

Murdock v. Ventures Trident II, No. E030301 (Cal.App. Dist.4 05/30/2003)

[1]

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH
APPELLATE DISTRICT DIVISION TWO

[2]

E030301 / E031257

[3]

2003.CA.0005232

May 30, 2003

[5]

DAVID H. MURDOCK ET AL., PLAINTIFFS AND APPELLANTS,

v.

VENTURES TRIDENT II ET AL., DEFENDANTS AND RESPONDENTS.

[6]

APPEAL from the Superior Court of Riverside County. E. Michael Kaiser, Judge.

Affirmed. (Super.Ct.No. RIC 332709)

[7]

Paul, Hastings, Janofsky & Walker, Peter M. Stone, Sean A. O'Brien and Carol S. Zaist
for Plaintiffs and Appellants.

[8]

Rutan & Tucker, Layne H. Melzer and Todd O. Litfin for Defendants and Respondents.

[9]

The opinion of the court was delivered by: Gaut J.

[10]

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

[11]

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying
on opinions not certified for publication or ordered published, except as specified by rule
977(b). This opinion has not been certified for publication or ordered published for
purposes of rule 977.

[12]

OPINION

[13]

1. Introduction

[14]

This case concerns liability for damages caused by the operation of a silica sand mine
located in Temescal Canyon in Corona. Murdock, *fn1 the mine's owner, allegedly
incurred \$9 million in remediation costs after the mine threatened the stability of
Interstate 15.

[15]

Murdock appeals from an order granting Ventures Trident II's summary judgment motion
and an order awarding attorney's fees to Ventures Trident II, the only respondent in this
appeal. Murdock protests the trial court erred because Murdock submitted evidence
demonstrating the existence of a disputed issue of material fact concerning alter ego or
lender liability. Murdock also challenges the trial court's award of attorney's fees.

[16]

Based on our de novo review, we find no disputed evidence concerning either of Murdock's theories of liability. We affirm the summary judgment in favor of Ventures Trident II. We also hold the trial court did not err in awarding contractual attorney's fees to Ventures Trident II.

[17]

2. Factual and Procedural Background

[18]

The following facts were not disputed, or not effectively disputed, for purposes of the summary judgment motion.

[19]

Olympic Mining Corporation (Olympic) was incorporated in 1984.

[20]

In 1985, with initial financing of \$16.5 million, Olympic formed a joint venture, Corona Industrial Sand Project (CISP), with Western Resources of New Mexico (Western), and Corona Industrial Sand Company (Cisco). Olympic had the majority equitable interest in CISP.

[21]

CISP leased the Corona silica sand mine. As stated in CISP's joint operating agreement, Cisco managed and operated the mine. The CISP management committee was composed of three members, one each from Olympic, Cisco, and Western. CISP began mining in 1987.

[22]

Ventures Trident II, a limited partnership, was formed in October 1987.

[23]

By 1991, CISP was having financial difficulties. In February 1992, Olympic first obtained a \$7 million loan from M.M. Warburg & Co. Luxembourg S.A. (Warburg) and then loaned \$7.5 million to CISP. As collateral for one-half the \$7 million loan, Ventures Trident II posted Amax Gold stock, for which it received a \$50,000 fee and obtained a 17 percent minority shareholder interest in Olympic. In April 1995, again using Ventures Trident II's Amax Gold stock as collateral for \$2.75 million, Olympic obtained a \$5.5 million loan from Banque Paribas that it then loaned to CISP to pay off the Warburg loan.

[24]

A landslide occurred in 1996, further damaging the mine's operations. In May 1997, CISP was placed in involuntary bankruptcy. To protect its Amax Gold stock, Ventures Trident II paid off the loan from Banque Paribas at the cost of \$2,804,904.51. After the bankruptcy trustee took over the control and operation of the mine, Murdock regained possession of the property.

[25]

Murdock then sued numerous defendants. Ventures Trident II filed its summary judgment motion directed at Murdock's first amended complaint (FAC). Murdock opposed the motion but also obtained leave to conduct further discovery and to file a second amended complaint (SAC), which included allegations of breach of contract against Olympic and alter ego allegations against Ventures Trident II.

[26]

Murdock eventually filed voluminous supplemental opposition and supplemental material to its motion to amend--more than 1,000 pages. Murdock contends all the new material "contained . . . newly discovered evidence on the alter ego issue." The court ruled the supplemental opposition was beyond the scope of what it had permitted and struck its filing, although it also considered the supplemental opposition in ruling on the summary judgment motion. Seven months after Ventures Trident II filed its motion, the trial court granted it, finding no triable fact on the issues of alter ego or lender liability and awarding \$205,000 in attorney's fees to Ventures Trident II.

[27]

3. Summary Judgment

[28]

A. Standard of Review

[29]

We briefly repeat the well-known principles governing appellate review of an order granting a motion for summary judgment:

[30]

"A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. [Citation.] We review the trial court's decision de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports. [Citation.] In the trial court, once a moving defendant has `shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established,' the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff `may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action . . .'" *fn2

[31]

As differently phrased, "all that the defendant need do is to show that the plaintiff cannot establish at least one element of the cause of action--for example, that the plaintiff cannot prove element X. [Fn. omitted] Although he remains free to do so, the defendant need not himself conclusively negate any such element--for example, himself prove not X." *fn3

[32]

Murdock contends the trial court applied the wrong standard for granting summary judgment by not requiring Ventures Trident II, as the moving defendant, to make an affirmative evidentiary showing rather than simply pointing to the absence of evidence to support Murdock's claims. *fn4 The contention is untenable. As is discussed more fully below, Ventures Trident II made a significant evidentiary showing. It did much more than announce in a conclusory way that the alter ego allegations do not apply. *fn5 As the moving party, Ventures Trident II met its burden, to which Murdock responded with a pastiche of evidence that ultimately did not present a triable issue of fact.

[33]

B. Alter Ego

[34]

Murdock's case against Ventures Trident II depends on a theory of alter ego liability. For liability to exist, there must be such a unity of corporate interest as creates inequity: "It

has been stated that the two requirements for application of this doctrine are (1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow." *fn6

[35]

More elaborately: "The figurative terminology "alter ego" and "disregard of the corporate entity" is generally used to refer to the various situations that are an abuse of the corporate privilege.' [Citation.] The purpose behind the alter ego doctrine is to prevent defendants who are the alter egos of a sham corporation from escaping personal liability for its debts. [Citation.] The device of disregarding the corporate entity is applicable whether the alter ego is an individual or corporation. [Citations.] `Before the courts will disregard the corporate entity of one corporation and treat it as the alter ego of another, even though the latter may own all the stock of the former, it must further appear that there is such a unity of interest and ownership that the individuality of the one corporation and the owner or owners of its stock has ceased and, further, that the observance of the fiction of separate existence would under the circumstances sanction a fraud or promote injustice. In other words, bad faith in one form or another must be shown before the court may disregard the fiction of separate corporate existence.

[Citations.]" [Citation.]" *fn7

[36]

The characteristics of undesirable corporate unity are catalogued in *Associated Vendors, Inc. v. Oakland Meat Co.* *fn8 They include: "Commingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses [citations]; the treatment by an individual of the assets of the corporation as his own [citations]; the failure to obtain authority to issue stock or to subscribe to or issue the same [citations]; the holding out by an individual that he is personally liable for the debts of the corporation [citations]; the failure to maintain minutes or adequate corporate records, and the confusion of the records of the separate entities [citations]; the identical equitable ownership in the two entities; the identification of the equitable owners thereof with the domination and control of the two entities; identification of the directors and officers of the two entities in the responsible supervision and management; sole ownership of all of the stock in a corporation by one individual or the members of a family [citations]; the use of the same office or business location; the employment of the same employees and/or attorney [citations]; the failure to adequately capitalize a corporation; the total absence of corporate assets, and undercapitalization [citations]; the use of a corporation as a mere shell, instrumentality or conduit for a single venture or the business of an individual or another corporation [citations]; the concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities [citations]; the disregard of legal formalities and the failure to maintain arm's length relationships among related entities [citations]; the use of the corporate entity to procure labor, services or merchandise for another person or entity [citations]; the diversion of assets from a corporation by or to a stockholder or other person or entity, to the detriment of creditors, or the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another [citations]; the contracting with another with intent to avoid performance by use of a

corporate entity as a shield against personal liability, or the use of a corporation as a subterfuge of illegal transactions [citations]; and the formation and use of a corporation to transfer to it the existing liability of another person or entity [citations]." *fn9

[37]

Guided by the stated principles of alter ego liability, we consider the evidence beginning our analysis with the claims as framed by the pleadings. *fn10 The operative pleading is the SAC.

[38]

In his FAC, Murdock alleged he leased the mine. In 1997, after the mine threatened to cause the collapse of Interstate 15, he spent \$9 million for repairs. Murdock sued defendants for breach of contract, tort claims, and related causes of action. The FAC alleges all defendants were the agents of one another and jointly and severally liable. The specific allegation against Ventures Trident II is that in 1995, Ventures Trident II provided a guaranty of a \$2,750,000 loan from Banque Paribas to Olympic, which then loaned the money to Cisco.

[39]

The SAC expanded the allegations against Ventures Trident II, alleging that Ventures Trident II was an alter ego of Olympic: managed and controlled by the same principals, David S. Johnson and Fernando Montero; not maintaining an arm's-length relationship; sharing the same employees, attorneys, and offices; commingling assets; not maintaining separate records; and acting in bad faith. Either directly, or indirectly through Olympic, the SAC asserted all of its causes of action against Ventures Trident II.

[40]

Ventures Trident II's summary judgment motion was based mainly on the declaration of Johnson, who was an officer of Castle Group, Inc., a consultant and manager for Ventures Trident II. Johnson was also an officer and director of Olympic.

[41]

Anticipating an alter ego argument, Johnson declared that Olympic and Ventures Trident II were separate entities. Olympic, formed in 1984, held regular board meetings between 1984 and 1997. It had between four and six directors. Ventures Trident II, formed in 1987, had only one representative as an Olympic director. The two entities had independent bank accounts, did not commingle funds, and memorialized all their written agreements, for which they obtained appropriate approvals. They maintained different offices in Boston and Denver, employed different people, and engaged in separate investments except for CISP. Neither Olympic nor Ventures Trident II participated in the daily operations of CISP. Ventures Trident II was not a member of the CISP management committee.

[42]

Based on the foregoing, Ventures Trident II argued it was not liable to Murdock either as a guarantor or because it provided collateral for the loans to Olympic and CISP or because it was a minority shareholder in Olympic. Ventures Trident II maintained it was a separate and distinct corporate entity from the other defendants.

[43]

In his initial opposition to Ventures Trident II's summary judgment motion, Murdock asserted Ventures Trident II was liable as a guarantor and a lender and that triable issues existed concerning the alter ego liability of Ventures Trident II. On appeal, he continues

to argue the theories of lender liability and alter ego liability. Murdock's main thrust is that Johnson, acting for both Olympic and Ventures Trident II, made Olympic the alter ego of Ventures Trident II and made Ventures Trident II liable for damages caused by CISP's failed mining venture. After reviewing the evidence in Murdock's original and supplemental opposition, we conclude it does not present a triable issue of fact as to whether Ventures Trident II and Olympic were alter egos. Rather than confining our analysis to evidence from the years 1995-1997, as proposed by Murdock in his reply brief, we will consider all the evidence presented.

[44]

Using the applicable factors from the Associated Vendors ^{*fn11} case on alter ego liability, we first find no evidence at all of commingling, diversion, or misuse of corporate funds by Olympic, Ventures Trident II, or Johnson. ^{*fn12} Olympic did not fail to issue stock. ^{*fn13} The purported evidence that Olympic may have had difficulty following corporate formalities ^{*fn14} does not implicate Ventures Trident II.

[45]

There is no evidence of identical equitable ownership, domination and control of the two entities by the equitable owners, or identification of the directors and officers of the two entities in supervision and management. ^{*fn15} Ventures Trident II admits that Johnson was a director and officer of Olympic and also an officer for Castle Group, Inc., a management consultant to Ventures Trident II. But a 1991 facsimile transmission, directed from Stan Hendrickson, on behalf of CISP, to Johnson, on behalf of Olympic and in care of Ventures Trident (a different entity than Ventures Trident II), does not support Murdock's contention that "the same directors and officers of VTII were also responsible for managing Olympic." The fact that Johnson was involved in renegotiating the mining lease in February 1991 was simply consistent with his role as Olympic's representative on the CISP management committee.

[46]

A memorandum to Minven, Inc. on Castle Group, Inc. letterhead, authored by Johnson and dated April 3, 1996, which mentions obtaining \$50,000 for litigation from Ventures Trident II for Olympic to pursue foreclosure of CISP, does not show Ventures Trident II controlling Olympic. Rather it suggests the opposite. Johnson's letter to Banque Paribas dated June 7, 1996, confirms that Ventures Trident II had a minority 18 percent share of Olympic and refers to the reluctance "of other Corona [CISP] partners to sell the assets of the partnership . . . but we are working on methods to force the other partners to cooperate with these efforts." The letter does not reflect Ventures Trident II exercising domination or control over Olympic. Furthermore, Ventures Trident II's admitted status as a minority shareholder in Olympic did not make Olympic its alter ego. ^{*fn16}

[47]

Another Castle Group, Inc. memorandum by Johnson, dated June 10, 1996, states Ventures Trident, not Ventures Trident II, is assigning its interest in Olympic to Castle partners for tax reasons: "This assignment was also done to protect the control position in Olympic held by the combined partnerships . . ." The memorandum does not refer to Ventures Trident II exercising control by itself but rather sharing a "control position" with Ventures Trident. The March 1997 management committee meetings of CISP do not show that David S. Johnson represented both Olympic and Ventures Trident II, except for Ventures Trident II's interest as a minority shareholder.

[48]

Johnson's declaration in the bankruptcy proceeding, even if it had not been excluded by the court, does not show Ventures Trident II controlling Olympic. Nor do deposition testimony and a bankruptcy declaration from Stan Hendrickson, also excluded, show Ventures Trident II controlled Olympic, although Hendrickson asserts Olympic and another entity, Hansa Finance LLC (Hansa), compelled CISP to accept unfavorable financing and forced CISP into bankruptcy.

[49]

Additionally, there is no evidence Ventures Trident II and Olympic shared offices, although Olympic shared offices with Castle Group, Inc. Nor does the 1991 facsimile or a collection of miscellaneous correspondence demonstrate Olympic and Ventures Trident II using the same address and offices. No documents actually reflect Olympic and Ventures Trident II being represented by the same attorney. *fn17

[50]

The only purported evidence of undercapitalization *fn18 is that in 1993 Olympic solicited short-term loans from shareholders in amounts ranging from \$50,000 to \$200,000 dollars, amounting to \$700,000. But Murdock does not show Olympic was undercapitalized at its inception in 1984 or later. The only evidence of financial difficulty is that Olympic was in default in 1995 or 1996 on a shareholder's loan for \$50,000 and the shareholder's statement that Olympic did not have the money to repay him.

[51]

Furthermore, Olympic was not a shell corporation. *fn19 A memorandum dated April 12, 1988, describing the interest of Ventures Trident in Olympic and stating Olympic's sole investment to date is in CISP, has no bearing on the subsequent relationship between Ventures Trident II and Olympic.

[52]

On appeal, Murdock also cites his own points and authorities and separate statement opposing summary judgment. But the latter material is not evidence. *fn20 In repeatedly attempting to rely upon the points and authorities and the separate statement itself, without citing the actual evidentiary documents in the 30-volume record, Murdock places an unfair burden on this court. Even upon de novo review, it is not incumbent upon us to scour the record for the evidence supporting plaintiff's position: "In creating the excerpts of record for appeal, it behooves parties to treat appellate panels not as if we were pigs sniffing for truffles [citation] but instead to fill our troughs to the brim with the relevant, let alone necessary, information." *fn21

[53]

The foregoing convinces us the trial court correctly assessed the evidence supplied by Murdock as being "no evidence" of an alter ego relationship. The most Murdock has succeeded in demonstrating is between 1992 and 1997 Olympic and Ventures Trident II shared a close business relationship with some overlap in personnel, most notably David S. Johnson. Nothing supports a finding of the existence of a triable issue of fact regarding the kind of inequitable corporate unity that alter ego liability is meant to address.

[54]

In fact, Murdock has offered no showing at all of any bad faith or inequity if Olympic and Ventures Trident II are treated as separate entities. Because Murdock may have suffered damages, it does not mean there is evidence of bad faith by Ventures Trident II

or inequity resulting from Ventures Trident II's conduct. *fn22 It would be far more inequitable to make Ventures Trident II liable for Murdock's damages when Ventures Trident II did not control Olympic or CISP and was forced to spend millions of dollars to redeem the collateral it provided for the Banque Paribas loan to CISP.

[55]

We are also not persuaded by Murdock's contention that it was inconsistent for the court to grant leave to amend on an alter ego theory but then grant the summary judgment motion. The two procedures are guided by wholly different principles. Pleading amendments are liberally permitted. *fn23 Summary judgment motions are subject to a different standard as discussed above. Furthermore, the court never found there was "some evidence" of alter ego liability. In ruling on the summary judgment motion, the court repeatedly said there was no such evidence.

[56]

C. Lender Liability

[57]

Murdock also tries to assert a theory of lender liability, according to which a lender assumes a duty of care where it exceeds the "scope of its conventional role as a mere lender of money." *fn24 The difficulty with this theory, however, is that Ventures Trident II was not a lender to Murdock, to Olympic, or to anyone. Ventures Trident II supplied the collateral to allow two successive loans to be made to CISP. The lenders were Warburg in 1992 and Banque Paribas in 1995.

[58]

Murdock cites no pertinent legal authority to support applying lender liability to one who supplies collateral for a loan to the lender. The strained reiteration of the same evidence that Murdock tries to use to show alter ego liability, as we have discussed in detail above, succeeds even less in showing a disputed fact concerning lender liability. Lender liability simply does not apply.

[59]

In sum, we hold the trial court properly ruled there was no basis for alter ego liability or lender liability and properly granted summary judgment in favor of Ventures Trident II.

[60]

4. Attorney's Fees

[61]

In granting Ventures Trident II's summary judgment motion, the trial court also granted attorney's fees. After a formal fee motion, the court awarded Ventures Trident II fees of \$205,000. The court made the award based on the fees provision in the mining lease. The court determined Ventures Trident II had a reciprocal right to fees because Murdock had sued Ventures Trident II for fees in the original complaint and the SAC. *fn25 It also ruled against allocation of fees because the tort and contract claims were inextricably entwined. *fn26

[62]

Two standards of appellate review apply. The award of fees is subject to de novo review. *fn27 The amount of fees is reviewed according to the abuse of discretion standard.

*fn28

[63]

On the first point, we agree Ventures Trident II is entitled to an award of fees based on the mining lease and Civil Code section 1717. The lease provides: "In the event that it becomes necessary to enforce the terms and provisions of this Sublease by instituting legal proceedings, the prevailing party shall be entitled to all costs of such litigation, including reasonable attorneys' fees." Section 1717 provides: "In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs."

[64]

As is well known, if one party sues on a contract and the other party prevails, the prevailing party is entitled to recover attorney's fees whether or not the prevailing party is a signatory to the contract. *fn29 This principle applies particularly where the prevailing party is sued on a theory of alter ego liability. *fn30

[65]

Murdock argues he did not sue Ventures Trident II based on contract. We disagree. In the original complaint, Murdock expressly alleged breach of contract and sought contractual indemnity and attorney's fees against all defendants, including Ventures Trident II. In the FAC, Murdock asserted an agency allegation against all defendants, alleged breach of contract, and sought contractual indemnification and attorney's fees against Olympic. In the SAC, Murdock added detailed alter ego allegations against Ventures Trident

[66]

II.

[67]

Murdock argues that the parties entered into a stipulation, prepared by co-defendant Hansa concerning the FAC, in which they agreed Murdock asserted only tort claims against Hansa and Ventures Trident II and that Murdock did not seek exemplary or punitive damages against Hansa and Ventures Trident II. That stipulation was prepared shortly before Ventures Trident II filed its summary judgment motion and months before Murdock obtained leave to file the SAC. The stipulation did not affect the SAC in which Murdock alleged Ventures Trident II and Olympic were alter egos and Olympic was liable for breach of contract and attorney's fees.

[68]

Because Murdock sued Ventures Trident II based on both contract and tort, his reliance on *Exxess Electronixx v. Heger Realty Corp.* *fn31 and *Loube v. Loube* *fn32 does not assist him. The former case involved a contract claim that had been dismissed, leaving only tort claims. *Loube* involved only a tort claim for professional negligence.

[69]

Murdock further argues that, if attorney's fees are permitted, they should be allocated between tort and contract claims. We conclude the trial court did not abuse its discretion in finding Murdock's claims against Ventures Trident II involved common facts and the same issue and therefore no allocation should be made. *fn33 Whether the suit was based on tort or contract, the ultimately dispositive issue in the case involved the theory of alter ego liability. The lengthy record fully demonstrates that most of the work performed in

this case by both parties was directed at resolving that issue. Under these circumstances, allocation of fees would not have been appropriate.

[70]

Finally, we reject Murdock's complaint that the amount of the fee award of \$205,000 was not reasonable. The trial court awarded Ventures Trident II \$100,000 less than its co-defendant Hansa, who was in a similar procedural position and asked for \$577,000 but was awarded \$305,000. In comparison, it appears Ventures Trident II defended a potential liability of \$9 million quite economically.

[71]

4. Disposition

[72]

We affirm the judgment. Ventures Trident II shall recover its costs on appeal.

[73]

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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We concur:

[75]

Hollenhorst Acting P. J.

[76]

McKinster J.

Opinion Footnotes

[77]

*fn1 David Murdock, doing business as Murdock Investment Company, and Pacific Clay Products, Inc.

[78]

*fn2 *Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476- 477; citing Code of Civil Procedure section 437c, subdivision (o)(2), and *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854- 855.

[79]

*fn3 *Aguilar v. Atlantic Richfield Co.*, supra, 25 Cal.4th at pages 853- 854.

[80]

*fn4 *Aguilar v. Atlantic Richfield Co.*, supra, 25 Cal.4th at pages 854- 855.

[81]

*fn5 *Krantz v. BT Visual Images* (2001) 89 Cal.App.4th 164, 173- 174.

[82]

*fn6 *Automotriz etc. De California v. Resnick* (1957) 47 Cal.2d 792, 796.

[83]

*fn7 *Hennessey's Tavern, Inc. v. American Air Filter Co.* (1988) 204 Cal.App.3d 1351, 1358.

[84]

*fn8 Associated Vendors, Inc. v. Oakland Meat Co. (1962) 210 Cal.App.2d 825, 838-840.

[85]

*fn9 Associated Vendors, Inc. v. Oakland Meat Co., supra, 210 Cal.App.2d at pages 838-840.

[86]

*fn10 Zuckerman v. Pacific Savings Bank (1986) 187 Cal.App.3d 1394, 1400- 1401, citing AARTS Productions, Inc. v. Crocker Nat. Bank (1986) 179 Cal.App.3d 1061, 1064- 1065.

[87]

*fn11 Associated Vendors, Inc. v. Oakland Meat Co., supra, 210 Cal.App.2d 825.

[88]

*fn12 Associated Vendors, Inc. v. Oakland Meat Co., supra, 210 Cal.App.2d at page 838.

[89]

*fn13 Associated Vendors, Inc. v. Oakland Meat Co., supra, 210 Cal.App.2d at page 838.

[90]

*fn14 Associated Vendors, Inc. v. Oakland Meat Co., supra, 210 Cal.App.2d at pages 838- 839.

[91]

*fn15 Associated Vendors, Inc. v. Oakland Meat Co., supra, 210 Cal.App.2d at page 839.

[92]

*fn16 MacPherson v. Eccleston (1961) 190 Cal.App.2d 24, 27.

[93]

*fn17 Associated Vendors, Inc. v. Oakland Meat Co., supra, 210 Cal.App.2d at page 839.

[94]

*fn18 Associated Vendors, Inc. v. Oakland Meat Co., supra, 210 Cal.App.2d at page 839.

[95]

*fn19 Associated Vendors, Inc. v. Oakland Meat Co., supra, 210 Cal.App.2d at page 839.

[96]

*fn20 Jackson v. County of Los Angeles (1997) 60 Cal.App.4th 171, 178, footnote 4; Brehm Communities v. Superior Court (2001) 88 Cal.App.4th 730, 735.

[97]

*fn21 Downs v. Los Angeles Unified School Dist. (2000) 228 F.3d 1003, 1007, footnote 1.

[98]

*fn22 Associated Vendors, Inc. v. Oakland Meat Co., supra, 210 Cal.App.2d at page 842.

[99]

*fn23 Nestle v. City of Santa Monica (1972) 6 Cal.3d 920, 939.

[100]

*fn24 Nymark v. Heart Fed. Savings & Loan Assn. (1991) 231 Cal.App.3d 1089, 1096; Connor v. Great Western Sav. & Loan Assn. (1968) 69 Cal.2d 850, 865.

[101]

*fn25 Civil Code section 1717; Santisas v. Goodin (1998) 17 Cal.4th 599; Reynolds Metals Co. v. Alperson (1979) 25 Cal.3d 124.

[102]

*fn26 Bruckman v. Parliament Escrow Corp. (1987) 190 Cal.App.3d 1051.

[103]

*fn27 *Silver v. Boatwright Home Inspection, Inc.* (2002) 97 Cal.App.4th 443, 448- 449.

[104]

*fn28 *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094- 1095.

[105]

*fn29 *Reynolds Metals Co. v. Alperson*, supra, 25 Cal.3d at pages 128- 129; *International Billing Services, Inc. v. Emigh* (2000) 84 Cal.App.4th 1175, 1188.

[106]

*fn30 *Reynolds Metals Co. v. Alperson*, supra, 25 Cal.3d at page 129.

[107]

*fn31 *Exxess Electronixx v. Heger Realty Corp.* (1998) 64 Cal.App.4th 698, 707.

[108]

*fn32 *Loube v. Loube* (1998) 64 Cal.App.4th 421, 429.

[109]

*fn33 *Abdallah v. United Savings Bank* (1996) 43 Cal.App.4th 1101, 1111; *Reynolds Metals Co. v. Alperson*, supra, 25 Cal.3d at page 129; *Bruckman v. Parliament Escrow Corp.*, supra, 190 Cal.App.3d at page 1060.