follows:

Defendants' motion for judgment is DENIED.

1 Defendants Unocal Corporation and Union Oil Company of California move for
2 judgment as to all of causes of action so as to preclude Phase II of the trial on the grounds
3 that the rulings in Phase I and recent case law bar plaintiffs claims.
4

5 **I. Phase I Ruling**
6

7 The scope of the Phase I trial was limited to whether defendants' subsidiaries' acts
8 "can be legally recognized as those of" defendants, i.e., "that there is such a unity of
9 interest and ownership that the individuality, or separateness, of" defendants and their
10 subsidiaries had ceased. (*Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210
11 Cal.App.2d 825, 837; see this court's rulings of November 17, 2003.) To determine
12 whether defendants' subsidiaries were their alter egos the court considered the evidence
13 presented at the Phase I trial in light of factors set forth in *Associated Vendors, Inc. v.*
14 *Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 838-840.

15 After evaluating the evidence the court found:

- 16 1) There was some commingling of funds among defendants and their subsidiaries
17 (Statement of Decision, p. 16);
- 18 2) the subsidiaries controlled their own assets (p. 17);
- 19 3) corporate formalities were observed (p. 19);
- 20 4) four out of five subsidiaries were wholly owned by their parents (*ibid.*);
- 21 5) the parents did not inappropriately control the subsidiaries' daily operations (pp.
22 20-21);
- 23 6) the corporations shared officers, directors, employees and offices (p. 22);
- 24 7) the subsidiaries were adequately capitalized (p. 25);
- 25 8) none of the subsidiaries was a shell (*ibid.*);
- 26 9) ownership was not concealed (*ibid.*);
- 27 10) defendants maintained appropriate arm's-length relationships with the
28 subsidiaries (p. 26);

1 11) there was no wrongful diversion of assets (*ibid.*); and

2 12) the corporations were not created to transfer existing liability (*ibid.*).

3 After further finding plaintiffs had not proven that disregarding the corporate
4 entities at issue would sanction a fraud or promote injustice, the court ruled that "Neither
5 UIC, UGVL, UIPC, UMOG nor MGTC is an alter-ego company. Plaintiffs have not met
6 their burden as to any of the companies on the two-prong test, and, on balance, have
7 made an inadequate showing on the *Associated Vendors* factors." (Statement of
8 Decision, p. 31.)

9 The issue decided was that plaintiffs failed to prove the separate personalities of
10 the parents and subsidiaries "do not in reality exist." (*Sonora Diamond Corp. v. Superior*
11 *Court* (2000) 83 Cal. App. 4th 523, 538.) That issue will not be relitigated in Phase II.

12 No other issues were decided.

14 II. Agency

15
16 Defendants argue this ruling should dispose of the entire case because alter ego is
17 the only theory under which the owners of a corporation can be held liable for the
18 corporation's debts. Specifically, they argue the concept of corporate agency is
19 indistinguishable from alter ego. They are incorrect.

20 Corporate agency and alter ego liability are distinct concepts, and a corporation
21 may be the agent of another corporation, even if the purported agent is wholly owned by
22 the purported principal. (See Restatement (Second) of Agency § 14M, comment (a)
23 (1958).)

24 A corporation is not the agent of one person . . . who can direct its conduct
25 because holding a majority of its voting shares of stock. Likewise, a corporation
26 does not become the agent of another corporation merely because the other has
27 stock control. . . . However a corporation may become an agent of an individual
28 or of another corporation, as it does when it makes a contract on the other's
account. Thus a subsidiary may become an agent for the corporation which
controls it, or the corporation may become the agent of the subsidiary.

1 (Ibid.)

2 "This does not mean that every subsidiary is the agent of its parent." (Rest. 2d
 3 Agency § 14M, Reporters Notes.) However, "there may be circumstances under which it
 4 is appropriate to withdraw the limited liability privilege *notwithstanding compliance with*
 5 *the formalities of separate incorporation.*" (Ibid; emphasis added.)

6 It is useful to distinguish situations in which liability is imposed on a parent
 7 because of the existence of the agency relation, in our common-law understanding
 8 of that relation, from cases in which the corporate veil of the subsidiary is pierced
 for other reasons of policy.

9 (Ibid; see also *Mobil Oil Co. v. Linear Films, Inc.* (D. Del. 1989) 718 F.Supp. 260, 271-
 10 272.)

11 Though the court has found no California case in which an owner of a corporation
 12 was held liable for the corporation's wrongdoing even when corporate formalities were
 13 observed, neither has it found a case holding a principal cannot be held liable for the
 14 wrongdoing of its agent, committed within the scope of agency, merely because the agent
 15 is a distinct corporation.

16 *ECC Construction, Inc. v. Ganson* (2000) 82 Cal.App.4th 572, cited by defendants,
 17 is not to the contrary. There, a contractor sued a homeowners' association and its
 18 members to collect a debt, not alleging an alter ego theory but arguing, at least on appeal,
 19 that "the homeowners may be personally liable where the association acts as their agent
 20 or for their benefit." (*Id.* at pp. 574-576, emphasis added.) In affirming summary
 21 judgment, the court disagreed with the plaintiff, stating that "By definition, the
 22 association acts for the benefit of the owners. (Citation omitted.) The association may
 23 also act as their agent. Thus, under ECC Construction's scenario, the owners would
 24 always be liable for the association's debts and liabilities, and the immunity granted the
 25 owners by the Corporations Code would be rendered meaningless—a result we are not
 26 willing to accept." (*Id.* at p. 576.) The court refused to find the owners liable for the
 27 association's debts, even though the debt was incurred to benefit the owners.
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ECC Construction did not distinguish between the legal implications of a corporation acting for its owners' benefit as opposed to acting as their agent. Neither did it find the corporation *was* the owners' agent.

"An agent is one who represents another, called the principal, in dealings with third persons." (Civ. Code § 2295.) Agency is created by precedent authorization or subsequent ratification. (Civ. Code § 2307; *Rakestraw v. Rodrigues* (1977) 8 Cal.3d 67, 73.) However, this is only true where the person whose act is to be adopted purported to act as agent for the ratifying party. (See *Emery v. Visa Int. Service Ass'n* (2002) 95 Cal.App.4th 952, 961 [company cannot ratify merchants' solicitations where merchants acted for their own benefit rather than for the benefit of the company].) "Any person having capacity to contract may . . . be an agent." (Civ. Code § 2296.) A corporation conducts business as a natural person and enjoys many of the rights and powers a natural person enjoys, including the power to contract. (*Id.* at p. 576.) It is distinct from its owner. (*Erkenbrecher v. Grant* (1921) 187 Cal. 7, 9.) That a corporation's purpose generally is to benefit its owner does not make it the owner's agent. (See Rest. 2d Agency § 14M, com. (a) [corporation is not automatically owner's agent].) Neither does a corporation become its owner's agent merely because its actions *directly* benefit its owner.

Though it is unclear, the plaintiff in *ECC Construction* apparently argued, incorrectly, that the association's action for the owners' direct benefit necessarily made it the owners' agent. (*Id.* at p. 576.) There was no discussion of agency principles. It was in that context, then, that the court held an owner qua owner is not liable for its corporation's debts. (*Id.* at p. 576) To read *ECC Construction* otherwise would be to change Civil Code section 2296 to read: "Any person having capacity to contract, *except a corporation*, may . . . be an agent." As noted in the Restatement, *supra*, such a rule would not be a correct statement of the law, is not necessitated by the facts in *ECC Construction*, and, this court concludes, was not intended there.

1 Neither are defendants' other cases of any more assistance to them, as each merely
2 restates the alter ego doctrine. (*Erkenbrecher, supra*, at pp. 9-11; *McLoughlin v. L.*
3 *Bloom Sons Co., Inc.* (1962) 206 Cal.App.2d 848, 851; *Las Palmas Associates v. Las*
4 *Palmas Center Associates* (1991) 235 Cal.App.3d 1220, 1249-1250.)

5 The court cannot find, then, that the owner of a corporation can be held liable for
6 the corporation's debts only when the corporate veil is pierced.

8 III. Phase I Effect

9
10 Defendants argue that even if plaintiffs' agency and other theories do not fail as a
11 matter of law they are precluded by the court's Phase I rulings.

12 A jury trial is guaranteed for legal issues. (*Golden West Baseball Co. v. City of*
13 *Anaheim* (1994) 25 Cal.App.4th 11, 50.) Where a court bifurcates proceedings to try
14 equitable issues before legal issue, resolution of equitable issues eliminates the need to
15 try legal causes of action only where "the court's determination of [equitable] issues is
16 also dispositive of the legal issues." (*Raedeke v. Gibraltar Sav. & Loan Assn.* (1974) 10
17 Cal.3d 665, 671; *American Motorists Ins. Co. v. Superior Court* (1998) 68 Cal.App.4th
18 864, 871; *Walton v. Walton* (1995) 31 Cal.App.4th 277, 293.) For example, if a court
19 were to try a Business and Professions Code section 17200 action premised on an
20 allegation of fraudulent practices and find no misrepresentation, such a finding would
21 preclude a subsequent trial on a cause of action for fraud based on the same
22 misrepresentation.

23 As noted above, however, the court has found no case holding that a finding of
24 separate corporate identity is inconsistent with or dispositive of a common law agency
25 theory. Therefore, such a finding in Phase I does not preclude a Phase II trial to examine
26 plaintiff's agency theory.

27 What defendants really argue is that the court's conclusions on *sub-issues*, i.e., the
28 *Associated Vendors* factors, preclude plaintiffs' other theories. Defendants seek to

1 cherrypick among the factors, specifically those pertaining to control and arm's-length
2 relationships, for favorable findings and establish those findings as incontrovertible. This
3 they cannot do.

4 Preliminarily, as noted above, the court and the parties understood Phase I was to
5 determine whether defendants' subsidiaries were their alter egos. The court and the
6 parties had no understanding that the *sub-issues* necessary to resolve this issue would
7 themselves be individually established not only for purposes of plaintiffs' alter ego theory
8 but also for the rest of their theories. (See RT, p. 885:7 [court limited evidence to alter
9 ego issues] and p. 1618:2 [defendants' counsel argued resolution of sub-issues in Phase I
10 would not be binding in Phase II].)

11 More importantly however, Phase I does not obviate Phase II because the sub-
12 issues evaluated in Phase I are not the same as those that must be determined in Phase II.

13 The main subissue examined in Phase I, which must also be examined in Phase II,
14 is the issue of control. To pierce the corporate veil the court must find, among other
15 things, that the parent so controlled the subsidiary as to deprive it of its independent
16 personality. The court found plaintiffs did not carry their burden of persuasion as to this
17 level of control.

18 To establish liability under an agency or enterprise theory, however, plaintiffs
19 must prove, among other things, only a lesser level of control: That defendants
20 controlled the undertaking at issue. (See *Rubin Bros. Footwear, Inc. v. Chemical Bank*
21 (S.D.N.Y 1990) 119 B.R. 416, 422; see generally Civ. Code § 2330 et seq.)

22 As persuasively argued by defendants' counsel at the trial (R.T. p. 1618:2), the
23 level of control necessary to eradicate a subsidiary's separate personality is not the same
24 as that necessary to direct its employment. Plaintiffs' failure to prove eradication of the
25 subsidiaries' separate personalities does not preclude them from proving defendants
26 controlled specific aspects of the Yadana project to an extent beyond that permissible by
27 a mere owner.

28 *That* subissue has not been litigated.

1 **IV. Effect of Summary Judgment**

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3 Finally, defendants' repeatedly argue this court's rulings on summary judgment
4 preclude plaintiffs' agency theories.

5 Not so. A summary adjudication or summary judgment ruling does not dispose of
6 individual issues, but only of causes of action. (Code Civ. Proc. § 437c(f).) In so
7 disposing of a cause of action the court does not determine the truth of any particular
8 allegation or defense but merely finds no evidence has been presented to support the
9 element or defense. (*Blaustein v. Burton* (1970) 9 Cal.App.3d 161.) Therefore, that
10 defendants' obtained summary judgment with respect to their alleged direct torts will not
11 transfer to Phase II to resolve issues regarding agency, control, enterprise, or joint
12 venture.

13
14 **V. Conclusion**

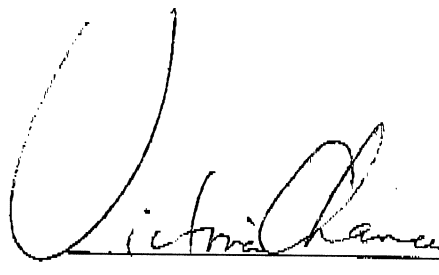
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16 Pursuant to the above reasoning, defendants' motion for judgment is denied.

17
18 In Sum:

19 **Defendants' motion for judgment is DENIED.**

20
21 **IT IS SO ORDERED.**

22
23 Dated: 9/14/04



Victoria Gerrard Chauey
Judge