

***Callie v. Bowling*, 123 Nev. Adv. Op. No. 22 (June 28, 2007)¹**

CIVIL PROCEDURE - ALTER EGO DOCTRINE

Summary

The court considered whether a judgment creditor in a domesticated foreign judgment may add a nonparty to a final judgment, under the alter ego doctrine, simply by moving to amend the judgment. The court held that such a procedure violates the due process rights of the nonparty whom the creditor seeks to add. To observe the requisite attributes of due process, a judgment creditor who wishes to assert an alter ego claim must do so in an independent action against the alleged alter ego.

Disposition/Outcome

As described above, the court held that a judgment creditor in a domesticated foreign judgment may not add a nonparty to a final judgment, under the alter ego doctrine, simply by moving to amend the judgment.

Here, because the appellant did not receive notice and was not the subject of an independent action with respect to the respondent's alter ego claim, the court concluded that the district court erred by granting the respondent's motion to amend the domesticated foreign judgment to add the appellant, in his individual capacity, as an alter ego of ITB. Accordingly, the court vacated the district court's amended domesticated foreign judgment.

Factual and Procedural History

Appellant Michael Callie was the president and a director of ITB Productions, Inc., a now-defunct Nevada corporation. Respondent Faye Bowling had an employment agreement with ITB. In 2000, Bowling filed a claim for arbitration in California, alleging that ITB had failed to make certain payments to her under the employment contract. The Los Angeles Office of the American Arbitration Association found for Bowling on her claim, and in 2001, a California trial court entered judgment on the arbitration award. ITB was the named defendant/respondent in both proceedings. Callie, in his individual capacity, was not named as a party or served with a summons or a copy of the complaint in the California proceedings.

In 2002, Bowling registered the California judgment in Nevada as a foreign judgment. The Nevada district court then domesticated the judgment. However, Callie was not individually named or served with pleadings filed as part of Bowling's efforts to domesticate the judgment.

¹ Edited from the original opinion by Bret Meich.

In 2005, having encountered some difficulties in her collection efforts, Bowling filed a motion with the Nevada district court to amend the domesticated judgment to add Callie as a party under an alter ego theory. The district court conducted an evidentiary hearing on the motion but did not issue formal findings of fact or conclusions of law.

Nevertheless, the court determined that there was sufficient evidence to find that Callie was an alter ego of ITB. Accordingly, the district court granted Bowling's motion and amended the judgment to make Callie personally liable for the judgment.

Callie appealed the district court's order granting Bowling's motion and amending the domesticated foreign judgment to add him as an alter ego of ITB. Callie argued that his constitutional due process rights were violated when he was added to the judgment as an alter ego because he did not participate in the underlying proceedings and was never served with summons and a copy of the complaint.

Discussion

The court applied a de novo standard of review to the constitutional challenge, and recited established due process rights under the United States Constitution and the Nevada Constitution. These rights guarantee that a person receive due process before the government may deprive him of his property. Due process requires notice and an opportunity to be heard.

The record in the case indicated that Callie was not individually named in any complaint and was never served with summons or any complaint in Nevada or California, even though multiple proceedings occurred in both states. Instead, in the Nevada proceedings, the district court simply granted Bowling's motion to amend the domesticated foreign judgment to add Callie as an alter ego of ITB, thereby, rendering him individually liable on the judgment. Thus, Callie never received notice and an opportunity to be heard before he was rendered individually liable on the domesticated foreign judgment—a deprivation of his property. Callie's due process rights were, as a consequence, violated. According to the court, the only method by which Bowling could have asserted her alter ego claim without jeopardizing Callie's due process rights was through an independent action against Callie with the appropriate notice.

Bowling did not dispute that Callie was not individually named in a complaint and that he never received summons or a copy of the complaint in his individual capacity. Instead, Bowling argued that by granting her motion to amend the judgment to add Callie as an alter ego, the district court merely identified Callie as the real defendant, since Callie and ITB were identical entities. Bowling further contended that under the court's 1957 holding in McCleary Cattle Co. v. Sewell, 73 Nev. 279, 317 P.2d 957 (1957), judgment creditors may add nonparties to the judgment under the alter ego doctrine by simply moving to amend a domesticated judgment.

The court rejected Bowling's argument that this procedure is proper and modified its holding in McCleary Cattle, to the extent that it sanctioned the procedure outlined by

Bowling; to add a nonparty to a domesticated judgment without notice and proper service. The court noted:

To the extent that McCleary Cattle implies that a party may assert an alter ego claim by motion as part of a collection effort, rather than through an independent action with notice and service of process, we overrule that case.

Instead, a party wishing to assert an alter ego claim must do so in an independent action against the alleged alter ego with the requisite notice, service of process, and other attributes of due process. When the judgment creditor employs the proper procedure, the defendant who is subject to the alter ego claim is assured a full opportunity of notice, discovery, and an opportunity to be heard before potentially being found liable. The failure to abide by this procedure results in a deprivation of due process.

Here, the parties did not follow this procedure and Callie's due process rights were violated as a consequence. Without formal notice and service of process, the court concluded that Callie was deprived of the opportunity to present a defense and argue any such distinctions. Therefore, the district court improperly granted Bowling's motion to amend the judgment.

Conclusion

Because Callie did not receive notice and was not the subject of an independent action with respect to Bowling's alter ego claim, the court concluded that the district court erred by granting Bowling's motion to amend the domesticated foreign judgment to add Callie, in his individual capacity, as an alter ego of ITB. Accordingly, the court vacated the district court's amended domesticated foreign judgment.