

Nevada Supreme Court Clarifies Alter Ego Liability Of LLC Members

Article By:

Keith Paul Bishop

Laura Graham was injured when she tripped over a sprinkler box located on property owned by a single member limited liability company. She sued the LLC and asserted that its member was the *alter ego* of the LLC and the case was appealed to the Nevada Supreme Court, *Ene v. Graham*, 140 Nev. Adv. 26 (Apr. 18, 2024).

The Supreme Court reversed finding that substantial evidence did not support the trial court's *alter ego* determination. The opinion makes several important points regarding the analysis of *alter ego* liability for LLCs:

- The *alter ego* analysis for an LLC is the same as the analysis applied with respect to a corporation. NRS 86.376 sets forth the elements required to support an *alter ego* finding with respect to an LLC. It mirrors the language and elements of NRS 78.747 and simply replaces the term "corporation" with "limited liability company".
- NRS 86.376 was enacted after NRS 78.747 but the case law analyzing *alter ego* doctrine for corporations remains "instructive".
- The trial court erred by including jury instructions regarding *alter ego* because *alter ego* is a question of law. See NRS 376(3).
- A person is the *alter ego* of an LLC only if (i) the LLC is influenced and governed by the person; (ii) there is a unity of interest and ownership such that the person and the LLC are inseparable; and (iii) adherence to the notion of separate persons would sanction a fraud or injustice.

The Supreme Court found that because the LLC had only a single member, substantial evidence supported the trial court's finding that the LLC was influenced and controlled by its member. While the Supreme Court agreed that there was some evidence that the member used the property for his own personal enjoyment, that evidence does not satisfy the "unity of interest and ownership" element without findings as to "a lack of observance of corporate formalities, maintenance of corporate records, comingling of funds, or prejudice to creditors". The Supreme Court also found that substantial evidence did not support the "fraud or injustice" element because it was unclear how recognition of the LLC would have result in an injustice to the plaintiff.

I find the Supreme Court's analysis of the second element troubling. The Court references the

observance of "corporate formalities". Not only does this conflate corporations and LLCs, it fails to recognize that LLCs are not required to observe the formalities required by corporations. See [*What Egregious Error Have Courts Made Nearly 9,000 Times \(And Counting\)?*](#) California's statute governing alter ego liability with respect to LLCs (Cal. Corp. Code § 17703.04(b)) specifically provides that the failure to hold meetings of members or managers or the failure to observe formalities in respect of meetings are not be be considered when the articles of organization or operating agreement do not expressly require the holdings of meetings or managers.

I also quibble with the inclusion of "prejudice to creditors" as evidence of a unity of interest and ownership. Prejudice to creditors seems to me to relate more closely, if at all, to the question of whether there was fraud or injustice. Further, the fact that creditors may be unable to collect should not necessarily imply that there has been a "prejudice to creditors" because creditors typically raise *alter ego* when the LLC or corporate defendant lacks the wherewithal to pay the creditor's claim in full.

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National Law Review, Volume XIV, Number 117

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