

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Leaser v. Prime Ascot, L.P.

Leaser · No. 2:20-cv-02502-DJC-AC · Decided May 7, 2025

SUMMARY

The United States District Court for the Eastern District of California held that Delaware law governs the alter ego analysis for the Delaware LLC defendants. The court granted defendants' motion for judgment on the pleadings because plaintiffs had not sufficiently alleged that the entities operated as a single economic entity, but granted leave to amend. The court denied defendants' motion for partial summary judgment without prejudice as premature.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 LEASER et al., No. 2:20-cv-02502-DJC-AC 12 Plaintiff, 13 v. ORDER 14
PRIME ASCOT, L.P. et al., 15 Defendants. 16 17 18 Pending before the Court is Defendants
Prime Ascot L.P., Prime Ascot 19 Acquisition, LLC, Prime/Park LaBrea Titleholder, LLC, and
Prime Administration, LLCs' 20 Motion for Judgment on the Pleadings.

Defendants argue that three of the 21 Defendants—Prime Ascot Acquisition, LLC; Prime/Park
LaBrea Titleholder, LLC—and 22 Prime Administration, LLC should be subject to Delaware law
on the issue of alter ego 23 liability. Defendants also bring a Motion for Partial Summary
Judgment. Plaintiffs 24 oppose both Motions.

For the reasons discussed below the Court GRANTS the 25 Motion for Judgment on the Pleadings
with leave to amend and DENIES the Motion 26 for Partial Summary Judgment without
prejudice. 27 //// 28 //// 1 I. Background 2 The factual and procedural backgrounds are largely
known to the parties. 3 However, the Court will briefly summarize the motions submitted by the
parties and 4 the relevant holdings as they pertain to the issue of alter ego liability.

5 Plaintiffs brought the present suit as a putative class action against Defendants 6 on behalf of
three classes of plaintiffs. The suit was originally filed in California 7 Superior Court, Solano
County, and was removed to this Court on December 17, 8 2020. (ECF No. 1).

The Court denied the Defendants' first motion to dismiss the First 9 Amended Complaint. (ECF
No. 26). On reconsideration, however, the Court found 10 that Plaintiffs did not have standing to
sue the owners and landlords of the properties 11 managed by Prime Administration, and those
Defendants were dismissed. (ECF No. 12 34). Plaintiffs then filed a Second Amended Complaint.

(ECF No. 37). Defendants 13 brought a Rule 12(f) motion to strike allegations in the Second Amended Complaint 14 related to the now-dismissed landlords, arguing they were required parties under 15 Rule 19. (ECF No. 38).

The Court denied that motion and Defendants proceeded to 16 bring a motion to dismiss the seventh and eighth causes of action under Rule 12(b)(7) 17 and attempted to dismiss the Plaintiffs' alter ego and conspiracy claims under Rule 18 12(b)(6). (ECF No. 51). Relevant to this Order, the Court held that Plaintiffs 19 successfully stated a claim for relief under California law for a theory of alter ego 20 liability.

(July 11 Order (ECF No. 60).) The Defendants now argue that Delaware law 21 applies to the issue of alter ego liability as it pertains to the three Defendants 22 incorporated in Delaware. (Mot. (ECF No. 70).) They claim that under Delaware law, 23 Plaintiffs' allegations of alter ego liability fail. Defendants also seek partial summary 24 judgment as to several causes of action in Plaintiffs' complaint.

(PSJ (ECF No. 71).) 25 The Court has considered Plaintiffs opposition to both motions (Mot. Opp'n 26 (ECF No. 83); MSJ Opp'n (ECF No. 84)) as well as Defendant's replies (Mot. Reply (ECF 27 No. 85); MSJ Reply (ECF No. 86).)

The Court ordered the matter submitted without 28 oral argument. (ECF No. 93). 1 II. Motion for Judgment on the Pleadings 2 A. Legal Standard 3 Federal Rule of Civil Procedure 12(c) provides that, "[a]fter the pleadings are 4 closed—but early enough not to delay trial—a party may move for judgment on the 5 pleadings." Fed. R. Civ. P. 12(c).

The same legal standard applicable to a Rule 6 12(b)(6) motion applies to a Rule 12(c) motion. See *Dworkin v. Hustler Mag. Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). Accordingly, the allegations of the non-moving party 8 must be accepted as true, while any allegations made by the moving party that have 9 been denied or contradicted are assumed to be false.

See *MacDonald v. Grace 10 Church Seattle*, 457 F.3d 1079, 1081 (9th Cir. 2006). The facts are viewed in the light 11 most favorable to the non-moving party and all reasonable inferences are drawn in 12 favor of that party. *Living Designs, Inc. v. E.I. DuPont de Nemours & Co.*, 431 F.3d 353, 13 360 (9th Cir. 2005). "[J]udgment on the pleadings is properly granted when, taking all 14 the allegations in the non-moving party's pleadings as true, the moving party is 15 entitled to judgment as a matter of law." *Marshall Naify Revocable Tr. v. United States*, 16 672 F.3d 620, 623 (9th Cir.

2012) (quoting *Fajardo v. Cnty. of L.A.*, 179 F.3d 698, 699 17 (9th Cir. 1999)). 18 B. Discussion 19 Defendants' Motion argues that Delaware law, rather than California law, 20 governs the issue of alter ego liability in this case, and that Plaintiffs have failed to 21 satisfy the elements of an

alter ego claim under Delaware law. Plaintiffs contend that 22 Defendants' arguments fail on procedural and substantive grounds.

Procedurally, 23 Plaintiffs claim that Defendants are estopped, and/or have waived, arguments about 24 choice of law and that Defendants' Motion is masquerading as an improper motion for 25 reconsideration. Substantively, Plaintiffs state that California law should apply under 26 the governmental interest test, but that even if Delaware law were to apply, Plaintiffs' 27 allegations are sufficient.

The Court will first address any procedural issues before 28 discussing substantive arguments. 1 1. Procedural Arguments 2 i. Judicial Estoppel and Waiver 3 "The purpose of judicial estoppel is to protect the integrity of the judicial 4 process by prohibiting parties from deliberately changing positions according to the 5 exigencies of the moment." *Clear Connection Corp. v. Comcast Cable Commc'ns 6 Mgmt., LLC*, 149 F. Supp. 3d 1188, 1204 (E.D.

Cal. 2015) (internal quotation marks and 7 citations omitted). "Judicial estoppel is an equitable doctrine that precludes a party 8 from gaining an advantage by asserting one position, and then later seeking an 9 advantage by taking a clearly inconsistent position." *Hamilton v. State Farm Fire & 10 Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001) (citations omitted).

The doctrine is 11 intended "to protect against a litigant playing fast and loose with the courts by taking 12 inconsistent positions." *U.S. v. Kim*, 806 F.3d 1161, 1167 (9th Cir. 2015) (internal 13 quotation marks and citations omitted). Judicial estoppel may bar the assertion of 14 inconsistent positions in the same litigation, or in two different cases. See *Hamilton*, 15 270 F.3d at 783 (citations omitted).

16 Courts may consider the following factors in determining whether judicial 17 estoppel applies: "First, a party's later position must be 'clearly inconsistent' with its 18 earlier position." *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001) (citation omitted). 19 Second, courts consider "whether the party has succeeded in persuading a court to 20 accept that party's earlier position, so that judicial acceptance of an inconsistent 21 position in a later proceeding would create 'the perception that either the first or 22 second court was misled.'" *Id.* (citation omitted).

Third, courts consider "whether the 23 party seeking to assert an inconsistent position would derive an unfair advantage or 24 impose an unfair detriment on the opposing party if not estopped." *Id.* at 751. 25 (citation omitted). Application of judicial estoppel is a matter of the district court's 26 discretion. *Baughman v. Walt Disney World Co.*, 685 F.3d 1131, 1133 (9th Cir.

2012) 27 (citing *New Hampshire*, 532 U.S. at 750). 28 //// 1 Under the first factor, the party to be estopped must have taken a prior position 2 that is clearly inconsistent with the position in question as possible; "indirect or 3 implied inconsistency does not trigger the doctrine." 18 *Moore's Federal Practice 4 Civil* § 134.30.

The Ninth Circuit has held that a “threshold” inconsistency is not sufficient for judicial estoppel. See *General Signal Corp. v. MCI Telecommc’ns Corp.*, 66 F.3d 1500, 1505 (9th Cir. 1995) (finding that citation to California law in earlier motions and a delay in raising a choice of law issue before trial is not playing “fast and loose” with the court).

Although the Court takes the Plaintiffs’ argument that Defendants certainly seem to have taken the position that California law applies to the issue of alter ego liability — given the motions submitted based on exactly that — the specific issue of choice of law has not yet been raised, or ruled on, in this matter. See *DeRosa v. Nat’l Envelope Corp.*, 595 F.3d 99, 104 (2d Cir.

2010) (in determining whether to apply judicial estoppel the court considers “whether the statements can be reconciled, not whether a factfinder would necessarily adopt the interpretation which reconciles them.”). The Court observes that the cases cited by Defendants to support their argument that judicial estoppel does not apply are not on all fours with the facts of this case, even though they involve denying estoppel where there was a choice of law issue raised before trial.

In *General Signal*, one party had cited to California law but “never specifically asserted as a legal argument that California law was applicable.” 66 F.3d at 1505. The prior motions in that case “related to interpretation of federal procedural rules rather than state substantive law.” *Id.* In *Radiation Sterilizer’s Inc. v. U.S.*, the issue was about a “brief argument” in a prior motion stating that one state’s law applied.

867 F. Supp. 1465, 1473 (E.D. Wash. 1994). Here, by contrast, Defendants’ reliance on California law has been anything but “brief.” Defendants submitted several motions over the span of this litigation discussing the substantive sufficiency of Plaintiffs’ alter ego arguments under California law. Ultimately, however, given that Defendants never specifically argued that California law applied, it seems there is only an “implied inconsistency” here with Defendants’ positions, which does not meet the “clearly inconsistent” standard.

The second factor, which is often dispositive, looks at whether the party persuaded a court to accept its earlier position. *Baughman*, 685 F.3d at 1133. Here, the Court found for Plaintiffs on the issue of alter ego liability based on California law, as that is the substantive law to which the parties cited in their briefing. (See generally July 11 Order.)

However, the Court never decided the choice of law issue and did not accept Defendants’ position that the alter ego theory was inadequately pled. Further, this does not appear to be an instance where the Defendants “induce[d] their opponents to surrender”, as there was no settlement where Plaintiffs relied on Defendants’ false allegations or claims.

See *id.* at 1134. Thus, this factor also appears to weigh in Defendants’ favor. Lastly, the Court considers whether the party seeking to assert an inconsistent position will derive an

unfair advantage or if the opposing party will suffer an unfair 15 detriment.

Here, the Court expresses concern with the “war of attrition” Defendants 16 appear to have been engaged in throughout the course of this litigation. Defendants 17 have filed several motions bringing up issues that, while not frivolous, could (and 18 should) have been brought to the Court’s attention at an earlier time.

As for the 19 instant Motion, the Defendants have offered no explanation as to why they delayed 20 raising a choice of law issue such that estoppel could have been denied based on 21 mistake or inadvertence. See *New Hampshire*, 532 U.S. at 753 (“We do not question 22 that it may be appropriate to resist application of judicial estoppel ‘when a party’s 23 prior position was based on inadvertence or mistake.’”).

The Court also recognizes 24 the disadvantages that Plaintiffs face in having to oppose the Defendants’ ongoing 25 motions, and the costs associated with that effort. Accordingly, this factor weighs 26 somewhat in favor of Plaintiffs. 27 //// 28 //// 1 Taking these considerations together, however, and particularly noting that this 2 Court has not yet ruled on the issue of applicable law, the Court finds that judicial 3 estoppel is not appropriate in this instance.^{1 4 ii.}

Improper Motion for Reconsideration 5 Plaintiffs also argue that the instant Motion is merely an improper motion for 6 reconsideration of the Court’s previous order. In their Reply, Defendants contend that 7 that the instant Motion raises a new issue, a ruling under Delaware law, not 8 reconsideration of the Court’s prior order.

Although the Court agrees with the 9 Plaintiffs that the Court already determined the sufficiency of their allegations as to 10 alter ego liability under California law, here, the Defendants are arguing that Delaware 11 law is the proper standard. Given that the choice of law argument is a new issue 12 being raised, the Court finds that this is not an improper motion for reconsideration.

13 See *MacRae v. HCR Manor Servs, LLC*, No. 8:14-cv-00715-DOC-RNB, 2017 WL 14 11480091, at *3 (C.D. Cal. Sept. 14, 2017) (rejecting the plaintiffs’ argument that 15 defendant waived its choice of law argument by failing to raise it in either of its prior 16 two motions to dismiss). 17 2. Applicable Law 18 The Court will first determine which law applies to the alter ego liability analysis.

19 Because jurisdiction here is based on the Class Action Fairness Act (“CAFA”), 28 U.S.C. 20 § 1332(d), which is a diversity statute, this Court applies California’s choice of law rules 21 to determine whether Delaware or California law is applicable. See *Lefevre v. Five Star 22 Quality Care, Inc.*, No. 5:15-cv-01305-VAP-SP, 2015 WL 13688460, at *2 n.1 (C.D.

Cal. 23 Dec. 11, 2015), *aff’d*, 705 F. App’x 622 (9th Cir. 2017) (“Given that CAFA relies on the 24 diversity of the parties for removal, the Court applies the choice-of-law rules of the 25 forum

state.”). “Where a statute dictates the choice-of-law, the court need not apply a 26 1 To the extent that waiver extends beyond judicial estoppel, the Court finds that because the Court has 27 not ruled on the issue of choice of law, the Defendants have not waived the argument.

See General Signal, 66 F.3d at 1505 (rejecting an argument based on waiver where the district court had not yet 28 ruled on the issue of choice of law). 1 common law choice-of-law analysis.” Wehlage v. EmpRes Healthcare Inc., 821 F. 2 Supp. 2d 1122, 1128 (N.D. Cal. 2011) (citing Barclays Discount Bank Ltd. v. Levy, 743 3 F.2d 722, 725 (9th Cir. 1984)); Restatement (Second) of Conflict of Laws § 6(1) (1971) 4 (“A court, subject to constitutional restrictions, will follow a statutory directive of its 5 own state on choice of law.”).

Under California Corporations Code § 17708.01, “[t]he 6 law of the state or other jurisdiction under which a foreign company is formed 7 governs.... the liability of a member as a member and a manager as a manager for 8 the debts, obligations, or other liabilities of the limited liability company.” Cal. Corp. 9 Code § 17708.01. This language “encompasses the determination of an LLC’s alter 10 ego liability.” Pro 49 Dev., LLC v. Ness Express 1, LLC, No. 2:24-cv-01850-JAM-JDP, 11 2024 WL 4712389, at *2 (E.D.

Cal. Nov. 7, 2024) (citing MacRae, 2017 WL 11480091, 12 at *3). Thus, California federal courts apply the law of the state of incorporation in 13 assessing the alter ego of an LLC. See id. at *2 (collecting cases)). 14 Here, three Defendants, including Defendant Prime Administration, LLC, are 15 incorporated in Delaware, and therefore the Court applies Delaware law in its alter 16 ego analysis to determine whether veil-piercing is appropriate.

See Pizana v. 17 SanMedica Int’l, 345 F.R.D. 469, 486 (E.D. Cal. 2022) (“[A]lthough plaintiff relied on 18 California’s substantive law to support his alter ego allegations [] California’s law does 19 not apply... Delaware’s substantive law on alter ego liability applies to the Delaware 20 defendants....”); Pro 49 Dev., 2024 WL 4712389, at *2 (“Because Ness is an LLC 21 incorporated in Delaware, the Court applies Delaware law in its alter ego analysis.”).

22 The appropriate standard to assess alter ego liability of a corporation under Delaware 23 law is (1) whether the entities in question operated as a single economic entity, and (2) 24 whether there was an overall element of injustice or unfairness. NetJets Aviation, Inc. 25 v. LHC Commc’ns, LLC, 537 F.3d 168, 177 (2d Cir. 2008) (citations omitted). 26 Delaware’s veil-piercing principles “are generally applicable as well where one of the 27 entitles in question is an LLC rather than a corporation.” Id. at 178.

The difference is 28 1 that “somewhat less emphasis is placed on whether the LLC observed internal 2 formalities because fewer formalities are legally required.” Id. 3 i. Single Economic Entity 4 The “alter ego analysis must start with an examination of factors which reveal 5 how the corporation operates and the particular defendant’s relationship to that 6 operation.” Id. at 176–77.

These factors include (1) whether the corporation was 7 adequately capitalized for the corporate undertaking; (2) whether the corporation was 8 solvent; (3) whether the dividends were paid, corporate records kept, officers and 9 directors functioned properly, and other corporate formalities observed; (4) whether 10 the dominant shareholder siphoned corporate funds; (5) and whether, in general, the 11 corporation simply functioned as a façade for the dominant shareholder.

Id. at 177. 12 The Second Circuit has held that “some combination” of factors is required to cast 13 aside the corporate entity. Id. (stating that “no single factor can justify” a decision to 14 pierce the corporate veil). 15 ii. This Court has previously held that Plaintiffs’ have sufficiently 16 alleged that Defendants operated as a “mere shell or conduit” 17 of Prime Administration.

(July 11 Order at 8.) The allegations 18 supporting this conclusion similarly support a finding that the 19 LLC functioned as a façade. However, Plaintiffs have not made 20 sufficient allegations as to any of the other factors listed in 21 NetJets. This is not to say Plaintiffs cannot meet the other 22 factors, but rather that the current allegations do not discuss 23 the relevant criteria.

Without allegations supporting any of the 24 other factors, the Court must find that Plaintiffs have failed to 25 satisfy the first element of the alter ego analysis. See NetJets, 26 537 F.3d at 177. Element of Injustice or Unfairness 27 Plaintiffs must also show the presence of “an overall element of injustice or 28 unfairness.” Fletcher v. Atex, Inc., 68 F.3d 1451, 1458 (2d Cir.

1995). To satisfy this 1 element, “the claimed injustice must consist of more than merely the tort or breach of 2 contract that is the basis of the plaintiff’s lawsuit.” NetJets, 537 F.3d at 183. “[A] 3 Plaintiff must allege injustice or unfairness that is a result of an abuse of the corporate 4 form” such that the corporation exists “as a sham or shell through which the parent 5 company perpetrates injustice.” Nat’l Gear & Piston, Inc., v. Cummins Power Sys., LLC, 6 975 F. Supp. 2d 392, 406 (S.D.

N.Y. 2013) (citations omitted). This does not mean, 7 however, that “there can be no overlap in the proof as to unity of ownership and the 8 proof of unfairness.” NetJets, 537 F.3d at 183. One district court in the Ninth Circuit 9 considering the issue of the similarity between second prongs of both the California 10 and Delaware tests has concluded that the second prong of each state’s test is 11 “materially identical.” Khoros, LLC v. Lenovo, No. 3:20-cv-03399-WHO, 2020 WL 12 12655516, at *15 (N.D.

Cal. Oct. 5, 2020) (collecting cases analyzing the similarity 13 between the two prongs). In the July 11 Order, this Court found that the second 14 element of the California analysis was plausibly alleged. (July 11 Order at 9 “[t]o the 15 extent the Plaintiffs are able to prove their claims, it would be inequitable for Prime 16 Administration to hide assets behind its alleged corporate shells or to avoid injunctive 17 relief as to those entities.”).

Since the Court has already found that the Plaintiffs have satisfied the second element of alter ego liability under the California test, the Court will not revisit this issue. However, because the first element of alter ego liability has not been satisfied, the Court finds that Plaintiffs have not plausibly alleged alter ego under Delaware law such that Prime Administration is the alter ego of the titleholding subsidiaries.

3. Leave to Amend Although Federal Rule of Civil Procedure 12(c) does not mention leave to amend, courts retain the discretion to grant a Rule 12(c) motion with leave to amend. See *Gregg v. Hawaii Dept. of Pub. Safety*, 870 F.3d 883, 887 (9th Cir. 2017).

The Court may deny leave to amend when doing so would be futile and the deficiencies in the complaint could not be cured by amendment. *Chandavong v. Fresno Deputy Sheriff's Ass'n*, 599 F. Supp.3d 1017, 1020 (citation omitted). Given that Defendants are now, for the first time, arguing that Delaware law should apply, the Court finds that leave to amend is proper.

Therefore, Plaintiffs' request to have leave to amend is GRANTED. Ill. Motion for Partial Summary Judgment As discussed above, the Court GRANTS the Defendants' Motion for Judgment on the Pleadings. Thus, the Court does not reach the Defendants' Motion for Partial Summary Judgment, as Plaintiffs requested leave to amend the operative Complaint. The Court finds that addressing the Motion for Partial Summary Judgment would be premature at this point and DENIES the Motion without prejudice.

IV. Conclusion For the reasons above, the Court GRANTS the Defendants' Motion for Judgment on the Pleadings (ECF No. 70) with respect to finding that Plaintiffs have failed to allege alter ego liability under Delaware law.

However, Plaintiffs are granted leave to amend and refile their Complaint within 21 days. The Court also DENIES the Motion for Partial Summary Judgment (ECF No. 71) without prejudice. IT IS SO ORDERED. Dated: May 6, 2025
Donel J Hon. Daniel alabretta
UNITED STATES DISTRICT JUDGE
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