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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

DEL ROSA VILLA et al.,

Petitioners,

v.

THE SUPERIOR COURT OF  
SAN BERNARDINO COUNTY,

Respondent;

HEATHER MacPHERSON et al.

Real Parties in Interest.

E054583

(Super.Ct.No. CIVDS10066489)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. John P. Vander Feer,  
Judge. Petition granted.

Lewis Brisbois Bisgaard & Smith, Jeffry A. Miller, Bryan R. Reid, Christopher M.  
Moffitt, and Brittany H. Bartold for Petitioners.

No appearance for Respondent.

Bisnar and Chase, Brian D. Chase, and J. Michael McClure for Real Parties in Interest.

## INTRODUCTION

In this matter, we have reviewed the petition, opposition, answer, and the replies thereto which we conclude adequately address the issues raised by the petition. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

## DISCUSSION

While business entities do not have the same privacy rights as individuals, they do enjoy some privacy that must be balanced against the relevancy of the discovery. (*Hecht, Solberg, Robinson, Goldberg & Bagley LLP v. Superior Court* (2006) 137 Cal.App.4th 579, 593-596.)

In this case, plaintiffs have sought discovery of financial information with respect to Del Rosa Villa (Del Rosa), which they allege to be the entity directly liable for the negligence and elder abuse leading to their decedent's death. They also seek financial information of individuals and entities that they contend share some connection with Del Rosa and which may ultimately bear some liability on an alter ego theory.

To succeed on an alter ego claim, plaintiffs must be able to show: (1) such a unity of interest and ownership between the corporation and its equitable owner that no separation actually exists; and (2) an inequitable result if the acts in question are treated as those of the corporation alone. Where sufficient facts are adduced to show a unity of

interest and ownership, in order to recover under a theory of alter ego liability the plaintiffs also must show an inequitable result if the individual shareholder and the corporation are not treated as one in the same. Difficulty in enforcing a judgment does not alone satisfy this element. There also must be some conduct amounting to bad faith that makes it inequitable for the individual shareholder to hide behind the corporate form. (*Leek v. Cooper* (2011) 194 Cal.App.4th 399.) Furthermore, a claim based upon an alter ego theory is not itself a claim for substantive relief. (*Id.* at p. 418.)

In *Rawnsley v. Superior Court* (1986) 183 Cal.App.3d 86, the court held that the limits for discovering financial information under Civil Code section 3295 (regarding claims for punitive damages) did not bar pretrial discovery of defendant's finances, which were related to the substantive claim involved in the case. (*Id.* at p. 92.)

In this case, the financial information does not go to the substantive cause of action but to plaintiffs' recovery against the other defendants on an alter ego theory. However, recovery against the other defendants is not an issue unless it appears that plaintiffs cannot recover a potential judgment against Del Rosa because it is undercapitalized and has no insurance. It maintains it has insurance, which will retroactively cover this cause of action. Before plaintiffs can pursue this alter ego theory against other entities, at a minimum, it would have to show that it cannot recover against Del Rosa. While allowing discovery of Del Rosa's financial condition might be appropriate, plaintiffs cannot go further unless they show that Del Rosa cannot pay *and* it is undercapitalized, or some other factor exists that warrants the application of alter ego liability.

Plaintiffs have argued that defendants have waived their right to privacy of financial information because some information is available publicly. Even if some financial information is publicly available, further discovery is not justified unless there is a showing of potential liability on their part.

At a minimum, the order requiring the defendants other than Del Rosa to disclose financial information is too broad. Comparison of their finances to Del Rosa's may be instructive, but that alone is not sufficient good cause to require disclosure where their potential liability in this case has thus far not been established. In the future, plaintiffs may seek discovery of their financial information if they can show a basis for alter ego liability.

#### DISPOSITION

Accordingly, the petition for writ of mandate is granted. Let a peremptory writ of mandate issue directing the Superior Court of San Bernardino County to set aside its order of July 29, 2011, and it enter a new and different order granting discovery of the financial information of Del Rosa only subject to an appropriate protective order. In all other respects, it should deny discovery of the financial information of the other defendants at this time.

Petitioners are directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

Petitioners to recover their costs.

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MILLER  
Acting P. J.

We concur:

McKINSTER  
J.

KING  
J.