Cases of Interest

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Appealability of Post-Judgment Discovery & Judgment Debtor Exam of Third-Party

Yolanda’s Inc. v Kahl & Goveia Commercial Real Estate, 11 Cal.App.5th 509 (2017)

In Yolanda’s Inc. v Kahl & Goveia Commercial Real Estate, the Court of Appeal for the Second Appellate District (Div. 6), considered a third party's appeal of a post-judgment order requiring the third party to answer questions during a debtor examination about the location of assets no longer in its possession. The Court first considered whether post-judgment discovery orders are directly appealable. It held they are not, reasoning that "allowing appeal of each discovery order will invite unnecessary delay and facilitate the concealment of assets.” Instead, post-judgment discovery orders should be handled as petitions for writ of mandate. In reaching this holding, the Court disagreed with the Fourth Appellate District in Macaluso v. Superior Court (2013) 219 Cal.App.4th 1042.

In the substantive portion of their appeal, the Third Party argued current whereabouts were "beyond the scope" of a third-party judgment debtor examination under Code of Civil Procedure section 708.120(a). The Court rejected this argument, citing Code of Civil Procedure section 187, which codifies the trial court's inherent power to adopt any suitable method of practice if the procedure is not specified by statute or the Rules of Court. The Court also recognized that "the law favors the enforcement of judgments," and that the purpose of the judgment debtor exam is to "leave no stone unturned" in the search for assets. The Court therefore denied the third party's petition and ordered that it "comply fully and completely" with the trial court's order.

Lis Pendens law - Good Faith Transferee & Equitable Subrogation


In Nautilus, Inc. v. Chao Chen Yang, the Court of Appeal for the Fourth Appellate District (Div. 3), Nautilus had obtained a judgment against an individual and recorded an abstract of judgment against real property owned by the individual and his brother. When the two property owners then transferred title to their father who obtained a reverse mortgage loan on the property from Security One Lending, the title insurance company missed the abstract of judgment in its title search. The lender on the reverse mortgage later sold the mortgage to Urban Financial Group, Inc. Although the reverse mortgage was recorded after the abstract of judgment, the trial court granted equitable subrogation in favor of the lenders.

On appeal, the Court considered the transferee’s good faith defense in relation to Nautilus's fraudulent conveyance claims against the two lenders. The judgment creditor argued that the lenders
were on inquiry notice because the reverse mortgagor had his own prior judgment that would be paid off through the loan funds. The Court rejected this argument, holding the lenders "did not have a duty to conduct further inquiry" simply because of the mortgagor's previous litigation, and where there was no evidence the lenders were aware of the post-judgment fraudulent conveyance. In sum, it held that a transferee cannot benefit from the good faith defense if that transferee had fraudulent intent, colluded with a person who engaged in the fraudulent conveyance, actively participated in the fraudulent conveyance, or had "actual knowledge of facts showing knowledge of the transferor's fraudulent intent."

Reverse Veil Piercing Is Available As An Equitable Remedy For Judgment Creditors In California
In Curci Investments, LLC v. Baldwin, the Court of Appeal for the Fourth Appellate District (Div. 3), concluded that reverse veil-piercing is available in California. The case dealt with a 6-year saga beginning in 2009, when Baldwin, a prominent Orange County real estate developer, defaulted on repayment of a note held by Curci. Curci and Baldwin then entered into a court-approved stipulation, establishing a payment schedule for Baldwin to avoid entry of judgment. When Baldwin failed to make the stipulated payments in 2012, the trial court entered a $7.2 million dollar judgment against him.

In 2014, Curci obtained charging orders against 36 business entities in which Baldwin had an interest, including JPBI, which has two members, Baldwin with a 99 percent member interest and his wife with a one percent member interest. Between 2006 and 2012, Baldwin had caused JPBI to distribute $178 million to him and his wife. After entry of the charging order, JPBI made no distributions. In 2015, Curci sought to add JPBI as a judgment debtor pursuant to Code of Civil Procedure section 187. Curci based its motion on the outside veil piercing doctrine, arguing that LLC was the alter ego of Baldwin and that Baldwin was using the company to avoid paying the judgment and that an unjust result would occur unless JPBI's assets could be used to satisfy Baldwin's personal debt. The trial court denied the motion believing 'outside reverse veil piercing' was not available in California. The Court of Appeal reversed.

The Court of Appeal explained that reverse veil piercing is similar to traditional veil piercing in that a court will disregard the separation between an individual and a business entity when the ends of justice so require. Rather than seeking to hold an individual responsible for the acts of an entity, reverse veil piercing seeks to satisfy the debt of an individual through the assets of an entity of which the individual is an insider. Outside reverse veil piercing, on the other hand, arises when the request for piercing comes from a third party outside the targeted business entity. The Court held that outside reverse veil piercing is an equitable remedy available in California and remanded the case to the trial court to decide whether the facts supported its application in adding JPBI as a judgment debtor.

The Court also noted that the reverse veil piercing could harm no innocent shareholders because JPBI is a limited liability company, not a corporation, and because both of its members, Baldwin and his wife, are liable for the judgment. It disagreed that the sole remedy of the creditor was a charging order, which is, by statute a means by which a creditor may satisfy a judgment from the debtor's “transferable interest.” By contrast, reverse veil piercing is a means of reaching the LLC's assets, not the debtor's transferable interests in the LLC.

The Uniform Voidable Transfers Act Contains a 7-Year Statute of Repose
In PGA West Residential Association, Inc. v. Hulven International, Inc., the Court of Appeal for the Fourth Appellate District (Div. 2) considered the timeliness of claims it concluded were, in substance,
claims sounding under California’s Uniform Fraudulent Transfers Act, now the Uniform Voidable Transfers Act. The Court held the Act contains a 7-year statute of repose and that claims brought past that date were completely extinguished.

Plaintiff alleged that the defendants named a sham corporation owned and controlled by the defendants as the beneficiary of a deed of trust to fraudulently insulate the equity in a condominium from creditors, and later directed the sham corporation to foreclose on the property. The complaint described a complex scheme by which defendants orchestrated the laundering of title. The defendants filed a demurrer, contending the action was untimely. The trial court overruled the demurrer and a bench trial ultimately resulted in a judgment in favor of plaintiff and a declaration that the deed of trust at issue was void and cancelled.

On appeal, the defendant again challenged the trial court’s order overruling its demurrer. Although the plaintiff did not bring a claim under the Act, the Court of Appeal concluded the gravamen of the claims, including the claim for declaratory relief seeking to void the deed of trust, were subject to the Act. Because the plaintiff’s claims were a “common law attack on a fraudulent deed of trust,” the court also concluded they were subject to Civil Code section 3439.09(c)’s “seven-year overarching, all-embracing maximum time period to attack a fraudulent transfer.” In a detailed discussion of the differences between statutes of repose and statutes of limitation, the Court reasoned that whereas statutes of limitations affect a remedy, statutes of repose “extinguish a right of action after the period has elapsed.” This section, it concluded, is a statute of repose, not a statute of limitation. Because the plaintiff brought its claims more than seven years after the defendants prepared the deed of trust, their claims were completely extinguished. The Court of Appeal reversed the judgment and instructed the trial court to enter a new order sustaining the demurrer and dismissing the action.

Service of Process

Rockefeller Technology Investments (Asia) VII v. Changzhou SinoType Technology Co., Ltd. A much-anticipated decision on consensual service of process in China. In this recent decision, the California Supreme Court ruled that where Chinese entity had contractually submitted to jurisdiction of California courts and agreed to receiving notice and service through Federal Express or similar means, plaintiff did not need to comply with the Hague Service Convention.

Alter Ego

Butler America LLC v. Aviation Assurance Co., 55 Cal. App. 5th. 136 (2020), a California appellate court affirmed an order adding alter egos to a judgment against a shell entity. “A judgment debtor with an empty shell is easy to crack.”

Choice of Law

Airs Aromatics, LLC v. CBL Data Recovery Technologies, Inc., 50 Cal. App. 5th 1009 (2020) the California Court of Appeal held that where a contract contains a choice of law provision, the chosen state’s substantive law governs whether a plaintiff can recover interest on damages and at what rate.

Jurisdiction

The case involved a family dispute over a revocable living trust that was executed in California. The trustee moved to Idaho. Trial court dismissed the action for lack of personal jurisdiction. Court of appeals reversed. Held: Since the trust was originated in California and was administered in California, trust instrument called for application of California law

Contracts

Waterwood Enterprises v. City of Long Beach, 58 Cal.App.5th 955 (2020)
The definition of a prevailing party in a contract’s attorney fee provision does not trump the definition in Civil Code §1717. A defendant was not a prevailing party even though it admitted it owed plaintiff a portion of the contractual damages the plaintiff was seeking, and the jury’s lump sum award was for less than plaintiff’s damages claim at trial, because the defendant never tendered any portion of the plaintiff’s damages.

**Business and Corporations**


Where a plaintiff in a breach of fiduciary duty claim is seeking the equitable remedy of disgorgement of secret profits, not the legal remedy of compensatory damages, the plaintiff is not required to show it suffered pecuniary harm because of the defendant’s misconduct.

**Civil Procedure Alter Ego**

*Triyar Hospitality Management, LLC v. WSI (II) - HWP, LLC, 57 Cal.App.5th 636 (2020), reh’g denied (Nov. 17, 2020), review denied (Feb. 24, 2021)*

The individuals who owned and controlled a corporate judgment debtor were properly deemed alter egos of the corporation where there was a disregard of legal formalities, failure to maintain an arm’s-length relationship among legal entities, manipulation of assets, and commingling of funds, and where the individuals agreed to hold themselves out to be personally liable for the corporation’s debts.

**Civil Procedure Toll Statute of Limitations**

*Arrow Highway Steel, Inc. v. Dubin, 56 Cal.App.5th 876 (2020), review denied (Feb. 10, 2021)*

Code of Civil Procedure §351 impermissibly burdens interstate commerce—and violates the dormant Commerce Clause—when it is used to toll the statute of limitations against a judgment debtor who moved away from California to engage in commerce after the judgment was entered.

**Civil Procedure Default Judgment**


A trial court abused its discretion in denying a party’s motion for relief from a default judgment where the party discovered the default well after judgment had been entered, and the party tried to obtain relief in its home jurisdiction before trying to vacate the default judgment. A corporation was entitled to equitable relief from a default judgment where the corporation was aware its executive had taken out a personal loan and pledged his shares as collateral, and the lender had obtained a judgment against him, but the corporation was not aware it was a defendant until well after the judgment had been entered.