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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

OSCAR WILLIAMS, Plaintiff and Respondent, v. KIPLEY LYTEL, Defendant and Appellant.	B269254 (Los Angeles County Super. Ct. No. BS155025)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark A. Borenstein, Judge. Affirmed.

Greenberg Glusker Fields Claman & Machtinger, Ricardo P. Cestero and Sofia M. Aguilar for Defendant and Appellant.

Baker Marquart, Jaime W. Marquart and Brian T. Grace for Plaintiff and Respondent.

I. INTRODUCTION

Defendant, Kipley Lytel, appeals from an amended judgment following confirmation of an arbitration award. Plaintiff, Oscar D. Williams, obtained a favorable arbitration ruling against "Montecito Capital Management, LLC." Plaintiff filed an unopposed petition to confirm the arbitration award and secured a judgment. Plaintiff attempted to enforce the judgment. Plaintiff then discovered "Montecito Capital Management, LLC" had no relationship with defendant, who had committed the wrongdoing.

Plaintiff moved to amend the judgment pursuant to Code of Civil Procedure[1] section 187 to include defendant as a judgment debtor. Plaintiff also sought to add defendant's company, Montecito Capital Management Group doing business as Montecito Capital Management, a sole proprietorship as a judgment debtor. Defendant asserted plaintiff could not amend the judgment because the time to correct the arbitration award had expired. Plaintiff's motion to amend the judgment was granted. Defendant argues the trial court erred by granting the motion to amend the judgment. We affirm.

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[1] Further statutory references are to the Code of Civil Procedure.

II. BACKGROUND

A. Arbitration Proceedings and Award

Plaintiff entered into an agreement with Montecito Capital Management on or about September 18, 2007 to provide investment advisory services. Mr. Lytel is the sole owner of Montecito Capital Management. A dispute arose concerning defendant's decisions regarding plaintiff's investments. On September 12, 2012, plaintiff filed an arbitration claim against defendant's company for fiduciary duty breach, negligent misrepresentation, negligence, fraud and contract breach. Plaintiff identified the company in its arbitration brief as "Montecito Capital Management, LLC." Defendant filed a responsive brief.

The parties exchanged relevant documents and filed pre-hearing briefs setting forth their contentions and legal authorities. Defendant and plaintiff testified during the arbitration hearing. The arbitrator, Richard R. Mainland, issued his arbitration award on March 4, 2015. The arbitrator found in plaintiff's favor on the fiduciary duty breach, negligent misrepresentation and negligence claims. The arbitrator found in defendant's favor on plaintiff's fraud and contract breach claims. In the arbitration award, the only named defendant was "Montecito Capital Management, LLC."

B. Petition to Confirm Arbitration Award and Enforcement of Judgment

On April 3, 2015, plaintiff filed a petition to confirm the arbitration award. Plaintiff requested judgment be entered in his favor and against "Montecito Capital Management, LLC" for $1,218,968.54, plus interest and costs. The petition was unopposed. On June 5, 2015, the petition to confirm the arbitration award was granted. Judgment was entered on June 17, 2015. On July 7, 2015, plaintiff applied for an order to require defendant, as owner of "Montecito Capital Management, LLC," to appear for a judgment debtor examination.

C. Motion to Amend Judgment

On July 24, 2015, plaintiff moved to amend the judgment under section 187. Plaintiff requested the judgment be amended to name as additional judgment debtors, "(1) Montecito Capital Management dba Montecito Capital Management Group, a sole proprietorship; and (2) Kipley Lytel." Plaintiff's attorney, Kaysie D. Garcia, submitted a declaration in support of the motion to amend the judgment. Ms. Garcia declared the following: during April 2015, plaintiff through a third party service company named Express Network, made numerous attempts to serve the petition to confirm the arbitration award on defendant; having failed to serve defendant, a search of the Secretary of State's website was conducted for the registered agent for "Montecito Capital Management, LLC"; that search revealed Autumn L. Radle, who resided in Pennsylvania, was the listed registered agent for service of process; on April 29, 2015, the process server

attempted service of the petition to confirm the arbitration award at Ms. Radle's home; on April 30, 2015, Bryan Moody e-mailed her regarding the petition to confirm the arbitration award; and Mr. Moody identified himself as Ms. Radle's husband and indicated that neither he nor his wife had ever had any business relationship with defendant. Mr. Moody further indicated he did register a limited liability company in California under the name of "Montecito Capital Management, LLC" in 2006. But Mr. Moody denied "ever do[ing] anything with the company" and did not "cancel it" with the Secretary of State. Defendant later contacted plaintiff's counsel via email to arrange for service. Mr. Moody's e-mail contained several recipients. One of the e-mail addresses appeared to Ms. Garcia to be that of defendant. Defendant was subsequently served on May 1, 2015.

After confirmation of the arbitration award, Ms. Garcia conducted further research regarding defendant's business structure. On the Securities and Exchange Commission's website, she discovered "Montecito Capital Management" as a sole proprietorship of defendant. "Montecito Capital Management Group" was the legal name of defendant's business. On the Patent and Trademark Office website, Ms. Garcia found a trademark for "Montecito Capital Management" registered to defendant.

Plaintiff also submitted a declaration. Plaintiff declared the following. The agreement between the parties appeared to indicate "Montecito Capital Management, LLC" was defendant's company based on the header on the top left of each page. Defendant provided plaintiff with several documents also indicating the company was "Montecito Capital Management, LLC." A presentation regarding Montecito Hedged Strategies

Fund, LP specifically referenced "Montecito Capital Management, LLC." A newsletter dated January 2008 from defendant's company specifically referred to the company as "Montecito Capital Management, LLC." Another newsletter dated January 2009 from defendant's company also referred to "Montecito Capital Management, LLC" as the relevant company. Another printout regarding Montecito Hedged Strategies Fund, LP identified "Montecito Capital Management, LLC" as the sponsor and hedge fund manager. Plaintiff believed "Montecito Capital Management, LLC" was the same company from the September 12, 2007 agreement.

Defendant argued plaintiff should not be permitted to amend the judgment. Defendant contended plaintiff knew Montecito Capital Management operated as a sole proprietorship and not as a limited liability company. Defendant argued: plaintiff had the opportunity to correct the arbitration award but failed to do so; because the arbitration award was confirmed, it is final and cannot be altered; amendment under section 187 is not permitted because it is undisputed "Montecito Capital Management, LLC" is not an alter ego of him or his companies; and it was clear during the arbitration proceeding that his company's name was "Montecito Capital Management." Defendant cited exhibits submitted by plaintiff at the arbitration proceeding that identified "Montecito Capital Management" as a sole proprietorship. Defendant also cited his arbitration brief in which he was identified as Kipley Lytel and his company as "Montecito Capital Management."

D. Order Amending the Judgment

On September 9, 2015, the trial court conducted the hearing on plaintiff's motion to amend the judgment. On October 29, 2015, the trial court issued its order granting plaintiff's motion to amend the judgment. The trial court ruled: defendant and his lawyer failed to disclose at the arbitration that the wrong party was named as a respondent; defendant had deceived the arbitrator and plaintiff regarding the proper respondent; plaintiff reasonably believed the proper entity was "Montecito Capital Management, LLC" based on the agreement's stationery and the newsletters sent by defendant; plaintiff did not know at the time of the hearing of the petition to confirm the arbitration award the wrong respondent was named. An amended judgment was filed on December 8, 2015 against "Montecito Capital Management dba Montecito Capital Management Group, a sole proprietorship" and defendant.

III. DISCUSSION

A. Standard of Review

On appeal, a judgment or final order is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) An appealed judgment or order that is correct on any theory will be affirmed. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981; *Hoover v. American Income Life Ins. Co.* (2012) 206 Cal.App.4th 1193, 1201.) Questions of law such as interpretation of a statute are reviewed de novo. (*People ex rel. Lockyer v. Shamrock Foods*

Co. (2000) 24 Cal.4th 415, 432; *In re Clarissa H.* (2003) 105 Cal.App.4th 120, 125.) A trial court's discretionary decisions such as amending a judgment to add judgment debtors are reviewed for an abuse of discretion. (*Carolina Casualty Ins. Co. v. L.M. Ross Law Group, LLP* (2012) 212 Cal.App.4th 1181, 1189; *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 508.) Factual findings necessary to the court's decision are reviewed to determine whether they are supported by substantial evidence. (*Wollersheim v. Church of Scientology* (1999) 69 Cal.App.4th 1012, 1014-1015; *NEC Electronics Inc. v. Hurt* (1989) 208 Cal.App.3d 772, 777.)

B. Applicability of Section 1286.6

Defendant contends the trial court exceeded its jurisdiction by amending the judgment because section 1288 is the exclusive procedure for review of arbitration awards. Section 1288 provides in pertinent part, "A petition . . . to correct an award shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner." (*Oaktree Capital Management, L.P. v. Bernard* (2010) 182 Cal.App.4th 60, 66; *Abers v. Rohrs* (2013) 217 Cal.App.4th 1199, 1211.) Defendant asserts plaintiff should have corrected the award pursuant to section 1288. Defendant argues that because plaintiff failed to correct the award within the 100 day time limit specified in section 1288, it could not subsequently be changed. We disagree.

Section 1286.6 provides in pertinent part: "Subject to Section 1286.8, the court . . . shall correct the award and confirm it as corrected if the court determines that: [¶] (a) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award . . . ." Unless otherwise defined, we construe a statute's words by giving them a plain and commonsense meaning. (*People v. Murphy* (2001) 25 Cal.4th 136, 142; *Absher v. AutoZone, Inc.* (2008) 164 Cal.App.4th 332, 339-340.) The word "evident" means "clear to the vision or understanding." (Webster's Collegiate Dict. (10th ed. 1993) p. 402.)

The trial court ruled section 1288 did not bar amendment of the judgment under section 187. The trial court stated that to correct an award under the 1286.6, subdivision (a) requires knowledge of the mistake within the allotted timeframe. The trial court found plaintiff did not know of this mistake.

Substantial evidence supports this finding. As indicated by plaintiff's declaration and supporting exhibits, defendant provided several documents during the course of their business relationship. These documents indicated defendant's company's name was "Montecito Capital Management, LLC." This included the stationery on which the agreement was written, two newsletters, a handout and a slideshow presentation. These documents and the slideshow all indicate "Montecito Capital Management, LLC" was the correct company. Additionally, defendant actually appeared in the arbitration proceeding and proceeded to defend against plaintiff's claims, which were against "Montecito Capital Management, LLC." Defendant controlled the testimony he presented. Defendant at no point indicated the wrong party had been named. Substantial evidence supports the

trial court's finding that it was not *evident* that the correct name of the company was "Montecito Capital Management" instead of "Montecito Capital Management, LLC."

Defendant asserts a trial court cannot amend a judgment to correct an award, citing *Portico Management Group, LLC v. Harrison* (2011) 202 Cal.App.4th 464, 468-469 (*Portico*). In *Portico*, the plaintiff entered into a purchase agreement for an apartment building owned by the defendants, including the trustees of a trust. (*Id.* at p. 468.) The dispute was arbitrated, resulting in an arbitration award in the plaintiff's favor. (*Id.* at pp. 468-469.) The arbitrator issued the award against the trust. (*Id.* at p. 469.) The plaintiff then filed a petition to confirm the arbitration award. (*Ibid.*) Initially, the plaintiff filed a petition to confirm the award *against the trust's trustees*. (*Ibid.*) However, the trustees objected and the trial court directed the plaintiff to revise the proposed judgment. (*Ibid.*) Judgment was entered against the trust, without reference to the trustees. (*Ibid.*) Further litigation ensued. (*Id.* at p. 467.)

The plaintiff did not seek to correct or modify the arbitration award or the judgment to indicate the arbitration award and judgment were properly against the trustees. (*Portico, supra,* 202 Cal.App.4th at p. 467.) The plaintiff later moved to amend the judgment to add successor trustees of the trust as judgment debtors. (*Id.* at p. 471.) The trial court denied the motion, finding it had no authority to amend the judgment. (*Id.* at p. 472.) The plaintiff appealed. (*Ibid.*) The Court of Appeal affirmed the denial of the petition to correct or modify the judgment. (*Id.* at p. 479.) The Court of Appeal held: "Having accepted and confirmed the arbitration against the [trust], without any attempt to have either the arbitrator or the court

correct it to name the trustees as the proper parties, [the plaintiff] is bound by the terms of the arbitration award. (Fn. omitted.)" (*Id.* at p. 478.)

Portico is not persuasive. The mistake in *Portico* was "evident"; a trust cannot be sued. (*Portico, supra*, 202 Cal.App.4th at p. 473; *Presta v. Tepper* (2009) 179 Cal.App.4th 909, 914.) Additionally, the plaintiff actually submitted the correct proper parties, the trustees, when it first attempted to confirm the award. Thus, the plaintiff knew exactly who were the correct parties. (*Portico*, *supra*, 202 Cal.App.4th at p. 469.) Here, as stated previously, the mistake was not readily apparent. Accordingly, section 1288 is not applicable.

C. Applicability of Sections 187 and 1287.4

Defendant also contends section 187 does not apply here because there was no unity of relationship between "Montecito Capital Management, LLC" and himself and his companies. Section 187 provides in pertinent part, "When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given . . . ." (*NEC Electronics Inc. v. Hurt*, *supra*, 208 Cal.App.3d at p. 778.) This includes amending judgments to add additional judgment debtors. (*Greenspan v. LADT, LLC*, *supra*, 191 Cal.App.4th at p. 508; *Carr v. Barnabey's Hotel Corp.* (1994) 23 Cal.App.4th 14, 20-22.)

Defendant asserts that there must be at a minimum a unity of ownership or interest between the judgment debtor and the original party. He relies on *Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.* (2013) 217 Cal.App.4th 1096, 1106-1107 and *NEC Electronics Inc. v. Hurt*, *supra*, 208 Cal.App.3d at page 777. Those cases discuss alter ego liability. (See *Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.*, *supra*, 217 Cal.App.4th at pp. 1106-1107; *NEC Electronics Inc. v. Hurt*, *supra*, 208 Cal.App.3d at p. 777.) This case does not involve alter ego issues.

Numerous cases involving judgments entered on an arbitration award have permitted a motion to amend the judgment under section 187 to add judgment debtors in their capacity as alter egos. (*Greenspan v. LADT, LLC*, *supra*, 191 Cal.App.4th at p. 508; *Hall, Goodhue, Haisley, & Barker, Inc. v. Marconi Conf. Center Bd.* (1996) 41 Cal.App.4th 1551, 1555; *NEC Electronics Inc. v. Hurt*, *supra*, 208 Cal.App.3d at p. 778.) The rationale for permitting amending judgments against alter egos is as follows: "Amendment of a judgment to add an alter ego '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. [Citation.] "Such a procedure is an appropriate and complete method by which to bind new . . . defendants where it can be demonstrated that in their capacity as alter ego of the corporation they in fact had control of the previous litigation, and thus were virtually represented in the lawsuit." [Citation.]' [Citation.]" (*Carr v. Barnabey's Hotel Corp.*, *supra*, 23 Cal.App.4th at pp. 21-22; accord, *Hall, Goodhue, Haisley, & Barker, Inc. v. Marconi Conf. Center Bd.*, *supra*, 41 Cal.App.4th at p. 1555.)

While this case does not involve alter ego allegations, the same rationale applies. Defendant filed responsive briefs and exchanged documents during the arbitration proceeding. Defendant appeared during the arbitration proceeding. The trial court found defendant misled all of those present as to his sole proprietorship's status as distinguished from the limited liability company. Amending the judgment here is merely inserting the correct name of the real defendant. (See *Carolina Casualty Ins. Co. v. L.M. Ross Law Group, LLP, supra*, 212 Cal.App.4th at p. 1188; *Carr v. Barnabey's Hotel Corp.*, *supra*, 23 Cal.App.4th at p. 22.) And, even in the absence of evidence sufficient to support alter ego findings, a judgment may be modified when "the equities overwhelmingly favor" the amendment. (*Carolina Casualty Ins. Co. v. L.M. Ross Law Group, LLP*, *supra*, 212 Cal.App.4th at pp. 1188-1189; *Carr v. Barnabey's Hotel Corp.*, *supra*, 23 Cal.App.4th at pp. 22-23.)

Further, a judgment confirming an arbitration award should be treated like any other judgment. Section 1287.4 provides in pertinent part: "If an award is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to the provisions of law relating to, a judgment in a civil action of the same jurisdictional classification . . . ." (*Greenspan v. LADT, LLC*, *supra*, 191 Cal.App.4th at p. 508; see *Hall, Goodhue, Haisley & Barker, Inc. v. Marconi Conf. Center Bd.*, *supra*, 41 Cal.App.4th at pp. 1554-1555.) The judgment here could thus be amended pursuant to section 187 as it is subject to the laws relating to a civil judgment. And the trial court could reasonably find this is a case where the equities overwhelmingly favor an amendment to prevent an injustice. (*Carolina Casualty Ins. Co.*

v. L.M. Ross Law Group, LLP, *supra*, 212 Cal.App.4th at p. 1189; *Carr v. Barnabey's Hotel Corp.*, *supra*, 23 Cal.App.4th at pp. 22-23.) The trial court did not abuse its discretion by amending the judgment.

IV. DISPOSITION

The judgment is affirmed. Plaintiff, Oscar R. Williams, may recover his appellate costs from defendant, Kipley Lytel.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

KRIEGLER, J.

KIN, J. *

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* Judge of the Superior Court of the County of Los Angeles, appointed by the Chief Justice pursuant to article VI, section 6 of the California Constitution.