

CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

ERNEST A. LONG

Alternative Dispute Resolution

❖ Resolution Arts Building ❖

2630 J Street, Sacramento, CA 95816

ph: (916) 442-6739 • fx: (916) 442-4107

elong@ernestalongadr.com • www.ernestalongadr.com

Relentless Air Racing, LLC v Airborne Turbine LTD. Partnership

12/31/13

Judgments; Amending to Add Additional Judgment Debtors

Relentless sued Airborne in a contract dispute involving the sale of an airplane, and prevailed, with an award in the trial court of \$174,374 in attorney fees and \$6,640 in costs. Relentless was unable to collect its judgment from Airborne and moved to amend the judgment to add Wayne and Linda Fulton, along with Airborne Turbine, Inc. (ATI) and Paradise Aero, Inc. (Paradise) as judgment debtors, claiming they are the alter egos of the Fultons.

The Fultons are Airborne's sole limited partners, and are the sole officers and directors of ATI and Paradise. ATI had been a general partner of Airborne, and Paradise was a general partner at the time of trial. In their debtor examination, the Fultons testified they decided to change general partners at the end of trial because, "...we just wanted to keep ATI completely separate from Airborne and the trial." The Fultons are in the business of importing and selling airplanes and airplane parts. The entities operate from the Fultons' house using equipment owned by the Fultons. Linda Fulton testified Airborne pays ATI's utility bills in lieu of rent for the use of ATI's hanger.

The Fultons claim they have Airborne partnership meetings, as many as five or six times a day, when they speak to each other about business. They have written minutes, however, of only one meeting a year. Mrs. Fulton testified she took draws from Airborne in 2009 and 2010 to pay her personal bills. No meetings are held to decide on the amount of a draw. The last time Airborne had a significant amount of money was in 2011 prior to the trial. In 2011, they withdrew \$115,000 from Airborne. They also sent the logbooks from a helicopter

that is the subject of the lawsuit to France. The helicopter cannot be operated without the logbooks. Airborne does not currently have any assets.

The trial court found that the Fultons are the sole shareholders in the corporations and are the sole limited partners who controlled the underlying litigation. It also found that the Fultons and their business entities are not separate entities. The business was operated out of their home and money was freely transferred. The court found some disregard for legal formalities. Corporate entities are used to procure labor and services for the benefit of the Fultons and their other businesses. Most compelling, according to the court, was the Fultons' demeanor at trial during which they portrayed their business ventures as their personal efforts, benefits, responsibilities and liabilities.

The trial court declined to find, however, that there is sufficient evidence to show that an unjust or inequitable result would occur if Airborne is treated as an entity separate from the Fultons and their other entities. Accordingly, Relentless' effort to add two natural persons and their corporations as judgment debtors was denied at the trial court level. This appeal followed.

The Second Appellate District began its opinion by noting that the trial court is authorized to amend a judgment to add judgment debtors. (*Greenspan v LADT LLC* (2010) 191 Cal.App.4th 486) The addition may be made on the grounds that a person or entity is the alter ego of the original judgment debtor. It is an equitable procedure based on the theory that the court is not amending the judgment to add a new defendant but is merely inserting the correct name of the real defendant.

In order to prevail, Relentless must show that (1) the parties to be added as judgment debtors had control of the underlying litigation and were virtually represented in that proceeding; (2) there is such a unity of interest and ownership that the separate personalities of the entity and the owners no longer exist; and (3) an inequitable result will follow if the acts are treated as those of the entity alone. (*Greenspan*, at p. 511) The trial court found the first two factors in favor of Relentless, and are not challenged on appeal.

The trial court found the third factor against Relentless. It found Relentless

failed to show that if the acts are treated as Airborne's alone, an inequitable result would follow. In reaching that conclusion, the trial court found that Relentless failed to prove the Fultons changed Airborne's general partner in order to avoid the judgment, or that the \$115,000 the Fultons withdrew from Airborne was "improperly directed." In addition, Relentless failed to show it was harmed by Wayne Fulton's action in sending the helicopter's logbooks to France because the matter would be resolved in a second lawsuit in Florida.

The Justices continued their opinion by pointing out that Relentless was required to prove that the Fultons' acts caused an inequitable result. The Fultons' intent is beside the point. The Fultons used Airborne's funds to pay their personal debts. Airborne has had no substantial assets since 2011 from which the judgment could be satisfied. The Fultons continue to operate their business but as Airborne's sole limited partners and the sole shareholders of its general partner, they are in complete control of Airborne. As long as Airborne is the sole judgment debtor, it is highly unlikely it will ever have assets with which to satisfy the judgment. Given the trial court's finding that the Fultons, Airborne, ATI and Paradise are one and the same, it would be inequitable as a matter of law to preclude Relentless from collecting its judgment by treating Airborne as a separate entity.

The Fulton parties argue that Relentless was aware of the alter ego relationship before judgment. They claim that Wayne Fulton was named as a defendant in the underlying lawsuit, specifically alleging Fulton was the alter ego of Airborne. Relentless dismissed Fulton prior to trial. They also claim that Relentless learned of the relationship between the Fultons, ATI and Paradise during trial. The Fulton parties rely on Greenspan where the trial court denied the plaintiff's motion to amend the judgment on the ground that plaintiff could and should have litigated any alter ego status in the underlying action.

The Second DCA pointed out that the Court of Appeal in Greenspan reversed the trial court, stating that, "...under the trial court's reasoning, the plaintiff in every corporate contract case would be encouraged—regardless of the circumstances—to sue not only the corporation but also its owners and affiliated companies and then engage in pretrial discovery in an attempt to establish alter ego liability. This would promote a fishing expedition into alter ego evidence

before the plaintiff obtained a favorable judgment. Thus, it may be prudent for a plaintiff to sue only the corporation.” If problems arise in satisfying the judgment, the procedure to add judgment debtors is available. Nothing in Greenspan requires plaintiffs to litigate alter ego status in the underlying action. The case merely says that if a plaintiff reasonably believes an alter ego relationship exists, the complaint “should probably” include alter ego allegations. Such a requirement is far from mandatory.

The relationship between the Fultons, their limited partnership and their shifting corporate general partners was anything but obvious. It is one thing to allege an alter ego relationship, it is another thing to prove it. It makes no sense to deny Relentless a recovery because it did not engage in pretrial discovery and spend time litigating an alter ego allegation, when the entire matter might have been resolved simply by the Fulton parties paying the judgment.

The trial court erred in requiring Relentless to prove that the Fultons acted with wrongful intent. The law does not require such proof. Relentless was required to prove that the Fultons’ acts caused an inequitable result.

The order is reversed. The judgment is amended to add the Fultons, ATI and Paradise as judgment debtors, and is remanded for further proceedings. Costs are awarded to Relentless.